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## Incorporating the Criminal Law in Sport Studies

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### Abstract

The purpose of this article is to provide an outline for teaching the criminal law in a sport studies (or related) course. While the discussion of crimes in sport usually begins with illegitimate physical force or confrontation during the sports contest, criminal misconduct may also involve non-violent behavior. For example, the recent allegations of point-shaving at the University of Toledo demonstrate how non-violent (white-collar) crimes might occur in the legal environment of sport (Gilbert & Silka, 2009).

Crimes can be committed in all environments and at all levels: youth sport, recreational activities and leagues, amateur competition and in the professional ranks. Crimes can be committed by coaches, fans, parents, agents, referees, and others. The study of the criminal law and its relationship to sport is quite broad, so establishing a solid outline prior to teaching this section of any sport studies course is vital.

### Introduction

It is very important that the instructor—at the outset—compare and contrast the similarities between the criminal law and the civil (i.e., tort) law. In tort law, a private party plaintiff may sue a defendant for an assault or battery while the same defendant might be charged by the government (i.e., the state) for criminal assault or criminal battery. For each alleged criminal misconduct, the state must prove that an act occurred (actus reus) which violated a federal or state statute and that the defendant had the intent to commit such act (mens rea). The district attorney's office makes the determination as when to prosecute for criminal misconduct based upon the evidence in the case and the willingness of the victim to press charges (New York Times, 2007).

The student should be encouraged to ask why prosecutors pursue charges in some sport incidents and not others. For example, why do Canadian jurisdictions prosecute misconduct during a hockey game substantially more than the American counterparts? A lot depends upon the locale's expectations regarding what degree participants impliedly consent to certain conduct and to what extent the conduct be characterized as illegitimate (unacceptable) violence (Clarke, 2000; Katz, 2000; Harary, 2002; Yates & Gillespie, 2002; Barry, Fox & Jones, 2005).

Table 1  
Categories of Crimes

Crimes Against Persons	Crimes Against Property	Crimes Against Public Health, Safety, and Welfare	Crimes Against Government
Assault	Counterfeiting of tickets and merchandise	Conspiracy to commit a crime (solicitation)	Human trafficking (assisting in illegal immigration) Illegal gambling

Battery	Embezzlement	Cruelty to animals	Illegal gambling (sports wagering)
Extortion (Blackmail)	Theft	Dangerous flying (parachuting)	Mail and wire fraud
Fraud	Trespassing	Disorderly conduct	Obstruction of justice
Hazing	Vandalism	Driving under the influence (DUI/DWI)	Perjury
Manslaughter		Point shaving (sports bribery)	Racketeering (RICO) and organized crime
Mobbing		Sports agent crimes	Use, sale or possession of performance-enhancing drugs
Reckless Homicide		Streaking/indecent exposure	Tax evasion
Reckless Endangerment			Ticket scalping
Stalking			
Voyeurism (Peeping Tom)			

### Assault and Battery

Beginning the study of the criminal law in sport with assault and battery before moving on to the other subjects is quite effective. The crimes of assault and battery involve the unwelcome and excessive physical contact between two or more persons. Definitions of assault and battery differ among the states and the student should be advised to research their own state statutes. However, the instructor should mention that the Model Penal Code was drafted to assist state legislatures in defining what constitutes criminal misconduct and to standardize and create more uniformity throughout the country with regard to the criminal law. It divides criminal assault into two categories: simple or aggravated (Osborne, 2006). A person is guilty of simple assault if he attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or negligently causes bodily injury to another with a deadly weapon; or attempts by physical menace to put another in fear of imminent serious bodily injury. Similarly, a person is guilty of aggravated assault if there was the attempt to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; or attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon (Model Penal Code § 2.11.1; Osborne, 2006).

### Implied Consent

In sports such as boxing, football, hockey, wrestling, and others, aggressive physical contact is an expected part of the contest. Some courts recognize this as the implied consent doctrine: that is, participants voluntarily assume certain risks of injury or violence during a sport activity. However, at what point does aggressive participation cross over into an excessively violent act in which a possible crime occurred? Is there a bright-line test in which participants, referees, coaches and spectators recognize that the type of violence which occurred is so far beyond the expected rules of the game that the participant could actually be charged with a crime such as assault or battery? The instructor carries the burden here of presenting such challenges for judges, and students must recognize that there is no clear-cut answer and each act of aggression or violence is different (Harary, 2002; State v. Guidugli, 2004).

In the Washington state case of State v. Shelley, a pickup basketball game turned into a brawl in which one player punched another in the face, breaking his jaw. In addition to the criminal charges, the court in the civil case utilized the Model Penal

Code's § 2.11 for guidance in determining whether or not such contact was reasonably foreseeable. The court affirmed the lower court decision and held that a participant in such an activity did not impliedly consent to throwing or receiving punches during a pickup basketball game.

The following sections discuss some of the more specific ways in which the discussion of the criminal law can enter the classroom. A few of the more important criminal laws are discussed as well as some of the significant cases in recent years in a variety of sports.

