

Regulating Competitive Balance in Sport

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A thesis submitted in partial fulfilment
of the requirements of Nottingham
Trent University for the degree of
Doctor of Philosophy

February 2012

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Abstract

Sport is an integral part of popular culture, capturing the hearts and minds of millions of people from every section of society.¹ Maintaining competitive balance in sport is essential in preserving its long term survival. A higher uncertainty of outcome in contests is likely to result in greater spectator demand and increased revenues; whereas an imbalanced competition will eventually lead to a decline in attendance and the overall quality of the sport. The regulation of competitive balance in individual sports is difficult to implement, as success relies largely on the athlete's individual skill and ability.² In contrast, team sports can be influenced by a number of regulatory measures such as player drafts, salary caps, transfer windows, and player quotas.

Analysis into Europe and North America's regulation of competitive balance reveals a variety of measures used to foster greater equality of opportunity between teams competing with one another in sport. Unfortunately European sports are restricted somewhat, as access to sport is considered to be a social advantage and importance for the integration of citizens, and therefore cannot remain outside the scope of the fundamental principles of free movement. Although the European Union accepts the 'specificity of sport', it grants no exception from European Union law for the industry; a principle that has recently been reaffirmed in the decisions of *Bosman*³ and *Meca-Medina*⁴. Sports governing bodies must therefore ensure new rules and regulatory measures comply with European Union law; reducing the number of measures available to them.

¹ Lewis, A. and Taylor, J. (2003) 'Sport: Law and Practice', Tottel publishing, p4.

² Success in individual sports can occasionally rely on other issues such as resources for training. It is harder to have success in winter sports (e.g. bobsleigh) if you live in Jamaica.

³ Case C-415/93 Union Royale Belge Sociétés de Football Association and others v Jean-Marc Bosman and others [1995] ECR I-4921.

⁴ Case C-519/04 Meca-Medina and Majcen v Commission [2006] ECR I-6991.

This thesis analyses the competitive balance in sport both as a more theoretical phenomenon and as something that concrete measures can practically inhibit or stimulate. It ‘drills down’ into how issues of competitive balance arise in a number of specific contexts (doping, corruption, the influence of sponsors and the broadcast media, and with respect to gender and disability) and examines how these specific issues may be resolved as well as drawing out the broader lessons they hold for competitive balance as a whole. It is envisaged that the thesis will not only be of academic interest but prove to be a practical tool for use by those who are at the frontline of governance of sport.

Acknowledgements

I would like to thank my supervisory team of Dr Austen Garwood-Gowers, Mr Simon Boyes, and Professor Mary Seneviratne for their expertise, guidance, support, and motivation throughout my project. I would also like to thank my father Hossein Kashani for funding my PhD and supporting me during the past four years; and my mother Sheila Kashani for her support and guidance.

Table of Contents

i.	Table of Statutes.....	vii
ii.	Table of Cases.....	viii
iii.	List of Abbreviations.....	xi
iv.	List of Tables.....	xiii

Chapter 1: Introduction

1.	Introduction.....	2
----	-------------------	---

Chapter 2: The Philosophy and Economics of Sport

2.	Identifying a Sport.....	12
3.	Competitive Balance and Uncertainty of Outcome.....	20
4.	Fair Play and Gamesmanship.....	33
5.	The Pursuit of Excellence.....	44

Chapter 3: Access Denial in Sport

6.	Gender and Disability.....	55
7.	European Union Law and Freedom of Movement.....	74
8.	Doping in Sport.....	92
9.	The Development of Mixed Martial Arts as a Sport.....	117

Chapter 4: The Commercialisation of Sport

10.	Influence of Sponsors and the Broadcast Media.....	141
11.	UEFA Financial Fair Play.....	159
12.	Combating Corruption in Sport.....	166
13.	Third Party Contracts: The Carlos Tévez Dispute.....	193
14.	The Webster and Matuzalém Cases.....	206

**Chapter 5: European and North American Regulation of Competitive Balance
in Team Sports**

15. The Promotion and Relegation System.....	220
16. The Salary Cap.....	245
17. The Player Draft.....	262

Chapter 6: Conclusion

18. Conclusion.....	282
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References

v. Bibliography.....	298
vi. List of Websites.....	309
vii. Appendix 1.....	313
viii. Index.....	317

Table of Statutes

United Kingdom

Commons Registration Act [1965]	12
Sex Discrimination Act [1975]	59
Human Rights Act [1998]	88, 89
Gender Recognition Act [2004]	59

United States

Sherman Antitrust Act [1890]	270, 286
Americans with Disabilities Act [1990]	69

EC/EU Treaty

Art. 2	75, 90
Art. 7	76
Art. 39	78
Art. 48	77, 78, 79
Art. 59	75, 76
Art. 81	74, 78, 227, 249, 250, 271, 286, 289
Art. 82	74, 78, 227, 286

European Convention on Human Rights

Art. 4	89
Art. 6	89

Treaty of Lisbon

Art. 165	75
----------	----

Treaty of Maastricht

Art. 228	79
----------	----

Table of Cases

UK and European Domestic Law

- Clarke v Earl of Dunraven [1897] AC 59. **195**
- County Limited v Girozentrale Securities [1996] 3 All ER 834, CA. **196**
- Eastham v Newcastle United FC Ltd [1963] 3 All ER 139; [1964] Ch 413. **87, 251**
- Edwards v The British Athletic Federation [1997] (High Court of Justice, Chancery Division), United Kingdom, 23.06.97. **99**
- Gasser v Stinson and another [1988] unreported, 15th June QBD. **87, 99**
- Greig v Insole [1978] 1 WLR 302. **87**
- Grubba v German Table Tennis Federation [1997] Frankfurt am Main Appeal Court, Germany, 25th November 1997, Case no. 2-14 0 254/97. **77**
- Hadley v Baxendale [1854] 9 Ex 341. **196**
- Katrin Zimmerman Krabbe v Deutscher Leichtathletik Verband (DLV) and International Amateur Athletic Federation (IAAF) [1996] (Munich Court of Appeal, Germany, 28.03.96). **101**
- Markakis v ASBL Fédération Royale Belge des Sociétés de Basketball [1992] Brussels Court of First Instance, Belgium, 08.09.1992. **76**
- Modahl v British Athletics Federation Ltd [2002] WLR 1192. **102**
- Newport AFC Ltd v The Football Association of Wales [1995] 2 All ER 87. **88**
- Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd [1894] AC 535. **86, 250**
- R v Oxfordshire County Council and Others ex p Sunningwell Parish Council [1993] 3 WLR 160. **12**
- Sheffield United FC Limited v West Ham United FC plc [2008] EWHC 2855 (Comm). **194**
- Stevenage Borough FC Ltd v Football League Ltd [1997] 9 Admin LR 109, Times August 1st, 1996. **226, 227**
- Vincent Guérin v Fédération Française de Football [1998] (Versailles Administrative Court, France, 02.07.98). **102**

- X v Netherlands (Application 9322/81) [1983] 32 DR 180. **89**
Z v DFB (German Football Federation) [1999], DFB sports tribunal. **100**

European Union Law

- Case 36/74 Walrave and Koch v Association Union Cycliste Internationale and Others [1974] ECR 1405. **74, 75, 90, 289**
Case 13/76 Doña and Montero [1976] 2 CMLR 578; [1976] ECR 1333. **76, 78**
Case C-33/89 Kowalska [1990] ECR I-2591. **271**
Case C-415/93 Union Royale Belge Sociétés de Football Association and others v Jean-Marc Bosman and others [1995] ECR I-4921. **31, 77-85, 89, 90, 217, 251, 290**
Cases C-51/96 and 191/97 Christelle Deliège v ASBL Ligue Francophone de Judo [2000] ECR I-2549. **76, 77**
Case C-176/96 Lehtonen (Jyri) & Castors Canada Dry Namur-Braine v ASBL Fédération Royale Belge des Sociétés de Basketball [2000] ECR I-2681. **76, 86**
Case C-309/99 Wouters and others [2002] ECR I-1577. **75**
Case C-438/00 Deutscher Handballbund v Kolpak [2003] ECR I-4135. **77**
Case C-519/04 Meca-Medina and Majcen v Commission [2006] ECR I-6991. **75, 90, 289**

Court of Arbitration for Sport

- CAS 1999/A/234 and CAS 1999/A/235 David Meca-Medina v FINA and Igor Majcen v FINA, Lausanne, 29.02.00. **101**
CAS 2004/O/645 United States Anti Doping Agency v Tim Montgomery. **100**
CAS 2004/O/649 United States Anti Doping Agency v Chryste Gaines. **100**
CAS 2006/A/1067 International Rugby Board (IRB) v Keyter. **100**
CAS 2007/A/1298 Wigan Athletic FC v Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v Heart of Midlothian. **206-208, 212, 213, 215, 217**
CAS 2008/A/1519 FC Shakhtar Donetsk v Matuzalém Francelino da Silva & Real Zaragoza & FIFA. **210-213, 215-217**

Australia

Adamson v NSW Rugby League Limited [1991] ATPR 41-141 9 (Full Court of Australia). **251**

Canada

Johnson v Athletics Canada and International Association of Athletics Federations [1997] (Ontario Court of Justice), Canada, 25.07.97. **99**

United States

Dr. Renee Richards v United States Tennis Association 400 NYS 2d 267 [1977]. **59**

Federal Baseball Club of Baltimore, Inc v National League of Professional Baseball Clubs, 259 U.S. 200 [1922]. **270**

Flood v Kuhn, 407 U.S. 258 [1972]. **31, 270**

James McCoy (Yazoo) Smith v Pro-Football et al., 420 F. Supp. 738, 745 D.C. Cir. [1976]. **21**

McNeil v National Football League, 790 F.Supp. 871, D.Minn, [1992]. **252**

Olinger v U.S. Golf Association F.3d, 2000 WL 257133 7th Cir. [2000]. **69, 71**

PGA Tour, Inc v Martin 532 U.S. 661 [2001]. **69-71, 73**

Toolson v New York Yankees, 346 U.S. 356 [1952]. **270**

List of Abbreviations

AFC	American Football Conference
CAIS	Complete Androgen Insensitivity Syndrome
CAS	Court of Arbitration for Sport
CBA	Collective Bargaining Agreement
DNA	Deoxyribonucleic Acid
DRC	Dispute Resolution Chamber
EPO	Erythropoietin
ECA	European Club Association
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EU	European Union
FA	Football Association
FC	Football Club
FIA	Fédération Internationale de l'Automobile
FIFA	Fédération Internationale de Football Association
FINA	Fédération Internationale de Natation
GHD	Growth Hormone Deficiency
HGH	Human Growth Hormone
IAAF	International Association of Athletics Federations
ICC	International Cricket Council
IGF-1	Insulin-Like Growth Factor 1
IOC	International Olympic Committee
IPC	International Paralympic Committee
IRB	International Rugby Board
ISU	International Skating Union
LLWS	Little League World Series
MLB	Major League Baseball

MLS	Major League Soccer
MMA	Mixed Martial Arts
NOC	National Olympic Committee
PGA	Professional Golf Association
PPV	Pay-Per-View
RFU	Rugby Football Union
NBA	National Basketball Association
NFC	National Football Conference
NFL	National Football League
NHL	National Hockey League
SACB	State Athletic Control Board
SEG	Semaphore Entertainment Group
SPL	Scottish Premier League
SRS	Sex Reassignment Surgery
TCCB	Test and County Cricket Board
TUE	Therapeutic Use Exemption
UCL	Ulnar Collateral Ligament
UEFA	Union of European Football Associations
UFC	Ultimate Fighting Championship
USA	United States of America
USGA	United States Golf Association
USTA	United States Tennis Association
VEGF	Vascular Endothelial Growth Factor
WADA	World Anti-Doping Agency

List of Tables

Figure 2.1 – Preparation of the Olympic Programme	13
Figure 3.1 – The Most Balanced League Ever Observed in Football	22
Figure 3.2.1 – World Cup 2010 Group F	28
Figure 3.2.2 – World Cup 2010 Group F (If two points for a win were allocated) ..	28
Figure 5.1 – The Fosbury Flop	50
Figure 7.1 – Foreign Players participating in the UEFA Champions League Final ..	80
Figure 7.2 – Number of Foreign Players in Football	83
Figure 8.1 – Analysis into Doping at the Summer Olympics	115
Figure 9.1 – Analysis of Knockouts	121
Figure 9.2 – Analysis of Winners from the 8/16 Man Knockout Tournaments	130
Figure 9.3 – Current Weight Divisions	132
Figure 9.4 – Analysis of Wins by Big and Small Athletes based on <i>figure 9.3</i> 's average data	132
Figure 10.1 – Break-up of Salaries, Winnings, and Endorsements	142
Figure 10.2 – Broadcast Payments to Premier League Clubs in 2010-11	151
Figure 10.3 – Comparisons with the Old Football Division One League	152
Figure 10.4 – Television Contracts for European Leagues	154
Figure 10.5 – Deloitte Highest Earning Football Clubs 2009-10	155
Figure 10.6 – 2011-12 La Liga Television Revenue Distribution	156
Figure 12.1 – Incidents which have favoured Barcelona	181
Figure 13.1 – Final Premier League Table for 2006-07 Season	197
Figure 13.2 – Player Statistics from the 2006-07 Premier League Season	199
Figure 13.3 – Analysis of Goal and Assist Ratios	200
Figure 13.4.1 – Scoring and Assist Statistics of Carlos Tévez for 2006-07	202
Figure 13.4.2 – Scoring and Assist Statistics of Bobby Zamora for 2006-07	202
Figure 14.1 – Most Expensive Transfers after the Webster Ruling	214
Figure 14.2 – Most Expensive Transfers after the Matuzalém Ruling	215
Figure 15.1 – Parachute Payments	225

Figure 15.2 – Premier League’s Promotion and Relegation Statistics	229
Figure 15.3 – Number of Games required to win the Premier League	230
Figure 15.4.1 – NBA Statistics for the Eastern Conference	234
Figure 15.4.2 – NBA Statistics for the Western Conference	235
Figure 15.5 – Teams Bottom of the Eastern Conference (Last Fifteen Games).....	237
Figure 15.6 – Attendance Figures in Recent NBA Seasons.....	239
Figure 16.1 – Analysis of the MLB’s Luxury Tax.....	248
Figure 16.2 – Win Difference before the Introduction of the Salary Cap.....	254
Figure 16.3 – Win Difference after the Introduction of the Salary Cap.....	255
Figure 16.4 – Analysis of Data in Figures 16.2 and 16.3.....	255
Figure 16.5 – NFL Champions before the Introduction of the Salary Cap.....	257
Figure 16.6 – NFL Champions after the Introduction of the Salary Cap.....	258
Figure 17.1 – Teams with the Worst Win/Loss Records in the NBA.....	265
Figure 17.2 – No.1 Draft Picks and their length of time with teams in the NFL....	272
Figure 17.3 – The Top Ten NFL Draft Picks and the Player’s length of time with their team.....	274
Figure 17.4 – Analysis into the Competitiveness of the NBA Draft.....	275
Figure 17.5 – Analysis into a Team’s Progression in the NBA.....	278
Figure 18.1 – A Comparison of European and North American Sports Leagues ..	285

Chapter 1 - **Introduction**

Introduction

1.1 – Research Objective

Sport is an important part of many peoples' lives; providing individuals with opportunities to socialise whilst maintaining their health and wellbeing. At the highest level, sport is a multi-billion pound industry that continues to grow through commercialisation and marketing. Maintaining competitive balance in sport is essential in preserving its long term survival, as low uncertainty of outcome will eventually lead to a decline in spectator demand. To ensure sport maintains its quality and professional status, governing bodies are required to regulate competitive balance by monitoring its development and implementing new rules and regulations when necessary. Unfortunately, not all regulatory measures can be implemented due to conflicts with national laws, and in particular EU law. This thesis attempts to develop a greater understanding of competitive balance and its importance to the overall product of sport. This requires an analysis of the key influential factors which restrict and interfere with the development of sport, and the barriers obstructing governing bodies from implementing new regulatory measures.

1.2 – Scope of the Research

The methods used to regulate competitive balance vary in accordance with whether the sport is an individual or team based effort. Regulating competitive balance in individual sports is more difficult as an athlete's success depends largely on their ability and skill. Team sports differ as they require all athletes to work together and perform as a team. Skill levels are likely to vary between teammates whilst tactical awareness plays a more prominent role in the outcome of results. The thesis focuses primarily on team sports as there are more options available to governing bodies in

terms of regulating competitive balance.⁵ Analysis of individual sports (e.g. athletics) is carried out where necessary, particularly with respect to doping in sport, as this material focuses primarily on an individual's effort to gain an unfair competitive advantage over opponents⁶; and gender and disability, which evaluates the position of transsexuals in sport and the participation of disabled athletes in able-bodied events. Sports which integrate the performance of humans with animals (e.g. horse racing and polo) or machines (e.g. sailing and motor racing) are more difficult to assess as performance may sometimes be as much about the animal or machine as the athlete.⁷

The body of the thesis is focused on four primary areas: The philosophy and economics of sport; access denial in sport; the commercialisation of sport; and a comparison of European and North American sports models. The section on philosophy and economics of sport serves to: Identify the particularity of sport as distinct from other recreational activities; outline its special importance and the extent to which this is recognised in law, not least in the EU context; and to explore the motives of athletes to pursue excellence.

The section on access denial focuses on a variety of restrictions that impede athletes and teams from competing in competitions. The participation of transsexuals and disabled athletes in specific events creates a number of problems for sports governing bodies, as their participation could potentially enable them to acquire an unfair competitive advantage. Similarly, athletes under the influence of performance enhancing drugs are likely to gain physiological advantages which could improve their performances. The thesis explores the theoretical rationale for restricting access to participation in sport (for example, the protection of integrity and competitiveness)

⁵ These options include mechanisms like the salary cap and player draft.

⁶ Although doping does occur in team sports, it is less likely to have an effect on the outcome of an event unless all members of the team are subjected to the same performance enhancing substance.

⁷ Reference will occasionally be made to these types of sports, particularly when analysing the numerous rule changes implemented into Formula 1 racing by its governing body, in a bid to restore competitive balance.

and, in this context, the justifiability of different theoretical and actual approaches adopted towards access denial.

The restrictions placed upon European sports, which are forced to comply with EU law, have a significant impact on the regulation of competitive balance and the development of sports. A number of legal cases, most notably *Bosman*, have significantly altered the position of sport with regards to the amount of dispensation it is afforded. Analysis focuses on a number of legal cases in relation to nationality clauses, player quotas, and the transfer system; and the potential to challenge rulings under the restraint of trade doctrine.

The section on commercialisation of sport focuses on the influence of sponsors and the broadcast media, corruption, and several legal decisions concerning player contracts in team sports. Revenue sharing and the collective sale of television rights have a huge influence on the competitive balance of a league. The top teams will always generate greater revenue streams than the smaller teams, and if the distribution of revenue is not regulated, the rich will inevitably become richer, and begin to dominate a league by purchasing the best talent. Corruption is also a growing problem in sport, with the expansion of betting markets providing athletes with greater incentives to underperform or ‘throw’ contests in exchange for financial rewards. This undermines the integrity of contests and dismisses the notion of a level playing field; resulting in a number of contests being decided by the deceitful actions of the perpetrator(s) as opposed to the skill and tactical nous of the athletes and teams. The growth of commercialisation has also triggered a number of legal disputes, often in relation to player contracts. Research into third party contracts, which analyses the Carlos Tévez dispute; and the recent decisions in *Webster*⁸ and *Matuzalém*⁹, which deal with footballers buying-out their contracts, are an indication of how sport (and in these instances football) has been forced to adapt to the

⁸ CAS 2007/A/1298 Wigan Athletic FC v Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v Heart of Midlothian.

⁹ CAS 2008/A/1519 FC Shakhtar Donetsk v Matuzalém Francelino da Silva & Real Zaragoza & FIFA.

growing influence of commercialisation. This has ultimately increased player power, whilst reducing the influence and control exhibited by clubs.

The section comparing European and North American regulation of team sports focuses on the key regulatory measures implemented by the contrasting sports models. The promotion and relegation system, the salary cap, and the player draft are all measures implemented into team sports with the aim of preserving competitive balance. The promotion and relegation system, utilised predominantly in European sports, is designed to promote competitiveness at the lower end of a league; whereas the North American alternative, known as the closed league format, is designed to install financial stability amongst teams. Both systems possess advantages and disadvantages, and the thesis aims to identify these in a bid to determine which format is more effective at promoting competitive balance. The salary cap and player draft are regulatory measures implemented into North American sports leagues in a bid to limit the spending power of the top teams, and to disperse the young emerging talent amongst the teams that require them most. Research will reveal the benefits of both regulatory measures and the potential problems they create with regards to underperformance and their implementation into European sports leagues.

1.3 – Research Methodology

This thesis conducts a theoretical evaluation of the sports economics and sports law sectors. The Sports economics literature review provides a brief introduction to the market structure of sports and the studies previously carried out by leading authority figures, including *Lewis and Taylor (2008)*¹⁰, *Parrish and Miettinen (2008)*¹¹, *Andreff and Szymanski (2009)*¹², and *Gardiner et al. (2012)*¹³; followed by a

¹⁰ Lewis, A. and Taylor, J. (2008) 'Sport: Law and Practice', Tottel Publishing, second edition.

¹¹ Parrish, R. and Miettinen, S. (2008) 'The Sporting Exception in European Union Law', Asser Press.

¹² Andreff, W. and Szymanski, S. (2006) 'Handbook on the Economics of Sport', Edward Elgar Publishing Limited.

comprehensive analysis of competitive balance, uncertainty of outcome, and spectator interest. The methodology of the legal research includes an extensive literature review of sports law, with legal method utilised by applying principles of legal reasoning, statutory interpretation, and judicial precedent. The use of secondary sources, including books, law journals, government publication, and case comments; combined with primary sources, including case law and legislation, allows for an extensive literature review of sports law. The knowledge obtained is used to form the basis of the thesis, with the identified individual research topics likely to require further detailed exploration.

The research approach is primarily one of doctrinal legal analysis, drawing upon quantitative data and economic analysis to illustrate particular points. An evaluation of European Union law is essential in building an understanding of legal hierarchy, with national laws created in compliance with EU law. An examination of Articles 81 and 82 of the European Community Treaty, and the Sherman Antitrust Act 1890 is essential in building a legal basis for European and North American regulation of competitive balance. Sports related case law, including *Bosman*¹⁴, *Deliege*¹⁵, *Lehtonen*¹⁶, and *Meca Medina*¹⁷ require critical assessment in a bid to determine whether these decisions were made with the aim of preserving competitive balance in sport, thus providing it with special dispensation and allowing it to function efficiently; or whether the decisions simply complied with principles set out in previous case law. When hypothesising new ideas, the application of small scale studies relating to sporting achievements and records, viewing figures, and other numerate data, is useful in supporting and dispelling previous material, and determining whether there is a need for legal reform in a particular area of sport. Numerate data is displayed in charts and graphs using statistical software

¹³ Gardiner, S., O’Leary, J., Welch, R., Boyes, S. and Naidoo, U. (2012) ‘Sports Law’, Routledge, fourth edition.

¹⁴ Case C-415/93 Union Royale Belge Sociétés de Football Association and others v Jean-Marc Bosman and others [1995] ECR I-4921.

¹⁵ Cases C-51/96 and 191/97 Christelle Deliege v Asbl Ligue francophone [2000] ECR I-2549.

¹⁶ Case C-176/96 Lehtonen and Castors Braine v Fédération Royale Belge des Sociétés de Basketball [2000] ECR I-2681.

¹⁷ Case C-519/04 P Meca Medina and Majcen v Commission [2006] ECR I-6991.

programme Microsoft Excel, providing clear and concise information which can be interpreted and applied to speculative arguments and developing theories, supplying them with tangible substance.

To effectively accomplish the aims of this thesis required a capacity to analyse both verbal and numerical material in a logical and incisive manner, making judgements after taking into account all pertinent factors. The ability to examine multiple hypotheses, thus avoiding the quick pursuit of only one path, which could turn out to be incorrect, is essential to maintaining the credibility of the thesis. Previous research required thorough examination, with the interpretation of speculations and theoretical insights imperative in providing a basis to conduct further research, with the aim of contributing significant knowledge to the field. Legal interpretation combined with an understanding of the sports economics market allows for the creation of speculative developments which not only offer new insights into issues, but also provide comprehensive solutions and changes in a bid to improving competitiveness in sport. An understanding of the value and meaning of competitiveness in sport provides a rationale for the inherent requirement of competitive balance in sport, whilst exploration into related and competing values will philosophically place the role of competitiveness in sport.¹⁸

1.4 – Research Ethics

As the thesis is primarily one of doctrinal legal analysis, drawing upon quantitative data and economic analysis to illustrate particular points, there have been no encounters with confidential data. The nature of some of the subject matter is sensitive (e.g. on gender and disability) and therefore required a particularly morally thoughtful approach. All material obtained from the literature review is correctly referenced and noted in the bibliography section of the thesis.

¹⁸ Research focuses on a number of issues including how sport is able to bring society together to embrace excellence, and the opportunity it offers people from all backgrounds to showcase their unique skills in a competitive environment.

1.5 – Significance of the Research

The findings of this research will be of great interest to sports governing bodies and the legal community, including legal practitioners and the Courts. Governing bodies continuously strive to improve various aspects of sports, including competitiveness and spectator interest. The thesis could provide these organisations with solutions and recommendations to problems which have continued to have adverse effects on both the business and performance aspects of sport. Developments could also be utilised to ascertain whether specific rules and regulations require addressing in the light of the new material.

1.6 – Contribution to Knowledge

Sports law is a relatively new subject with limited material. There is very little research that combines legal, economic, and philosophical analysis with the regulation of competitive balance in sport. This thesis attempts to examine content which has not previously been explored, in a bid to provide solutions to unanswered questions and develop new insights in the process. Research into doping explores the relatively new subjects of technological and gene doping, as opposed to just concentrating on the use of traditional performance enhancing drugs. Similarly, analysis into gender and disability boundaries centres on unresolved matters such as the participation of male-to-female transsexuals in women's events and the requirements that need to be met for disabled athletes to be eligible to compete in able-bodied contests. Exploration into the growth and development of the relatively new sport of mixed martial arts, as opposed to a traditional combat sport like boxing, was made on the basis that there is currently no material which focuses on the problems encountered by MMA in obtaining regulation from State Athletic Commissions. Likewise, the majority of research on the influence of sponsors and the broadcast media concentrates on the marketing and sponsorship opportunities provided by sport, whereas this thesis focuses on the advantages and disadvantages

in relation to competitive balance. Analysis of the revenue sharing methods employed by sports leagues, and a breakdown of an athlete's annual earnings in individual sports reveals the level of influence that sponsorship and television revenue can have on the competitive balance of a sport.

1.7 – Limitations of the Research

The thesis encountered very few limitations regarding access to previous material, journals, case law, and statistical information; however, word limit restrictions resulted in a number of minor aspects not being explored. Although these issues are of lesser importance to the research, they still have the ability to contribute data towards the analysis of competitive balance in sport, and can be researched at a later date if deemed necessary. Skill boundaries are required to ensure the very best athletes and teams are able to compete against each other without having to expend time and energy, and risk injury in contests against less gifted and substandard opponents. It can be argued that these type of boundaries essentially detract from the romance of sport, whereby a relatively unknown or amateur athlete can cause a shock by prevailing in a contest or event. The USA ice hockey team which defeated the heavily favoured USSR team at the 1980 Olympics was largely comprised of amateur and collegiate players. Commonly referred to as the '*Miracle on Ice*', this medal-round men's ice hockey match is regarded as one of the biggest upsets of all time, as the Soviet team was considered the best hockey team in the world.¹⁹

The seeding of sports contests is a regulatory measure used to ensure that the latter stages of a competition are comprised of the best sporting talent. This prolongs interest in an event and increases the anticipation of contests as a competition progresses. Although the objective of seeding is to reward the best athletes or teams

¹⁹ The 4-3 victory over the Soviets did not guarantee the U.S. team the gold medal; although a victory against Finland in the final group game would assure the team of first place, and the gold medal. In a close fought game, the USA were able to defeat Finland 4-2, becoming Olympic champions in the process.

by pairing them against lower ranked opposition in the earlier rounds of a competition, there are occasions when two of the better competitors are paired against each other.²⁰ This does not always detract from a competition, and can often reflect the overall strength of the competition.²¹ Seeding can also be used to integrate a wider variety of competitors into a competition, in a bid to improve the growth of the sport. UEFA recently altered the qualifying process of the Champions League, with mixed results. The participation of smaller teams in the group stages allows them to gain experience of top-level football and generate greater revenue streams. However, their presence has resulted in a number of one-sided games, with the majority of these so called lesser teams having no realistic chance of qualifying for the knockout stages; with most just content to keep the score down in contests. This is not always the case, as evidenced by APOEL's 2011-12 Champions League campaign in which the minnows managed to win their group and advance to the knockout stage of the competition.²²

²⁰ This usually occurs as a result of one of the competitors being injured or underperforming prior to the seeding of a competition.

²¹ The FIFA World Cup and the UEFA European Championships often contain a 'group of death'; a group which is unusually competitive, because the number of strong competitors in the group is greater than the number of qualifying places available for the next phase of the tournament.

²² APOEL became the very first Cypriot team to qualify for the knockout stages of the UEFA Champions League. They were the lowest seeds of the group and had never won a Champions League game prior to the campaign.

Chapter 2 – The Philosophy and Economics of Sport

Identifying a Sport

2.1 – Definition of a Sport

*Sport is all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.*²³

There is no precise legal definition of a sport in English law, although the case of *R v Oxfordshire County Council and Others ex p Sunningwell Parish Council*²⁴ attempted to define its meaning, without success. In this instance the term ‘sport and pastime’ was used as a means of avoiding arguments concerning whether an activity could be classified as either a sport or a pastime.²⁵ *Slusher (1967)* believes the interpretation of sport to be similar with that of religion; “Basically sport, like religion defies definition. In a manner it goes beyond definitive terminology. Neither has substance which can be identified. In a sense both sport and religion are beyond essence”²⁶. Research confirms there to be very little material available which comprehensively provides either a legal or social definition as to what type of activities can be regarded as legitimate sports.

