

**On 21 February 2023 Master Michael Beloff – Treasurer in 2008 – gave the first lecture in this year's Mixed Messes series on the subject of 'Law, justice and rules in the world of sport'. There appeared to be considerable interest among those present in this growing branch of practice, though it came as a surprise to some that there was such a thing as 'Sports Law'; so we thought it would be good to follow up the talk with a piece in *Graya News*, for the benefit in particular of those who missed it.**

Well qualified in the topic, with more than 50 years' experience as a sports lawyer – as advocate, adviser, author and arbitrator – Master Beloff, a member of the Court of Arbitration for Sport (CAS) for a quarter of a century, has arbitrated at a record five summer Olympics and three Commonwealth Games. He is the only person to have chaired the Ethics Commission of a trio of global sports, athletics, cricket and ski-ing, and was Ethics Commissioner for the successful London 2012 Olympic bid. He has been a member of a number of tribunals in a variety of sports – motor racing, mixed martial arts, ironman and European golf. Not surprisingly, he is sometimes familiarly described as 'the Godfather of Sports Law'.

**WHAT IS A 'SPORT'?**

Master Beloff started his talk with an affirmation that sport matters, both to those who play and those who follow it, in terms of both emotion and economics. He suggested that it is preferable to restrict the definition of sport to a contest with more than a negligible element of physicality, pointing out that the European Court of Justice had denied that definition to Bridge. As he put it, 'All sports are games, but not all games are sports'. He went on to explain that sport, on any definition, requires rules to establish how it must be played. Using football as a paradigm example, he illustrated how, under its rules, victory in a match is achieved, how goals are scored, who adjudicates on whether the rules have been complied with and who can enforce compliance, that is the referee, helped (or hindered?) by VAR (Video Assistant Referee).

**THE FIELD OF PLAY PRINCIPLE**

A fundamental element in sports law is the so called 'field of play principle', which immunises from review or appeal, unless the rules otherwise provide, the referee or umpire's honest exercise of judgment. That principle is justified by various considerations: a judge or arbitrator's lack of expertise in the technical side of sport; the inevitable element of subjectivity, resulting in part from different physical perspectives, in deciding, for example, whether a tennis ball is in or out; the fear of constant interruption to the course of play; the opening of floodgates; the problems of rewriting a result after the event; and the need to strengthen the match official's hand.

Quoting from his Panel's decision that an American gymnast should keep the gold medal in the all-round men's gymnastics final at the Athens Olympics in 2004, even though his Korean rival had been the victim of

admitted mismarking in the penultimate apparatus event, which, if corrected, would have propelled him to first place, he observed: 'Finality is in this area all important: rough justice may be all that sport can tolerate.'

**FAIR COMPETITION AND CHEATING**

Master Beloff suggested that the essential purpose of the *lex sportiva* is to ensure that there is, as far as possible, fair competition, so that sportspersons get to the actual or metaphorical start line with, as far as possible, equality of opportunity, and that the result of the contest, luck apart, depends on talent and commitment and not on some form of cheating.

Doping, he noted, is the most prevalent threat to fair competition. There is an all but universal consensus that

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**MASTER MICHAEL BELOFF**

use of performance enhancing drugs is unacceptable. The World Anti-Doping Code in its various versions is policed by the World Anti-Doping Authority (WADA). The Code applies to almost all sports, and it is WADA which decides on what are prohibited substances – a somewhat moveable feast. WADA can prosecute but can be joined in proceedings brought by national doping authorities for breach of the Code.

Fundamental to the Code is the strict liability rule in doping offences. Lack of intention to cheat is no defence, though it might affect the penalty. The degree of care taken to avoid presence or use of a banned substance, again, goes to penalty only, although for the purposes of future ineligibility this is calibrated to the degree of fault, if any. The interests of the many clean athletes have to be prioritised over the interests of the few.

The regime is burdensome. Sportspersons are subject to tests in and out of competition and are under an obligation to provide information as to their whereabouts at all times so as to be available for testing. From his own casebook, Master Beloff gave the examples of Michelle de Bruyne, an Olympic gold medallist found guilty by his panel of contaminating her urine sample with Irish whiskey at an out of competition test, and of Christine Ohuruogu, whose acquittal of a breach of the whereabouts rule he procured, enabling her to compete in the women's 400m at the Beijing Olympics, where he watched her win a gold medal.

Cheating takes many forms in sport, frequently fuelled by gambling. Sometimes it also involves a breach of the public criminal law as well as of private regulatory law. An example Master Beloff gave was the finding by his International Cricket Council panel in Doha that three Pakistani cricketers were guilty of spot fixing in the Lords test match in 2010 in aid of a betting coup – they were

later convicted of offences of corruption. Master Beloff's own decision, as an ICC Commissioner, that applying saliva mixed with sticky mint to a cricket ball by the South African Captain Faf du Plessis amounted to ball tampering, involved only regulatory law.

Master Beloff pointed out that public authorities had powers which private sports governing bodies (SGBs) lack, such as the power to summon witnesses or to tap telephones. The inculpatory decisions of specialist sports tribunals, whether internationally such as CAS, or domestically such as the Sports Dispute Resolution Tribunal, are often necessarily founded on material previously gathered by the police, unless adventitiously supplied by the sport's own whistle blowers. He noted, too, the difference in sanctions available in each

decades for footballers to be treated as persons, not chattels, with increased freedom to move clubs; and even now the FIFA regulations on the Status and Transfer of Players represent a compromise between the two irreconcilable objectives of contractual stability and freedom of employment.

Finally, Master Beloff turned to anti-discrimination law and the provisions of the Equality Act 2010. The law against discrimination on grounds of disability has no purchase in sport which is, for this purpose, not perceived as a 'normal activity.' The residual issue, not finally resolved but brought into prominence by the case of Oscar Pistorius, the so-called 'blade-runner', is whether and when a para-Olympian using prosthetics should be permitted to participate in Olympic sports.

# WORLD OF SPORT



Master Beloff (in the centre) at the CAS offices in February before his last case.

forum: the courts can imprison but cannot impose bans on participation in the sport, while the reverse is the position with SGBs. The latter have also generally adopted a standard of proof of 'comfortable satisfaction', perched somewhat imprecisely between that of the criminal and the civil law.

## THE RELEVANCE OF DOMESTIC LAW

Next Master Beloff reminded the audience that the law of the land applies to sport but with due regard to sport's specificity. The duty of care owed by players to one another and to spectators in contact sports is influenced by that context; so too the higher duty owed by referees to players. As for criminal law and boxing, the late Master Mustill once opined judicially: 'It is .. best to regard this as another special situation which for the time being stands outside the ordinary law of violence because society chooses to tolerate it.'

Sport shapes the contours of contract law, too. It took litigation at domestic and European level over several

The law against age discrimination protects persons in particular age groups; the identity of their comparators is not specified but sport habitually tolerates competitions for persons in different age groups, eg under 20s or Masters.

In the field of sex or gender discrimination, although the legislation recognises exceptions to the general prohibition where fair competition or safety is involved, the battle as to whether biology trumps identity in the case of trans sportspeople (or how, in the related case of intersex persons) rages on. Master Beloff, whose involvement in this area has been as a draftsman, not a judge, observed that, throughout sport, biology dictates: different weights in boxing, lightweight or heavyweight crews in rowing, youth or master's classifications in track and field, etc.

*For more about Master Beloff's involvement with this area of law, see Chapter 10 ('My Sporting Life') of his recently published memoir MJBQC: A Life within and without the Law.*