### **Sport Participants**

Illegitimate violence in sport can occur in all activities. The concern over violence in sport has become so important that some have referred to it as an “epidemic” (Harary, 2002). Incidents abound involving players and entire teams before, during and after football games including the infamous bench-clearing brawl between University of Miami (Florida) players and Florida International University players in 2006. No arrests were made in the incident (ESPN.com News Services, 2006). In baseball, bench-clearing brawls are common as is the act of a pitcher intentionally hitting a batter. However, is this type of violence legitimate? Should the police arrest the players for assault and battery? In 2007, former major-leaguer Jose Offerman was thrown out of the game, arrested by police and charged with two counts of second-degree assault after charging the pitcher’s mound and swinging his bat at the opposing team in an independent league minor league game after he was hit by a pitch. He pleaded not guilty and was given two years special probation (Associated Press, 2007).

Hockey players’ overly aggressive misconduct has resulted in numerous legal cases including several criminal convictions especially in Canadian courts. In the twin Canadian cases of *Regina v. Maki* and *Regina v. Green*, Wayne Maki of the St. Louis Blues and Ted Green of the Boston Bruins were charged with assault after each attempted to swing their sticks among the shoving in an exhibition game in Ottawa. Maki connected with Green’s head, which resulted in a fracture of Green’s skull. The courts held that the amounts of force were not excessive, that players assumed certain risks in the game and that self-defense justified the actions. The assault charges were dismissed against both Green and Maki in the separate cases, though the Green court noted that sports leagues should not have players immune from criminal prosecution.

In *Regina v. Ciccarelli*, Minnesota North Stars’ Dino Ciccarelli hit Luke Richardson (Toronto Maple Leafs) with his stick during a game in Toronto in 1988. Ciccarelli was sentenced to one day in jail for the assault and received a \$1,000 fine. The court wanted to send a message to fans and participants that certain types of violence in hockey cross the line (Clarke, 2000; Harary, 2002).

### **Spectators**

There are countless examples of spectators storming the field or court during a contest, not just among the post-game celebrations or skirmishes. Such actions have led to criminal prosecutions. In 2002, a father and son stormed the field and attacked Kansas City Royals first-base coach Tom Gamboa during a game against the Chicago White Sox in Chicago. The son pleaded guilty to aggravated battery and mob action and was sentenced to five years probation and community service. The father originally pleaded innocent, but he later changed his plea to guilty and was given 30 months probation, community service and to remain in a substance abuse program (Falkoff, 2003). In 2003, Pittsburgh Pirates member Randall Simon was cited for disorderly conduct, a misdemeanor, and was fined \$432 after he—while standing on the edge of the dugout—knocked a stadium worker involved in the spectator-friendly “sausage race,” which features fans dressed in over-sized caricatures involving a bratwurst, hot dog Italian sausage and Polish sausage between the sixth and seventh innings running around the bases for entertainment. Simon was handcuffed and taken to the Milwaukee County Jail after the game. The incident has become known as “Sausage-gate” (Associated Press, 2003; Luna, 2007).

### **Parents and Youth Sport**

Incidents across the country, including shootings of high school coaches, have given national attention to parents involved in criminal youth sport misconduct (Associated Press, 2006a). New Jersey passed a law in 2002 increasing the

(Associated Press, 2008a). New Jersey passed a law in 2002 increasing the punishment for assaults committed during youth sporting events, especially by intense, overzealous and in some cases “raging” parents. Now, the possible punishment is up to 18 months in prison and more than \$10,000 in fines. The state law changed in response to a criminal case in which a parent was found guilty of involuntary manslaughter (an unintentional killing as a result of a battery) during a fight after a youth hockey practice. A Massachusetts jury convicted Thomas Junta rejecting claims that he acted in self-defense when he beat another father to death at a youth scrimmage during 2000. He was sentenced 6 to 10 years in prison (Harary, 2002; Commonwealth v. Junta, 2004).

## **Gambling (Sports Wagering)**

Sports gambling (sometimes referred to as sports wagering) and point-shaving (intentionally fixing a game) do not involve any physical force per se. Federal and state governments have attempted to legislate anti-gambling prohibitions as sports gambling under the government’s general ability to protect the health, safety and welfare of its citizens under its constitutionally authorized “police power.” Protecting the integrity of a sports contest is obviously vital for fans and to be fair to competing gamblers where sport gambling is legal (Weinberg, 2003; Osborne, 2006). Though federal laws, such as the Wire Communications Act of 1961, the Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO) (organized crime), and the Bribery in Sporting Contests Act of 1979, emerged in the last several decades and have been applied in sport law prosecutions, there are newer attempts to regulate sports gambling many of which have been met with success (McCarthy a, b, 2007). The advent of the internet has greatly shaped the landscape with regard to sports wagering in professional sport (Liddell, 2004).