2.2 – The Olympic Games

The Olympic Games are a major international event of summer and winter sports, in which thousands of athletes compete in a wide variety of events. The Games are

²³ The definition of sport established by the Council of Europe.

²⁴ *R v Oxfordshire County Council and Others ex p Sunningwell Parish Council* [1993] 3 WLR 160.

²⁵ The case related to the Council’s failure not to register the village green as common land. Section 22(1) of the Commons Registration Act [1965] contains a three part definition of a town or village green: ... (a) Land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality, or (b) on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes, or (c) on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.

²⁶ *Slusher, M. (1967) ‘Men, Sport and Existence: A Critical Analysis’, Philadelphia: Lea and Febiger.*

currently held every two years, with Summer and Winter Olympic Games alternating. The 2008 Summer Olympics took place in Beijing, China. A total of 11,028 athletes from 204 National Olympic Committees (NOCs) competed in 302 events in twenty-eight sports. According to Nielsen Media Research, an estimated 4.7 billion viewers worldwide tuned in to various segments of the event’s television coverage. The success and popularity of the Olympic Games is one reason why many consider the International Olympic Committee (IOC), the Olympic Games governing body, as a major authority in determining which physical activities can be regarded as sports.

Figure 2.1 – Preparation of the Olympic Programme

Name	Example	Conditions to be met for inclusion in the Olympic Games
Federation	e.g. Fédération Internationale de Natation	1) Administer one or several sports at world level and encompass organisations administering such sports at national level (national federations), 2) Have statutes, practice and activities in conformity with the Olympic Charter, 3) Have adopted and implemented the World Anti-Doping Code.
Sport	e.g. Aquatics	1) For the Games of the Olympiad: be widely practiced by men in at least 75 countries and on four continents, and by women in at least 40 countries and on three continents, 2) For the Winter Games: be widely practiced in at least 20 countries on three continents, 3) Have adopted and implemented the World Anti-Doping Code, 4) Be admitted to the programme seven years before the Olympic Games.
Discipline	e.g. Diving	1) Have a recognised international standing, 2) For the Games of the Olympiad: be widely practiced by men in at least 75 countries and on four continents, and by women in at least 40 countries and on three continents, 3) For the Winter Games: be widely practiced in at least 25 countries on three continents, 4) Be admitted to the programme seven years before the Olympic Games.
Event	e.g. Individual Springboard	1) Have a recognised international standing both numerically and geographically, and have been included at least twice in world or continental championships, 2) Be practiced by men in at least 50 countries and on three continents, and by women in at least 35 countries and on three continents, 3) Be admitted three years before the Olympic Games.

The table details the requirements that need to be met for a new federation, sport, discipline, and event to be considered part of the Olympic Games.

The IOC has strict guidelines outlining the conditions which need to be met by a sport, for it to be included in the Olympic Games, see *figure 2.1*. These guidelines are in place to ensure a sport is practiced in a wide variety of countries to maximise interest and to provide a sufficient number of participants who are capable of competing in the sport at the highest level. Another condition requires the sport to agree to adopt and implement the World Anti-Doping Code, in a bid to not only protect the welfare of competitors, but to also rid the sport of anti-competitiveness and rule breaking. The guidelines also list the requirements for new federations (sports individual governing bodies), disciplines, and events.

2.3 – Fundamental Requirements of a Sport

There is no social definition regarding the fundamental requirements which differentiate a sport from games and recreational activities. *Rodgers (1977)* suggested that four basic elements should ideally be present in a sport, and the first two should always be present:

1. Sport should: involve physical activity;
2. Be practiced for recreational purposes;
3. Involve an element of competition;
4. Have a framework of institutional organisation.²⁷

Rodger's elements fail to account for the requirement of a unique skill or ability, and to ensure that the element of luck does not outweigh the level of skill or ability required for success within the sport. Further analysis reveals the following four elements to be essential in determining what type of activity qualifies as a sport:

²⁷ Rodgers, B. (1997) 'Rationalising Sports Policies; Sport in the Social Context: Technical Supplement, Council of Europe', Strasbourg.

2.3.1 – The Physical Requirement

A prominent feature in sport is the level of physicality exerted by the athlete; with the crucial factor being that one is exercising a skill that is not dominantly mental but involves particular refinement in use of the body. Archery, although not as physically demanding as football and rugby, still requires a particular refinement of the body to generate the speed and accuracy to fire an arrow from a bow directly onto a target, whilst allowing for wind velocity and direction. Similarly, darts requires great physical precision which must be repeated, requiring regular practice to develop skill. This involves not only familiarity with a strategy, but also a process of learning to aim and training a set of muscles to perform the same task over and over. Although darts players do not require cardio vascular conditioning or the physique of a modern day athlete, there is a sufficient physical input for it to be regarded a sport. In comparison, the physical exertion used to move pieces around the board in a game of chess requires no refinement in use of the body, and has no bearing on the outcome of the game; with success relying solely on the mental skill and ability of the individual.

2.3.2 – The Ability and Skill of the Athlete

At the highest level, a sport will require athletes to train frequently in order to maintain their endurance and skill levels to remain competitive within their field. Should the activity require very little skill, then it is more likely to be considered a hobby or pastime rather than a sport. The ability to catch fish utilises both minimal refinement in the use of the body and nominal skill, with the surroundings and conditions of the river or lake having a huge influence on the fisherman's attempts to successfully catch fish. There is also very little training and conditioning that can be undertaken by participants to improve their fishing ability. Professional body building requires rigorous

physical exertion and frequent training; however it lacks the unique skill and ability which separates a sport from a recreational activity; therefore allowing any able-bodied individual to achieve similar performance levels exhibited by professionals. Chess and other board games require a minimal amount of physical effort in terms of complex physical skills or vigorous exertion, as the skills required are essentially cognitive.²⁸ The lack of physical skill involved in chess inevitably renders it a pastime or hobby, as opposed to a sport.

2.3.3 – The Competitive Aspect

The level of competition within a recreational activity is crucial in determining whether it can be classified as a sport. For an activity to be considered a sport there must be at least one opponent for the athlete to compete against. The athletes do not necessarily have to participate in the same competition as each other, so long as they are competing to outperform one another.²⁹ There are several activities that can be practiced as either a leisure activity, or be performed as part of a competitive sport. Many people use running as a means of maintaining fitness; however, this physical activity can also be transformed into a competitive sport, should the participant be running against either another opponent, or the clock. Professional wrestling is a difficult activity to classify as it lacks the competitive element to be regarded a sport; with the results of bouts being pre-determined beforehand. Although commonly mistaken as a sport; professional wrestling regards itself to be a form of sports entertainment. It can be argued that although results in bouts are pre-determined by management; the performances of individual athletes, in terms of their ability

²⁸ See 'Chess – A Sport or just a Game' (1999) 2(2) Sports Law Bulletin, 16.

²⁹ There are several individual sports (e.g. javelin, swimming, and sprinting) in which an athlete may attempt to outperform a specific time or distance record, which has been previously set in a different competition. As the time or distance was set by another athlete, the athlete is still competing against an opponent.

to entertain spectators and execute high-risk manoeuvres, can have an influence on their stature and ranking within the sport. Good performances can increase an athlete's chances of star billing and title opportunities; which is likely to result in them acquiring a higher profile and being rewarded with an increase in salary.

2.3.4 – The element of luck

For a recreational activity to be considered a sport, the element of luck involved should not outweigh the level of skill required to become successful. Football games are occasionally decided by incorrect refereeing decisions or lucky deflections, however the magnitude of luck involved in the sport is relatively low when balanced across a ninety-minute game. In contrast, the element of luck plays a prominent role in determining the outcome of a game of poker. It is not uncommon for an amateur player to defeat a professional player. These type of results suggest that the game relies heavily on luck as opposed to individual ability; with the game striking a similar resemblance to a lottery than a competitive sport.³⁰ Poker is essentially a high stakes gambling game which contravenes the ethics of sport; with losing participants not only exiting the tournament, but also leaving with a hefty financial loss, as they have to pay entrance fees in order to compete in tournaments.

³⁰ Sports athletes are usually in control of their own destiny; however, in the game of poker, participants rely heavily on the cards they are being dealt. Although there is the option to bluff their opponent, a participant will inevitably come up against an opponent with a stronger hand, and ultimately lose.

2.4 – Differentiation between a Sport, a Game, and a Recreational Activity

There are several contrasting features between sports, games, and recreational activities. A game does not usually require a person to exert some form of physicality; with mental skill more often than not being the deciding factor between winning and losing. Games do contain some form of competition, but they usually lack a particular refinement in use of the body. In contrast, recreational activities lack competitiveness, but do maintain an element of physicality. Recreation can be described as a physical activity which is designed for refreshment of one's body or mind. A sport can be defined as an activity that is governed by a set of rules or customs and engaged in competitively. Used by itself; sports commonly refer to activities where the physical capabilities of the competitor are the sole or primary determiner of the outcome (winning or losing). Sports can also be a source of entertainment for the participant and the viewer.

2.5 – Contact in Sport

Sports can be divided into four categories regarding their degree of contact: full-contact, semi-contact, limited-contact, and non-contact. A full-contact sport (or collision sport) is any sport where significant physical impact force on participants, either deliberate or incidental, is allowed for within the rules of the game. Contact actions include tackling, body checking, and blocking. Examples of full-contact sports include: rugby, boxing, MMA, and American football. A semi-contact sport is typically a combat sport which involves the simulation of full-power striking. Techniques are restricted to limited power, and rendering the opponent unconscious is forbidden. Kick-boxing, kung fu, and taekwondo are just a few sports that fall under this category. A limited-contact sport contains rules which are specifically designed to prevent contact between participants, either intentionally or unintentionally. Although contact can still occur, strong penalties are often used to discourage contact between individuals. Examples of such sports include: basketball,

baseball, squash, netball, and running. A non-contact sport ensures participants are separated from one another as to make it almost impossible for them to make contact during the course of a game. Tennis, cricket, swimming, and volleyball are all considered to be non-contact sports. Although physical contact with an opponent is unlikely; there is still the possibility that a participant could be struck by a ball.

2.6 – Summary

The ability to differentiate a sport from recreational activities, hobbies, and pastimes is integral to establishing whether a sport warrants special dispensation in light of new legal rulings; particularly those enforced by EU law. Analysis reveals a sport to be a physical activity which requires a particular refinement in use of the body, demanding a high level of skill and ability to attain success, whilst requiring some form of competition, either by means of an opponent or a set time, weight, distance, limit, etc..., which needs to be fulfilled. A recreational activity differs as it does not contain the same level of competitiveness that is exhibited in a sport. A hobby or pastime can be defined as a game that features a competitive element, and some form of cognitive skill; but lacks the physical requirement to be considered a genuine sport. Sports entertainment features both the physical and skill requirements, but lacks the required competitiveness associated with regular sports. Although similar to a recreational activity, the product of sports entertainment appears to be competitive to spectators; despite the fact that results have been predetermined by management, and are common knowledge between competitors. Sports are occasionally given special dispensation by law makers, in a bid to ensure their infrastructure and organisation is not compromised. This is often the case with European sports, where certain rules conflict with those outlined in EU law; and without the special dispensation afforded to them, the sport would be unable to function accordingly.

Competitive Balance and Uncertainty of Outcome

3.1 – Competition in Sport

Groot (2008) traces competition back to Ancient Greece where dramatic plays, funded by the polis³¹, were often performed in competitions as part of religious festivals in honour of god Dionysus³². Sport is comprised of contests between two or more participants, and these contests are usually part of an organised competition. *Scully (1995)* notes that sports fans appear most interested in organised championships³³, as opposed to exhibition contests that garner less interest and excitement; with *Noll (2003)* agreeing, stating that leagues create the opportunity to market a game as both the contest itself and one of a series that leads to a championship; with the quest for a championship generating spectator interest, and league matches leading to a championship covered more exclusively by the media³⁴. The organisational structure, along with the prestige and honour which accompanies success, is what makes competitions appealing to both participants and spectators; and without public demand, competitions would be unable to generate sufficient revenue to attract the best athletes and teams. There are exceptions, particularly if the set-up of a country is such that money is kept away from participants (e.g. Cuba), or a particular sport is unpopular and unable to generate sufficient revenue streams. In these instances, competitions are still likely to attract the best playing talent.

The regulation of competitive balance in individual sports is difficult to implement, as success or failure relies largely on an athlete's individual skill and ability; whereas team sports can be influenced by a number of factors including: team selection, managerial expertise, club spending power, team work, and other

³¹ The word *Polis* means 'City' in Greek.

³² Groot, L. (2008) 'Economics, Uncertainty and European Football: Trends in Competitive Balance', Edward Elgar Publishing, Inc., p27.

³³ Scully, G. (1995) 'The Market Structure of Sports', Chicago: University of Chicago Press.

³⁴ Noll, R. (2003) 'The Organization of sports leagues', Oxford Review of Economic Policy, 19, p530-551.

regulatory measures (e.g. the salary cap). Analysis of competitive balance in sport therefore focuses more on team sports, as governing bodies possess a greater regulatory influence over them. In reference to team sports, *Borland (2006)* highlights four components which are required for sporting competition: a set of players to participate in the contest; clubs that will organise these players into teams; a sporting league which will be responsible for the design and management of the competition; and a stadium where contests between teams can occur, together with any equipment required for the contest³⁵. Competitions at the highest level also require suppliers of labour (players), including minor league professional clubs, junior amateur clubs, and college clubs; and consumers of sporting contests (spectators), supporters who attend contests, and viewers who watch or listen to broadcasts of contests through media such as free-to-air TV, pay TV, the radio, or the internet.

3.2 – Competitive Balance

*Competitive balance means in essence that all of the league's teams are of sufficiently comparable playing strength that... fans will be in enough doubt about the probable outcome of each game and of the various division races that they will be interested in watching the games, thus supporting the teams' television gate revenues.*³⁶

Competitive balance refers to the balance between the sporting capabilities of each participant. In team sports, the more evenly balanced the competitive strengths of each team within a league, the more uncertain the outcome of each contest.

³⁵ Borland, J. (2006) 'The Production of Professional Team Sports', in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing, p22.

³⁶ See the decision in *James McCoy (Yazoo) Smith v Pro-Football et al.*, 420 F. Supp. 738, 745 D.C. Cir. [1976].

Figure 3.1 – The Most Balanced League Ever Observed in Football³⁷

Romania 1983-84, Divizia C, Seria a VIII-a

Pos	Team	W	D	L	Pts
1	Muresul Deva	16	6	8	38
2	UMT Timisoara	14	3	13	31
3	Mecanica Orastie	15	1	14	31
4	Minerul Paroseni	13	5	12	31
5	Minerul Moldova-Noua	14	2	14	30
6	Minerul Stiinta Vulcan	13	4	13	29
7	Metalul Bocsa	13	4	13	29
8	Dacia Orastie	11	7	12	29
9	Minerul Certej	13	3	14	29
10	Metalul Otelu-Rosu	14	1	15	29
11	Minerul Anina	13	3	14	29
12	Victoria Calan	13	3	14	29
13	Constructorul Timisoara	13	3	14	29
14	Minerul Oravita	13	3	14	29
15	Minerul Ghelar	12	5	13	29
16	Minerul Aninoasa	11	6	13	28

Pos – The final position of the team

Team – The name of the team

W – Win

D – Draw

L – Loss

Pts – Points

Difference between the first and last team is: 10pts (16.67% of possible gap).

Difference between second and last team is: 3pts (5% of points that could be gained).

Number of teams equal on points is: 9 (56.25%).

Number of teams within one point is: 11 (68.75%).

Number of teams within two points is: 14 (87.5%).

Number of teams within three points is: 15 (93.75%).

Standard deviation in winning percentage: 0.03727.

In a perfectly balanced league, see *figure 3.1*, each team would have an equal chance of winning each contest and each team would therefore have an equal chance of winning the league title. Whereas in any other industry a competitor would be happy to see all its rivals go bankrupt, sports markets are characterised by the fact that each competitor has an inherent interest in maintaining the health of their rivals. Competitive balance does not necessarily have to be perfect or close to perfect to

³⁷ Sourced from: Groot, L. (2008) 'Economics, Uncertainty and European Football – Trends in Competitive Balance', Edward Elgar Publishing, Inc., p23.

stimulate interest; merely a sufficient degree of competition.³⁸ In order to maintain fan interest, a sports league must ensure that teams do not become too strong or too weak relative to one another so that uncertainty of outcome is preserved. If a league becomes unbalanced, with too much playing talent concentrated in one or two teams, fan interest for both the dominant and weaker team declines. *Zimbalist (2003)* believes the success of a particular competition relates to the degree of balance amongst its teams³⁹. An unbalanced league fails to maximise potential income from spectators and viewers; with *Neale (1964)* asserting that excessive dominance will eventually destroy interest⁴⁰. Maintaining competitive balance enables clubs, and the league, to maximise demand for their product, whilst safeguarding league stability, as an unbalanced league is more likely to face increased risks of bankruptcy of lagging clubs and threats of a league break-up from new or rival leagues.

Competitive imbalance occurs when a team acquires the best playing talent, usually by offering higher transfer fees and salaries. The level of support for each team, along with the owner's financial backing varies, enabling some teams to generate greater revenue streams. *Fort and Quirk (1995)* state that in the absence of cross-subsidies from strong teams, teams in weak-drawing cities lack the profit incentives to field teams that can compete at the level that would maximise league revenues⁴¹. Maintaining competitive balance in team sports can be difficult, as teams are often spread out over different geographical regions, where demand varies. In North American sports, teams often relocate to regions where demand is greater in a bid to improve financial intake, which in turn improves the team's prospects. Although uncommon in European sports, the decision to relocate Wimbledon FC, from South-

³⁸ For example, in cricket a lot of emphasis and interest is taken in individual and team performance rather than simply the outcome. Australia was dominant for many years but the sport still managed to maintain interest. Players who individually performed well against the Australians and teams that pulled off underdog wins were treated as heroic. Teams like Zimbabwe and Bangladesh are poor but there is appreciation when they pull-off improved performances.

³⁹ Zimbalist, A. (2003) 'Sport as Business', *Oxford Review of Economic Policy*, 19(4), p503-511.

⁴⁰ Neale, W. (1964) 'The peculiar economics of professional sport', *Quarterly Journal of Economics*, 78(1), p1-14.

⁴¹ Fort, R. and Quirk, J. (1995) 'Cross-subsidization, Incentives, and Outcomes in Professional Team Sports Leagues', *Journal of Economic Literature*, 33(3), p1265-1299.

West London to Milton Keynes⁴², was made due to a lack of demand which was the result of a large concentration of football clubs within close proximity of each other. Although the rebranding of clubs usually results in the loss of a team's identity, a geographical spread of teams is often required to maximise demand and create a greater interest in the league as a whole.

Szymanski (2006) notes that although balance within a contest can be exciting, so can contests between a David and Goliath, even if David seldom wins⁴³. The realisation of the completely unexpected can generate enormous satisfaction; uniting neutral spectators in support of the so called underdogs. The performance of a perpetually successful team can also provide extra interest, either among those who support the dynasty, or among those who are rooting for it to fail. Sporting excellence is often heralded by supporters and neutral spectators, particularly when a team exhibits a style of play which is perceived as being revolutionary to a sport, such as the introduction of *total football*⁴⁴ by Ajax in the early seventies, or Barcelona's development of *tiki-taka*⁴⁵ in the late noughties. The dominance of a team can also be looked upon favourably by the neutral spectator, especially if the team is considered to be the greatest of all time. The 1992 U.S. Dream Team⁴⁶, the 1970 World Cup winners Brazil⁴⁷, the 1995-96 Chicago Bulls team⁴⁸, and the 1985

⁴² Wimbledon FC relocated to Milton Keynes in 2003 and the team was eventually rebranded as Milton Keynes Dons.

⁴³ Szymanski, S. (2006) 'The Uncertainty of Outcome, Competitive Balance, and the Theory of Team Sports', in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing, p597.

⁴⁴ Total football refers to an influential tactical theory in which any outfield player can take over the role of any other player in a team.

⁴⁵ Tiki-taka is a style of play characterised by short passing and movement, working the ball through various channels, and maintaining possession.

⁴⁶ The 1992 U.S. Olympic basketball Dream Team won the gold medal at the 1992 Summer Olympics, with a team featuring thirteen Hall of Famers (ten players and three coaches). The team was so much better than the competition that head coach Chuck Daly did not call a single timeout during the tournament.

⁴⁷ The 1970 Brazil national football team is considered to be the best national football team of all time, winning all seven games during their World Cup win, whilst displaying the most irresistible attack ever seen in the competition. The team remained unbeaten for the next three years.

⁴⁸ The 1995-96 NBA winners the Chicago Bulls posted a record of 72-10, cruising through the playoffs and eventually defeating the Seattle SuperSonics in the finals.

Chicago Bears team⁴⁹ are all considered to be the greatest teams in their respective sports and competitions. Sporting dominance is often unappealing to viewers, but in these instances, the ability and skill exhibited by the dominant teams was deserved, and more than made up for a lack of competitiveness. By contrast, the ability of a club to become financially dominant, enabling them to gain a stranglehold on the best talent, threatens the sense of enjoying deserved success.

3.3 – Uncertainty of Outcome

*One of the key ingredients of the demand by fans for team sports is the excitement generated because of the uncertainty of outcome of league games. For every fan who is a purist who simply enjoys watching athletes with outstanding ability perform regardless of the outcome, there are many who go to watch their team win, and particularly to watch their team win in a close game over a challenging opponent.*⁵⁰

Simon Rottenberg's (1956) uncertainty of outcome hypothesis posited that, other things being equal, the closer the competition between teams, the greater the interest in the sport and, therefore, the greater the likelihood of total attendance⁵¹. For example, team A and team B confers benefits on the league not only via increased attendance at teams' own games, but also at games involving teams C and D, hence the externality. A single club that continually dominates a league can have a negative effect on other teams; lowering their attendance figures and reducing spectator interest in the long term. Cairns *et al.* (1985) distinguish three forms of uncertainty of outcome. The first refers to the level of competition in a single match; the second refers to a single championship season; and the third refers to there being a variety of champions over a period of years rather than a concentration of success⁵².

⁴⁹ The 1985 NFL champions the Chicago Bears finished the regular season with a 15-1 record, scoring 456 points whilst allowing only 198.

⁵⁰ Quirk, J. and Fort, R. (1992) 'Pay Dirt: the Business of Professional Team Sports', Princeton: Princeton University Press, p243.

⁵¹ Rottenberg, S. (1956) 'The baseball Player's Labor Market', *Journal of Political Economy*, 64(3), p242-258.

⁵² Cairns J., Jennett N. and Sloane P. (1985) 'The Economics of Professional Team Sports: A Survey of Theory and Evidence', *Journal of Economic Studies*, 13(1), p1-80.

In the context of match uncertainty, *Szymanski (2003)* asserts that demand for tickets peaks where a home team's probability of winning is about twice that of the visiting team⁵³. Home team supporters are not interested in a well-balanced contest; they want their team to win, and are more likely to attend when the probability of that event is greater; whereas the neutral spectator is more likely to attend contests that are evenly balanced, as they have no allegiance to either team. *Forest and Simmons (2002)* note that making a simple connection from match uncertainty to competitive balance is not straightforward since in all sports, home advantage is a factor determining match results⁵⁴. As home advantage can often be a pivotal influence on results, the most balanced contests in a league are not between the first and second place teams, but are between, for example, the tenth place team (at home) and the second place team (away). Therefore in a perfectly balanced league, it would be very difficult to maintain the same level of balance in individual contests between teams.

Championship uncertainty relates to the number of teams contesting the league title, playoff positions, promotion, and relegation; with these issues ensuring that contests remain competitive throughout a season. Contests with little at stake provide teams with little incentive to perform to the best of their abilities, which in turn reduces spectator interest and attendance. The battle for the league title is the most intriguing and anticipated aspect of a league; with a long and hard fought title race likely to prolong the interest of neutral spectators. A season which is dominated by one single team is likely to be less appealing, reducing the number of high profile contests, particularly once the title has been decided. Occasionally this dominance can be appealing, particularly if the team has never previously won or contested for the league title. A league which is continually dominated by one or two teams will eventually find it difficult to attract the best playing talent, as these players are unlikely to join any other team than the dominant ones, with success likely to be limited. The decline of the Scottish Premier League (SPL) can be attributed to the

⁵³ Szymanski, S. (2003) 'The Economic Design of Sporting Contests', *Journal of Economic Literature*, 41, p1155.

⁵⁴ Forrest, D. and Simmons, R. (2002) 'Outcome Uncertainty and Attendance Demand in Sport: The Case of English Soccer', *The Statistician*, 51, p229-241.

long term dominance of Celtic and Rangers.⁵⁵ These two teams became far superior, both financially and in terms of ability, relative to other teams within the league. This resulted in numerous predictable seasons, with the best playing talent distributed solely amongst the dominant two teams. The league's overall decline in quality has resulted in it slipping down the UEFA coefficient rankings⁵⁶, making it very difficult for teams to attract the best players, including the dominant two. Preserving long term uncertainty of outcome is essential in maintaining league interest, and unlike match uncertainty, a decline in attendance will almost certainly occur if the predictability of the league title continues to remain high.

3.4 – Spectator Interest

For spectators, sport at the highest level is a form of entertainment. Maintaining spectator interest is essential in preserving professional sports, as the revenue generated from viewers and supporters enables athletes and teams to maintain their professional status. Spectator demand ultimately accounts for: attendance revenue, lucrative television revenue, merchandise (e.g. replica shirts) and memorabilia sales, and sponsorship investment in sport. Sports governing bodies are therefore entrusted with the responsibility of maintaining the excitement and unpredictability of sport, which in turn preserves spectator interest. *Rottenberg's* uncertainty of outcome hypothesis states that individuals are more likely to attend contests where the outcome is uncertain. Although this is true to some extent, attendance and demand for sport varies according to the perspective of the individual. A neutral spectator is more likely to attend contests where uncertainty of outcome is high; whereas supporters of a team are likely to attend contests regardless of competitive balance; although home attendance is likely to decline if a team's performance level and results begin to suffer. The importance of a contest can also have a bearing on

⁵⁵ In the thirteen years of the Scottish Premier League's existence, Rangers and Celtic have finished in the top two positions in all but one of these seasons.

⁵⁶ The league's winners no longer receive an automatic place in the UEFA Champions League.

attendance, with competitive games attracting greater audiences compared to those with little or nothing at stake.

Figure 3.2.1 – World Cup 2010 Group F⁵⁷

Pos	Team	Pld	W	D	L	GF	GA	GD	Pts
1	Paraguay	3	1	2	0	3	1	+2	5
2	Slovakia	3	1	1	1	4	5	-1	4
3	New Zealand	3	0	3	0	2	2	0	3
4	Italy	3	0	2	1	4	5	-1	2

Figure 3.2.2 – World Cup 2010 Group F (If two points for a win was allocated)⁵⁸

Pos	Team	Pld	W	D	L	GF	GA	GD	Pts
1	Paraguay	3	1	2	0	3	1	+2	4
2	New Zealand	3	0	3	0	2	2	0	3
3	Slovakia	3	1	1	1	4	5	-1	3
4	Italy	3	0	2	1	4	5	-1	2

Pos – The team’s final position in the group.

Pld – The number of games played.

W – Win. **D** – Draw. **L** – Loss.

GF – Goals scored. **GA** – Goals against. **GD** – Goal difference.

Pts – The total number of points accumulated by each team.

Although competitive balance is a desirable component in contests, it is ultimately the level of performance that increases demand for sport. Spectators demand attacking and exciting play, preferably resulting in a high scoring contest. Rule changes are often required to keep leagues and competitions in touch with the development of the modern game. The introduction of three points for a win (as opposed to two) in football was designed to promote attacking football, encouraging teams who would ordinarily be content with a draw, to go for the win. At 2010 FIFA World Cup, Group F witnessed New Zealand exit the tournament after finishing third in their group, drawing all three of their games; see *figure 3.2.1*. Had the previous scoring system been employed, then New Zealand would have finished in

⁵⁷ These are the final standings for Group F at World Cup 2010.

⁵⁸ These are the final standings for Group F at World Cup 2010 if two points was allocated for a win instead of three.

second place and qualified from the group at the expense of Slovakia; see *figure 3.2.2*. New Zealand was more concerned with containing the opposition and settling for the draw in their contests, whereas Slovakia was more positive, attempting to win games with attacking play, scoring four goals and defeating World Champions Italy in the process.

3.5 – Maintaining Competitive Balance

In ancient Greece, during the running for positions of power in the polis, those considered to be ‘beyond competition’ by virtue of their excellence relative to others, were ostracised and banned from the city.⁵⁹ *Groot (2008)*, in applying ostracism to modern day sport, questions whether dominant athletes and teams like Edwin Moses⁶⁰ and the 1992 U.S. basketball dream team⁶¹ should be permitted to compete in events; as their inclusion in future contests was only likely to confirm whether they could continue their winning streaks⁶². The use of ostracism as an instrument to promote competitive balance in modern day sport would be impractical, as the top athletes and teams are the ones that garner the greatest interest and attract viewers. The punishment for not conforming to football’s new financial fair play regulations could be perceived as a form of ostracism; as those who are unable to balance their books will be excluded from cross-country competitions like the UEFA Champions League, regardless of their ability. Although this type of punishment is likely to damage the integrity and credibility of competitions in the short term, ambitious clubs will eventually be forced to comply with the new regulations, as their absence

⁵⁹ The punishment for one who was ostracised was ten years of exile from Attica.

⁶⁰ Edwin Moses is an American track and field athlete who won gold medals in the 400m hurdles at the 1976 and 1984 Olympics. Between 1977 and 1987, Moses won 107 consecutive finals (122 consecutive races) and set the world record in his event four times.

⁶¹ The 1992 U.S. basketball dream team is considered one of the strongest teams assembled in any sport. It defeated its opponents by an average of almost forty-four points en route to the gold medal against Croatia at the 1992 Summer Olympics.

⁶² *Groot, L. (2008) ‘Economics, Uncertainty and European Football: Trends in Competitive Balance’, Edward Elgar Publishing, Inc., p28.*

from such prestigious competitions will make it much harder to attract the best playing talent.

