

T · M · C · A S S E R P R E S S

ASSER International Sports Law Series

# Sports Betting: Law and Policy

Paul M. Anderson  
Ian S. Blackshaw  
Robert C. R. Siekmann  
Janwillem Soek *Editors*

 Springer

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Editors

# Sports Betting: Law and Policy



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 Springer

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## Series Information

Books in the *ASSER International Sports Law Series* chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

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# Foreword

I am very pleased and honoured to have been invited to write the foreword to this timely book. I use the word ‘timely’ advisedly to characterise this book as, sadly, more and more cases of corruption—of one kind or another—in sport are regularly being exposed by the world’s media. Not surprisingly, perhaps, because there is so much to play for, not only in sporting terms but also in financial ones as sport nowadays is big business and a global industry in its own right!

Take, for example, a couple of recent instances of corruption in sport. The disclosures by *The Sunday Times* newspaper of corruption in the bidding process for the 2018 FIFA World Cup, resulting in bans being imposed on the two members of the FIFA Executive Committee alleged to have been involved in this scandal by offering their votes to the England bidding team in return for substantial monetary payments. And also the exposure by the *News of the World* newspaper on ‘match fixing’ or—more properly described—‘spot fixing’ in cricket involving certain members of the Pakistan National Cricket Team during the 4th Test between England and Pakistan at Lords in which, it is alleged, that they deliberately bowled ‘no balls’ at predetermined points in an over, as pre-arranged and agreed with a certain bookmaker, who would take bets on when ‘no balls’ would be bowled during the match.

Betting and sport have been—to some extent—uneasy bedfellows probably since the dawn of time: for example, lottery games were originally played in China some three thousand years ago! Not only is it enjoyable to watch a sporting event, but added excitement and interest come from also being able to bet on the outcome of it. In fact, horse racing depends upon betting for its very survival as a sport. As David Forest points out in his contribution to this book:

...betting has been a pervasive influence on sport. For example, betting companies have become a dominant source of sponsorship in English Premier League football and the famous shirts of Real Madrid are now adorned with the logo of a bookmaker.

This book looks at the Law and the Policy on Betting and Sport in many countries around the world—sport is a global phenomenon—and thus provides a very useful and valuable comparative survey on a subject that is so vital to

safeguarding and preserving the integrity of those sports in which betting is legally allowed.

In fact, the International Olympic Committee now requires all athletes participating in the Summer and Winter Games to sign a declaration that they will not be involved in betting. Also, the European Governing Body of Football (UEFA) has introduced a sophisticated system for monitoring betting markets on matches under its or its members' jurisdiction. And the United Kingdom Government has recently enunciated a formal policy requiring sports to defend themselves against 'fixers' (UK Department for Culture, Media and Sport, 2010).

Of course, with such preventive measures in place, sport and betting can—and do, in fact—coexist for their mutual benefit. Indeed, National Lotteries raise substantial sums of money for 'good causes,' which include the funding of sports events and sports persons.

I warmly congratulate Professors Paul Anderson, Ian Blackshaw and Robert Siekmann, the Editors of this book, as well as the contributors, in assembling such a mine of useful information on such an important subject; and also the TMC Asser Press for publishing this material.

I would, therefore, welcome and heartily commend this book to sports lawyers and all others with a particular professional, academic and policy interest in the subject, including those who are involved in the organisation and administration of National Lottery Schemes benefitting sport.

After all, the essence of sport is 'fair play' and illegal and unfair betting arrangements and the manipulation of the outcomes—in one way or another—of sporting events are completely anathema and contrary to this fundamental concept and principle. And long may this be so!

The Hague, January 2011

Tjeerd Veenstra  
Director of the Dutch De Lotto  
Second Vice-President, The European Lotteries

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# Chapter 1

## Introductory Remarks

Ian S. Blackshaw

Gambling is a significant global industry, which is worth around 0.6% of world trade, that is, around US\$ 384 billion; and Gambling on the outcome of sports events is a very popular pastime for millions of people around the world, who combine a flutter with watching and enjoying their favourite sports. But, like any other human activity, sports betting is open to corruption and improper influence from unscrupulous sports persons, bookmakers and others who are out to make a quick—but substantial buck—unjustly and unfairly.