## **Sports Bribery (Game Fixing/Point-Shaving)**

Sports bribery has been brought to light in recent years in sport and recreation law. In 2007, NBA referee Tim Donaghy pleaded guilty to a gambling scandal involving wire fraud and transmitting gambling tips, and he was sentenced in 2008 to 15 months in prison (Timanus, 2007; Pugmire, 2008). In 2009, several University of Toledo athletes were indicted by federal authorities for alleged involvement in point-shaving schemes in conjunction with Detroit men (Gilbert & Silka, 2009). Too, there have been numerous gambling incidents related to amateur sport, particularly with regard to the NCAA (Udovicic, 1998; Jones & Handel, 2002).

The influential NCAA has a keen interest in protecting the integrity of its sports product and frowns upon any sort of sport-related gambling whatsoever (NCAA, 2004; Crowley, 2006; McCarthy a, b 2007). Therefore, the NCAA has enacted a rules manual (called Bylaws) which the Indianapolis-based organization enforces vigorously at all three divisions of competition (Copeland, 2004; Rogers and Ryan, 2007). Many of its Bylaws relate to sports wagering. Other NCAA incidents included the University of Kentucky basketball team, which played no schedule for the 1952-53 season due to a point-shaving scandal that rocked the nation in 1951. Historically, collegiate sports gambling incidents abound and have included and affected schools such as Boston College (1978, 1996), Northwestern University (1994), and numerous others including several colleges and universities in Florida (McCallum & Hersch, 1997; Drape, 2003; Goldstein a,b,c,d, 2003; Grady & Clement, 2005; Maske, 2005; Merron, 2006; Gillispie, 2007; NCAA, n.d.).

## **Professional and Amateur Sports Protection Act**

A federal law, the Professional and Amateur Sports Protection Act of 1992, was enacted to stop the spread of state-authorized gambling and to protect the integrity of sporting events generally. Nevada, the only state at that time that had legalized sports gambling, was granted immunity from this federal law (also known as the Nevada or “Las Vegas loophole”) which makes it unlawful for a governmental entity, or a person acting pursuant to the law of such an entity, to operate, sponsor, advertise, promote, license, or authorize a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on one or more competitive game in which amateur, Olympic or professional athletes participate. The states of Delaware, Montana and Oregon are also exempt from the Act which exempts pari-mutuel betting and jai alai games as well (Barlett & Steele, 2000; Slavin, 2002; Rychlak, 2003/2004).

## **Ticket Scalping**

Reselling an event ticket is usually referred to as ticket scalping, a classic example of a sport-related crime. This practice of resale is regulated at the state level. Ticket scalpers attempt to find buyers of their tickets around the venue for the event. Today, scalping is often done through various secondary ticket marketing brokers online in addition to in-person. State laws and city ordinances which regulate ticket scalping focus on where a sale of a ticket may (or may not) take place and to what degree the scalper may (or may not) sell a ticket above its face value. Scalping laws were also enacted to prevent spectators from being harassed as they entered the sports arena and for safety reasons related to the flow of fans into the arena.

While there are no federal laws directly governing ticket scalping, several states and a number of municipalities have given up on the attempts to enforce scalping laws altogether. Many states have recently repealed their ticket-scalping laws. This appears to be a trend especially with the ease and access of reselling over the internet by companies such as StubHub.com, for example. The ticket-resale business has been dramatically changed by the on-line world of cyber-scalping. To enforce anti-scalping laws from sales on the internet may be impracticable but it appears that the selling of counterfeit tickets may be more of a governmental concern than the resale of tickets (Criscuolo, 1995; Gibbs, 2000; Osborne and Pittman, 2006).

## Wire and Mail Fraud

The Wire Communications Act of 1961 is at 18 U.S.C. §1084. The purpose of the act is to criminalize gambling behavior which uses a wire communication (such as a telephone) to transmit to place illegal bets across state lines (i.e., via “interstate commerce”). The federal mail fraud statute (18 U.S.C. §1341) defines fraud as a “scheme” or artifice which uses the “mails” to execute the scheme. This statute is often used by United States Attorneys in the prosecution of white-collar crimes. Similarly, wire fraud (18 U.S.C. §1343) provides for a penalty for any criminally fraudulent activity involving electronic communications. These crimes have appeared in scenarios involving sports agents who recruit student-athletes to become their professional clients.

In *United States v. Walters*, Walters, a sports agent, was charged with conspiracy, RICO violations, and mail fraud. The mail fraud charge arose from his actions in which student-athletes violated NCAA rules by signing post-dated contracts with him and his associate Bloom. The federal government argued that the mail fraud statutes were violated because each university required its athletes to verify their eligibility to play by mail sent to the appropriate athletic conference. Walters was initially convicted by a jury, but that conviction was reversed on appeal. Conspiracy and racketeering (RICO) charges were ultimately dismissed (Goodman, 1998).

## Conclusion

Incorporating the criminal law in the sport studies course can be a challenge. Establishing a solid outline for this section of a course is vital to the instructor’s success. Recent suspensions involving the illegal use of performance-enhancing drugs, allegations of point-shaving schemes, and the continuing illegitimate violent physical misconduct by parents, players and spectators should provide the instructor and student alike considerable discussion with regard to the role of the criminal law in sport studies. The above outline and subject matter should provide a solid foundation for a successful section of criminal law in any sport studies course.

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