There are a number of measures which can be implemented into team sports to improve competitive balance. North American sports tend to employ salary caps and player drafts as a means of restricting revenue expenditure on teams. European sports are often hamstrung by EU law, and are therefore forced to use alternative regulatory methods such as transfer windows and financial fair play (which is currently being introduced into football). Salary caps limit the total amount of money which can be spent on team salaries, whilst the player draft helps redistribute the best playing talent across the league. Transfer windows were introduced to stop the big teams from recruiting the best talent from smaller teams during mid-season, whilst financial fair play is intended to limit a team's spending power to ensure rich clubs are unable to buy success and continually dominate a league. *Cairns et al. (1986)* suggest, "... Leagues should attempt to transfer resources from stronger, more successful teams, to smaller less successful teams. This will enable smaller teams to have the resources necessary to attract some of the best sporting talent to them and consequently raise their competitive capabilities on the field"⁶³. In North American sports, gate revenue sharing⁶⁴ has long been accepted as an exemption from antitrust law, as it enhances competitive balance by transferring funds from strong to weak teams. In European sports, revenue sharing occurs in the form of the collective sale of broadcast rights. This ensures that each team receives an equal amount of money, as opposed to the bigger clubs demanding a greater share of the revenue.

Davenport (1969) links the creation of the *reserve clause* in baseball to its need for competitive balance. In 1869, the Cincinnati Red Stockings posted a perfect 65-0 record, which stands as the only perfect season in baseball history. Salaries were so

⁶³ Cairns, J., Jennett, N., and Sloane, P. (1997) 'The Economics of Professional Team Sports: a survey of the theory and evidence', *Journal of Economic Studies*, 13(1), p3-80.

⁶⁴ For example in the MLB, all teams pay a percentage of their local revenues into a pot each season. This pot is then evenly distributed among the each team. A team in New York or Chicago will pay more into this pot than a team in Tampa Bay or Kansas City.

high and public interest so low that no teams would report any profits. The practice of ‘revolving’, whereby a player could continually switch to a club that would pay them more, was the main cause. The baseball industry suffered so badly that teams were forced to come together and reevaluate their position, resulting in the creation of the *Reserve Clause*⁶⁵. In *Flood v Kuhn*⁶⁶, Major League Baseball (MLB) successfully defended its ‘reserve clause’, barring all competition for a player’s service once he signed an initial contract from antitrust challenge. One of the principal arguments made by the club owners was that “without the balance provided by the reserve system, the clubs with greater financial resources would attract the most outstanding players. As a result, successful and reasonably balanced league play would be impossible to maintain”⁶⁷. In European sports, according to Advocate General Lenz in *Bosman*⁶⁸, the justification of restraint as a means of promoting competitive balance would have to establish that competitive balance is actually desirable.⁶⁹ Although there are a variety of methods which can be used to maintain competitive balance within a league, a divide is always likely to exist amongst teams. The demand for a team will vary according to their geographic location, enabling those in populated regions to generate a greater amount of revenue; whilst in European sports, teams that continually qualify for cross-country competitions are more likely to attract the best players, enabling the club to pull-away from the rest of the league.

⁶⁵ Davenport, D. (1969) ‘Collusive Competition in Major League Baseball: Its theory and Institutional Development’, *American Economist*, p6-30.

⁶⁶ *Flood v Kuhn*, 407 U.S. 258 [1972].

⁶⁷ The U.S. Supreme Court held that baseball’s reserve clause was exempt from scrutiny under the Sherman Act; however the court made it clear that its holding applied only to baseball, and not other sports.

⁶⁸ Advocate General Lenz concluded that agreements necessary “to ensure by means of specific measures that a certain balance is preserved between the clubs” were lawful.

⁶⁹ In other words, that competitive balance within domestic leagues will actually improve the popularity of the sport.

3.6 – Summary

Competitive balance and uncertainty of outcome are essential components of sport. Although short term dominance has the potential to increase spectator interest, continued dominance is likely to become predictable and uninteresting. The long term survival of a sports league relies on the link between competitive balance, uncertainty of outcome, and spectator interest. A competitive league is likely to preserve the match uncertainty of contests, which in turn maintains spectator interest; whereas an imbalanced league is likely to reduce match uncertainty, resulting in a decline in spectator interest. Not all contests can be perfectly balanced, particularly when one team is allocated home advantage. In these instances, it is the level of performance exhibited by the disadvantaged team that can help close the gap between the two. Although competitive balance is a desirable component in sport, it is not always possible to maintain, particularly in the short term. The top teams generate greater revenue streams, allowing them to acquire the best playing talent; although regulatory measures do limit this to some degree in North American sports. Ultimately the greatest sporting contests are those contested by two evenly matched athletes or teams. Although dominant champions are heralded for their superiority, it is the closely contested leagues and competitions that live long in the memory.

Fair Play and Gamesmanship

4.1 – The need to Preserve the Values of Sport

Sport is a social activity that is very much a part of popular culture. Although there is no single authoritative list of sporting values, the World Anti-Doping Code⁷⁰ provides a helpful list as to what it perceives to be the underlying values of sport: ethics, fair play and honesty; health; and excellence in performance. Fair play can be defined as much more than playing within the rules; it incorporates the concepts of friendship, respect for others, and playing within the spirit of the game. It also concerns itself with the elimination of cheating, gamesmanship, doping, violence, exploitation, and excessive commercialisation and corruption. Health is an important value of sport, particularly as those who incorporate exercise, physical activity, and participate in sport are likely to be healthier and live longer. *Kayser et al. (2007)* note that injuries are common amongst elite athletes because of the considerable demands of training and the risks encountered during competition⁷¹, however sport can demonstrate its concern for health as a value by continuing to introduce safety equipment and updating rules. The pursuit of excellence is a value common to all sports. The development of talent itself calls upon and reinforces values important in many aspects of life. Certain values such as courage, tenacity, and honour can be applied within and outside of sport. *Murray (2010)* notes sport's important role in the development of individuals who will enhance the lives of others and the success of the social, economic and political institutions that earn their loyalty⁷². Sporting values can be influential in the development of an individual and their future

⁷⁰ In 2004, the World Anti-Doping Code was implemented by sports organisations prior to the Olympic Games in Athens, harmonising the rules and regulations governing anti-doping across all sports and all countries for the first time.

⁷¹ Kayser, B., Mauron, A., and Miah, A. (2007) 'Current Anti-Doping Policy: A Critical Appraisal', *BMC Medical Ethics* 8(2): p1-10.

⁷² Murray, T. (2010) 'Preserving Sporting Values and Ethics: The relationship between anti-doping and sport values and ethics', United Nations Educational, Scientific and Cultural Organisation, p1-9.

contribution to society; whether it is within sport or some other form of occupation; highlighting the need to preserve them.

4.2 – The Need for Rules in Sport

The rule of law, on and off the playing field, is essential for the future of sport in society, whatever sport may mean, as it is for society in general. For without the rule of law in society, anarchy reigns. Without the rule of law in sport chaos exists⁷³. Rules in sport are designed to govern competitive balance, sportsmanship, corruption, equipment, facility design, the structure of contests, and to prevent conduct that creates unnecessary risks of injury. Techniques that inflict pain or endanger athletes violate the fundamental premise of athletic competition. Examples include: physical intimidation, intentional injuring, tripping, and other tactics that introduce dangerous elements into the game. In boxing, the rules developed to codify prize fighting in the 18th century were motivated by safety, and written by Jack Broughton in 1747, two years after he had killed George Stevenson in a prize-ring in Tottenham Court Road.⁷⁴ The late 1800s witnessed the formal codification of many sports; with *Simon (1991)* distinguishing a difference between ‘constitutive rules’ and rules of strategy⁷⁵. Constitutive rules determine what counts as a permissible move within the game itself (e.g. outfield players are unable to use their hands in football); whereas rules of strategy are concerned with improving one’s performance (e.g. tackling an opponent ‘hard and low’ during the early stages of a rugby game to achieve a consequential advantage). Rules of strategy do not necessarily have to be formally written, and are often developed through playing cultures in a bid to gain an advantage. Although these rules contradict certain ethical principles, *Fraser (1993)* argues that such rule breaking behaviour may be functional as a deterrent to other more serious rule breaking; citing a clear distinction between

⁷³ Grayson, E., former President of the British Association for Sport and Law, in his inaugural presidential address (1993) 1(1) *Sport and the Law Journal*.

⁷⁴ These rules were further codified in 1867 under the auspices of the Marquis of Queensberry.

⁷⁵ Simon, R. (1991) ‘Fair Play: Sports, Values and Society’, Boulder Westview, p14-15.

legitimate (although illegal) fighting (fist-fights) and illegitimate (and still illegal) violence (using the stick as a weapon) in ice hockey; with those who engage in violence ostracised as the use of a stick as a weapon can cause serious injury⁷⁶.

The modification of rules is often carried out to placate external pressures such as sponsors and television. The introduction of the back-pass rule in football was intended to speed-up the game; whilst changes to the foul-start rule in sprinting were made to appease television schedules which would often overrun.⁷⁷ Sports governing bodies are continually forced to review and modify rules, particularly as coaches and players are always looking for ways to exploit the limitations of existing rules. Without the modification of rules, sport can become predictable; however, too many changes can be counterproductive and damage the balance of particular sports. Officials' attitudes towards certain rules can vary at different points in time; with governing bodies instructing umpires and referees to enforce the rules more or less strictly, according to the current state of the game (e.g. an increase in foul play would require a stricter enforcement of the rules from officials). Although officials are in charge of overseeing sporting contests, the use of technology is gradually being incorporated into sport to aid their decision making. Cameras are frequently used in sports such as tennis, cricket, and rugby to provide officials with assistance; however there are concerns that this undermines the authority of officials and makes contests too clinical. Although the introduction of technology would improve the consistency of decision making; this would ultimately reduce the number of mistakes made by officials, which often provides controversial talking points for spectators.

⁷⁶ Fraser, D. (1993) 'Cricket and the Law: The Man in White is Always Right', Sydney: Institute of Criminology, p185.

⁷⁷ Previously, athletes were given a second opportunity after a foul-start; now, any athlete foul-starting is automatically disqualified from the event.

4.3 – Why Should Sport Encompass the Principle of Fair Play?

The Olympic Creed reads, “The most important thing in the Olympic Games is not to win but to take part, just as the most important thing in life is not the triumph but the struggle. The essential thing is not to have conquered but to have fought well”⁷⁸. *Loland (2002)* defines ‘fair play’ as conducting oneself in accordance with what the sport values, regardless of whether or not the rules specifically require it⁷⁹. This may take the form of halting play (i.e. kicking the ball out of play) to allow an opponent to receive medical assistance. Sport is a social activity which, practiced fairly, enriches society and the friendship between nations. *The Council of Europe, Code of Sports Ethics: Fair Play – the Winning Way* recognises sport as an individual activity which, played fairly, offers the opportunity for self-knowledge, self-expression, and fulfilment; personal achievement; skill acquisition and demonstration of ability; good health and well-being; and social interaction⁸⁰. *Murray (2010)* states that only in the context of fair play can a worthwhile competition take place in which the values athletes pursue through sport have the possibility of being realised⁸¹. Preserving the principle of fair play in sport ensures that every competitor has an equal chance of attaining success. Sport is an opportunity for athletes to test their individual skills against others and this requires a level playing field to ensure that no individual is able to gain an unfair advantage which could ultimately influence the result of a contest.

4.4 – What is Sportsmanship?

Sportsmanship is a practice that relies on honesty, upholding the interests of fair play, and accepting defeat graciously. The sportsmanship model demands a commitment

⁷⁸ <http://janecky.com/olympics/creed.html>.

⁷⁹ Loland, S. (2002) ‘Fair Play in Sport: A Moral Norm System’, London and New York: Routledge.

⁸⁰ Council of Europe, Code of Sports Ethics: Fair Play – the Winning Way (adopted by the Committee of Ministers on 24th September 1992).

⁸¹ Murray, T. (2010) ‘Preserving Sporting Values and Ethics: The relationship between anti-doping and sport values and ethics’, United Nations Educational, Scientific and Cultural Organisation, p1-9.

to principles of integrity including compliance with the letter and spirit of the rules even when one could get away with violations; and places the emphasis on participating as opposed to winning, with sport identified as an activity where nobility and glory is found, but in honourable competition in the pursuit of victory. A true sportsperson is willing to lose rather than sacrifice ethical principles to win. An athlete that is not willing to lose is more likely to engage in unethical behaviour to win. Victories attained by cheating or other forms of unethical conduct are dishonourable and undeserved. Although sportsmanship is considered to be good sporting etiquette, an over-reliance on this practice can lead to athletes abusing certain unwritten agreements. This has been the case in football recently, particularly in the 2006 World Cup where players would feign injury whilst their team was being counter-attacked in a bid to entice the opposition into kicking the ball out of play.⁸²

One such example of good sportsmanship occurred in a match between Arsenal and Liverpool in 1997, when Liverpool striker Robbie Fowler was put through on goal, slipping past the Arsenal goalkeeper before losing his balance and falling to the ground. Fowler immediately picked himself up and gestured to the referee that the keeper had not touched him, but the referee did not concur and awarded the penalty. Fowler stepped up and saw his tame effort saved, only for team mate Jason McAteer to turn-in the rebound. Fowler's act of sportsmanship earned him a UEFA Fair Play award. Another show of good sportsmanship occurred in a tennis player featuring Andy Roddick. Leading 5-3 in the second set of his quarter-final encounter with Fernando Verdasco, and with three match points, Andy Roddick watched on as his opponent spun a second serve dangerously close to the left tram-line. The line judge called the ball out, giving Roddick the victory, but Roddick, seeing the ball mark in the clay, called the serve good, handing Verdasco a reprieve. The Spaniard took full advantage and held serve, before winning the set in a tie-break. Verdasco then won the third set to seal a 6-7, 7-6, 6-4 victory.

⁸² This is a common practice undertaken by teams to allow injured players to receive treatment.

4.5 – What is Gamesmanship?

Lee and Whitehead (1999) define the concept of gamesmanship as a category of actions that do not violate the rules of the particular sport but do appear to violate the spirit of the contest... using the laws to gain some advantage that might be considered unfair or dishonourable⁸³; while *Howe (2004)* claims that the advantage gained through the use of gamesmanship comes from either an ‘artful manipulation of the rules’ or by the ‘psychological manipulation or unsettling of the opponent’⁸⁴. What makes gamesmanship an unclear ethical concept is that the rules are sometimes never actually broken in plain sight, but they are manipulated, often times with the use of deception. The gamesmanship model of sport places heavy emphasis on winning, with adherents often adopting the ‘win at all costs’ attitude. One of the most common techniques involves breaking-up the flow of play in a bid to unsettle the opposition. In many sports, the feigning of injury is a common occurrence, particularly when the offenders are content with the current score line. Not only does this method consume playing time, it also disrupts and slows down the momentum of the opposition. In baseball a batter can disrupt a pitcher's flow by calling time just before he delivers the pitch, while in cricket a batsman can walk onto the crease sporting two right-handed gloves in a bid to waste time. Another common gamesmanship technique involves causing the opponent to over-think in the hope that they lose focus. In American football teams will often take one or more timeouts to give an opposing kicker an excessive amount of time to think about a critical kick. Although these gamesmanship techniques are often within the rules of a sport, their practice undermines the spirit of fair play, with athletes and teams more concerned about implementing underhand tactics than using their skill and ability to build on their advantage.

⁸³ Lee, M.J. and Whitehead, J. (1999) ‘The effect of values, achievement goals, and perceived ability on moral attitudes in youth sport’, Report provided to the Economic and Social Research Council, Swindon, England.

⁸⁴ Howe, L.A. (2004) ‘Gamesmanship’, *Journal of the Philosophy of Sport*, 32(1): p105-115.

One of the most notorious examples of gamesmanship occurred in the match between West Germany and Austria at the 1982 World Cup. Both teams qualified at the expense of Algeria, who had surprisingly beaten West Germany earlier in the tournament. Algeria had played its final match the day before, giving Austria and West Germany the advantage of knowing that a win by one or two goals for West Germany would ensure qualification for both teams at the expense of Algeria. West Germany took an early lead in the game⁸⁵ and as the game progressed, both teams appeared to be content with the result, giving the impression that there was an agreement between the two to allow the Germans to win 1-0.⁸⁶ Austria was not assured of qualification as West Germany was the better team and more than capable of inflicting a heavy defeat on them. The final group games of international tournaments are now played simultaneously to ensure similar incidents do not reoccur.

There are certain acts of gamesmanship that are punishable within the confines of the game. In the quarterfinal between Uruguay and Ghana at the 2010 World Cup, the score was tied at 1-1 going into the final minute of extra-time when Uruguay's Luis Suárez deliberately blocked Dominic Adiyiah's goal-bound header with his hands; saving what would have been the winning goal.⁸⁷ Ghana's Asamoah Gyan missed the ensuing penalty-kick⁸⁸, taking the game to a shootout which Uruguay won 4-2. After the game Suárez said, "I made the save of the tournament"⁸⁹, and claimed that he had no alternative and was simply acting on instinct. Suárez was heralded a hero by the Uruguayan's, while the Ghanaian's were enraged, labelling him a cheat and a villain. Although Suárez's actions violated the rules of the game

⁸⁵ After ten minutes of furious attack, West Germany succeeded in scoring through a goal by Horst Hrubesch.

⁸⁶ After the goal was scored, the team in possession of the ball often passed between themselves in their own half until an opposition player came into the vicinity of the ball. The ball was then passed back to the goalkeeper. Isolated long balls were played into the opposition's half, with little consequence. For the next eighty minutes there were few serious attempts on goal.

⁸⁷ In doing so, Luis Suárez was shown a straight red card which ruled him out of Uruguay's next game.

⁸⁸ Gyan's penalty miss was celebrated by Suárez, who was still making his way down the tunnel at the time.

⁸⁹ <http://www.guardian.co.uk/football/2010/jul/04/luis-suarez-world-cup-villain-hand-of-god>.

and undermined the principles of fair play, he had nothing to do with Gyan's subsequent penalty miss or Ghana's failure to win the shootout, and he was punished accordingly for his infringement of the rules. If Suárez is guilty of cheating, then does this mean any individual committing an intentional foul is also guilty of cheating? In this instance it appears Suárez's actions amounted to nothing more than spontaneous gamesmanship, as his actions were punishable within the field of play.

At the Moscow Olympics in 1980, officials would open the doors at one end of the arena when the Soviet javelin throwers were taking their throws to improve the aerodynamics, and then closed them for the other athletes. The Soviet team managed to finish first and second in the men's event, and second in the women's event. Not all acts of gamesmanship are made with the intention of gaining an unfair advantage. The 1771 monster bat incident occurred in a cricket match between Chertsey and Hambledon, and involved the attempts of Chertsey's Thomas White to use a bat which exceeded the width of the wicket. The opposition objected and a formal protest was made; which ultimately brought about a change to the laws of cricket.⁹⁰ White's motive was unclear; his actions may have been an attempt to gain an unfair advantage, or merely an effort to change the laws of the game.⁹¹ In the end justice prevailed, as Chertsey lost the game by one run.

The act of bad gamesmanship can be detrimental to the integrity of sport, particularly if the incident has a significant impact on the outcome of a contest. In 1981, Australian cricket captain Greg Chappell ordered his brother Trevor to bowl the final ball of a one day international against New Zealand underarm. Trevor obliged, giving the Kiwis no chance of acquiring the six runs they needed to tie the game; resulting in the batsmen walking off in disgust at the end of the game. As a result of the incident, underarm bowling was banned in one day cricket by the ICC as "not within the spirit of the game". Another incident of bad gamesmanship

⁹⁰ The incident brought about a change in the 1774 version of the Laws of Cricket wherein the maximum width of the bat was set at four and one quarter inches.

⁹¹ Straight bats had replaced the old hockey stick shape a few years earlier (in response to bowlers pitching instead of rolling the ball as formerly) and the width issue may have been rankling.

occurred in a boxing bout between Mike Tyson and Evander Holyfield. Tyson was disqualified after biting a chunk out of Holyfield's right ear and spitting it out onto the floor in the third round. Tyson was deducted two points for his illicit actions; however when the fight resumed, he once again preceded to bite Holyfield's ear, forcing the referee to end the fight. In both instances the lack of sportsmanship displayed undermined the spirit of fair play and effectively created a chaotic end to both contests, which ultimately deprived spectators of a 'clean' outcome.

4.6 – Does Gamesmanship amount to Cheating?

Although both gamesmanship and cheating undermine the spirit of fair play, they cannot be considered similar offences. Gamesmanship is a practice often not visible, nor punishable within the rules of the game. Offences that are deemed punishable, such as simulation and unsporting behaviour are resolved within the field-of-play by means of sin-bins and dismissals. In comparison, cheating is a practice that is not punishable during play and often requires extensive enquiries, testing, and television reviews to determine whether or not the offender has broken any rules.⁹² Punishments for such offences are more severe and usually involve heavy fines and lengthy bans. Although gamesmanship has the ability to affect decisions within a game, cheating can significantly alter the outcome of a contest; particularly in individual sports. There is also the potential for cheating practices, such as doping, to have a negative effect on an athlete's health and wellbeing. It appears that the difference in the severity of the offence, in terms of providing the offender with an unfair competitive advantage, and the possible repercussions to one's health are the underlying factors which separate the practices of gamesmanship and cheating.

⁹² Cheating in this sense refers to those who aim to go undetected in a bid to gain an unfair advantage whilst escaping punishment.

4.7 – Combating Gamesmanship

Sportsmanship promotes safety and the integrity of the game, whereas gamesmanship promotes tactics and practices that may be unsafe and can violate the integrity of the game. Gamesmanship is a difficult issue to deal with as it does not necessarily have to take place in a visible form. It also relies on the discretion of the referee to determine whether or not an athlete is engaging in gamesmanship. Using football as an example, the team content with the current score is more likely to engage in time wasting in order to preserve their position. In these instances the act of gamesmanship is visible to the referee and is punishable with a yellow card. The offence of simulation is more likely to occur inside the opposition's penalty area; however the offence itself is not always clear-cut, and relies on the interpretation of the referee. Therefore, to reduce the amount of gamesmanship within a sport, the official needs to take a firm stance with visible offences, and be prepared for offences that are not so clear-cut. A strong official can command respect and install order to enable the smooth running of a contest, whereas a weak official is more likely to be susceptible to gamesmanship practices, encouraging more athletes to participate in these unethical practices.

The most effective method of reducing gamesmanship in sport involves the introduction of post-match video replays. Contentious decisions could be reported to the sport's governing body, where an independent panel consisting of officials and retired players, would be able to review the television footage and determine whether or not an offence or an act of gamesmanship has occurred. A majority vote would be required along with a suitable punishment, with more serious offences punished accordingly. This practice would ensure athletes are unable to escape punishment for their actions, and hopefully deter them from entering into gamesmanship; however there are occasions when athletes will be prepared to do whatever it takes to win a contest regardless of the punishment, particularly in finals and other important contests. The only conceivable problem with this combative method is that the official's authority could be undermined, with referees and

umpires less likely to make contentious decisions in fear of making a mistake or in the safe knowledge that the offender is likely to be punished after the contest.

4.8 – Summary

The practices of fair play and sportsmanship are essential in preserving the values of sport. A good sport plays fair, congratulates their opponent in defeat, and is respectful in victory. A bad sport is jealous in defeat, boastful in victory, and is not opposed to outright cheating. The middle ground between good and bad is known as gamesmanship; a practice that exploits a game's rules in order to intentionally gain an advantage or cause a disadvantage to the opposing athlete or team. While aspects of gamesmanship are technically legal, they are typically frowned upon as unsportsmanlike. Although gamesmanship is considered to be an undesirable component of sport, there are occasions when controversial incidents can be beneficial in raising the profile of an event or competition. Unsportsmanlike behaviour is often used to promote high profile boxing contests; although this can occasionally spill over to the fight itself, as was the case in the 1997 rematch between Mike Tyson and Evander Holyfield.⁹³ Whether we like it or not, gamesmanship will continue to remain a part of sport so long as there is an incentive to win, as there will always be those athletes who are prepared to do whatever it takes to succeed.

⁹³ In one of the most controversial boxing contests in the history of the sport, Mike Tyson was disqualified after continually biting Evander Holyfield's ear.

The Pursuit of Excellence

5.1 – The Pursuit of Excellence

The pursuit of excellence through the dedicated development of each person's natural talents is common to all sports. Every sport strives to produce the ultimate athlete who is considered to be the very best in terms of ability and success. A modern day sporting legend attracts greater interest whilst promoting the sport, encouraging young individuals to participate and hopefully make an impact in the near future. For some, becoming a professional sportsperson is sufficient enough; however for many, the pursuit of excellence is the ultimate challenge. Creating a legacy and pioneering a technique or strategy is considered to be the pinnacle of sporting success; but in order to accomplish this requires consistency and dominance over a long period of time, and innovation on behalf of the athlete. Those who are intent on creating a legacy cannot allow themselves to become complacent, as consistency is the key to domination. This pursuit can be beneficial to a sport as it requires the opposition to raise their game in order to topple and defeat the dominant athlete. Dominance within sport can reduce spectator interest if the athlete or team takes a pragmatic approach to winning; however this is unlikely to occur if performances exhibit attacking play and flair.

5.2 – The Essential Characteristics of Sport

Sport encompasses similar characteristics to those in general occupations, with the individual constantly striving to improve their performance to reach the top of their chosen profession. Athletes of all calibre share this aim, and regardless of their current standing within their sport, have the desire and ambition to constantly improve their performance levels. The main difference between sport and other occupations is that athletes at the highest level are usually born with their inherent

and genetic abilities. Hard work and practice alone is not enough to succeed; you need to have been born with the fundamental qualities required to become a professional athlete. Top athletes, particularly those originating from developing countries, are often heralded as heroes by their people, and their achievements encourage those with aspirations of following in their footsteps. In many regions sport is synonymous with education; encouraging youngsters to learn in exchange for the opportunity to compete in organised competitions.⁹⁴ Sport is essentially more than a profession or a form of entertainment; it is an opportunity for people to escape poverty, and for those who are less intelligent to excel in life. It is these characteristics that make sport special, but not distinctly so as to distinguish it from other forms of activity such as acting, dancing, and even running certain types of business; all of which do not require a significant level of intelligence.

5.3 – The Importance of Sport

Sport at all levels is fundamental to many aspects of society, providing individuals with opportunities to socialise whilst maintaining their health, and allowing countries to exhibit political and economic strength.

5.3.1 – Economic Importance

Sport plays an important role in the development of local regions by: supporting the improvement of health and well-being, providing infrastructure for local people, supporting tourism, providing employment opportunities, improving the image of the region, and encouraging inward investment. In 2008, Sport-related employment in England was estimated to be around 441,000, accounting for 1.8% of employment in England. In the

⁹⁴ This is a common practice in North America. In order for young rising sportsmen to compete at the highest level, they are required to gain an education as a fall-back option, should they fail to make the grade at professional level.

same year, consumer expenditure⁹⁵ on sport totalled £17,384m, an increase of 19% since 2003; and sport-related economic activity added almost £16,700m to the English economy, representing an increase of 22% and 8% over the year 2003 and 2005 respectively.⁹⁶ The finance and employment opportunities generated from sport are hugely beneficial to a nation's economy, particularly when hosting major competitions like the FIFA World Cup and the Olympic Games.

There is a debate as to whether the hosting of major sporting events is beneficial to a region's economy. On the one side, the monuments developed for the spectacle in the form of stadiums and sporting venues benefit athletes, providing them with modern training facilities and a greater stage to perform on. The construction of these facilities also boosts employment within the area, and enables the region to host future events. The NFL claims an economic impact from the Super Bowl of around \$400m, while *Selig et al. (1999)* highlight Major League Baseball's All-Star Game which generates around \$75m⁹⁷. However, there are some that believe the hosting of sports events to be detrimental to an economy, with Victor Matheson, an associate professor of economics, citing the 2002 Winter Games hosted in Salt Lake City, where many hotels and restaurants were busy during the event, whilst other businesses, like department stores, suffered significant losses in sales; resulting in an overall fall of economic activity in the region during the Games⁹⁸.

⁹⁵ Consumer expenditure includes: sport clothing and footwear, sports equipment, participation subscription and fees, admissions to events, sport-related gambling, TV rentals and satellite subscriptions, and other sport-related spending.

⁹⁶ Statistics are from *Sport England* study entitled 'Economic Value of Sport in England 1985-2008', conducted by the Sport Industry Research Centre of Sheffield Hallam University in August 2010.

⁹⁷ Selig, B., Harrington, J. and Healey, J. (1999) 'New Ballpark Press Briefing', 12th July 1999.

⁹⁸ See <http://roomfordebate.blogs.nytimes.com/2009/10/02/do-olympic-host-cities-ever-win/>.

5.3.2 – Social Importance

Unlike leisure activities, which do not always involve some form of competition against an opponent, sport offers individuals the opportunity to socialise with others, whilst attempting to fulfil an objective. Social integration enables individuals of all backgrounds, whether it be social class or race, to come together and engage in a competitive activity, encouraging team work and solidarity (in team sports). For many, sport is an important part of one's social life, whether it involve participation or support of a team. Some view sport as a means of relaxation, particularly after a hard day's work; whereas others view it as an opportunity to socialise with friends or bond with work colleagues. In some countries, sport can bring a community together, providing individuals with a common interest which can galvanise social integration. According to a Eurobarometer survey in 2004⁹⁹, approximately 60% of European citizens participate in sporting activities on a regular basis.¹⁰⁰ Sport can also be used as a means for reducing crime within society, acting as a diversionary method of spending time and a place to release aggression, whilst encouraging positive attributes such as teamwork and leadership, to those who would otherwise engage in some form of illegal activity.

5.3.3 – Health and Wellbeing

Health and wellbeing has long been associated with sport; with *Mutrie and Biddle (1995)* agreeing that physical activity, and associated processes, can contribute positively to mental health (with the obvious exceptions of over-training and training addiction) and have a positive effect on anxiety,

⁹⁹ Special Eurobarometer (2004): The Citizens of the European Union and Sport.