As Tjeerd Veenstra, Director of the Dutch Lotto and Second Vice President of The European Lotteries, quite rightly points out in his foreword to this book that, there is an uneasy relationship between sport and betting. In fact, they may be incompatible if the one influences the other, so that the outcome of the sporting event, as well as the betting itself, is not left to chance, but are—in one way or another—interfered with, or manipulated, to use the jargon, ‘fixed.’ Match-fixing, unfortunately, is quite prevalent in sport, from time to time.<sup>1</sup> But, one thing sport and betting do have in common is that, in their pure forms, they both require ‘integrity’ if they are to co-exist and fulfil their respective purposes. Put another way, sport and betting must be conducted in a fair and open manner, without criminals getting involved.

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Ian S. Blackshaw—Member of the Court of Arbitration for Sport and Honorary Fellow of the ASSER International Sports Law Centre.

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<sup>1</sup> For a recent high-profile example, see the article on the England Pakistan Fourth Test Cricket Match Fixing Case – ‘*It all comes down to proof*’—by Ian Blackshaw in *The Times* newspaper on 9 February, 2010. For an extended version of this article, see *International Sports Law Journal*, ISLJ 2010/3-4, at pp. 186 & 187.

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This point is well made by the UK Gambling Commission in a Policy Position Paper on its approach to Betting Integrity in general and Sports Betting in particular, which was published in March 2009, in the following terms:

Betting integrity is important to the Commission because of the risks any failure would pose to the licensing objectives of keeping gambling fair and open and keeping crime out of gambling. While any lack of integrity in the way in which an event is managed, or the results reported, will detract from the fairness and openness of any betting on that event, the Commission's focus is on integrity directly related to betting, specifically where the outcome of an event has been influenced with the intention of benefiting through betting on it, or where inside information is used improperly or unfairly in placing a bet. For example, if an individual pays (directly or indirectly) another to deliberately lose a game with the intention of profiting through betting on that outcome (directly or indirectly), that is a matter of concern to the Commission. The Commission does not consider it to be part of its core role to promote event integrity more widely, but would expect sports governing bodies to do this. For example, if a team does not put out its best available players for one match simply in order to be better prepared for another match, this would not normally be a matter for the Commission even if bets had been placed on the outcome (unless inside information is used improperly or unfairly in placing a bet). Generally speaking, those betting are aware of such wider risks to sporting or event integrity.<sup>2</sup>

As it will be seen from the above extract, the onus of keeping sports event betting clean, according to the Commission, falls—fairly and squarely—on the shoulders of the sports governing bodies themselves. This is only logical as their purpose is to regulate their respective sports.

Again, according to the Commission, there is also a responsibility on the part of the 'punters' themselves to be aware of certain sporting situations in which, as mentioned above, there may not be a 'level playing field' in the sporting sense, which may affect the outcome of the sporting event on which bets have been placed. For example, in football, a club may field an inferior team for a less important match in order to rest the main players for a subsequent more important match. Whether or not this is a sporting thing to do is, of course, another matter, but this kind of thing does happen quite frequently.

Thus, Sports Betting is a very complex matter in order to keep everyone involved in it 'on side' and on the 'straight and narrow' and thus to keep the 'punters' happy.

Sports Betting in the last ten years or so has developed and changed quite fundamentally with the advent of modern technology—not least the omnipresence of the Internet and the rise of on-line Sports Betting. Therefore, those responsible for developing Sports Betting Policy and reflecting that Policy in the corresponding legal rules have quite a challenge on their hands. Not least because the World Wide Web has been described as the 'latter day wild west' on account of

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<sup>2</sup> Section 1.4. See [www.gamblingcommission.gov.uk/.../betting%20integrity%20policy%20position%20paper%20-....](http://www.gamblingcommission.gov.uk/.../betting%20integrity%20policy%20position%20paper%20-....)

the difficulty of policing and regulating it.<sup>3</sup> This is particularly true of offshore Betting Companies offering gambling possibilities to punters in countries where either gambling—in any form—is illegal or very restricted. Take the United States of America, for example, where on-line sports gambling is illegal, although few ‘punters’ have ever been prosecuted—at least, to date—and things are in state of flux!