¹⁰⁰ Commission of the European Communities White Paper on Sport, Brussels, 11.07.2007.

depression, mood and emotion, self-esteem and psychological dysfunction¹⁰¹. The World Health Organisation recommends a minimum of thirty minutes of moderate physical activity (including but not limited to sport) per day for adults and sixty minutes for children. *Paffenbarger et al. (1986)* cite a study involving more than 15,000 Harvard alumni which reveals sports participation, especially walking, to increase life expectancy by nearly two years¹⁰². Walking is not per se a sport, raising questions as to whether it is simply the exercise that benefits the individual, as opposed to sport, which possesses several dangers. Sport can also be used as a tool of fitness and repair to individuals who have suffered injuries and illness. Leisure activities alone are often not sufficient enough to fulfil one's aim to remain fit and healthy; with the competitive aspect of sport providing them with the added pressures of meeting required targets. In the workplace, sport is considered to be beneficial to the health of employees; however research by *Marini (1980)* indicates sportspeople to have an absentee rate of 3.64%, against 6.58% for the entire staff¹⁰³; although these results do not take into account the potential for injuries and accidents, with *Koralztein (1986)* noting that in general¹⁰⁴, sportspeople enjoy better health than those who do not participate¹⁰⁵.

5.3.4 – Political and National Importance

Sport has often been used as a tool to exhibit the athletic superiority of a nation. Both communist and fascist regimes have identified sporting

¹⁰¹ Mutrie, N. and Biddle, S. (1995) 'The effects of exercise on mental health in nonclinical populations', in S. Biddle, *European perspectives on exercise and sport psychology*, Champaign (IL): Human Kinetics, p50-70.

¹⁰² Paffenbarger, R., Hyde, R., Wing, A., and Hsieh, C. (1986) 'Physical activity, all-cause mortality and longevity of college alumni', *New England Journal of Medicine*, 10, p605-13.

¹⁰³ Marini, F. (1980) 'Sport et travail: Incidence professionnelle de la pratique des sports en compétition', *Memoire CES de biologie et medicine du sport*, University of Besancon.

¹⁰⁴ This involved a study on the subject which was carried out in France in 1980 by the doctor in the Alsthom Atlantique Company in Belfort.

¹⁰⁵ Koralztein, J. (1986) 'La Sante a l'epreuve du sport', Grenoble: Presses Universitaires de Grenoble.

excellence as a sign of national power and progress. The political value placed on sport has enabled more individuals to become professional athletes through funding and government support, particularly during the cold war, with communist nations pouring huge amounts of finance into the development of its athletes in a bid to reign supreme in national competitions. Without the added political stigma, national competitions would not retain the same level of competitiveness and interest. Sport offers nations an opportunity to resolve their rivalry in the sporting arena, in a safe and regulated environment, whilst creating excitement for spectators. National pride is often at stake and acts as a catalyst to raise athletes' performance levels. National competitions like the Olympic Games and the FIFA World Cup are unlikely to garner the same interest and coverage if political and national pride was excluded from sport.

5.4 – Winning and Athletic Superiority

Sport at the highest level is primarily concerned with winning, with athletic superiority often leading to increased television coverage and sponsorship deals, providing athletes with higher incomes and allowing them to acquire the best coaches and train in modernised facilities. Winning does not always determine whether an athlete has been successful or not. For some, performing at their best and surpassing a previous performance is enough, whereas for others, simply defeating a particular opponent constitutes a successful performance. Recognition does not always accompany winning, particularly if an athlete or team has fluked their way to victory or performed poorly and still won; however in some sports, such as athletics, underperformance of an opponent is the only realistic chance of victory for an athlete. However, as with most sports, winning is what separates the good from the great. Performing on the big occasion whilst under enormous pressure is the true test of a great athlete. Occasionally there are periods of dominance within sport, and in

these instances, spectators should sit back and admire the athlete’s ability.¹⁰⁶ In individual sports there is very little that can be done to improve competitiveness, whereas in team sports, sports governing bodies can intervene and implement new rules in a bid to address competitive balance amongst teams. Michael Schumacher’s dominance in Formula 1 during the early noughties forced the FIA to intervene and make a number of fundamental changes to the sport. Qualifying for events was drastically changed, along with car specifications, and points scoring in a bid to close the gap between drivers and teams; although these changes may also have been implemented to make the product more appealing to television companies.

Figure 5.1 – The Fosbury Flop

Olympic Year	Floppers	Straddlers
1968 - all competitors	1	Everyone else
1972 - all competitors	28	12
1980 - finalists	13	3
1984 - finalists	Everyone	0

Olympic Year – The year of the Olympic Games.

Floppers – The total number of high jumpers using the Fosbury Flop technique.

Straddlers – The total number of high jumpers using the straddle technique.

For many athletes, success is not enough; to truly define one’s legacy requires a period of dominance or a significant contribution to the sport. Dick Fosbury is one of the most influential athletes in track and field, helping revolutionise the high jump event by pioneering a unique ‘back first’ technique, now known as the Fosbury Flop.¹⁰⁷ *Figure 5.1* highlights the significance of the Fosbury Flop, with all top level high jumpers gradually adopting this technique over the traditional straddle approach. David Berkoff revolutionised the sport of swimming by refining a technique known as the dolphin kick. During the 1980s Berkoff began consistently winning races by

¹⁰⁶ Rodger Federer dominated men’s tennis in the early noughties, Jahangir Khan dominated men’s squash between 1981 and 1986 winning 555 consecutive games in a row, and Michael Schumacher dominated Formula 1 between 2000 and 2004 winning five consecutive World Championships.

¹⁰⁷ Fosbury won the gold medal in the high jump at the 1968 Olympic Games using the Fosbury Flop technique, setting a new Olympic record in the process. At the following Olympics, twenty-eight of the forty competitors used the Fosbury Flop technique.

dolphin-kicking underwater at the start of each race and after each flip turn, for as much as thirty-five meters at a time.¹⁰⁸ Berkoff's initial impact was limited to his event, the backstroke; however, other competitors soon began utilising his technique, causing International Amateur Swimming Federation officials to institute a new rule precluding underwater swimming beyond ten meters from the pool walls (which was later relaxed to fifteen meters). The official reason given for this rule change was "the safety of the athletes", however, most experts agree that the real reason for the ruling was the officials' concern that the dolphin kick would migrate from backstrokers to include freestyle and butterfly swimmers. Thus, an otherwise non-competitive swimmer could conceivably defeat world-class champions by dolphin kicking the majority of the pool's length. They also feared swimming would become a largely underwater affair, which would diminish the differentiation between the various strokes.

5.5 – Winning in Style

There are several misconceptions about success and failure in sport and this varies according to the perspective of the individual. In team sports the primary requirement of supporters and spectators is the success of their team regardless of style and substance; although there are occasionally some exceptions. The Brazilian national football team is required to win with style, flair, and attacking prowess in order for it to be considered successful; anything less is regarded as failure. Real Madrid employs a similar principle, evidenced by the club's decision to fire manager Fabio Capello on two occasions. In both instances Capello led the team to the Spanish League title in 1997 and 2007 respectively, but ultimately failed to install the attacking football required; favouring a more pragmatic approach. Club and franchise owners have similar aims to those of supporters, along with the added interest of making the team financially self-sustaining; whereas athletes are more

¹⁰⁸ Berkoff quickly went from being a mediocre swimmer to a world-class champion, winning four Olympic medals in 1988. The media later referred to Berkoff's refined dolphin kick technique as the 'Berkoff Blast'.

concerned with their individual career, with financial income and performance often taking priority over collective success.

*World Soccer*¹⁰⁹ created a list of the ten greatest football teams in history; with the top four teams as follows: Hungary 1953, Brazil 1970, Holland 1974, and AC Milan 1989-90.¹¹⁰ What is noticeable is that both Hungary and Holland failed in their attempts to win the World Cup, and the AC Milan team was not as successful as the team later managed by Fabio Capello. “People often say results are paramount, that, in ten years down the line, the only thing which will be remembered is the score, but that’s not true... What remains in people’s memories is the search for greatness and the feelings that engenders”¹¹¹. The Dutch football teams of the seventies are legendary, far more than West Germany who defeated them in the 1974 final, or Argentina, who beat them in the 1978 final. Arrigo Sacchi¹¹², in explaining the importance of style and substance to Marco Van Basten¹¹³, stated, “This is why you need to win and you need to be convincing... I didn’t do it because I wanted to write history. I did it because I wanted to give ninety minutes of joy to people. And I wanted that joy to come not from winning, but from being entertained, from witnessing something special”¹¹⁴. Although success will forever be acknowledged in sporting archives; it is essentially the style, flair, and entertainment manifested by athletes and teams which determines their legacy.

¹⁰⁹ *World Soccer* is an English language football magazine specialising in the International football scene.

¹¹⁰ <http://www.worldsoccer.com/greatest/teams.php>.

¹¹¹ Jorge Valdano, a former Argentine footballer, in Wilson, J. (2008) ‘Inverting the Pyramid – The History of Football Tactics’, Orion, p307.

¹¹² Arrigo Sacchi was the manager in charge of AC Milan from 1987-91 and 1996-97.

¹¹³ Marco Van Basten is a former Dutch footballer who played for AC Milan under Arrigo Sacchi from 1987-93.

¹¹⁴ Arrigo Sacchi, manager of AC Milan at the time, in Wilson, J. (2008) ‘Inverting the Pyramid – The History of Football Tactics’, Orion, p306.

5.6 – Summary

For many athletes, winning a trophy amounts to a successful career; however for some, achieving sporting excellence is what truly cements their legacy. Trophies and medals are one thing; but to achieve a unique and spectacular accomplishment is what separates the good from the great. In football, many average players have been fortunate enough to be part of a winning team, without really making a significant contribution. José María Gutiérrez Hernández, commonly known as Guti, is a Spanish footballer who played for Real Madrid between 1995 and 2010, winning three UEFA Champions League and five La Liga titles; however he was only capped fourteen times by his country; an indication that he was not consistent enough to warrant a regular place in the national team.¹¹⁵ Although Guti won numerous trophies (fifteen in total) during his career, he is not considered one of the all-time great Spanish footballers. In contrast, Hungarian footballer Nándor Hidegkuti, who pioneered the deep lying centre-forward role, earning sixty-nine caps for his national team¹¹⁶, won very few notable trophies during his career.¹¹⁷ Although the pursuit of excellence is the ultimate challenge for all athletes, not everyone is fortunate enough to possess the skill and ability required to reach these levels. Some are lucky enough to be part of a great team, whereas others excel in relatively poor teams. Ultimately, in team sports, athletes are judged on their overall ability and performances, rather than their success and achievements.

¹¹⁵ The Spanish national team has always been competitive, but achieved little success during Guti's time in football. Had Guti's performances been more consistent, he would have been selected to play for his country more often, particularly as he played for the biggest club team in Spain at the time.

¹¹⁶ The Hungary national football team during Hidegkuti's time, referred to as the Magnificent Magyars, is considered to be one of the greatest teams of all time.

¹¹⁷ Nándor Hidegkuti was part of the Hungarian national team that finished as runners-up in the 1954 FIFA World Cup.

Chapter 3 – Access **Denial in Sport**

Gender and Disability in Sport

6.1 – Gender in Sport

Research into the anatomical, physiological, and psychological differences between genders reveals the average woman to have limited strength, less speed, and inferior speed endurance in contrast to the average man. The effectiveness in biomechanical and muscular activity of women is also lower than men's. Women do however possess some physiological advantages such as greater flexibility and elasticity. In terms of psychological attributes, women are emotionally more advanced than men and possess higher levels of sensitivity and enthusiasm. Organised competitive sports are often segregated by gender; particularly those which rely on physical contact and strength-related performance, as any alternative is likely to result in women being excluded from the higher levels of competition. Problems occur when transsexual athletes undertake participation in sport; particularly when transitioned male-to-female athletes attempt to compete in women's events. Transgendered individuals are those who exhibit incongruence between their birth sex and their gender identity¹¹⁸, and are subsequently recognised as suffering from a condition known as 'gender dysphoria'. Those who seek surgery to permanently associate the psychological and anatomical aspects of their sex and gender are referred to as 'transsexual individuals'.¹¹⁹ Intersex individuals are those who display sexual characteristics of both male and female.

6.2 – The Need for Gender Testing

The segregation of men and women in sport is necessary to preserve the interests of fair play. The issue of gender can be traced back to ancient Greece, where Olympic

¹¹⁸ Greenberg, J. (1999) 'Defining Male and Female: Intersexuality and the Collision between Law and Biology', *Arizona Law Review*, 41, p265.

¹¹⁹ Sharpe, A. (2002) 'Transgender Jurisprudence: Dysphoric Bodies of Law', Cavendish Publishing.

male athletes were required to compete in the nude to demonstrate that they were not female; with *Wackwitz (2003)* claiming this to be the earliest manifestation of the Olympic sex-test¹²⁰. In comparison, the modern incarnation of the gender test now focuses on genetic women in an effort to preserve the interests of fair play. The first sex test took place at the 1966 European Track and Field Championships in response to rumours suggesting that men were masquerading as women for the sole purpose of excelling in international athletic competition.¹²¹ This was the case with male high jumper Hermann Ratjen¹²², who finished fourth in the women's high jump at the 1936 Olympics.¹²³ Polish American female sprinter Stanisława Walasiewicz (also known as Stella Walsh) won the gold medal in the 100m sprint at the 1932 Olympic Games, and the silver medal at the following games¹²⁴; however, after her death in 1980, her autopsy revealed that she possessed male genitalia and both male and female chromosomes, a condition known as mosaicism¹²⁵.

Gender tests originally consisted of a visual examination, and although intrusive, they did appear to deter a number of female athletes from competing; in particular the Soviet Union's Tamara and Irina Press who vanished from the athletics scene once tests became mandatory.¹²⁶ Advancements in sex reassignment surgery (SRS) forced the IOC to introduce far more sophisticated tests to examine the chromosomal structure of an athlete. Polish sprinter and Olympic gold and bronze medallist Ewa Kłobukowska was the first athlete to fail this test and was subsequently ruled

¹²⁰ Wackwitz, L. (2003) 'Verifying the Myth: Olympic Sex Testing and the Category "Woman"', *Women's Studies International Forum* 26(6), p553–560.

¹²¹ These initial tests were given to any female athlete attempting to compete and amounted to nothing more than women traipsing nude in front of a panel of physicians who were monitoring for appropriately corresponding genitalia.

¹²² Hermann Ratjen is also known as Heinrich Ratjen.

¹²³ Ratjen also competed at the European Athletics Championships, winning the gold medal with a world record jump of 1.67m (5ft 5.75in); however he was forced to return his gold medal and his name was expunged from the records.

¹²⁴ She set twenty world records in her time and won forty-one AAU titles in various events.

¹²⁵ In genetic medicine, mosaicism denotes the presence of two populations of cells with different genotypes in one individual who has developed from a single fertilised egg. Mosaicism may result from a mutation during development which is propagated to only a subset of the adult cells.

¹²⁶ Tamara and Irina Press won numerous Olympic gold medals in a variety of women's events including shot put, discus, hurdles, and pentathlon. There are suggestions that the sisters were actually male, or perhaps hermaphrodites.

ineligible after an initial visual inspection indicated ambiguous genitalia.¹²⁷ Gender verification tests were not generally well received, particularly as the majority of women affected suffered from Complete Androgen Insensitivity Syndrome (CAIS)¹²⁸ and are legally recognised as women; and along with a growing number of mistakes (referred to as ‘false positives’), these factors ultimately forced the IOC and the IAAF to abandon mandatory gender testing. In 2004 the IOC published the *Stockholm Consensus*, a policy statement setting out the conditions under which individuals would be permitted to compete athletically in a sex different from their birth sex. The athlete would be required to meet the qualification standards for their sport and three additional criteria:

1. The athlete’s gender is legally recognised;
2. The athlete has completed genital reconstructive surgery and had his or her ovaries or testes removed;
3. The athlete has undergone a minimum of two years post-operative hormone therapy to eliminate any sex-related advantages.

South African runner Caster Semenya was subjected to a gender test after winning a gold medal in the 800m at the 2009 World Championships. Unconfirmed media reports suggested that her gender test had revealed both male and female characteristics¹²⁹, and the treatment for intersex would involve surgery or, more likely, hormones; and would explain why it has taken so long to resolve her case. It remains to be seen whether Semenya will be able to recapture her previous form, particularly if she was subjected to hormone treatment.

¹²⁷ An investigation revealed the presence of an XXY sex chromosome composition. She was ultimately banned from future women’s events and her name was stripped from the record books.

¹²⁸ Androgen Insensitivity Syndrome (AIS) is a condition that results in the partial or complete inability of the cell to respond to androgens. Women with AIS look and feel like typical women, and in every practical, social, legal, and everyday sense they are women, even though congenitally they have testes and XY chromosomes, and can never bear children.

¹²⁹ <http://www.telegraph.co.uk/sport/othersports/athletics/7873240/Caster-Semenya-given-all-clear-after-gender-test-row.html>.

6.3 – Transsexuals in Sport

Men possess a higher level of androgen hormones, which increase the protein component of the musculature, increasing strength. Androgens also increase the level of protein hormones, such as erythropoietin, which in turn stimulates bone marrow to produce a greater amount of red blood cells that contain haemoglobin; enabling men to have a higher maximum oxygen uptake which aids aerobic endurance. Women, due to high levels of estrogen, exhibit an increased deposition of fat just below the skin. Male-to-female transsexuals lose a number of these physiological advantages during estrogen therapy. The process decreases their power-to-weight ratio, increases fat storage, and slows athletic performance in sports where the body mass is supported by the limbs. On completion of the transitional process, male-to-female transsexuals are left with a decrease in strength and maximum oxygen uptake, affecting both strength-oriented and endurance-oriented activities. Therefore, apart from the larger male skeletal bone mass which remains intact, any physiological advantage possessed by male-to-female athletes before surgery is eradicated.

Although the physiological changes encountered by female-to-male athletes appear to improve their performance capabilities, their participation in men's sport is not subject to the same scrutiny as male-to-female athletes. Their testosterone therapy increases skeletal muscle mass, thereby increasing their power-to-weight ratio; and increases blood levels of erythropoietin and haemoglobin, which in turn increases red blood cell mass and maximum oxygen uptake; however these changes alone are not enough to make female-to-male athletes stand out among their competitors. The main problem facing female-to-male transsexuals is the risk of exclusion from competition by the prevailing anti-doping rules governing the use of certain prohibited substances. Thus, transsexuals undergoing testosterone therapy will fail the drug testing procedures of most sports; although some sports may permit an athlete to obtain a medical waiver permitting competition despite post-operative testosterone therapy.

6.4 – Legal Position

The case of *Dr. Renee Richards v United States Tennis Association*¹³⁰ was one of the first legal challenges concerning the participation of transsexuals in sport. In 1974, Dr Renee Richards (born Richard H. Raskind) was ranked thirteenth in the men's 35-and-over tennis division. The following year, Raskind underwent a sex reassignment operation to become female, changing his name in the process, and becoming a post-operative male-to-female transsexual. In 1977 *Richards* won a ruling from the New York State Court allowing her to compete in the U.S. Women's Open, having been previously excluded discriminatorily by the United States Tennis Association (USTA). The Supreme Court held that it was unfair and discriminatory to force *Richards* to pass a sex chromatin test in order to participate. The decision was made on the basis that the USTA had contravened the *New York Human Rights Law s.290 (3)*¹³¹ which declares that the State is responsible to ensure that every individual is afforded an equal opportunity to enjoy a full and productive life. In 1978, at the age of forty-four, Richards famously reached the women's quarter-finals of the U.S. Open tennis championship.

Under English and Welsh Law, the *Gender Recognition Act s.19 (4)*¹³² implies that *Richards* may not have found relief had her situation arisen today; with *Edwards (1985)* noting that approaches to issues of sex and gender in England and Wales rely on "untested assumptions about biological determinism"¹³³. In relation to sport, the *Sex Discrimination Act s.44*¹³⁴ restricts the participation of women where the physical strength, stamina, and physique of the average woman, places them at a disadvantage to the average man and vice versa; however this is based on the presumption that all average male athletes are superior to average female athletes, therefore restricting women from competing in men's sports. *Patel (2008)* notes that in this instance, the term 'average male or female athlete' most likely refers to the

¹³⁰ *Dr. Renee Richards v United States Tennis Association* 400 NYS 2d 267 [1977].

¹³¹ New York Human Rights Law s.290 (3).

¹³² Gender Recognition Act [2004] s.19 (4).

¹³³ Edwards, S. (1985) 'Gender, Sex and the Law', London: Croom Helm.

¹³⁴ Sex Discrimination Act [1975] s.44.

spectator and certainly not the competitor who is undoubtedly far fitter, healthier, and elite than the average person in terms of strength, speed, and stamina; regardless of gender¹³⁵.

6.5 – Genetic Disorders

The chromosomal composition of an individual is often used to determine whether or not an athlete possess any physiological advantages. Regular men possess the XY pattern, while regular women possess the XX pattern. The assumption that a Y chromosome produces physical advantages is inconclusive. Genetic anomalies have the ability to create a woman with a Y chromosome without possessing a physiological advantage over a normal XX woman. Spanish runner and hurdler María José Martínez Patiño failed the sex test which revealed that she had XY chromosomes (usually found in genetic men). Because her body could not register testosterone she developed female genitalia and a female anatomical form (no masculine advantage). She was subsequently banned from competition in 1985 but reinstated in 1988 following the first successful petition of the IOC disqualification policy.

There is also the related issue of female born athletes who have genetic advantages for various sports. These include Marfan's Syndrome which causes women to grow to heights of seven foot¹³⁶ and congenital adrenal hyperplasia which causes an over-supply of testosterone in women and produces extreme muscularity. If transsexuals are prohibited from competing in sport because of a presumed genetic advantage, then surely individuals born with genetic advantages for sport should similarly be prohibited from competing. If the chromosomal composition of an individual is the determinant as to whether an athlete possesses a physiological advantage or not, then men who carry the YY pattern should also be excluded from competing against

¹³⁵ Patel, S. (2008) 'Transsexuals in Sport: Inclusiveness and the Level Playing Field', Anglia Ruskin University- Papers in Law Series.

¹³⁶ Some female basketball and volleyball players have this syndrome.

regular XY males. The idea appears to be flawed, particularly as genetic anomalies can exist amongst men, which would confine them to competing against women. It would appear that a criterion which takes into account the actual physiological advantages possessed by an individual would be more efficient at determining whether one is eligible to compete in male or female sporting events.

6.6 – The Importance of Testosterone

Guyton (1991) defines testosterone as a steroid hormone derived from cholesterol which occurs more abundantly in circulation among men, than women; regulating many bodily functions¹³⁷. Testosterone enables the body to build muscle; allow muscle recovery during and after physical activity; supports heart and lung development and recovery; supports, regulates and burns body fat; regulates weights and the immune system; and provides overall drive and energy. Men have a testosterone level of between sixty-four and ninety-six¹³⁸, whereas women have a testosterone level of between nine and sixteen¹³⁹; and when this level falls below nine, testosterone administration may be prescribed for health reasons. *Tenover (1997)* notes that testosterone levels diminish gradually in both sexes during the ageing process¹⁴⁰; thus making it harder for athletes to maintain their muscle mass as they grow older. Male-to-female transsexuals lose around 30-40% of their overall muscle mass and strength during transition, and after transition they will have zero testosterone levels. Due to such low levels, transitioned male-to-females lose the ability to develop new muscle and encounter tremendous difficulty in sustaining existing muscle, regardless of their training intensity. They also lose the ability to recover quickly during and after exercise, whilst their bodies lose the ability to burn fat; and even with adequate exercise, weight control becomes a significant concern.

¹³⁷ Guyton, A. (1991) 'Textbook of Medical Physiology', Philadelphia, Saunders.

¹³⁸ This figure is based on a standard blood volume scale of one hundred. After the age of fifty, this declines by about 1% each year.

¹³⁹ This figure is based on the same standard blood volume scale of one hundred.

¹⁴⁰ Tenover, J. (1997) 'Testosterone and the Aging Male', *J Androl* 18(2), p103-6.

The loss of testosterone in male-to-female transsexuals therefore puts them at a disadvantage when competing against other women.

6.7 – Do Male-to-Female Transsexuals possess an Advantage over Women?

Men's inherent performance advantage over women is largely due to correspondingly different exposures to androgens¹⁴¹.¹⁴² Chromosomal sex as the criterion to ensure fair competition in sports has been relinquished as an adequate indicator as there is no evidence to suggest that the chromosomal pattern has a direct effect on muscle mass and strength¹⁴³; with the influence appearing to be indirect through determination of the nature of the embryonic gonadal anlagen and its hormonal products. In sport, previous and present exposure to androgens would be a reasonable criterion for reducing unfair competition not only between men and women, but also between men who use or have used exogenous androgens. *Gooren and Bunck (2004)* raise the question of whether a transsexual who has undergone normal physical pubertal and post-pubertal development in one sex, with prolonged exposure to sex-appropriate levels of sex steroids before SRS, can fairly compete as a member of the other¹⁴⁴. In terms of actual androgen hormone levels, male-to-female transsexuals after SRS have no competitive advantage over other women, but the effects of prior androgen exposure on muscle mass and strength do carry over for a certain time period, while previous effects on height and the size of hands and feet are irreversible, which may be a relevant consideration according to the sport.

¹⁴¹ An androgen is the generic term for any natural or synthetic compound, usually a steroid hormone, which stimulates or controls the development and maintenance of male characteristics in vertebrates by binding to androgen receptors.

¹⁴² Prior to puberty, boys and girls do not differ in height, muscle, and bone mass. It is the exposure to testosterone during puberty that leads ultimately to an average greater height in men, larger bones and muscle mass, and greater strength.

¹⁴³ Chromosomal sex as the criterion for competition in sports precluded from participation not only transsexuals, but also subjects with disorders of sexual differentiation, and because of this it was dropped as a determination method in 2000.

¹⁴⁴ Gooren, L. and Bunck, M. (2004) 'Transsexuals and Competitive Sports', *European Journal of Endocrinology*, 151, p425-429.

The irreversible qualities retained by transitioned male-to-females could be considered nothing more than a physiological advantage, similar to those exhibited by other athletes in a variety of sports. Sri Lankan cricket bowler Muttiah Muralitharan suffers from a congenital deformity in his elbow which prevents him from fully extending his right arm giving the impression that he is in fact throwing the cricket ball; however his action has been deemed legal by the ICC. Similarly, Pakistan fast bowler Shoaib Akhtar possesses hyper mobility in both his shoulder and elbow joints which leads to the hyper extension of his arm, allowing him to generate greater pace. Although his actions have been deemed to be within the laws of the game, he does appear to possess an advantage over other bowlers. If the criterion for exclusion is based solely on physiological advantages, then athletes like Muralitharan and Akhtar who possess unique abilities should also face the same scrutiny as transsexual athletes. The participation of male-to-female transsexuals is unlikely to pose a threat to the integrity of women's sports, as the advantages of transition are unlikely to outweigh the disadvantages, such as a lack of testosterone.

6.8 – Can Reassigned Transsexuals Compete Fairly with Others of their Own Sex?

The segregation of men and women in sport is justified on the basis that testosterone exposure has profound effects on muscle mass and strength. *Gooren and Bunck (2004)* note that female-to-male transsexuals can compete fairly against other male athletes, provided the administration of testosterone has not generated and does not generate supraphysiological testosterone levels, as these levels combined with exercise can induce a surplus in muscle mass¹⁴⁵; however for transitioned male-to-females, there still exists an element of arbitrariness. The response to testosterone exposure in men is idiosyncratic; whereas similar plasma levels of testosterone do not produce similar effects on muscle mass and strength. Despite the difference in testosterone exposure between men and women, there is a large overlap of muscle

¹⁴⁵ *Ibid.*

area between them, and androgen deprivation of men induces a loss of muscle area which further increases this overlap with women. This evidence appears to justify the inclusion of transitioned male-to-females in women's events; although some would still argue that irreversible physiological characteristics such as height provide these athletes with an unfair advantage. If physiological characteristics are such an issue then should basketball players like Yao Ming and Kareem Abdul-Jabbar, who stand at 7ft 6in and 7ft 2in respectively, have faced the same scrutiny for merely possessing a height advantage. One could argue that competition exists to test unevenly distributed attributes as well as skill, and therefore advantages such as height make contests more intriguing to competitors and viewers.

From a purely sporting perspective, transitioned male-to-female athletes should be denied the opportunity to compete in women's events in the interests of fair play, particularly if SRS is conducted after a normal male puberty. Although the long term effects of androgen deprivation and oestrogen hormone therapy partially reverse some of the previous effects of testosterone, the individual still retains a number of physical characteristics which are inherent to men. From an ethical perspective, transsexual individuals are like any other athlete and should be afforded the opportunity to showcase their talent on the big stage; with the IOC and other sports governing bodies finally recognising that their participation poses no threat to the integrity of sport. Problems will occur when transitioned male-to-female athletes begin to win competitions on a regular basis, raising the question as to whether separate events are required, similar to the Paralympics, to accommodate these athletes.

6.9 – Disability in Sport

Disability can be defined as any physical or mental condition that limits an individual's movements, senses or activities. The term 'disability' is conventionally used to refer to attributes that are severe enough to interfere with, or prevent normal

day-to-day activities. In sport there are specific events created for disabled athletes to provide them with a realistic opportunity to compete against athletes with similar disabilities, as opposed to able-bodied athletes who are likely to possess certain advantages. The Paralympic Games are a major international multi-sport event where athletes with specific disabilities compete. The International Paralympic Committee (IPC) has established six disability categories (amputee, cerebral palsy, intellectual disability, wheelchair, visually impaired, and les autres) which are then divided according to an athlete's level of impairment. Stringent criteria is essential in preserving the integrity and level playing field of events, particularly in the intellectual disability category which was the subject of huge controversy when a Spanish basketball team was discovered to contain able-bodied athletes.¹⁴⁶ In recent times, with advancements in technology and specifically bioengineering, disabled athletes who have dominated their respective sports have begun to seek entry into able-bodied events. Health and safety issues are a potential problem in contact sports; however it is the possibility that disabled athletes may possess some form of unfair advantage over the rest of the field that creates the biggest dilemma for governing bodies and event organisers.

Danish athlete Liz Hartel became the first woman in equestrianism to win an Olympic medal when she won silver medals at the 1952 and 1956 Summer Olympics in dressage. She accomplished this feat despite being paralysed below the knees as a result of polio; although she did require assistance in mounting her horse. American swimmer Jeff Float became the only legally deaf athlete¹⁴⁷ from the USA to win an Olympic gold medal; a feat he accomplished at the 1984 Summer Olympics.¹⁴⁸ In both instances the athletes' participation in able-bodied sports did

¹⁴⁶ A Spanish athlete alleged that several members of the gold medal winning Spanish basketball team at the 2000 Sydney Paralympics had flouted the intellectual disability criteria. The results of the IPC's investigation confirmed the Spanish athlete's allegations and also determined that the incident was not isolated to the basketball intellectual disability event or to Spanish athletes. As a result all intellectual disability competitions were suspended indefinitely, although the ban was lifted after the 2008 Games.

¹⁴⁷ Float lost most of his hearing and nearly his life to viral meningitis when he was thirteen months old. He is 90% deaf in his right ear and 65% in his left.

¹⁴⁸ Float won the gold medal in the 4x200m freestyle relay.

not create any objection as neither of them required any form of special treatment or appliances to aid their disability. A wheelchair archer, Neroli Fairhall, competed in the 1984 Olympic Games; however, her disability became an issue as her alleged stability advantage was questioned by traditional upright archers. It appears that the issue of disabled athletes competing in able-bodied events only becomes a problem when the use of apparatus is required to perform; particularly if there is a suggestion that the recipient gains an unfair advantage from its use. South African amputee swimmer Natalie du Toit, who recently competed at the 2008 Beijing Olympics¹⁴⁹, swims without the aid of a prosthetic limb; whereas Oscar Pistorius requires artificial limbs to be able to run, potentially providing him with an unfair advantage.

6.10 – The Case of Oscar Pistorius

Oscar Pistorius is a South African paralympic sprinter who has a double amputation. He is the world record holder in the 100m, 200m, and 400m events and runs with the aid of Cheetah Flex-Foot carbon fibre transtibial artificial limbs. The problem regarding Pistorius' participation in able-bodied sporting contests concerns the physical advantages he possesses, potentially giving him an unfair advantage over other athletes. There are a number of arguments labelled against the artificial limbs of Pistorius. One such suggestion is that the blades are longer than required, thus enabling him to cover more ground in each stride. There is also a concern that the blades return more energy per stride without ever becoming fatigued or requiring the same investment of energy, and they are not subject to metabolite or lactic acid build-up which slows down rival athletes. In 2007, Pistorius participated in various tests at the behest of the IAAF, with the Cologne Test¹⁵⁰ designed to evaluate his sprint movement using an inverse dynamic approach, and also to study his oxygen intake and blood lactate metabolism over a 400m race simulation. Having considered the test results, the IAAF Council concluded that Pistorius' prostheses

¹⁴⁹ Natalie du Toit finished sixteenth in the 10km open water race.

¹⁵⁰ The Cologne Test was a laboratory analysis conducted by personnel at the German Sport University between July and December, with the report detailing their results.

enabled him to exert less mechanical effort than able-bodied athletes, with a mechanical advantage of the blade in relation to the healthy ankle joint of an able-bodied athlete higher than 30%, resulting in a significantly lower energy loss in comparison to others. On the basis of this evidence, the IAAF argued that Pistorius' participation in able-bodied events rendered him ineligible under rule 144.2(e) regarding the illegal use of technical aids to gain an advantage. One could perceive something that is detachable from one's body as a tool or an aid, but what if these devices were irreversibly fused onto a body through a direct neural interface or other means? It would be difficult to classify these bionic devices as aids or tools as they would be part of the athlete's functional body. This lack of transparency, combined with the Cologne Test's failure to take into account the drawbacks of the carbon fibre blades, resulted in the CAS ruling in favour of Pistorius:

To propose that a passive device...should be classified as contravening that Rule without convincing scientific proof that it provides him with an overall net advantage over other athletes flies in the face of both legal principle and commonsense.... If the use of the device provides more disadvantages than advantages, then it cannot reasonably be said to provide an advantage over other athletes.¹⁵¹

Although the CAS agreed with the IAAF that the applicable standard of proof was 'balance of probability' rather than anything higher, it decided the evidence on which the IAAF had based its decision had not reached even that standard.¹⁵² Experiments conducted by a team of experts¹⁵³ in biomechanics and physiology revealed that Pistorius' energy cost of running is similar to that of accomplished male distance runners, but 17% lower than that of performance-matched male sprinters. He also possesses the ability to maintain his speed over longer sprint races,

¹⁵¹ Pistorius, op cit, para 83 (emphasis in original).

¹⁵² The IAAF had been wrong to assert that the requirements of Rule 144.2(e) would be satisfied by any single advantage (as opposed to an overall net advantage) being found to accrue from the use of prostheses, and the Cologne Report had not satisfactorily established that there was any metabolic advantage to a double amputee in using the prosthetic limbs.

¹⁵³ The authors of the study are Peter Weyand of Southern Methodist University, Matthew Bundle of the University of Wyoming, Craig McGowan of the University of Texas at Austin, Alena Grabowski and Hugh Herr of the Massachusetts Institute of Technology, Mary Beth Brown of Georgia Institute of Technology and Rodger Kram of the University of Colorado at Boulder.

similar to that of able-bodied athletes. His sprinting mechanics are markedly dissimilar to able-bodied track athletes. At top speed: he exerts considerably less force on the ground in relation to his body weight than intact-limb runners; his foot is in contact with the ground 14% longer on each sprinting step; he spends 34% less time in the air between steps; and he takes 21% less time to reposition (swing) his legs between steps.¹⁵⁴ However, like the Cologne Test, these experiments failed to answer the question required by the CAS; namely, whether the prostheses gave Pistorius an overall advantage over other competitors, whilst taking into account any drawbacks. It appears that athletes who utilise similar prosthetic devices will be eligible to compete in able-bodied events, so long as it cannot be proven that the advantages outweigh the drawbacks. Safety considerations also need to be taken into account, particularly in competitions that involve some form of close contact; as is the case with the 400m relay run by Pistorius.

Pistorius recently competed in the 400m sprint at the 2011 World Championships, qualifying for the semi-final before being eliminated. He also participated in the 4x100m relay, helping South Africa advance to the final.¹⁵⁵ Pistorius is now intent on competing at the 2012 London Olympics, and although current form suggests he is unlikely to be considered a medal contender in the individual sprints, his presence is still likely to cause controversy for event organisers. Pistorius will benefit by having the opportunity to test himself against the very best athletes; other athletes will benefit by being challenged by his presence in the race and, perhaps, compete at a higher level; his presence may help erase lines between people with physical disabilities and those without; and his performance may prove to be an inspiration to other disabled athletes. However there are considerations which need to be taken into account: Pistorius' presence may take a spot away from another athlete who has trained for years, lowering their inclusion opportunities; in an effort to keep up with Pistorius' carbon fibre blades, other athletes may be inspired to take additional

¹⁵⁴ Findings were published in the *Journal of Applied Physiology* after they were presented to the Court of Arbitration to Sport (CAS) in Lausanne, Switzerland in May of 2008.

¹⁵⁵ South Africa went on to finish second in the final, although Pistorius took no part in the race. He was however awarded a silver medal for his role in the heats.

training risks that could be harmful, including performance enhancing drugs; and allowing athletes who use technological enhancements to compete with able-bodied athletes could harm the spirit of the sport, rendering it more of a competition about engineering and technology as opposed to physical achievement and effort.

6.11 – Is Walking Fundamental to the Game of Golf?

In the case of *Olinger v U.S. Golf Association*¹⁵⁶, Fred Olinger, a golfer suffering from a degenerative condition known as bilateral avascular necrosis¹⁵⁷, sought to compete in the U.S. Open. The USGA did not dispute that Olinger was disabled under the *Americans with Disabilities Act*¹⁵⁸; however they did contend that allowing Olinger to use a golf cart would fundamentally alter the game. The 7th Circuit upheld a ruling denying an accommodation to Olinger, citing the element of fatigue as being fundamental to the game of golf, with the expert testimony of professional golfers who attested to the physical and psychological stressors that walking the course may have, particularly in extreme conditions as blazing heat and humidity. The court reasoned that under these circumstances, Olinger would enjoy an unfair advantage over his fellow competitors if he were allowed to use a golf cart. The decision's rationale appeared to be unsubstantiated, lacking scientific evidence, and relying solely on the testimonies of ex-professionals who are likely to be biased in their opinions.

American golfer Casey Martin, who suffers from a birth defect in his right leg known as Klippel Trenaunay Weber Syndrome, is unable to walk long distances and is forced to use a motorised cart to manoeuvre around a golf course. The U.S. Professional Golf Association argued that this gave him an unfair competitive advantage as he did not have to undergo the same physical test as able-bodied golfers and would therefore be less fatigued. This argument is based on the premise

¹⁵⁶ *Olinger v U.S. Golf Association* F.3d, 2000 WL 257133 7th Cir. [2000].

¹⁵⁷ Bilateral avascular necrosis can significantly impair one's ability to walk.

¹⁵⁸ *Americans with Disabilities Act* [1990].

that golf is a game of stamina. *Weiler (2000)* cites the final round of the 1964 U.S. Open, with temperatures of one-hundred degrees and oppressive humidity, Ken Venturi was advised by his doctor to stop playing in order to avoid the risk of dying.¹⁵⁹ However, Venturi accepted the risk, walking the next nineteen holes to win his first major golf tournament¹⁶⁰. Arnold Palmer¹⁶¹ reiterated the need to preserve the PGA Tour's 'walking rule' in order to "inject the element of fatigue into the skill of the shot-making"¹⁶²; while the PGA claimed that to allow a disabled golfer to ride instead of walk would give them the equivalent of a one-to two-stroke advantage in scoring. These claims appeared inconclusive, as the type of exhaustion encountered in golf is more psychological than physical, with the swinging motion of a golf club more likely to incur fatigue than walking between shots. There is also an argument that in amateur golf, some players regularly ride in carts whilst others walk. In this situation there is no request for the rider to offer a one-to two-stroke edge to the walker.¹⁶³ The decision in *PGA Tour, Inc v Martin*¹⁶⁴ favoured Martin, allowing him the use of a cart in order to compete in the PGA.

6.12 – Performance Enhancing Devices and Techniques

The use of enhancing devices and techniques by disabled athletes can essentially equate to an unfair advantage, particularly if the enhanced skills are fundamental to the sport; however there is an argument that able-bodied athletes frequently prosper from the use of such aids. A prosthetic can be defined as a device, either external or implanted, that substitutes for or supplements a missing or defective part of the body. On this basis a swim cap is a prosthetic as it smoothes the defective surface of a

¹⁵⁹ Venturi was suffering from a combination of heat, humidity, and dehydration.

¹⁶⁰ Weiler, P. (2000) 'Leveling the Playing Field (How the Law can make Sports Better for Fans)', Harvard University Press, p28.

¹⁶¹ Arnold Palmer is an American golfer who is generally regarded as one of the greatest players in the history of men's golf.

¹⁶² Arnold Palmer's comments in Weiler, P. (2000) 'Leveling the Playing Field (How the Law can make Sports Better for Fans)', Harvard University Press, p28.

¹⁶³ One major difference between professional and amateur competitions is that a walking professional golfer has a caddie to carry his clubs, rather than having to carry them himself.

¹⁶⁴ *PGA Tour, Inc v Martin* 532 U.S. 661 [2001].

swimmer's head, making it more hydrodynamic. Similarly, Speedo's LZR Racer swimsuit, which makes a swimmer more buoyant, could also be considered a form of prosthetic; although this piece of equipment has since been banned due to its access limitations. USA Track & Field has worked with Nike to test carbon-sole shoe implants that harness energy normally lost when a runner's foot pushes off. American athletes wore the shoes in the Sydney Olympics; evidence that able-bodied sprinters have already used the type of carbon-infused prosthetics that resulted in Pistorius' brief ban.

Similarly, able-bodied athlete's use of techniques and medical surgery has risen in recent times, enhancing particular skills in an effort to improve their overall performance. Tommy John surgery¹⁶⁵, known in the medical practice as ulnar collateral ligament (UCL), is a procedure common among athletes, particularly baseball players, who view it as an opportunity to increase their pitching performance, enabling them to throw at a greater velocity. Other enhancement techniques include the LASIK¹⁶⁶ eye surgery undertaken by Tiger Woods in an attempt to improve his vision beyond 20/20.¹⁶⁷ Woods had lost sixteen straight tournaments prior to the surgery, which improved his vision to 20/15, enabling him to win seven of his next ten events. Another debateable technique involves the use of a hyperbaric chamber, by undersized NFL player Anthony Gonzalez when sleeping, to saturate his blood with oxygen and gain fourth-quarter stamina. The use of enhancement devices and techniques appears to be accepted as long as all athletes have access to them; unlike the carbon fibre blades used by Pistorius, which can only be used by amputees, and the use of a motorised golf cart, a privilege allocated to *Olinger* and *Martin* in an attempt to aid their mobility around a golf course. In these instances the advantages of the device must not outweigh the drawbacks, particularly if the enhanced skill is fundamental to the sport.

¹⁶⁵ Tommy John surgery is a surgical procedure in which a ligament in the medial elbow is replaced with a tendon from elsewhere in the body (often from the forearm, hamstring, knee, or foot of the patient).

¹⁶⁶ Laser-Assisted *In Situ* Keratomileusis.

¹⁶⁷ Without the LASIK eye surgery, Tiger Woods was close to being classified as legally blind.

6.13 – Summary

The inclusion of transsexual and disabled athletes in sport essentially raises the issue of what constitutes a competitive advantage. It is generally accepted that men have an inherent performance advantage over women, and this is the result of correspondingly different exposures to androgens. Although current research reveals that transitioned male-to-female athletes possess no advantages relating to testosterone; they do still retain qualities inherent to men including: greater height, larger hands and feet, and possibly larger heart and lung capacities. These qualities could prove beneficial in a number of sports, thus providing the individual with an advantage over other female competitors. The high levels of testosterone found in men is an inherent quality unique to them, whereas physiological features such as height can affect both genders, and therefore exclusion on these grounds cannot be justifiable unless all tall female athletes are denied entry into events. Similar to the principles regarding the participation of disabled athletes in sport; the advantages and disadvantages need to be weighed against one another before a definitive decision can be made. Many studies fail to take into account that transitioned male-to-female athletes no longer have the ability to produce testosterone, limiting their ability to build muscle mass, and putting them at a disadvantage in comparison to female athletes. Further research is therefore required to determine the overall position of transitioned male-to-female transsexuals with regards to their competitive ability and whether or not their participation in sport compromises the notion of a level playing field.

In determining whether a disabled athlete who requires the use of an aid or device is eligible to compete in able-bodied events, a list of requirements must be met to ensure they do not possess some form of unfair advantage over the rest of the field. First off, the device must not compromise the essence of the sport, for example the use of a motorised device in swimming would compromise the sport's aim of determining the fastest swimmer in a particular discipline and distance, whereas swim caps simply aid one's performance by smoothing the defective surface of a

swimmer's head. If the device simply enhances one's performance then its use is likely to be permitted as long as there are no restrictions concerning accessibility. The problem with fast paced technological aided improvements in performance is their ability to create disjuncture with sporting tradition and history, with hard earned world records and personal bests too easily overtaken when, for example, one wears a new swimsuit. The swim cap is accessible to all athletes and therefore does not distort the notion of a level playing field, whereas the LZR Racer swimsuit is a piece of performance enhancing apparel exclusive to athletes sponsored by Speedo; and because of its limited accessibility, it was subsequently banned by FINA. If a device is limited to specific athletes, then its advantages must not be deemed fundamental to a sport. The golf cart used by *Casey Martin* was not considered to enhance skills fundamental to the game of golf, with cardio vascular endurance determined to be a minor attribute in one's attempt to be successful in the sport.

If the device is deemed fundamental, then its overall advantages must not outweigh the drawbacks. In the case of *Oscar Pistorius*, a number of experiments and tests revealed that his carbon fibre blades enable him to gain several advantages deemed fundamental to the sport of sprinting; however results failed to take into account the possible drawbacks of the blades, and this lack of evidence failed to fulfil the criteria required by the CAS to enforce a ban on athletes utilising this form of prosthesis in able-bodied events. The final consideration relates to the health and safety of the device, with Pistorius' use of carbon fibre blades contested by the IAAF, particularly in the 400m relay where athletes may come into contact with each other after the first 500m of the race. In this instance the CAS did not determine the prosthetic limbs to be a safety hazard, as the potential for a collision was considered to be minimal. However if Pistorius was to compete in a game of football, then it is likely he would be deemed ineligible due to the high risk of injury posed by his blades, particularly as football is a full contact sport.

European Union Law and Freedom of Movement in Sport

7.1 – Introduction

Access to sport is considered to be of social advantage and importance for the integration of citizens, and therefore it cannot remain outside the scope of the fundamental principles of free movement. The Court has ruled that a European Union national who legally resides in another Member State has the right to equal treatment in terms of social advantages. The Commission reaffirms that membership of sports clubs and participation in competitions is an important factor to promote the integration of residents into the society of the host country, and that discrimination against EU nationals in this area must be avoided. The treaties, which establish the right of every citizen of the Union to move and reside freely in the territory of the Member State, prohibit discrimination on the grounds of nationality. Amateur sport must not remain outside the scope of the fundamental principles of free movement. Whereas access to sport practice and facilities does not seem to be a problem at European level, issues arise concerning membership of clubs for non-nationals, cross-border movement of sportspeople and participation in competitions.

7.2 – European Union law

It has long been established by the Commission and the Community Courts that sport is subject to EC Treaty provisions, notably Articles 81 and 82 EC in so far as it constitutes an economic activity.¹⁶⁸ While the presence of economic activity is the point of departure for any legal analysis under EC competition rules, it is also undisputed that sport features a number of particular characteristics that set it apart from other economic activities. Although the EU accepts the ‘specificity of sport’,

¹⁶⁸ This is established case law of the European Court of Justice since Case 36/74 Walrave and Koch v Association Union Cycliste Internationale and Others [1974] ECR 1405.

and Article 165 of the *Treaty of Lisbon* makes specific reference to the special nature of sport, it grants no exemption from EU law for the industry. Where purely sporting rules are integral for the sport and are considered proportionate (e.g. eligibility rules for international football) these can be justified, but where rules are either not integral for sport or have a disproportionate impact on EU regulations, they can be challenged by the Commission or in the European Court of Justice. Although the recent decision in *Meca-Medina*¹⁶⁹ essentially expunged the *Walrave* sporting exception rule, the ECJ transposed the reasoning found in the context of professional regulation in *Wouters*¹⁷⁰ to the organisation of sport. It noted that rules considered ‘inherent’ in the proper organisation of sport did not constitute restrictions of competition and consequently fell outside the scope of the Treaty.

7.3 – Nationality Clauses in Sport

There is currently no explicit Treaty basis for the Community to involve itself in sporting activity. The ECJ’s involvement in sport began with the case of *Walrave and Koch v UCI*¹⁷¹, which discussed discrimination based on nationality within the common market. Mr Walrave and Mr Koch regarded a provision of the Union Cycliste Internationale (UCI) regulations, according to which a pacemaker should be of the same nationality as his rider, to be discriminatory; thus bringing an action against the UCI and others. The case was referred to the ECJ who stated that:

1. Having regards to the objectives of the Community, the practice of sport was only subject to Community law insofar as it constituted an economic activity within the meaning of Article 2 of the Treaty;
2. The prohibition of Discrimination based on nationality, set out in Articles 7, 48, and 59 of the EEC Treaty, did not affect the composition of sports teams,

¹⁶⁹ Case C-519/04 *Meca-Medina and Majcen v Commission* [2006] ECR I-6991.

¹⁷⁰ Case C-309/99 *Wouters and others* [2002] ECR I-1577.

¹⁷¹ Case 36/74 *Walrave and Koch v Association Union Cycliste Internationale and Others* [1974] ECR 1405.

in particular national teams, the formation of which was a question of purely sporting interest and as such had nothing to do with economic activity.

The ECJ established that Community law concerning discrimination based on nationality, applied not only to public authorities, but to the rules of private sports associations. This principle applied to Articles 48 (workers) and 59 (services) of the Treaty. The rule on non-discrimination also applied to all legal relationships which could be located within the territory of the community. The position of national teams in sport was further strengthened in *Deliège v Ligue francophone de judo*¹⁷², with the Advocate General stating, “The pursuit of a national team’s interests constitutes an overriding need in the public interest which, by its very nature, is capable of justifying restrictions on the freedom to provide services”¹⁷³. In *Doña v Montero*¹⁷⁴, the ECJ identified that any discrimination on the grounds of nationality was prohibited under Article 7 of the EEC Treaty and any national provision which limited the right to participate in an activity within the scope of application of Articles 48 to 51 or 59 to 66 of the EEC Treaty solely to the nationals of one Member State was incompatible with Community law. This was also the case for sports organisations, unless such rules excluded foreign players from participation in specific games for reasons which were not of an economic nature, and were ultimately for sporting interest only. After referring to the case law of the ECJ, the Brussels Court of First Instance came to a similar conclusion in *Markakis v ASBL Fédération Royale Belge des Sociétés de Basketball*¹⁷⁵; applying the principles of Articles 2 and 7 to the facts of the case.

In *Lehtonen v Fédération Royale Belge des Sociétés de Basket-ball*¹⁷⁶, questions relating to the interpretation of the Treaty rules on the principle of the prohibition of

¹⁷² Cases C-51/96 and 191/97 *Christelle Deliège v ASBL Ligue Francophone de Judo* [2000] ECR I-2549.

¹⁷³ Opinion of Advocate General Cosmas, point 84.

¹⁷⁴ Case 13/76 *Doña and Montero* [1976] 2 CMLR 578; [1976] ECR 1333.

¹⁷⁵ *Markakis v ASBL Fédération Royale Belge des Sociétés de Basketball* [1992] Brussels Court of First Instance, Belgium, 08.09.1992.

¹⁷⁶ Case C-176/96 *Lehtonen (Jyri) & Castors Canada Dry Namur-Braine v ASBL Fédération Royale Belge des Sociétés de Basketball* [2000] ECR I-2681.

discrimination on the grounds of nationality were discussed. On this occasion the ECJ determined that, regarding salaried workers, this principle had been implemented and specifically applied by Article 48 of the Treaty. The case of *Grubba v German Table Tennis Federation*¹⁷⁷ discussed the validity of national clauses relating to nationals of States associated with the EU. Article 48 of the Treaty, concerning free movement for workers within the common market, did not apply in this instance, since Poland was not part of the EC. The Appeal Court concluded that Mr Grubba's request was unfounded because the clause on foreigners in the version that formed the basis of the disputed decision by the legal bodies of the German Table Tennis Federation was compatible with German and European law.

7.4 – Nationality Quotas in Sport

In *Deutscher Handballbund v Kolpak*¹⁷⁸, the ECJ ruled in favour of Mr Kolpak, declaring that citizens of countries which have associate agreements with the European Union have the same right to freedom of work and movement within the EU as EU citizens. Any restrictions placed on their right to work, such as quotas setting maximum numbers of such foreign players in sports teams, are deemed illegal under EU law. The case of *Deliège* discussed the validity of sports rules providing for national quotas. In contrast to the rules applicable in *Bosman*, the selection process in this instance did not determine the conditions governing access to the labour market by professional sportsmen and did not contain nationality clauses limiting the number of nationals of other Member States who could participate in a competition. To conclude, Article 48 essentially prohibits restrictions on players who are nationals of other EU Member States with regard to their participation in competitions between different clubs organised by national and international associations. The ECJ accepts a number of exceptions to the principles

¹⁷⁷ *Grubba v German Table Tennis Federation* [1997] Frankfurt am Main Appeal Court, Germany, 25th November 1997, Case no. 2-14 0 254/97.

¹⁷⁸ Case C-438/00 *Deutscher Handballbund v Kolpak* [2003] ECR I-4135.

set out in Article 48 of the Treaty. These exceptions are linked to reasons which are not of an economic nature and are thus of sporting interest only.¹⁷⁹

7.5 – The Bosman Case

In *Bosman v Royal Club Liégeois SA and UEFA*¹⁸⁰, the question decided by the Court of Justice concerned whether nationality restrictions and transfer rules in football contravened Article 39. The Court expressly denied consideration of the national court's question in so far as it referred to Articles 81 and 82, most likely because of the difficulties involved with the application of competition law to sporting competitions.¹⁸¹ It did however question two distinct rules; the so-called 3+2 rule (three foreigners plus two assimilated players) which involved direct discrimination in the rules of fielding players; and the highly restrictive but entirely non-discriminatory transfer rules which essentially enabled a club to prevent a player from transferring subsequent to completing their contract of employment. In their judgement, the ECJ applied *Doña* noting that the court had jurisdiction since football was an 'economic activity' and that Bosman, a footballer, was a 'worker' under European law. The court held that the transfer system restricted footballers' employment opportunities by forcing clubs to pay transfer fees for un-contracted athletes, which contravened restraint of trade laws. This precedent established the foundations upon which the European transfer system is based today; applying free agency to all athletes who are out of contract. Therefore, a club cannot receive a transfer fee unless their athlete wishes to sign a contract with another club before the expiration of his existing contract.

¹⁷⁹ For example, the rules excluding foreign players from participation in games between national teams from different countries; see the case of *Doña v Montero*.

¹⁸⁰ Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v Jean-Marc Bosman and others* [1995] ECR I-4921.

¹⁸¹ *Bosman* Para. 138.

7.5.1 – UEFA’s Foreign Player Quota System

In 1996, UEFA was forced to change its quota rules by the Commission to take account of *Bosman*. Although UEFA’s stance had been supported by FIFA, who called for European Law to be amended so that football’s transfer system and quota rules would be protected, the Commission would not allow UEFA to flout the Treaty and the ‘clear ruling’ of the Court in *Bosman*. “Nobody is above European Law. Individual states are not above European Law so you can’t have a private organisation like UEFA saying that they are”¹⁸². Premier League Chief Executive Rick Parry sided with the Commission stating, “I feel very sceptical that the Community will exempt football from its Article 48 on freedom of movement of workers because it is the bedrock of Community Law... The idea of a blanket exemption for sport is absurd”¹⁸³. UEFA reminded the Commission that the existing quota rules had been the result of a ‘Gentleman’s Agreement’ reached between the two in 1991; however the Advocate General in *Bosman* had expressly stated that this agreement had no validity at all, as it was not for the Commission to rule on how Community Law was to be interpreted. *McArdle (2000)* notes that although UEFA informed its national associations to abide by the quota restrictions for UEFA competitions for the rest of the 1995-96 season ‘in the interests of fairness’; they were ultimately forced to comply after Commissioner Flynn instigated proceedings under Article 171 (as amended by the Maastricht Treaty and now Article 228)¹⁸⁴. On 19th February, UEFA announced that the so-called 3+2 rule would be scrapped forthwith.¹⁸⁵

¹⁸² A spokeswoman for the Commissioner Pdraig Flynn in: Sports News (1996) 17th January, The Guardian, p20.

¹⁸³ Then Premier League Chief Executive Rick Parry in: Sports News (1996) 13th February, The Guardian, p24.

¹⁸⁴ McArdle, D. (2000) ‘From Boot money to Bosman: Football, Society and the Law’, London: Cavendish.

¹⁸⁵ UEFA called upon all those clubs still involved in its competitions to observe a ‘Gentlemen’s Agreement’ until the end of the 1995-96 season. Although partly satisfied with this, the Commission stressed that UEFA would have no way of enforcing this agreement if any club unilaterally decided to flout it.

Figure 7.1 – Foreign Players participating in the UEFA Champions League Final

Season	Winner	F	Runner-up	F	Tot
*1992-93	Marseille	3	AC Milan	3	6
*1993-94	AC Milan	3	Barcelona	3	6
*1994-95	Ajax	3	AC Milan	2	5
*1995-96	Juventus	3	Ajax	3	6
1996-97	Borussia Dortmund	3	Juventus	5	8
1997-98	Real Madrid	7	Juventus	5	12
1998-99	Manchester United	8	Bayern Munich	2	10
1999-00	Real Madrid	5	Valencia	6	11
2000-01	Bayern Munich	8	Valencia	9	17
2001-02	Real Madrid	6	Bayer Leverkusen	7	13
2002-03	AC Milan	6	Juventus	7	13
2003-04	FC Porto	3	AS Monaco	7	10
2004-05	Liverpool	12	AC Milan	10	22
2005-06	Barcelona	10	Arsenal	12	22
2006-07	AC Milan	5	Liverpool	10	15
2007-08	Manchester United	8	Chelsea	10	18
2008-09	Barcelona	6	Manchester United	10	16
2009-10	Inter Milan	13	Bayern Munich	6	19
2010-11	Barcelona	6	Manchester United	9	15

Winner – The winner of the UEFA Champions League.

Runner-up – The runner-up of the UEFA Champions League.

F – The total number of foreign players that participated for the team in the final, including used substitutes.

Tot – The total number of foreign players that participated in the UEFA Champions League Final in that particular year, including used substitutes.

* During these seasons, clubs were restricted from fielding more than three foreign players in games (including substitutes).

Foreign player quotas were intended to maintain a level playing field amongst European leagues, whilst preserving the identity of clubs by ensuring teams were comprised mainly of national players. This enabled clubs from smaller leagues to compete for European honours, as clubs from bigger leagues were reluctant to purchase foreign players due to UEFA's quotas. The Netherlands regularly produce talented players, and prior to *Bosman*, teams like Ajax were able to build strong squads capable of challenging for European honours. In 1994-95 the team managed to win the UEFA Champions League, and in the following season they were runners-

up; however since *Bosman*, the club has struggled to keep hold of talented Dutch players who now prefer to seek employment abroad, where financial incentives are greater. In recent years, the Champions League has been dominated by English and Spanish teams; whereas previously, there were clubs from a variety of countries competing in the latter stages of the competition. Analysis into recent Champions League finals, see *figure 7.1*, reveals a loss of identity amongst clubs; with recent finalists comprised mainly of foreign players. *Bosman* has essentially created competitive imbalance within European competitions, resulting in the decline of a number of leagues that were relatively strong prior to the abolishment of foreign player quotas. However the ruling does appear to have improved the chances of English clubs in European competitions; who prior to *Bosman*, found themselves at a huge disadvantage because UEFA decreed that Welsh and Scottish players counted as foreigners under the 3+2 rule. Teams like Manchester United were forced to make wholesale changes to their normal line-up when playing in Europe¹⁸⁶, to the detriment of the team. Manchester United's performances in European competitions post-*Bosman* have been much improved; appearing in three of the last four Champions League finals.¹⁸⁷

7.5.2 – Player Transfers

The decision in *Bosman* has significantly altered the transfer market in football. Smaller clubs can no longer rely on transfer fees as a source of income. Whereas previously a club could develop home grown talent in the safe knowledge that should the player wish to leave, the club would receive a transfer fee; nowadays a player can simply wind-down their contract and

¹⁸⁶ Most notably Sir Alex Ferguson chose English goalkeeper Gary Walsh ahead of Dane Peter Schmeichel, arguably one of the greatest goalkeepers of that time, just so the team could meet the quota requirements.