The US Government is generally relaxed, allowing individual ‘punters’ to place sports bets online. However, the Government tends to focus its resources on trying to stop the websites that are offering Sports Betting services to U.S. citizens, as well as the payment processors who facilitate deposits and payouts related to Sports Betting accounts.

The problem for US Law Enforcement Agencies is that there is no law outlawing Sports Betting on the Internet. Many US legal experts suggested invoking the Wire Act, which outlaws Sports Betting over the telephone, but, in the age of satellite and cable Internet connections, the legal lines of attack are more blurred than ever.

Eventually, the US Department of Justice prosecuted a few companies for offering Sports Betting services to U.S. citizens. They also threatened prosecution of companies selling advertisements for the same services, but Antigua filed suit against the US in the International Court of Justice in The Hague—and won! The US filed appeals against the ruling, but all their appeals were also unsuccessful.

State Governments around the US are now legalising casino gambling and many are pushing to legalise Sports Betting as well. As a result, it is becoming more difficult and, indeed, pointless for the US Federal Government to waste resources trying to police an activity that is already legal in most of the world.

This book covers the law and policy on Sports Betting in a variety of countries, whose economic and social development, history and culture are quite different, and a few salient comments now follow on a random—but representative—selection from the many countries covered in this Book, which illustrate the different policy approaches to Sports Betting and its legal regulation and effects.

In China, for example, one of the so-called ‘BRIC’ countries, whose economy goes from strength to strength and whose citizens bet on poker and mah-jong, there is a State Lottery, which provides a consistent source of revenue for the Chinese Government. The Chinese Laws and Regulations on Sports Betting are out of date and need reforming. For example, China should legalise some forms of Sports Betting, which are commonplace in the west, such as horse racing. Furthermore, there is a need for the investment of private capital in the betting industry, which would add much needed competition in this sector, and also, it is believed, could reduce the corruption and match-fixing which is prevalent and widespread in sport in China.

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<sup>3</sup> This is well borne out by the *WikiLeaks* website affair in which confidential and highly sensitive diplomatic cables, mainly from US diplomatic missions around the world, were leaked to and published by the world’s media during December 2010, despite the protestations of the US State Department and the US Attorney General.

On the other hand, in Singapore, legalised Sports Betting provides a significant source of funding to the Sports Industry, allowing the building of new sports facilities, which benefit the community, even though gambling in its various forms, including Sports Betting, is generally regarded as being detrimental to the moral fibre of this rather special and unique Island State.

Likewise, in Switzerland, the home of many International Sports Federations, including the IOC and FIFA, there seems to be an ambivalent attitude to Sports Lotteries and Betting, although the proceeds are used for financing so-called 'good causes' which includes sport. The Federal Lotteries and Commercial Betting Law, which also, incidentally, governs on-line betting, is under revision, which has been in process since 4 April, 2001, but is now temporarily suspended. But any resulting new Law, whenever it appears, is expected to continue the current practise of licensing lottery schemes and commercial betting, which are organised and carried on for the 'public benefit,' which, of course, includes the advancement of sporting activities and facilities in the 26 Swiss Cantons.

In India—another 'BRIC' country with impressive economic growth, despite the world-wide recession—betting on Horse Racing is legal, as it is considered that it is not a game of chance, based on the fact that 'punters' do their research on the horses and the jockeys taking part in the races before placing their bets. As such, it is, therefore, a game of skill.