¹⁸⁷ Manchester United won the UEFA Champions League in 2008, and was runners-up in 2009 and 2011.

leave on a free transfer. Previously the money available to the big clubs was passed on to smaller clubs in the form of transfer fees; however since *Bosman*, this money has increasingly been diverted to out-of-contract players and their agents. This has put the player in a strong position, particularly those in the last year of their contracts, who are content to wind-down their contracts in a bid to acquire lucrative signing-on fees and higher wages, to the detriment of the clubs who developed them. In a bid to prevent players from leaving on a free transfer, clubs began signing them to long term contracts. Unfortunately this commitment created many difficulties for relegated clubs facing financial difficulties; leaving them with a number of high earning players on long term contracts. Leeds United were just one of many clubs forced to sell their brightest talents; players like Jonathan Woodgate, Paul Robinson, and Mark Viduka were all sold at cut-price rates, just to cut their salaries from the payroll. The *Bosman* ruling has essentially created a greater divide between clubs, with out-of-contract players more likely to sign for bigger clubs who can offer greater incentives.

7.6 – Preserving the National Game of Football

Both FIFA and UEFA argue that the unchecked movement of footballers within the EU, resulting from the ECJ's rejection of the 3+2 rule in *Bosman*, has resulted in clubs losing their national identity, national team football being weakened, a loss of competitive balance in club football, and a reduced emphasis on the development of young players. In a bid to resolve these concerns, both governing bodies proposed a new set of rules intended to improve the development of young talent, whilst preserving the future of the national game. FIFA's 6+5 rule required clubs to field at least six domestic players in the starting team; a rule that stands in direct opposition

to the *Bosman* ruling. UEFA promotes the concept of a ‘home grown player’ rule¹⁸⁸, which requires clubs to include in their squads at least eight¹⁸⁹ home grown players out of twenty-five, in all UEFA club competitions.¹⁹⁰ *Martins (2009)* notes that most of the home grown players would be nationals as opposed to foreigners, making it more difficult for foreign players to move to a country where they had not been trained and educated¹⁹¹.

Figure 7.2 – Number of Foreign Players in Football¹⁹²

Country	League	TP	FP	%	Avg
England	Premier League	565	368	65.1	18
France	Ligue 1	556	224	40.3	11
Germany	Bundesliga	523	261	49.9	15
Italy	Serie A	551	212	38.5	11
Netherlands	Eredivisie	471	177	37.6	10
Portugal	Super Liga	407	234	57.5	15
Spain	Primera Division	560	197	35.2	10

TP – Total number of players in the league.

FP – Number of foreign players in the league.

% - Percentage of foreign players in the league.

Avg – Average number of foreign players per club.

Analysis of Europe’s top seven leagues, see *figure 7.2*, reveals that foreign players make-up at least a third of each league’s total amount of players. The English Premier League has been the most affected, with 65.1% of the league’s players being foreign; an average of *eighteen* per club. The England national team’s failure to qualify for Euro 2008 can be attributed to a lack of depth in terms of domestic talent, with the likely cause being an overreliance on foreign players at club level

¹⁸⁸ Home grown players are defined by UEFA as players who regardless of their nationality or age, have been trained by their club or by another club in the national association for at least three years between the age of fifteen and twenty-one.

¹⁸⁹ UEFA introduced the rule in three phases: season 2006-07 a minimum of four home grown players in a twenty-five man squad; in 2007-08 a minimum of six home grown players; and in 2008-09 a minimum of eight home grown players.

¹⁹⁰ Clubs have no obligation to put a certain number of homegrown players on the field of play, or on the match sheet. They are entirely free in their team and match day squad selection.

¹⁹¹ *Martins, R.B. (2009) ‘Agenda for a Social Dialogue in the European Professional Football Sector’, in Gardiner, S., Parrish, R. and Siekmann, R. ‘EU, Sport, Law and Policy’, Asser Press, p388.*

¹⁹² A 2008 study sourced from: http://inea-online.com/download/regel/gutachten_eng.pdf.

stifling the opportunities and development of young players. The German Bundesliga is also heavily imbalanced, with foreign players accounting for 49.9% of the league's total; an average of *fifteen* per club; however their national team has continued to perform beyond expectations, finishing as runners-up in both the 2002 World Cup and the 2008 European Championships.¹⁹³ One possible reason for the contrasting fortunes of the English and German national teams may lie in the number of domestic games played within each country, with the English Premier League comprised of twenty teams in comparison to the eighteen teams forming Germany's Bundesliga.¹⁹⁴ Germany also employs a winter break in a bid to ensure players do not fatigue towards the end of the season. The level of fatigue suffered by English players often leads to underperformance at national level, particularly at end of season tournaments. Fatigue, combined with a lack of time made available for making a cohering national team, are the more likely reasons for England's poor performances at national level, and not the number of foreign players plying their trade in the Premier League.

These statistics confirm that the top European leagues are being overwhelmed with foreign talent; creating competitive imbalance by allowing the rich to purchase ready-made foreign talent, as opposed to developing their own. This results in leagues losing their national identity, and ultimately has a bearing on the national team in terms of the number of players being developed. *Sturgess (2008)*, in his analysis of the English national team during the Premier League era, believes that the influx of foreign players might have actually improved the average performance of the national team¹⁹⁵; however results do not appear to support his views¹⁹⁶, particularly as England's best ever performance at the European Championships¹⁹⁷

¹⁹³ The German national team also finished third in both the 2006 and 2010 World Cups.

¹⁹⁴ The top English teams often fair well in European competitions, which leads to an increased number of games during the season.

¹⁹⁵ Sturgess, B. (2008) 'Foreign Player Quotas – the Good, the Bad, and the Illegal', December.

¹⁹⁶ Since the influx of foreign players in the Premier League, England has failed to advance past the quarter-finals stage of a major international competition. Prior to the *Bosman* ruling, England had reached the semi-final stage in two of their last four major tournaments (World Cup 90 and Euro 96); although they did fail to qualify for World Cup 94.

¹⁹⁷ Host nation England reached the semi-finals of Euro 96, losing to Germany on penalties.

occurred just prior to the *Bosman* ruling and the subsequent influx of foreign players.

Quotas limiting the number of foreign players in club football are illegal, as direct discrimination on the grounds of nationality is expressly prohibited by EU law and the Commission, with the ECJ making it clear that any attempt to introduce quota systems, similar to those prior to *Bosman*, would be challenged. FIFA was forced to abandon its proposed 6+5 rule in 2010; however UEFA's 'home grown player' rule has been accepted, despite it being discriminatory under EU law. The discrimination was deemed to be indirect and justifiable so long as it is able to achieve its objectives of increasing the quality of club's academy systems. As of the 2010-11 Premier League season, new rules requiring each club to register a maximum 25-man squad of players aged over twenty-one¹⁹⁸ were introduced to enable the 'home grown' rule to be enacted.¹⁹⁹

7.7 – The Current Transfer Window in European Football

Transfer windows were introduced into European football at the beginning of the 2002-03 season by UEFA. They constitute a mechanism for restricting the ability of football players under contract to move between clubs to two set periods during the year; the first during January and second from the start of the close season through to the end of August. Transfer windows support the requirements of team stability by creating some notion of equal purchasing strength between clubs by limiting when purchases can be made. Previously clubs relied on the flexibility to buy, sell, or loan players whenever required for either football or financial reasons. Opposition to the existence of the transfer window often comes from the smaller clubs in football; with the sale of big-money players enabling clubs in the lower divisions to balance their books in periods of financial difficulty. The £5m that Nottingham

¹⁹⁸ The squad list can only be changed in transfer windows or in exceptional circumstances.

¹⁹⁹ Also from 2010, the League requires at least eight of the named 25-man squad to be made-up of 'home grown players'.

Forest received from Newcastle United for Jermaine Jenas in 2002 was rumoured to have kept the club afloat. Transfer windows can also be beneficial to small teams as they restrict the spending abilities of big clubs who could potentially buy their way out of trouble, should the team be struggling.

The case of *Lehtonen* concerned the transfer system in basketball, where a Finish basketball player challenged rules on when transfers could take place imposed by the Belgian Basketball Federation, which effectively prevented him from playing in certain games. The ECJ held that where there are sufficient sporting reasons to justify some form of economic restriction, these would not be considered to be illegal. *Gardiner and Welch (2007)* argue that transfer windows in European football would fail the test of proportionality as they are too restrictive²⁰⁰. In this instance the restriction appears to be necessary in order to preserve the identity of clubs, as without transfer windows, players could essentially change clubs at any time, resulting in a lack of continuity. A team competing for the title could potentially purchase several of their rival's key players in a bid to improve their chances of success, whilst weakening their opponents. Transfer windows ultimately install some form of stability within team sports; levelling the playing field between the rich and the poor, and enabling supporters to build a greater rapport with their team's players.

7.8 – Restraint of Trade

The restraint of trade doctrine renders partially or wholly void contracts or agreements that are found to be unreasonably in restraint of trade. Lord Macnaghten in *Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd*²⁰¹ outlined three elements that must be satisfied for the imposition of the restraint to be reasonable:

²⁰⁰ Gardiner, S. and Welch, R. (2007) 'The Contractual Dynamics of Team Stability Versus Player Mobility: Who Rules 'The Beautiful Game'?', Entertainment and Sports Law Journal, ISSN 1748-944X, August, p6.

²⁰¹ *Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd* [1894] AC 535.

there must be an inherent meriting protection; the restraint must be reasonable; and the restraint must not be contrary to the public interest. In the sporting context, the doctrine has been primarily utilised in three areas: challenges to transfer systems; where a ban has been imposed; and where governing bodies purport to prevent a team or club from entering a competition.²⁰² *Eastham v Newcastle United*²⁰³ was one of the first cases to challenge the transfer system. Professional footballer George Eastham's contract had expired with Newcastle United; however the FA's rules at the time meant Newcastle could prevent him from transferring to another club without their consent. Eastham had been unable to earn a living for several months and consequently argued an unreasonable restraint of trade. The Court held that the restrictions imposed upon Eastham were an unreasonable restraint of trade as it prevented him from pursuing further employment.

Restraint of trade was used to challenge the reasonableness of disciplinary measures in *Greig v Insole*²⁰⁴; a case that involved three cricketers disputing a change of rules by the ICC and the TCCB which were deemed in unlawful restraint of trade. The Court held the governing bodies involved had breached their obligations regarding the restraint of trade doctrine; with Slade J. recognising that the TCCB and ICC were reasonable to want to protect the legitimacy of the sport and prevent the sport from suffering at all levels. In *Gasser v Stinson*²⁰⁵, Swiss athlete Sandra Gasser challenged the rules of the IAAF, after being banned for having a prohibitive substance found in her urine. Gasser claimed that the rules were in unreasonable restraint of trade, as they did not permit her to try to establish her innocence, even in mitigation. The court, while not severing the economic link, extended the doctrine to cover a larger group than might otherwise have access to the courts; with Scott J finding the rules to be 'reasonable'. The decision is an indication that the courts are likely to give weight to the values applied by governing bodies, particularly in

²⁰² Gardiner, S., O'Leary, J., Welch, R., Boyes, S. and Naidoo, U. (2012) 'Sports Law', Routledge, fourth edition.

²⁰³ *Eastham v Newcastle United Football Club Ltd* [1963] 3 All ER 139; [1964] Ch 413.

²⁰⁴ *Greig v Insole* [1978] 1 WLR 302.

²⁰⁵ *Gasser v Stinson* [1988] unreported, 15th June, (QBD).

relation to a cause such as ‘the war against doping in sport’, despite the fact that a restraint on these grounds may not always be objectively justifiable.²⁰⁶

A restraint of trade can also be challenged where governing bodies prevent clubs from entering a competition. In *Newport AFC Ltd v The Football Association of Wales*²⁰⁷, three Welsh football clubs challenged a decision to pass a resolution preventing the Welsh football clubs from playing in leagues making up part of the English pyramid system in order that a comparable Welsh competition could be established. The claimant clubs were awarded an interlocutory injunction; providing further evidence of the Court’s willingness to utilise the restraint of trade doctrine as a mechanism by which to scrutinise the substance of sports governing bodies’ activities, rather than merely the procedural or contractual elements. Analysis of the doctrine reveals it to be highly accessible, with the source of the restraint not necessarily seen as being of particular significance; rather it is the effect that brings the doctrine into play; with *Gardiner et al. (2012)* accepting that the doctrine will not extend to all decisions taken by governing bodies, only those that affect the ability of others to trade²⁰⁸.

7.8.1 – The Human Rights Act 1998

The *Human Rights Act*²⁰⁹ is one potential alternative to the limitations identified in the restraint of trade doctrine. The effect of the *Human Rights Act* is to give further effect to the provisions of the *European Convention on Human Rights*²¹⁰ in the UK.²¹¹ *Gardiner et al. (2012)* note that this has been

²⁰⁶ Gardiner, S., O’Leary, J., Welch, R., Boyes, S. and Naidoo, U. (2012) ‘Sports Law’, Routledge, fourth edition.

²⁰⁷ *Newport AFC Ltd v The Football Association of Wales* [1995] 2 All ER 87.

²⁰⁸ Gardiner, S., O’Leary, J., Welch, R., Boyes, S. and Naidoo, U. (2012) ‘Sports Law’, Routledge, fourth edition.

²⁰⁹ Human Rights Act [1998].

²¹⁰ European Convention on Human Rights [1950].

²¹¹ The Act incorporates Arts 2-12 of the convention itself as well as Arts 1-3 of the First Protocol and Arts 1-6 of the Sixth Protocol.

achieved primarily through the imposition of a new imperative obligation, laid out in the *Human Rights Act s.3*, to interpret law compatibility with convention rights in so far as this is possible without interfering with the will of Parliament²¹². When applied to the sports industry, the Act has the potential to impact upon the activities of self regulating organisations (e.g. FIFA). *Boyes (2001)* applies the case of *X v Netherlands*²¹³, brought in respect of football's transfer system, to Paragraph 1 of Article 4 of the Act which deals with the prohibition of slavery and servitude, less relevant to the sporting world²¹⁴. In this instance the ECHR dismissed the player's claim that a prohibitive fee prevented him from being allowed to move clubs, on the basis that he entered into the contract knowing that he would be affected by the rules governing relationships between football clubs. *Boyes (2001)* also highlights the possibility of applying Article 6, which deals with the right to a fair and public hearing, to the sports industry²¹⁵; with the Article merely requiring a dispute relating to a right or obligation. There is a real possibility that in the future, the *Human Rights Act* may provide some form of parity between the protection of economic and fundamental rights within the sports industry.

7.9 – Summary

The ECJ's decision in *Bosman* has had serious implications for the smaller clubs in football, with the big teams preferring to purchase established players on long-term contracts and for huge salaries, rather than taking a risk on players from lower divisions. At present, it appears that the European Commission does not intend to grant football an exemption from the rigours of EU law, and unless changes are made, smaller clubs are likely to decline to the point of extinction for want of

²¹² Gardiner, S., O'Leary, J., Welch, R., Boyes, S. and Naidoo, U. (2012) 'Sports Law', Routledge, fourth edition.

²¹³ *X v Netherlands* (Application 9322/81) [1983] 32 DR 180.

²¹⁴ Boyes, S. (2000) 'The Regulation of Sport and the Human Rights Act 1998', 6(4) EPL, p525-28.

²¹⁵ *Ibid.*

income, unless a system that effectively regulates player movement while complying with the law can be agreed upon. *McArdle (2000)* highlights Manchester United's 'memorandum of cooperation' with Royal Antwerp²¹⁶ as an imaginative attempt to cash in on *Bosman*²¹⁷, which also reveals a lack of concern on behalf of the big clubs in the development of grassroots football. As the big clubs continue to outgrow their national leagues, the creation of a European super league becomes a more likely option; providing teams with more lucrative and competitive contests.

The so called 'sporting exception' to European Union law, can be traced all the way back to the first real sports case to be heard by the ECJ. In *Walrave*, the Court confirmed that EU law did not apply to rules that were of pure 'sporting interest' on the basis that such rules had nothing to do with the economic activities to which the EC Treaty relates.²¹⁸ The *Meca-Medina* case was an opportunity for the ECJ to develop the specific 'sporting rules' that fall outside the EC Treaty, which would offer sports governing bodies a clearer understanding of the rules and practices they could apply without being challenged under EU law. The case concerned an EU based legal challenge to anti-doping rules that were intended to identify and prevent cheating; an area that many would perceive as falling within the natural and exclusive competence of the sporting regulator. The Court held, "The mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaged in the activity governed by that rule or the body which has laid it down". Unfortunately, the ECJ's decision appears to have taken a step backwards by partly reversing the earlier ruling of the Court of First Instance. *Infantino (2006)* believes the decision will set out an open ended legal test which will invite an even greater number of EU based legal challenges to rules and

²¹⁶ Non-EU residents benefit from Belgium's less stringent immigration laws by obtaining an EU work permit after eighteen months at Antwerp before joining Manchester United.

²¹⁷ McArdle, D. (2000) 'They're Playing R. Song: Football and EU law after Bosman', 3(2) Football Studies, p64.

²¹⁸ European law only applies to 'economic activities' within the overall meaning of Article 2 of the Treaty.

practices in the world of sport²¹⁹. Rules that penalise clubs for breaches by relegating them, or curtail the number of clubs within a league to avoid fixture congestion or player stress, could potentially be susceptible to challenges under EU law. If such rules were to be evaluated by the ECJ, then it remains to be seen what margin of appreciation will be afforded to the regulators.

²¹⁹ Infantino, G. (2006) 'Meca-Medina: A step backwards for the European Sports Model and the Specificity of Sport', http://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/480391_DOWNLOAD.pdf.

Doping in Sport

8.1 – Introduction

*Doping poses a threat to sport worldwide... It undermines the principle of open and fair competition. It is a de-motivating factor for sport in general and puts the professional under unreasonable pressure. It seriously affects the image of sport and poses a serious threat to individual health.*²²⁰

A drug can be defined as a chemical substance that interacts in the body to alter its biochemical systems, while the term ‘doping’ refers to the use of a drug or blood product with the aim of improving athletic performance. The use of performance enhancing drugs in sport can be traced back to the ancient Greeks, with *Wadler and Hainline (1989)* referring to athletes’ use of hallucinogenic mushrooms and sesame seeds to improve performance, and gladiators’ use of stimulants to stave off fatigue in the arena²²¹. The 19th century marked the introduction of stimulants such as strychnine, cocaine, and caffeine; while the 20th century witnessed significant advancements in pharmaceutical research which produced anabolic steroids, human growth hormone, and the polypeptide hormone insulin. *Noakes (2007)* envisages the new emerging biotech era as having the potential to revolutionise sport, with gene doping appearing to be the choice of the future due to its superior performance enhancement ability and difficulty in detection²²².

8.2 – Why do Athletes use Performance Enhancing Drugs?

Simon (1991) advocates that the use of performance enhancing drugs gives the taker an advantage over a competitor who has not taken drugs, which therefore constitutes

²²⁰Chapter 2.2 (summary) Joining forces in the fight against doping, Commission of the European Communities White Paper on Sport (2007) Brussels 11.07.2007.

²²¹ Wadler, G. and Hainline, B. (1989) ‘Drugs and the athlete’, Philadelphia: Davies.

²²² Noakes, C. (2007) ‘Gene Therapy: the future of doping in sports’, 16th April.

cheating²²³. An athlete may decide to use performance enhancing drugs for numerous reasons. Physiological incentives include performance enhancement and success, decreased recovery periods, weight control, aiding recovery from injury and pain, and masking the presence of other drugs. Psychological incentives include the fear of failure, social vulnerability, risk seeking, self esteem, and emotional intelligence. In each instance, the athlete gains some form of unfair advantage over their opponent. There are a variety of drugs and doping practices available to athletes of all sports. Weightlifters are likely to use anabolic steroids as they increase protein synthesis within cells, which results in the buildup of cellular tissue, especially in muscles; while athletes requiring high levels of endurance may be inclined to indulge in blood doping practices which boosts the number of red blood cells in the bloodstream to enhance athletic performance. Weak athletes dope in an attempt to reduce the gap between themselves and strong athletes, while strong athletes dope in fear of weak athletes doping and essentially closing the gap in ability. What is apparent is that if used correctly, performance enhancing drugs and doping practices will improve an athlete's performance.

An economic analysis of doping in sport reveals athletes to be typically involved in a Prisoner's Dilemma-type interaction. Suppose an athlete considers using doping to enhance his performance. In making his decision, he takes into account the behaviour of his competitors. The problem is that there is no transparency, so the athlete does not know whether or not his competitors are doping, leaving him with two options. He can either assume his competitors are doping, in which case he would be forced to dope himself to have any chance of winning the event and prize money; or he can assume his competitors are not doping, in which case he would almost certainly win should he opt to dope. If there is no transparency concerning doping, and an athlete is unaware of his competitor's actions, then there will always be an economic incentive to dope. *Bird and Wagner (1997)* disagree with this notion; believing athletes share some level of fair play norms that tend to inhibit them from

²²³ Simon, R. (1991) 'Fair Play: Sports, Values and Society', Boulder: Westview Press, 4.

doping²²⁴. With doping being a dominant strategy, athletes find it optimal to take drugs, resulting in a situation of generalised doping; although athletes would be better off in a dope-free world. *Eber and Thépot (1999)* maintain that to reduce the economic incentives to dope requires global reform of the competitive sports encompassing lower spreads in the prizes from events²²⁵ and fewer events²²⁶ during a season²²⁷; while *Maennig (2002)* believes an increase in the cost of doping is likely to deter athletes²²⁸. An economic analysis reveals that unless the probability of athletes being caught doping is raised considerably, or the prize money on offer is substantially reduced, then the incentive for an athlete to dope remains high.

8.3 – Why are Certain Substances Banned in Sports?

*Doping is cheating, and there should be no glory in gaining an edge over rivals this way. Victories gained by doping are not only empty and meaningless but should really be considered as acts of fraud.*²²⁹

There are three principal reasons why certain substances are prohibited in sport. The first justification concerns performance enhancement. These substances are used by athletes to give them an unfair competitive advantage over their opponents. Many will argue that not all illegal substances are performance enhancing. Recreational drugs like Cocaine are unlikely to be considered a viable stimulant for top level sport. The second justification based on health, concerns the use of both performance enhancing and recreational drugs, as a large number of these substances can have long-term consequences on an athlete's health. The third justification relates to the

²²⁴ Bird, E.J. and Wagner, G. (1997) 'Sport as a Common Property Resource: A Solution to the Dilemmas of Doping', *Journal of Conflict Resolution*, 41, p749-766.

²²⁵ The larger the difference between the rewards for the winner and loser, the higher the gain from switching from second to first place, and hence, from using drugs.

²²⁶ An increase in the number of events during a season strengthens an athlete's incentive to use doping.

²²⁷ Eber, N. and Thépot, J. (1999) 'Doping in Sport and Competition Design', *Louvain Economic Review*, 65, p435-46.

²²⁸ Maennig, W. (2002) 'On the Economics of Doping and Corruption in International Sports', *Journal of Sports Economics*, 3, p61-89.

²²⁹ The International Association of Athletics Federations (IAAF) official website 2004.

perception that all athletes are role models for youngsters and aspiring athletes. Although individuals are unlikely to start using drugs because a particular athlete uses them, it is essential that high profile sportspersons are not associated with the use of illegal substances, as their actions could give aspiring athletes the wrong impression of what is accepted as moral behaviour in sport and society.

8.3.1 – Unfair Competitive Advantage

There is a firm belief that all participants in sport should start-off on a level playing field; although some will argue that each individual possesses a different range of abilities, making it impossible to do so. Doping threatens the ethics and values upon which sport is based. Sport is an opportunity for individuals to display their natural ability in a variety of events and disciplines encompassing physical activity. One of the underlying principles of sport is that everyone has an equal opportunity to achieve success in terms of starting-off on a level playing field. Athletes who choose to indulge in prohibited doping practices ultimately gain an unfair advantage over those who choose not to. It does not seem fair for athletes to have to compromise their integrity and moral beliefs in a bid to remain competitive amongst doped athletes, by following suit. The rationale behind gaining an unfair competitive advantage appears to be based on the pursuit of excellence which is innate to the human race. Many individuals aspire to excel in specific sporting activities to which they devote a substantial amount of their life to. In a sense, doping has its roots in this quest for excellence; however, it is merely a pursuit of false excellence through fraudulent, illicit, and health damaging means. This begs the question of where lies the true source of self-satisfaction. Are doped athletes satisfied in being victorious for a few years until their medals and health are eventually stripped away from them?

8.3.2 – Health Issues in Relation to the Use of Banned Substances

The misuse of performance enhancing substances can lead to a number of health related problems including cardiovascular disorders, liver and kidney disease, psychological or physiological dependence, and even death. The spectre of harm has been further raised with the introduction of blood doping and gene manipulation procedures. The use of prohibited substances by athletes can also have an effect on others. In 2007 Canadian professional wrestler Chris Benoit killed his wife and strangled his seven-year-old son before committing suicide. The initial motive for Benoit's actions was believed to be roid rage²³⁰, with elevated levels of testosterone cypionate found in his urine. "This level of testosterone indicates that he had been using testosterone at least within some reasonably short period of time prior to the time he died"²³¹. Anabolic steroids can cause many adverse effects including elevated blood pressure, harmful changes in cholesterol, and increases in the risk of cardiovascular disease (particularly when using testosterone).²³² Not all performance enhancing substances possess such adverse effects; for instance, taking erythropoietin up to the safe level, say 0.5 International Units, would not cause any significant problems, allowing athletes to correct for natural inequality. It appears that the potential to abuse performance enhancing substances is the primary reason for their exclusion in sport. The introduction of a limit on the consumption of substances is likely to improve performance, although athletes will always be inclined to exceed the limit in a bid to gain an advantage; consequently putting their health at risk. Therefore complete prohibition of such substances is necessary to raise awareness of the health risks associated with their use.

²³⁰ Steroids were discovered in Benoit's home, leading some media organisations to hypothesise that a steroid-induced rage may be the cause of Benoit's actions, as various doctors have linked steroid use to uncontrollable anger, among other psychological issues which include paranoia.

²³¹ Dr. Kris Sperry, Chief Medical Examiner for the State with the Georgia Bureau of Investigation, see <http://www.foxnews.com/story/0,2933,289649,00.html>.

²³² There are other non-health related effects which include premature baldness for men and increases in body hair for women.

8.3.3 – Athletes are Role Models

Public interest in sport is huge, with the Olympic Games and the various World Cups attracting large audiences, both in person and via the media. Such is the profile status of athletes in society, it is essential that they set examples to youngsters aspiring to follow in their footsteps. *Globus (1998)* believes that many athletes work hard to become positive role models and are often involved in activities such as raising money for charities, acting as mentors, and talking to student groups. American Olympic gold medallist Cheryl Miller stated, “When you reach a certain level of visibility, you are a role model whether you like it or not”²³³. High profile sports athletes associated with the use of drugs are likely to give aspiring athletes the impression that success can only be achieved through the use of illicit substances, inadvertently encouraging them to risk their long-term health. There is an argument for high profile athletes caught by anti-doping authorities to face more severe punishments due to their influence and standing in sport and society; transferring more of an onus onto them to ensure their actions and behaviour are responsible in terms of their perception with the media and general public.

8.4 – Regulating Doping in Sport

8.4.1 – The Role of the World Anti-Doping Agency

The World Anti-Doping Agency (WADA) was established in 1999 as an international independent agency composed and funded equally by the sport movement and governments of the world. Its key activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti-Doping Code. WADA works towards a vision of the

²³³ *Globus, S. (1998) ‘Athletes as Role Models’, Current Health, 24(6), p25-28.*

world that values and fosters a doping-free culture in sport. WADA Article 2: Anti-Doping Rule Violations states that the following constitute anti-doping rule violations:

2.1 – The presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen.

2.1.1 – It is each athlete’s personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their bodily specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete’s part be demonstrated in order to establish an anti-doping violation under *Article 2.1*.

There are several criticisms labelled at WADA. *Eber (2002)* believes institutions like sports federations or the IOC may lack credibility in their actions against doping in sport. Such institutions may find it optimal to slacken their anti-doping policy in order to preserve stars from disqualification and hence, to preserve the economic value of the professional sports events.²³⁴ WADA is a product of the IOC, and to restore credibility, the organisation would require independence. Another criticism concerns WADA’s new code and specifically the ‘whereabouts system’ which requires athletes on the national testing register to make themselves available to testers for one hour a day, three months in advance of the upcoming 2012 Olympic Games. Football’s position in the Olympics is currently under threat after FIFA and UEFA stated that they will not comply with the code because they want to respect players’ privacy. There are also questions surrounding WADA’s concern for the health and safety of athletes;

²³⁴ Eber, N. (2002) ‘Credibility and independence of the World Anti-Doping Agency: a Barro-Gordon-type approach to anti-doping policy’, *Journal of Sports Economics*, 3, p90-96.

with rules regulating the use of recreational drugs far more lenient than those relating to the use of performance enhancing substances.²³⁵

8.4.2 – Strict Liability

The strict liability definition causes the athlete involved to be found guilty *prima facie* whenever a prohibited substance has been shown to be or has been present in his or her body, regardless of intent. Although strict liability may appear to be a draconian provision, its presence is necessary as rules requiring proof of intent would be impossible to implement, allowing athletes the opportunity to transfer responsibility onto others and claim innocence. This is the only realistic method of regulating doping in sport, and the retrospective punishments handed down are not considered to constitute a restraint of trade, as established in *Gasser v Stinson*²³⁶ where amateur athletes were not deemed to be in trade. In *Johnson v Athletics Canada and IAAF*²³⁷ sprinter Ben Johnson unsuccessfully appealed his life time athletics ban after failing the second drugs test of his career. Johnson appealed on the basis that the lifetime ban constituted a restraint of trade; however the ban was justified on the basis that it was necessary to protect Johnson's health and the integrity of the sport. Similarly in *Edwards v British Athletic Federation*²³⁸, the four-year ban handed down to Edwards was upheld on the basis that IAAF Rule 60 was essential in regulating the sporting conduct of athletes by punishing those guilty of doping. In the cases of *USADA v*

²³⁵ If WADA was actually concerned about health risks posed by marijuana, surely it would test for the substance regularly? Why would you test for the drug in competition when it has no performance enhancement value?