As for Sports Betting in general, it is arguable that it is not illegal in India, because, most of the States comprising India do not prohibit it through their Legislatures, and also Betting on other sports is also a game of skill. Although the outcome is uncertain, the result of a sports event depends upon the skill of the players/participants. And, in football, for example, a 'punter'—as in Horse Racing—goes on 'form.' In other words a 'punter' studies the form of the players; their statistics in winning games or contributing to the winning of games; the playing conditions; their opponents and their form; and any and all other relevant factors that may well affect the outcome of the game. Of course, there is still an element of luck—chance—involved. So, is Sports Betting in India really illegal? An interesting question and answered in the negative by the contributor of the Chapter on India!

In Brazil—also a 'BRIC' country—the manipulation of sport through, for example, betting is a crime under Brazilian Law, as is gaming and betting generally. Among the exceptions are the Government Lottery and Horse Racing, in which bets can be placed at racecourses, authorised Jockey Club branches and accredited betting stations, by telephone and also online. As regards betting online generally, it is not entirely clear, under Brazilian Law, whether it falls under the general criminal prohibition against gaming and betting, which was enacted in 1946, when there was no Internet and such a medium at that time was inconceivable, and which speaks of a 'space,' which probably should be interpreted as meaning a 'physical' rather than a 'virtual' or 'cyber space.'

In the United Kingdom, there is a long tradition of gambling generally and betting on sport in particular; and gambling has been regulated for some three hundred years. Sports betting is now regulated by the Gambling Act of 2005. This is a highly technical, complicated, sophisticated and comprehensive piece of



legislation, which regulates the different kinds of betting, including ‘fixed odds’ and ‘pool’ betting, and many other aspects of gambling and betting and its consequences and effects. There is also a very complex system of licensing arrangements in relation to carrying on the business of betting in the United Kingdom. Likewise, someone who manufactures, supplies, installs or adapts betting software without the required licence commits a criminal offence under the Act; however, it should be noted that, network operators and internet service providers are specifically excluded from this Statutory provision. Interestingly, The Act also creates the specific offence of ‘cheating,’ which may consist of actual or attempted deception or interference in connection with the betting process or with a real or virtual game, race or other event or process. It is irrelevant whether the offender improves his chances of winning anything or, indeed, wins anything at all! These provisions, of course, are highly relevant to match-fixing and the unlawful manipulation of the outcomes/results of sporting events generally. To guard against this kind of behaviour, and in line with the general adage that ‘prevention is better than cure,’ in the summer of 2009, a Sports Betting Integrity Panel was set up, on the initiative of the UK Government, with very precise and comprehensive terms of reference.

Finally, in this mini survey of some of the countries covered in this Book, we take a brief look at the legal situation of Sports Betting in New Zealand. There, Sports Betting is conducted by the New Zealand Racing Board, which acts through The Totalisator Agency Board (TAB), which, in turn, liaises with the various National Sporting Organisations, in order to provide on- and off-course betting facilities for the general public. Horse racing was traditionally the most substantial gambling activity in New Zealand, but gradually lotteries, instant kiwi, gaming machines, casinos, dog racing and general Sports Betting have come into play and changed the gambling scene. The TAB is a commercial entity and operates through outlets, the Internet, Phonebet, Touch Tone and a SKYBET channel, devoted, as its name suggests, to betting. Gambling on Sport inevitably involves attempts to ‘throw’ sports events results, but reasonably effective anti-corruption measures exist in New Zealand to counteract these practices. Nowadays, the ubiquitous Internet and betting on sporting transactions outside New Zealand present serious challenges for the TAB to control.

This Book also includes a fascinating review of Sports Betting under European Union (EU) Law, which, as one might expect, would have something to say on the subject. In fact, as far as the EU is concerned, betting in all its forms, including Sports Betting, is considered to be an economic activity and, as such, is subject to EU law in general and EU Competition Law in particular. In a landmark case handed down by the European Court of Justice (ECJ), lotteries involve the provision of services—not goods—and, as such, are subject to the rules on the freedom of provision of services within the EU Single Market. The fact that the winnings are not secure does not make a lottery a non-economic activity.<sup>4</sup>

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<sup>4</sup> See *Her Majesty's Customs and Excise v Gerhard Schindler and Jorg Schindler*, C-275/92, Judgement of 24 March, 1994, [1994] ECR I- 01039.