²³⁶ *Gasser v Stinson and another* [1988] unreported, 15th June QBD.

²³⁷ *Johnson v Athletics Canada and International Association of Athletics Federations* [1997] (Ontario Court of Justice), Canada, 25.07.97.

²³⁸ *Edwards v The British Athletic Federation* [1997] (High Court of Justice, Chancery Division), United Kingdom, 23.06.97.

*Gaines*²³⁹ and *USADA v Montgomery*²⁴⁰ the strict liability rule was successfully applied even though there was only a ‘suspicion’ of doping.

The strict liability doctrine does have the ability to make victims of athletes who are competing in good faith but have been forced to take prohibited substances. The 1976 East German Olympic swim team used steroids on the premise that the drugs were merely vitamins.²⁴¹ Similarly, skier Alain Baxter was banned (although this was eventually overturned on appeal) and stripped of his bronze medal after testing positive for a trace amount of methamphetamine. Baxter confirmed that the trace substance had originated from a Vicks inhaler bought in the U.S.; the contents of which differed from the UK version. Although the strict liability doctrine is considered an unfair practice, it is essential in effectively regulating doping in sport and thus maintaining a level playing field amongst athletes. In *Z v DFB*²⁴², although the prohibited substances entered the defendant’s body without his knowledge, it was determined that a doping offence had occurred as negligence and recklessness are not valid forms of defence to exonerate an athlete.

In *International Rugby Board (IRB) v Keyter*²⁴³ the defendant tested positive for Benzoyllecgonine²⁴⁴. Keyter pled guilty to the doping offence but claimed the prohibited substance had entered his body without his knowledge.²⁴⁵ He was subsequently banned from participation in all IRB competitions for one year. Unhappy with the decision, the IRB appealed to the CAS who upheld the appeal and extended Keyter’s ban to the mandatory two years. The CAS

²³⁹ CAS 2004/O/649 United States Anti Doping Agency v Chryste Gaines.

²⁴⁰ CAS 2004/O/645 United States Anti Doping Agency v Tim Montgomery.

²⁴¹ The 1976 East German Olympic Swim Team surprised observers, doubling their medals from the previous Olympics. The women’s team dominated their field by taking eleven of the thirteen gold medals available. These women continued to dominate the pool for almost twenty years.

²⁴² *Z v DFB* (German Football Federation) [1999], DFB sports tribunal.

²⁴³ CAS 2006/A/1067 International Rugby Board (IRB) v Keyter.

²⁴⁴ Benzoyllecgonine is a cocaine metabolite.

²⁴⁵ Keyter was unsure of how the cocaine entered his body, hypothesising that it had been ingested via a ‘spiked’ drink.

noted that the defence of exceptional circumstances²⁴⁶, under which the length of a ban may be reduced, should only apply in two situations: where the athlete can establish that he bears no fault or negligence for the violation, and where he bears no significant fault or negligence for what happened.²⁴⁷ The cases of *David Meca-Medina v FINA and Igor Majcen v FINA*²⁴⁸ determined that prohibited substances present in food consumed by athletes required the appellants to clearly show how the prohibited substance entered their bodies and that there was no negligence on their part, once it was established that a doping offence had been committed. In this instance the defendants were unable to prove that the nandrolone discovered in their systems was the result of innocently consuming contaminated pork, since the facts submitted were not verifiable and were based on unproven scientific theories. Once again anti-doping authorities stood firm in their battle to preserve fair play in sport by refusing to accept negligence as a valid rationale.

The decision in *Katrin Zimmerman Krabbe v Deutscher Leichtathletik Verband*²⁴⁹ provides evidence that doping authorities are likely to punish athletes for doping offences, even if the substance is not contained on the prohibited list. In this instance the court noted that the list of prohibited substances also banned the use of substances that had an identical effect to that of those on the list. In a contrasting case, after winning the snowboarding giant slalom at the Winter Games in Nagano, Canadian Ross Rebagliati tested positive for marijuana. Rebagliati claimed that the traces of the substance in his system must have been absorbed from passive smoking

²⁴⁶ Regulations relating to the Game, supra note 53, Regulation 21.22.4.

²⁴⁷ The CAS was not persuaded that the occurrence of an alleged ingestion of cocaine through a spiked drink was more probable than its non-occurrence. As such, the defence of exceptional circumstances was not established and thus there existed no grounds to serve as a basis for reducing Keyter's mandatory two-year ban.

²⁴⁸ CAS 1999/A/234 and CAS 1999/A/235 *David Meca-Medina v FINA and Igor Majcen v FINA*, Lausanne, 29.02.00.

²⁴⁹ *Katrin Zimmerman Krabbe v Deutscher Leichtathletik Verband (DLV) and International Amateur Athletic Federation (IAAF)* [1996] (Munich Court of Appeal, Germany, 28.03.96).

during a party with friends. The CAS discovered to their dismay, that marijuana was not on the list of prohibited substances, thus allowing Rebagliati to retain his victory and gold medal; although marijuana was immediately added to the prohibited substance list after the ruling. The decision is likely to have been made on the basis that marijuana does not possess performance enhancing qualities.

There are grounds for appeal when doubt regarding the authenticity of testing procedures is raised. In *USA Triathlon v Spencer Smith*²⁵⁰ the CAS questioned the reliability of tests, and this doubt ultimately favoured the accused, as a definitive case of doping was unable to be established. In *Vincent Guérin v FFF*²⁵¹ the accused was acquitted of doping on grounds that the medical tests had been carried out in accordance with an incorrect procedure.²⁵² The effectiveness of doping procedures was also successfully challenged in *Modahl v British Athletics Federation*²⁵³, with the defendant establishing grounds to question the validity of the test. Modahl was able to prove that her urine sample was incorrectly stored in the laboratory, subsequently causing bacterial degradation of the sample. It appears that the reliability of testing procedures is the only effective challenge to the rule of strict liability; with anti-doping authorities unlikely to rule against athletes when reasonable doubt exists.

8.4.3 – Therapeutic Exemptions

WADA states that, “If the medication an athlete is required to take to treat an illness or condition happens to fall under the Prohibited List; a Therapeutic

²⁵⁰ USA Triathlon v Spencer Smith [2000] CAS, Lausanne, 31.05.00.

²⁵¹ Vincent Guérin v Fédération Française de Football [1998] (Versailles Administrative Court, France, 02.07.98).

²⁵² Unequal volumes of urine were used for the first and second analysis (45 ml and 15 ml respectively).

²⁵³ Modahl v British Athletics Federation Ltd [2002] WLR 1192.

Use Exemption (TUE) may give that athlete the authorisation to take the necessary medicine²⁵⁴. In such instances it is important to ensure that the treatment prescribed is solely on the basis of aiding the athlete to overcome their condition, and not an opportunity for them to improve their athletic development. Growth Hormone Deficiency (GHD) is a medical condition in which the body does not produce enough growth hormone. Psychological symptoms include poor memory, social withdrawal, and depression; while physical symptoms include loss of strength, stamina, and musculature. Argentine footballer Lionel Messi, who suffered from GHD, began using human growth hormone (HGH) at the age of nine and continued to use it systematically for more than four years. The use of HGH in a normal bodied human being acts as an anabolic steroid, but for Lionel Messi, it merely enabled him to overcome his abnormal height. Messi's current height is *five-foot-six*, but without treatment, doctors believe he would have only reached *four-foot-seven* as an adult. "Nothing allows us to overcome genetics... But if difficulties arise we can help it along. Those who genuinely have growth hormone deficiency have it for life. This is why it is necessary to intervene"²⁵⁵.

The question is whether the use of HGH enhanced Lionel Messi's performances as an athlete, ultimately giving him an unfair advantage over his opponents.²⁵⁶ If this is the case, then according to the principles set out by WADA, Messi has essentially cheated in a bid to gain a competitive advantage. Although the drug was required in a bid to aid the growth of Messi, the fact that it enhanced his physical abilities, should have resulted in him being unable to take up a career as a professional sportsman. If justified, any athlete could essentially take the performance enhancing drug and accredit its use to them not being happy with their current stature or physique.

²⁵⁴ <http://www.wada-ama.org/en/Science-Medicine/TUE/>.

²⁵⁵ Dr. Diego Schwarzsstein, the endocrinologist who first treated Lionel Messi as a nine-year-old, in a recent interview with journalist Luca Caioli.

²⁵⁶ Lionel Messi is currently regarded as the World's best player, winning numerous awards and honours. He possesses exceptional agility and strength for someone of his stature.

Common sense plays a big part in these decisions; without the drug, Messi's development as a child would have been severely hindered, possibly causing him medical ramifications in the future. Research needs to be conducted to determine whether these form of treatments inadvertently provide athletes with residual hormonal based advantages, and whether they should be permitted entry into events.

8.4.4 – Failure to Comply with Drug Tests

In 2003 Manchester United footballer Rio Ferdinand was suspended for eight months and fined £50,000 for failing to attend a drugs test. Ferdinand claimed that he simply forgot about the test, although he did provide a negative urine sample two days later, but this was deemed to be too late.²⁵⁷ Manchester United appealed against the verdict, sighting parallels to the case of Manchester City player Christian Negouai, who was fined £2,000 for missing a test. Negouai 'failed' to attend his drugs test due to being stuck in traffic, whereas Ferdinand's absence was interpreted by the Football Association as a 'refusal' to take the test, and the original suspension was upheld. Missed drugs tests under these circumstances are deemed as serious as failed tests because they raise doubts regarding one's motive. There was no suggestion that Ferdinand was attempting to avoid testers because he possessed illegal substances within his system, but by missing the test he created the possibility. Similarly, Greek sprinters Konstantinos Kenteris and Ekaterini Thanou failed to attend a drugs test on the eve of the 2004 Olympic Games.²⁵⁸ As the missed test was the duo's third violation, they were

²⁵⁷ With urine testing, an athlete with something to hide can manipulate their sample with less than one hour's notice. The most effective way of doing this is by catheterisation, whereby water or 'clean' urine is introduced into the bladder by means of a tube. Given more time, an athlete who has taken an illegal substance can also attempt a cover-up with masking agents.

²⁵⁸ The duo claimed that they had both been injured in a motorcycle accident, spending several days in hospital. Kenteris and Thanou withdrew from the games after a hearing before the Disciplinary Commission of the IOC. An official investigation into the accident revealed it to have been staged and the pair was criminally charged for making false statements to the authorities.

consequently suspended by the IAAF, later admitting to anti-doping rule violations²⁵⁹, although they were acquitted of the more serious doping charges.

8.5 – Non Performance Enhancing Drugs

There is some debate as to whether recreational drugs like cocaine should be subject to the same mandatory two year ban imposed upon users of performance enhancing drugs. *Shepel and Geiger (1998)* do not consider cocaine to be a performance enhancing drug despite its ability to produce euphoria, increase perception of mental and physical abilities, increase risk taking behaviour, and heighten alertness²⁶⁰; as the biochemical changes, including decreases in endurance, increases in glycogen depletion, and elevation of free fatty acid and plasma lactate levels, are detrimental to performance at prolonged, maximal levels of exertion, and far outweigh the benefits obtained from its use²⁶¹. Although cocaine has the ability to induce individual perception in relation to performance, the drug ultimately lowers oxygen consumption, heart rate, and aerobic capacity.²⁶² Ultimately cocaine is a psychological addictive substance, with long term use leading to possible heart problems, respiratory failure, and death²⁶³. Although evidence indicates cocaine to be a recreational drug as opposed to performance enhancing, the substance remains on the WADA Code Prohibited List, rather than the Specified List.²⁶⁴

²⁵⁹ The duo essentially served out their unofficial two-year suspensions.

²⁶⁰ Increased aggression may be a desirable attribute in several sports, particularly a physical contact-sport such as rugby union, and therefore it may be argued that cocaine in that setting may possess performance-enhancing qualities.

²⁶¹ Shepel, P.N. and Geiger, J.D. (1998) 'Considerations for Cocaine use in Sports', Sports Medicine Council of Manitoba.

²⁶² Thus, cocaine users may only perceive that they are performing well.

²⁶³ Two days after being selected by the Boston Celtics as the second overall pick in the 1986 NBA draft, Len Bias died of cardiac arrhythmia induced by a cocaine overdose.

²⁶⁴ The WADA Code, in Article 4.3.1.2, specifically refers to player health reasons as a criterion when deciding whether a substance should be placed on the banned list or not.

There are several practical differences in the treatment of recreational drugs according to their position on the Prohibited List. The WADA Code 2010 Prohibited List places recreational drugs including amphetamines, cocaine, marijuana, and heroin in the S6 (stimulants), S7 (Narcotics), and S8 (Cannabinoids) categories. Unlike other substances which are prohibited both in and out of competition, recreational substances are prohibited in competition only. Presumably, it is the view of WADA that the use of recreational drugs is contrary to the ‘spirit of sport’ and a potential health risk to athletes; although they are unlikely to be considered a viable stimulant for top level sport. Some will argue that on this assumption, cigarettes and alcohol²⁶⁵ should be added to list of prohibited substances.²⁶⁶ This logic is further undermined by the fact that marijuana is only tested for in competition. If WADA was actually concerned about health risks posed by marijuana, surely it would test for the substance regularly? Why would you test for the drug in competition when it has no performance enhancement value?

Team owners are usually reluctant to sign players who indulge in recreational drugs. *Weiler (2000)* believes it is because recreational drugs tend to reduce rather than enhance players’ performance, thus compromising the integrity of contests²⁶⁷. Baseball player Steve Howe was suspended seven times during his career due to recreational substance abuse²⁶⁸; while in 2004, Romanian footballer Adrian Mutu’s contract was terminated by Chelsea FC after he tested positive for cocaine.²⁶⁹ Mutu was banned for seven months and after appeal, ordered to repay a substantial amount of his transfer fee.²⁷⁰ Although recreational drugs are more likely to be detrimental

²⁶⁵ Alcohol can increase self confidence, which may result in the athlete taking risks that they would not normally take. This could place both the subject and other athletes around them at risk.

²⁶⁶ Alcohol is included in the ‘substances prohibited in particular sports’ section, although it is only prohibited in competition only.

²⁶⁷ Weiler, P. (2000) ‘Leveling the Playing Field (How the Law can make Sports Better for Fans)’, Harvard University Press, p80.

²⁶⁸ Steve Howe was addicted to cocaine and received a lifetime ban from baseball in 1992, although this was later overturned.

²⁶⁹ Chelsea FC requested that the FIFA Dispute Resolution Chamber should award an amount of compensation in favour of the club following the established breach of the employment contract committed by the Player without just cause.

²⁷⁰ In 2008 the FIFA Dispute Resolution Chamber ordered Adrian Mutu to pay over €17m in compensation to former club Chelsea FC.

to one's performance, there is a possibility that they could impair their performance, potentially putting both themselves and other competitors in danger, particularly in safety risk sports such as horse racing, motor racing, and motor cycle racing. This once again raises the question of why alcohol is not included on the Prohibited List.

8.6 – Technological Doping

Technological doping refers to the practice of gaining a competitive advantage using advanced sports equipment. Similar to the advancements in medicine and training methods, technology has played a key role in the progression of sport and athletic performance. Technological advancements in playing stadia have made for faster swimming pools, faster running tracks, and faster skating arenas. By reducing turbulence in the pool, increasing energy return on the track, and manipulating ice temperature and arena pressure, athletic performance is technologically enhanced. Although these advancements are considered beneficial in modernising sport, there are instances when technology may give an unfair competitive advantage to its user. Just as certain drugs can illicitly enhance sporting performance, technology can tilt the playing field and unfairly discriminate against those who have no access to it. The launch of the Speedo LZR Racer swimsuit²⁷¹ caused controversy in the sport of swimming, allowing its users to reduce racing times by 1.9% to 2.2%, thus providing athletes with a significant unfair advantage over their opponents.²⁷² The introduction of clap skates²⁷³ in ice skating had a similar impact to the LZR Racer swimsuits²⁷⁴; however the technology was not banned by sports governing bodies. The underlying factor in the decision was that access to the skates was not limited to

²⁷¹ The suit allows for better oxygen flow to the muscles, and holds the body in a more hydrodynamic position, while repelling water and increasing flexibility.

²⁷² In 2008 there were 108 records broken in the pool – a 635% increase over the seventeen records set in the previous Olympic year.

²⁷³ Unlike in traditional skates where the blade is rigidly fixed to the boot, clap skates have the blade attached to the boot by a hinge at the front. This allows the blade to remain in contact with the ice longer, as the ankle can now be extended toward the end of the stroke, as well as for more natural movement, thereby distributing the energy of the leg more effectively and efficiently.

²⁷⁴ Within a year of its introduction on the elite circuit, the clap skate was worn by every competitor at the 1998 Winter Games, which led to the crumbling of numerous world records.

specific athletes, allowing all competitors the opportunity to benefit from the technology's performance enhancing qualities.

The problem with technological doping is the lack of clarity concerning the extent of technological performance enhancement permitted in sport. Recent decisions suggest that applications and apparel utilising advanced technology are permissible in sport as long as accessibility is not limited and safety regulations are not contravened. The LZR Racer swimsuit is owned by Speedo and cannot be legally duplicated by other sports manufacturers. Athletes sponsored by rival swimwear companies would not have access to the suit unless they were to relinquish their current sponsorship agreement. Some would contend that rival companies should develop suits with comparable performances so as to level the pool once again, but it would seem unfair to force Speedo to yield its advantage because its competitors have lagged behind. There is an argument that the suit appears to yield a significant advantage which crosses the line in terms of changing the nature of the competition. As the suit provides athletes with an unfair competitive advantage, it would be inappropriate to compare results with those set by athletes not using the suit.

Developments regarding the rules and regulations governing technological doping are likely to be clarified in the future, with a variety of new applications and apparel being introduced into sport. The launch of ionized shirts²⁷⁵, which are made of a material that contains a negatively charged electromagnetic field, helps increase blood flow which in turn helps deliver more oxygen to the muscles and accelerates the removal process of lactic acid from the muscles. WADA have confirmed that, as the shirts do not contain prohibited substances, the technology is not banned. Their stance could change if access to the shirts was to become limited, which would in turn create competitive imbalance amongst athletes. Similarly the introduction of interactive material²⁷⁶ in sport is likely to raise questions regarding its ability to

²⁷⁵ Ionized shirts refer to 'IonX shirts' created by a New Zealand firm.

²⁷⁶ Researchers at the Commonwealth Scientific and Industrial Research Organisation created a garment that can monitor movement and give feedback. The technology essentially gives the athlete real-time feedback on their movements, as the material helps correct the athlete's movement and

enhance one's performance; although it is unlikely to be banned while accessibility is unrestricted. There are also concerns that the use of technology can have a damaging affect on the culture of sport, making it easier for athletes to break long-standing and historical records.

8.7 – Gene Doping

Gene doping refers to the use of somatic cell gene transfer to enhance athletic performance. The basic premise is to introduce desired genes into the body, where they will be incorporated into the athlete's own cells and expressed as a normal protein²⁷⁷. Gene doping methods include genetically engineered erythropoietin (EPO)²⁷⁸ which may be used to boost an athlete's performance on the genetic level, potentially increasing endurance capabilities; increases in the concentration of vascular endothelial growth factor (VEGF) in the blood²⁷⁹, which may enhance the performance of the cardiac muscle, improve training effectiveness and delay fatigue; and insulin-like growth factor 1 (IGF-1)²⁸⁰ which could be used by athletes for boosting muscle mass. WADA defines gene doping as "the non-therapeutic use of cells, genes, genetic elements, or of the modulation of gene expression, having the capacity to improve athletic performance"²⁸¹. *Haisma (2004)* highlights the use of the term 'non-therapeutic' in reference to patients treated for cancer by chemotherapy receiving gene encoding erythropoietin to boost recovery of bone marrow, which inadvertently increases hematocrit²⁸² levels²⁸³. This raises the

helps the athlete gain muscle memory so they can continue to perform well once the material is taken away.

²⁷⁷ A protein is a biochemical compound consisting of one or more polypeptides typically folded into a globular or fibrous form in a biologically functional way.

²⁷⁸ Erythropoietin is a glycoprotein hormone that controls erythropoiesis, or red blood cell production

²⁷⁹ The activity of VEGF leads to a proliferation of blood vessels in organs, which increases the distribution of oxygen to tissues.

²⁸⁰ The administration of genetic material IGF-1 during an experiment on young mice caused an increase in muscular mass and speed by about 15-30%. An increase was also observed in the number of nuclei in myocytes.

²⁸¹ World Anti Doping Code, the 2008 Prohibited List, International Standard.

²⁸² The hematocrit is the proportion of blood volume that is occupied by red blood cells.

²⁸³ Haisma, H.J. (2004) 'Gene Doping', Netherlands Centre for Doping Affairs, Capelle aan den IJssel.

question as to whether these patients would be allowed to perform in sport in the future.²⁸⁴ It appears the definition of gene doping requires clarification to address the unapproved use of genetic transfer technologies.

Fore (2010) identifies two primary reasons why athletes may find gene modification preferable to traditional pharmacological doping; the enhancement effects from genetic modification could become permanent²⁸⁵, and gene doping is currently all but undetectable²⁸⁶. Proteins created by engineered genes look identical to the ones naturally produced by the human body, while a number of gene doping products remain in the muscles without circulating the bloodstream²⁸⁷; thus making gene doping extremely difficult for drug testers to detect. *Krych and Goździcka-Józefiak (2008)* note that the inserted gene causes an increase in the concentration of a specific substance only in the target tissue, thus any blood or urine tests are unable to detect it²⁸⁸. Should effective tests be developed in the future, the problem of distinguishing illicit gene doping from naturally occurring genetic mutations would still exist.

There is some debate as to whether gene doping should be treated with the same disdain as other doping methods. Traditional pharmacological doping involves the introduction of foreign materials that directly stimulate growth in the body²⁸⁹ or the production of new tissues or cells²⁹⁰; whereas in gene doping, the introduced substance is merely informational in nature and ineffective on its own. This draws

²⁸⁴ Once genetic therapies have become commonplace, it will not be fair to deny these therapies to all athletes.

²⁸⁵ Once the foreign genes are incorporated into an athlete's cells, they become part of the cell's own genetic material and are expressed like any other part of the native genetic code. This means that once an athlete undergoes genetic modification, he or she would not have to come back to be re-upped, reducing both the cost of doping and the chances of being caught.

²⁸⁶ Fore, J. (2010) 'Moving beyond Gene Doping: Preparing for Genetic Modification in sport', *Virginia Journal of Law and Technology*, 15(76).

²⁸⁷ The only reliable method for detecting gene doping would be to do a muscle biopsy at the site of the injection, an extremely invasive procedure to which athletes are unlikely to readily submit.

²⁸⁸ Krych, A. and Goździcka-Józefiak, A. (2008) 'Doping in Sport: New Developments', *Human Movement*, 9(1), p62-75.

²⁸⁹ Examples include human growth hormone and steroids.

²⁹⁰ An example being erythropoietin (EPO).

parallels with portable ‘altitude tents’²⁹¹, which WADA decided not to place on its list of banned technologies. Just as in gene doping, where the biological response comes only as the result of an informational input and not a direct chemical stimulus, tents simply elicit a perfectly natural response triggered by low oxygen conditions. As with most doping practices, there are several health risks involved. *Azzazy, Mansour, and Christenson (2009)* identify a number of risks associated with gene doping which athletes are likely to overlook. These include the general risks of gene therapy such as violent immune response to viral vector²⁹², autoimmune response to recombinant protein, and insertional mutagenesis²⁹³. *Cieszczyk et al. (2009)* believe the greatest threat connected with gene doping to be the potential possibility of cancer. A DNA fragment, after introduction into the human body, can cause a change in the genome, which consequently can have fatal results²⁹⁴. Further research is required to determine the safety of gene doping, and once it is established that the process is safe enough to be used effectively, the desire to protect athletes will no longer be a sufficient justification for banning genetic modification in sport.

There is some dispute over the legal consequences for athletes who are found to be using gene doping for non-therapeutic use. *Fore (2010)* notes that once the foreign genes are inserted, there would be no way to remove them from the athlete’s body, and, potentially, no way to disable them²⁹⁵. Consequently, athletes caught by anti-doping authorities would be subject to a life time ban if adhering to the zero tolerance policy. This could potentially cause conflict with WADA policies, which mandate a maximum two-year suspension for first time doping offenders. *Miah (2003)* believes sporting authorities will also be confronted with the problem of having to deal with individuals who have been modified for non-sporting reasons,

²⁹¹ Altitude tents trick the body into producing more red blood cells by simulating high altitude conditions.

²⁹² Viral vectors are a tool commonly used by molecular biologists to deliver genetic material into cells.

²⁹³ Azzazy, A., Mansour, M., and Christenson, R. (2009) ‘Gene Doping: Of Mice and Men’, *Science Direct, Clinical Biochemistry*, 42, p435-441.

²⁹⁴ Cieszczyk, P., Maciejewska, A. and Sawczuk, M. (2009) ‘Gene Doping in Modern Sport’, *Biology of Exercise, Poland*, 5(1).

²⁹⁵ Fore, J. (2010) ‘Moving beyond Gene Doping: Preparing for Genetic Modification in sport’, *Virginia Journal of Law and Technology*, 15(76).

but who might be particularly gifted for sport for this reason²⁹⁶. Ultimately, if an individual chooses to indulge in gene doping, they are essentially gambling with their sporting career, as the process of the modification is irreversible.

Currently with gene doping virtually undetectable, athletes seeking this doping practice are able to gain some form of competitive advantage over their opponents, in the safe knowledge that they are unlikely to be caught by anti-doping authorities. However, an individual choosing to indulge in gene doping is essentially risking permanent expulsion from sport in the future, as it is only a matter of time before anti-doping authorities develop sufficient detective methods for gene doping. What remains unclear is whether genetic modification should be considered an impermissible biological enhancement like steroid use or a desirable technological improvement like improved training methods or the introduction of modified applications like carbon fibre racquets in tennis. FINA's decision to ban the advanced LZR Racer swimsuit appears to have set a precedent for other sports governing bodies to follow when confronted with contentious applications which could significantly improve an athlete's performance; a process known as 'technological doping'. There are also a number of ethical issues that could prevent gene doping in sport, including the biological distinctions linking gene transfer and traditional doping methods. As sanctioning genetic modification under the current regulatory regime is unlikely, the creation of parallel contests to accommodate athletes with increased biological endowments could be an option. This alternative would ultimately preserve the fundamental ethical and fair play characteristics composing drug regulated sports.

²⁹⁶ Miah, A. (2003) 'Gene-Doping: Sport, Values and Bioethics', *The Ethics of Human Genetics*, Strasburg, Council of Europe, p171-180.

8.8 – What if Drugs Were Made Legal in Sport?

Preston and Szymanski (2003) suggest that if doping was legal, all athletes could do it, and therefore it is hard to see what would be unfair about it²⁹⁷. In theory, removing bans on drugs would create a level playing, as every athlete would be able to obtain the same drugs. This could potentially create inequality in sport, with rich athletes having access to more efficient drugs. However, socioeconomic status already exists in sport, with access to top class training and advanced equipment limited to specific athletes. In a sense, as there is no genetic level playing field in sport, differences in genetic and financial capabilities creates a more balanced environment. Some would contend that the use of performance enhancing drugs in sport is merely another sophisticated training method utilised to give the athlete a competitive advantage over the rest of the field. It is no different to advances in technology, training methods and equipment, and tactics. Surely the use of these substances is merely taking advantage of the developments in modern medicine.

The legalisation of drugs would provide spectators with what they want... high level performance in sport; potentially increasing viewing figures in the process. Finance previously allocated to drugs testing could be spent on other areas of sport, including development and diversity. The argument that an athlete using performance enhancing drugs subsequently coerces others into taking them for similar reasons is unsubstantiated, with numerous training regimes rejected by athletes on the basis that they may cause long-term physiological damage. Why should the use of drugs be treated any differently? Many young sports athletes undertake training routines or compete when injured, to their later physical detriment. However, those who choose not to dope would be at a competitive disadvantage, whilst those who exceed the recommended quantities could potentially be putting their lives at risk. Sport is synonymous with good health, recovery, and rehabilitation; but the legalisation of drugs would compromise both its integrity and the physiological benefits obtained.

²⁹⁷ Preston, I. and Szymanski (2003) 'Cheating in Contests', *Oxford Review of Economic Policy*, 19, p612-624.

From a financial standpoint, sport needs to be distanced from the use of drugs or it risks losing valuable income from sponsors, with companies unlikely to condone association with immoral, unethical, and unhealthy practices. Ultimately, the primary rationale for banning drugs and other doping practices in sport is health; if a substance poses significant risks or harm to an athlete, it should be prohibited.

8.9 – Combating Doping in Sport

Combating the use of drugs in sport has proved to be a difficult task over the years. Athletes are constantly one step ahead of anti-doping authorities in terms of advancements in medicine and training methods. Although WADA's involvement has significantly improved the regulation of doping practices and contributed to the suppression of drug use in sport, their effectiveness is likely to come under threat from new sophisticated methods like gene doping. One possible solution is the introduction of a 'three strikes rule'. Should an athlete be caught, they will be appropriately fined for bringing the sport into disrepute, and subsequently be disqualified from the competition. On their third offence, the offender should be banned from competing for life in that particular sport. Some will dispute that this process gives the athlete two opportunities within their career to undertake some form of performance enhancing drug, especially those athletes that are not considered to be in the upper tiers of their particular sport or discipline. The problem with a one strike ban is that there are occasions when an athlete may take some form of supplement that, unbeknown to them, contains a banned substance. With the strict liability doctrine in place, it does not seem fair to cut an athlete's career short due to negligence. As with criminal law, shouldn't an athlete have the required elements of mens rea and actus reus? Should unsuccessful attempts at doping be punished in the same way? It must be noted that not all crimes require mens rea²⁹⁸; it is accepted that sometimes there must be a trade-off between the need to establish culpability and the ability of a State to effectively deter some behaviours. In sport, it is the nature of the

²⁹⁸ For example: Speeding and parking violations.

doping beast that makes it impossible to have an effective system unless one abandons the requirement for moral culpability.

Figure 8.1 – Analysis into Doping at the Summer Olympics

Event	Ath	Medals	Tot	%
1968 Mexico City	1	1xBronze	1	100
1972 Munich	7	1xGold, 1xSilver, 2xBronze	4	57.1
1976 Montreal	11	2xGold, 1xSilver	3	27.3
1980 Moscow	0	n/a	0	0
1984 Los Angeles	12	2xSilver	2	16.7
1988 Seoul	10	3xGold, 1xSilver	4	40
1992 Barcelona	5	n/a	0	0
1996 Atlanta	2	n/a	0	0
2000 Sydney	12	7xGold, 1xSilver, 4xBronze	12	66.7
2004 Athens	27	5xGold, 1xSilver, 2xBronze	8	29.6
2008 Beijing	18	1xGold, 3xSilver, 2xBronze	6	27.8

Event – The year and location of the summer Olympic Games.

Ath – The total number of athletes testing positive for prohibited substances at the games.

Medals – A list of the medals (gold, silver, bronze) and quantities won by doping athletes.

Tot – The total number of medals attained by athletes who were discovered to be doping at the games.

% – The percentage of doping athletes who attained medals at the games.

Analysis into doping at the Summer Olympics, see *figure 8.1*, reveals mixed results regarding the number of athletes caught by anti-doping authorities. There are several reasons for these inconclusive results; either the methods used by anti-doping authorities have drastically improved, or the number of doping practices available to athletes have increased. Although unsubstantial, revelations that communist nations regularly forced their athletes to take drugs infers that the previous methods and technology available to anti-doping authorities was either inaccurate or not sufficiently developed enough to detect culprits during this period in time.²⁹⁹ Over 38% of athletes caught doping at the Olympics managed to win a medal, which suggests that athletes at the top of their respective sports are more likely to use doping practices in a bid to secure a medal, as opposed to those who are unlikely to

²⁹⁹ East Germany was one of the main culprits, with the women’s Olympic swim team claiming they were forced to take at least thirty pills every day along with injections by their coaches and trainers. Unbeknown to them, they were being given steroids which drastically improved their performance; although side effects did include birth defects, enlarged hearts, and gynaecological problems.

be competing for honours. What is conclusive is that doping has been present in sport since its inception. Athletes are always going to be inclined to seek an unfair competitive advantage, regardless of the combative measures installed by regulative organisations such as WADA. There is a possibility that a change in testing policies may reduce the incentive for athletes to dope. Every year over 100,000 drug tests are conducted worldwide at a cost of \$30m. During competition, some sports only carry out drug testing on the winning team or top three competitors. Others will test by random selection from all competitors. Ensuring that all athletes are tested at some point within a calendar year is likely to reduce the possibility of athletes escaping undetected.

8.10 – Summary

Although health concerns are attributed as the main justification for banning doping practices in sport, FINA's recent decision to ban the LZR Racer swimsuit suggests that the preservation of a level playing field is as much a concern for anti-doping authorities as an athlete's health. It appears that WADA is more concerned with maintaining a level playing field amongst athletes and teams; with smoking and alcohol abuse as much of a health risk as excessive use of anabolic agents and beta agonists, although they are not included on the Prohibited List. Not all performance enhancing substances are necessarily a health risk, with excessive abuse of drugs the likely rationale for their ban. What is apparent is that the sporting world is about to face its biggest test to date, with the emergence of gene modification likely to tarnish its integrity, whilst disrupting the level playing field. With gene modification currently undetectable, WADA will struggle to identify the culprits, allowing athletes to regain the upper hand in this war.

Mixed Martial Arts: An Analysis of the Ultimate Fighting Championship

9.1 – Introduction into the sport of Mixed Martial Arts

*Mixed Martial Arts (MMA) is an intense and evolving combat sport in which competitors use interdisciplinary forms of fighting that include jiu-jitsu, judo, karate, boxing, kickboxing, wrestling and others to their strategic and tactical advantage in a supervised match.*³⁰⁰

The history of modern MMA competition can be traced to mixed style contests throughout Europe, Japan and the Pacific Rim during the early 1900s; the Gracie family's Vale Tudo martial arts tournaments in Brazil starting in the 1920s³⁰¹; and early MMA matches hosted by Antonio Inoki in Japan in the 1970s³⁰². Bruce Lee was one of the pioneers of the sport, popularising martial arts in his numerous films, and developing his own fighting style known as Jeet Kune Do. Martial arts gained international exposure and widespread publicity in the United States in 1993 with the creation of the Ultimate Fighting Championship (UFC); a competition designed to determine the best martial arts discipline. Continued interest in Japan resulted in the creation of the Pride Fighting Championships (Pride FC) in 1997. As a result of the increased number of competitors, organised training camps, information sharing, and modern kinesiology; the understanding of the combat-effectiveness of various strategies has been greatly improved. UFC commentator Joe Rogan claims, "Martial arts have evolved more in the last ten years following 1993 than in the preceding 700 years"³⁰³.

³⁰⁰ <http://www.ufc.com/index.cfm?fa=LearnUFC.FactSheet>.

³⁰¹ Vale Tudo began in the 1920s with the 'Gracie Challenge' issued by Carlos Gracie and Hélio, and upheld later on by the Gracie family.

³⁰² Antonio Inoki, a former professional wrestler, hosted a series of MMA matches in the 1970s in Japan. This eventually led to the formation of the first MMA organizations, such as Shooto, which was formed in 1985.

³⁰³ UFC commentator Joe Rogan during the UFC 40: Vendetta (PPV), Zuffa November 22, 2002.

9.2 – The Ultimate Fighting Championship

The Ultimate Fighting Championship (UFC) is a North American based mixed martial arts organisation. In 2008 it was estimated to be worth \$1 billion while controlling 90% of the mixed martial arts industry. The UFC began in 1993 as a single event tournament designed to find the world's most effective martial arts style, by pitting fighters from different disciplines against each other in no-holds-barred contests. The competition proved to be a success and its popularity led to further events. The company's growth eventually attracted the attention of governors and politicians, who took an instant dislike to it.³⁰⁴ Their subsequent lobbying resulted in huge financial losses, forcing its owners to sell the company. The new owners rebuilt the business, establishing the brand as a sport, in contrast to the previous owners who marketed competitions as spectacles. Events finally gained State sanctioning, allowing the sport to spread throughout North America. Its popularity and increase in finance led to the introduction of a reality TV show, and the purchase of its main competitor.³⁰⁵

The UFC faced many obstacles during its rise to becoming the world's leading MMA promotion. The owners have been forced to adopt several rule changes to appease governors and politicians, and to improve the competitive aspect of the sport. Several rules were introduced to improve both the safety of participants, and the spectacle of contests. Obtaining the approval of State Athletic Commissions was essential in widening the sport's potential market. The sanctioning of events finally allowed the sport to develop and attract new participants and spectators through lucrative sponsorship agreements, and new television and pay-per-view deals. The majority of rule changes were implemented into the sport by its owners, with a view to improving the spectacle and competitive aspects of events; whilst other rules were

³⁰⁴ There were several high profile politicians who were unhappy with the content of the sport. The most notable protestor, Senator John McCain, led a campaign to ban the UFC in the majority of North American States.

³⁰⁵ In 2007 Dream Stage Entertainment sold Pride Fighting Championships to Lorenzo Fertitta and Frank Fertitta III, co-owners of Zuffa, which currently owns the Ultimate Fighting Championship. During its ten years of existence, Pride was the UFC's main rival and actually overtook it at one stage to become the world's leading MMA organisation.

forced upon the sport by governors and politicians, who were concerned about the safety of participants (see *Appendix 1* for a list of the relevant rule changes). The sport is now effectively as rule-orientated as boxing, albeit some of the specifics of the rules are different. The majority of rule changes appear to have been made in an attempt to improve competitive balance within the sport; although there are several changes that serve multiple purposes.³⁰⁶

9.3 – Problems with Health and Safety

The biggest problem facing the UFC was the preservation of its participant's health and safety. Due to the nature of the sport, precautions had to be taken to ensure that no athlete suffered serious long-term injuries. To this day, a fighter has never died or suffered a severe, debilitating injury in the UFC. The most serious injury on record occurred at UFC 16 as Frank Shamrock took Igor Zinoviev down with a powerful slam that knocked him unconscious and broke his collarbone; finishing his career in the process.³⁰⁷ MMA is arguably much safer than other combat sports such as boxing. Once a competitor has been knocked out the bout is instantly stopped, whereas in boxing the fighter is given a mandatory count to clear his head and get up; increasing the possibility of brain damage. There have been around 1,465 recorded boxing fatalities dating all the way back to the early 20th Century.³⁰⁸ In contrast, there have only been three deaths in MMA since its inception in 1993.³⁰⁹ Although it is still relatively early to pronounce definitively on the relative safety or otherwise of MMA, the speed at which the sport has developed suggests that the number of injuries and fatalities will be much lower in comparison to the early years of boxing.

³⁰⁶ For example, the UFC's decision to adopt the newly developed *Unified Rules of Mixed Martial Arts* was made to not only comply with State guidelines, but to also improve the competitiveness and health and safety of the sport.

³⁰⁷ Zinoviev suffered a broken clavicle and fractured his C-5 vertebrae, and was the first fighter to ever leave the Octagon on a stretcher.

³⁰⁸ Death under the Spotlight: The Manuel Velazquez Boxing Fatality Collection, *Journal of Combative Sport*, November 2007. http://ejmas.com/jcs/jcsart_svinth_a_0700.htm.

³⁰⁹ Data is correct as of 13th October 2009. All three fatalities occurred after the bouts had concluded and there were questions regarding each fighter's health going into the fights.

*Instead of hitting, he scratched my eyes while we were standing... then he continued to scratch and hit me. I finally got him on the ground and got on top of him and he shoved one thumb into my eye so that I could barely see. Then he bit a chunk out of my hand, grabbed the back of my head, and shoved a thumb in my eye, popping it out of socket. I lost twenty percent of the peripheral vision in my right eye.*³¹⁰

The bout between Jon Hess and Andy Anderson at UFC 5 was one of the few occasions that produced serious foul play in the UFC. The bout left Anderson with permanent damage in one of his eyes. The rules of the UFC at that time forbade eye gouging and biting as these actions can cause serious, long-term damage; however, anyone breaking these rules was simply fined, as opposed to being disqualified. In theory, an athlete could repeatedly break these rules to win a contest, and simply pay the fines afterwards; exposing a major problem with the rules governing the health and safety of fighters. Hess was fined thousands of dollars for his actions, which was passed onto Anderson as a form of compensation.³¹¹ A similar incident regarding eye gouging occurred at UFC 14 in the heavyweight final between Mark Kerr and Dan Bobish. In this instance though, Kerr exposed a loophole in the rules by pressing his chin down into Bobish's right eye socket, forcing him to submit due to the pain. The rules were addressed soon after the event to include the use of the chin to the eye as a form of eye gouging.³¹²

The introduction of padded gloves was supposed to improve the safety aspect of the sport by reducing the number of knockouts. The new rule stated that all UFC fighters were required to wear four-to-six-ounce gloves. These are much smaller than boxing gloves and allow the fighter to hit harder without damaging his hands. Referee John McCarthy did not agree with the new requirements; "The whole reason we didn't use gloves was because the fighter couldn't hit the person as much because it hurt their hand. [Mandatory gloves] went against what we had been

³¹⁰ Andy Anderson, Gentry, C. (2004) 'No Holds Barred', Milo Publishing, p87.

³¹¹ "The competition has no rules – only two suggestions – no eye gouging or biting... Use of these attacks does not disqualify a fighter, but will earn him a \$1,000 fine", UFC Executive producer Campbell McLaren, Gentry, C. (2004) 'No Holds Barred', Milo Publishing, p64.

³¹² On this occasion the referee was unclear as to what was occurring at the time, and was therefore unable to use his discretion to intervene and outlaw such an underhand tactic.

saying the whole time”³¹³. The use of padded gloves has had an adverse affect on occasions, with one notable instance occurring at UFC 46 in a bout between Vitor Belfort and Randy Couture. While throwing a punch at Couture, the seam of Belfort’s glove sliced Couture’s left eyelid and left it hanging. It was considered far too dangerous for Couture to continue in such a condition, and the fight was stopped after just forty-eight seconds.

Figure 9.1 – Analysis of Knockouts

Group 1	KO's	Group 2	KO's	Group 3	KO's	Group 4	KO's
UFC 1	0	UFC 14	0	UFC 27	0	UFC 41	1
UFC 2	2	UFC 15	1	UFC 28	1	UFC 42	1
UFC 3	1	U Japan	0	UFC 29	0	UFC 43	0
UFC 4	0	UFC 16	1	UFC 30	3	UFC 44	3
UFC 5	0	UFC 17	1	UFC 31	2	UFC 45	0
UFC 6	2	U Brazil	1	UFC 32	1	UFC 46	1
UFC 7	0	UFC 18	0	UFC 33	1	UFC 47	3
UU 95	0	UFC 19	0	UFC 34	2	UFC 48	0
UFC 8	2	UFC 20	2	UFC 35	2	UFC 49	4
UFC 9	0	UFC 21	2	UFC 36	1	UFC 50	1
UFC 10	1	UFC 22	1	UFC 37	1	UFC 51	2
UFC 11	0	UFC 23	1	UFC 37.5	0	UFF 1	2
UU 96	1	UFC 24	1	UFC 38	1	UFC 52	1
UFC 12	0	UFC 25	0	UFC 39	1	UFC 53	1
UFC 13	0	UFC 26	0	UFC 40	1	UFN	0
Total	9	Total	11	Total	17	Total	20

Group 1 – The first fifteen consecutive events in which the wearing of padded gloves was not mandatory.

Group 2 – The second fifteen consecutive events in which the wearing of padded gloves was mandatory.

Group 3 – The third fifteen consecutive events in which the wearing of padded gloves was mandatory.

Group 4 – The fourth fifteen consecutive events in which the wearing of padded gloves was mandatory.

KO's – The number of knockouts that occurred during the event.

Total – The total number of knockouts for that particular group of fifteen events.

(UU 95 & 96 represents the events titled ‘The Ultimate Ultimate’, U Japan & U Brazil represents Ultimate Japan & Ultimate Brazil respectively, and UFN represents Ultimate Fight Night events).

³¹³ John McCarthy, Gentry, C. (2004) ‘No Holds Barred’, Milo Publishing, p165.

Figure 9.1 reveals that the number of knockouts has risen since the wearing of padded gloves became a mandatory requirement. The first fifteen events (*Group 1*) did not require fighters to wear padded gloves. In this period, there were a total of *nine* knockouts. In the following fifteen events (*Group 2*), rules were introduced requiring all fighters to wear padded gloves. The number of knockouts in this period rose to *eleven*. This figure continued to increase, with the next fifteen consecutive events (*Group 3*) producing *seventeen* knockouts. This number increased to *twenty* in the following fifteen events (*Group 4*). Findings indicate that the number of knockouts has steadily increased over time, as the padded gloves allow fighters to repeatedly strike their opponent in the head without breaking their hand. Consequently, the rule change has reduced the safety aspect governing participants; although it appears to have levelled the competitive balance between strikers and grapplers. One possible solution to reduce the number of knockouts would be to change the weight of the glove, which would in turn soften blows to the head; however, strikers would argue that this would hinder their chances of success, and inadvertently shift the balance in favour of grapplers once again.

9.4 – The Influence of Law Makers on the Sport

*Far from being legitimate sports events, ultimate fighting contests are little more than human cock fights where human gladiators battle bare-knuckled until one gives up, passes out, or the carnage is stopped by a doctor or referee. The rules are designed to promote injury rather than prevent it.*³¹⁴

The UFC has been the subject of much heated political debate ever since it was first introduced into the United States in 1993. The inability to gain sanctioning from State Athletic Commissions resulted in the UFC being labelled a spectacle, as opposed to being regarded as a sport. Poor marketing and a lack of regard towards the health and safety of participants eventually attracted the unwanted attentions of politicians and governors, whom instantly took a dislike to the sport. Under the

³¹⁴ Lonnie Bristow, President of the American Medical Association, Gentry, C. (2004) 'No Holds Barred', Milo Publishing, p109.

leadership of Arizona Senator John McCain, the UFC's opponents succeeded in forcing PPV carriers to drop the UFC from their schedule, and convinced several States to ban events from being staged in their cities. The four year hiatus experienced by the UFC from 1997 until 2001 was a direct result of the political onslaught led by Senator McCain. Although damaging to the financial standing and popularity of the sport; the hiatus did give the UFC the opportunity to completely reinvent itself.

John McCain launched his campaign against the UFC after viewing a tape of one of the early events. Horrified from what he saw, McCain began writing to all fifty State governors in an attempt to gain support for his campaign against the sport. McCain's first call of action was to try and convince Puerto Rican Senator, Pedro Rosello, that there was no place for this barbaric sport in a civilised society. Rosello concurred with McCain; however on this occasion, original owners SEG³¹⁵ were successful in fending off the authorities attempts to cancel the event.³¹⁶ UFC 9 was the first event to be directly affected by McCain's repeated attempts to ban the sport. Prior to the event, SEG was busy battling with the Michigan District Attorney, who was trying to prevent the event from being held in Detroit. They would remain in court up until the evening of the event when the judge issued an ultimatum: the fights could go on as long as there were no head butts and no closed-fist strikes to the head. SEG reluctantly agreed to comply with these conditions; with the new rules being implemented into the event just hours before it was due to begin. Should any of the competitors have broken these rules, they would have either been fined or arrested. These changes led to several dull and uninteresting contests, as fighters were hampered in their ability to perform to their maximum potential.

The main event of UFC 9 featured a rematch between Ken Shamrock and Dan Severn. Their previous meeting had seen Shamrock win by submission in just over two-minutes. After learning of the subsequent rule changes, Shamrock was ready to

³¹⁵ Semaphore Entertainment Group.

³¹⁶ McCain enlisted the help of Senator Pedro Rosello in an attempt to cancel UFC 8, which was being staged in Puerto Rico.

pullout of the bout as he did not believe he could defeat Severn under these conditions. Shamrock's father was eventually able to persuade him to compete; "Ken, you've broken Takashi's cheek [in Pancrase], and you've broken his jaw and nose with an open hand, so you don't need to close your fist"³¹⁷. The cancellation of the fight could have caused substantial monetary damage to SEG; in actuality, the long-term damage caused by the bout would end up costing SEG millions. Dubbed the 'Detroit Dance', the bout is regarded as the most boring fight in the history of the UFC. The entire contest witnessed both fighters dance around each other without making any significant form of contact. The inability to strike with closed-fists hampered both fighters, who seemed unsure of how to engage.³¹⁸ Severn went on to win the contest with a close split decision; whilst Shamrock would later state that going through with the fight was the biggest mistake of his fighting career.³¹⁹

On the day that UFC 12 aired, Leo J. Hindery Jr was named President of TCI Cable; an industry giant that could reach fourteen million viewers in forty-six States. Hindery was an implacable opponent of no-holds-barred events and had refused to carry them when he ran a small cable network in San Francisco. He promptly cancelled TCI Cable's agreement to distribute UFC events³²⁰, and worse was to follow as Time Warner followed Hindery's lead and dropped the sport from its schedule; effectively vanquishing the UFC from the small screen.³²¹ The lack of PPV income resulted in the UFC being unable to keep hold of their star fighters.³²² With a number of athletes departing to rival promotion Pride FC; the competition level in the UFC was significantly affected, as the calibre of competitors was not of

³¹⁷ Bob Shamrock, Gentry, C. (2004) 'No Holds Barred', Milo Publishing, p110.

³¹⁸ Towards the end of the bout, Shamrock had Severn in a dominant position but was unable to finish the fight due to the rules outlawing closed-fist strikes.

³¹⁹ Ken Shamrock, Ultimate Fighting Championship: Ultimate Shamrock [VHS], 1999.

³²⁰ Hindery stated, "I came here, found out where the bathrooms are, and I cancelled [Ultimate Fighting]". Leo J. Hindery's comments to the Los Angeles Times, Gentry, C. (2004) 'No Holds Barred', Milo Publishing, p165.

³²¹ During this period the UFC began working with State Athletic Commissions in an attempt to gain sanctioning for the sport. Banned in a number of States; the UFC was forced to stage events in much smaller markets including Iowa, Mississippi, Louisiana, Wyoming, and Alabama.

³²² Ken Shamrock, Dan Severn, and Tank Abbott all left the sport to become professional wrestlers; whilst Don Frye, Mark Kerr, and Mark Coleman all 'jumped ship' to compete in the more lucrative Pride FC promotion in Japan.

the same standard as previous participants. Worse was to follow, as SEG was unable to secure home video releases for UFC 23 through to UFC 29; a period referred to as the ‘Dark Ages’ of the UFC. This was the company’s main source of income at the time, leaving SEG on the brink of bankruptcy.

After long battles with governors and politicians had left the UFC in financial turmoil, SEG agreed to sell the promotion to casino executives Frank and Lorenzo Fertitta, and boxing promoter Dana White (under the newly formed company Zuffa) in 2001. White and the Fertittas were instrumental in the UFC’s return to PPV³²³; securing sanctioning from the Nevada State Athletic Commission, and posting record buy rates and ticket sales at live events. The new and improved version of the sport returned with a stricter set of rules, which included rounds, time limits, five weight classes, a list of thirty-one fouls, and eight possible ways to win a contest. Competition in the sport began to increase, as the UFC was able to sign the best fighters from smaller promotions. The structure of payouts changed, as an increase in prize money allowed competitors to train full time; improving their physical conditioning for upcoming bouts.³²⁴ Higher profile fights were allocated bigger payouts; whilst win bonuses increased fighters’ incentives to win.³²⁵ The UFC was also able to secure the release of events onto home video, which garnered the much needed extra revenue.³²⁶

The New Jersey Athletic Control Board was the first major commission to sanction a UFC event. The commission insisted on same-day weigh-ins, not allowing for the current system where fighters routinely step into the Octagon³²⁷ around 15lbs over their weigh-in weight. These new regulations ensured fighters were unable to gain

³²³ UFC 28 was the first event to be sanctioned under the New Jersey State Athletic Control Board’s ‘Mixed Martial Arts Unified Rules’.

³²⁴ During the UFC’s ‘Dark Ages’, all competitors would receive \$1,000 as payment, regardless of their standing in the sport. In the modern era, not only is the amount of money substantially higher than in the previous regime, but there is also a payment structure based on the profile of the bout; with payouts ranging from \$9,000 – \$200,000.

³²⁵ Several win bonuses are handed out after events for the following achievements: ‘submission of the night’, ‘knockout of the night’, and ‘fight of the night’.

³²⁶ UFC 30 was the first event to be released on video since UFC 22.

³²⁷ The UFC stages bouts in an eight-sided enclosure officially named ‘The Octagon’.

an unfair advantage over their opponent by cutting weight; however, these changes were not enforced in future events as many athletes found it difficult to make weight on the same day as their fight, and risked being disqualified from competing.³²⁸ The commission was the strictest the UFC had ever been supervised under up to that point. They even went as far as to cancel the contest between Jeff Monson and Chuck Liddell at the last minute, amidst concerns regarding questionable CTS scan results in Monson's pre-fight testing.³²⁹ These adjustments highlight the stringent rules and regulations that State Athletic Commissions enforce upon sports; with the objective of safeguarding both the competitive and safety aspects of MMA.

Gaining acceptance as a sport from State athletic commissions was a crucial step towards improving competitiveness within the UFC. State athletic commissions regulate all contests and exhibitions of unarmed combat within that particular State; including licensure of promoters, MMA fighters, ring officials, matchmakers, and managers. The commission have the ability to approve, deny, revoke, or suspend all licences for unarmed combat. Obtaining sanctioning from these governing bodies ensures issues relating to the safety of participants and liability of event organisers are protected, in contrast to unsanctioned events, where participants may be reluctant to compete in fear of being injured whilst uninsured, and event owners who could potentially be liable for millions of dollars should a participant die whilst competing. The stringent rules and guidelines set out by these commissions, including their insistence that all athletes complete a medical clearance before competing, and their up-to-date tracking of athletes who are suspended from participating; make the sport more appealing for cable companies to televise events, resulting in higher income for the company.³³⁰

³²⁸ There were problems as the backstage scale everyone was using to monitor their weight was 4lbs off the commission scale, meaning fighters who were not under weight all had to cut 4lbs on the day of the event. Ultimately, everyone made weight.

³²⁹ This bout would eventually take place at UFC 29.

³³⁰ One of the biggest problems facing the UFC in its early tenure was that television and cable companies were reluctant to screen events as there was no guarantee of participant safety within the sport. There were very few rules, no mandatory medical clearances, no stringent drug tests, a lack of recognition of the sport from State athletic commissions, and a general unknown quantity surrounding the format of events.

9.5 – The Importance of State Athletic Commissions

State Athletic Commissions play an important role in the regulation of MMA in the United States. Without these regulating bodies, MMA would not have grown into the billion dollar sports industry it is today. The New Jersey State Athletic Control Board is one of the more important legal bodies governing MMA in the United States, as it established the first Unified Rules of MMA which has since been adopted by other States including Nevada, Louisiana, and California. The Control Board was established by the Legislature in 1985 (N.J.S.A 5:2A et. Seq.) to ensure that all public boxing and other combative sports exhibitions, events, performances and contests are subject to an effective and efficient system of strict control and regulation. The Board's main purpose is to protect the wellbeing of all participants and promote the public confidence and trust in the regulatory process and conduct of public boxing and other combative sports. The New Jersey State Athletic Control Board has the following goals:

1. Provide general conduct, supervision, and oversight of public boxing and other combative sports contestants, promoters, officials, and physicians at all events and weigh-ins to ensure that contests are conducted in accordance with State Athletic Control Board regulations.
2. Approve and regulate scheduling of proposed events.
3. Develop, prescribe and charge fees for licensure.
4. Ensure equal competitiveness among contestants through establishment, conduct and strict supervision of contestant eligibility to participate with contracted opponents as well as contestant eligibility for licensure.
5. Issue licences and decide causes affecting the granting, suspension, revocation or renewal thereof.
6. Establish, levy and collect fines and fees; conduct hearings and/or impose suspensions for violations of regulations, policies, and procedures.

7. Appoint, supervise, train and monitor all officials and ringside physicians to ensure accurate and fair performance and medical evaluations of all contestants.
8. Levy and collect all event media and gate receipts in accordance with prescribed schedules.
9. Conduct special studies and investigations to evaluate and improve agency/industry efficiency and effectiveness in accordance with SACB regulations.
10. Verify, record, and register with the United States Federal Registry all show results as official historical information.³³¹

With regard to the competitiveness of events, State Athletic Commissions ensure that bouts are no longer the subject of scrutiny regarding their legitimacy, as was the case in the UFC's early days when several high profile bouts were discovered to have been fixed (e.g. Oleg Taktarov vs. Anthony Macias and Don Frye vs. Mark Hall).³³² Their ability to appoint neutral and experienced judges also allays fears of favouritism and poor judgment, although there have been several controversial decisions in recent times.³³³ One of the biggest advantages of having a regulatory body overseeing MMA events is their ability to control the use of performance enhancing substances. The use of banned substances in MMA would prove to be a major problem if not adequately controlled. Not only are banned substances a health risk to athletes, but they also give the competitors that choose to use them, an unfair advantage over their opponents. The first steroid controversy to affect MMA occurred after UFC 36, when Josh Barnett tested positive for Boldenone (Equipoise, a veterinary steroid) after winning the UFC heavyweight championship from Randy Couture in the featured main event. As the bout occurred before Nevada had the

³³¹ The goals of the New Jersey State Athletic Control Board: see <http://www.state.nj.us/lps/sacb/about.html>.

³³² Both bouts were semi-final contests that occurred at UFC 6 and Ultimate Ultimate 96 respectively, and both contests have since been proven to have been staged in order to allow the winner of each contest more recovery time before the final.

³³³ The main event of UFC 104 between Lyoto Machida and Mauricio Rua is considered to be one of the worst decisions in the history of MMA, with Machida being awarded the victory by unanimous decision.

authority to overturn decisions based on a drug test positive, the result still stood and Barnett was crowned the new heavyweight champion. However, a contract dispute between Barnett and the UFC, primarily based on the failed steroid test, resulted in him being stripped of the title. Without the stringent testing process installed by the Nevada State Athletic Commission, Barnett is likely to have evaded being caught by UFC officials, and continued to compete under the influence of performance enhancing drugs. This instance served as a deterrent for other athletes, as not only was Barnett stripped of his title; he was also never given the opportunity to compete in the UFC again.

9.6 – Was there a need for Weight classes?³³⁴

The UFC did not perceive weight to be a factor during its early stages of development, as tournaments were open-weight competitions, allowing athletes of all sizes the opportunity to compete. Three time UFC tournament winner Royce Gracie was one of the smallest athletes competing in events. Weighing around 180lbs, Royce proved that technique and skill was far superior to size and strength by defeating much larger opponents. As the sport developed, it became apparent that weight was becoming a factor, especially when the skill level of two fighters was evenly matched. At UFC 12, event organisers decided to introduce two weight classes; one for fighters 199lbs and under (lightweights), and one for fighters 200lbs and over (heavyweights). The introduction of weight classes was designed to improve the chances of smaller fighters, allowing them the opportunity to display their skills without being overwhelmed and dominated by much larger athletes. Results in the event's first heavyweight tournament appeared to dispel the need for weight classes as the lightest participant, Vitor Belfort, won the heavyweight tournament weighing a meagre 205lbs. Belfort's triumph was considered a one-off

³³⁴ In the following analysis, athletes weighing a minimum of 23lbs more than their opponents will be referred to as 'big/large fighters', and athletes weighing a minimum of 23lbs less than their opponents will be referred to as 'small fighters'.

as he was a very competent fighter, skilled in both striking and grappling, and would become the UFC's star attraction in the following years.

Figure 9.2 – Analysis of Winners from the 8/16 Man Knockout Tournaments

Event	Winner	Discipline	Style	Weight	Division
UFC 1	Royce Gracie	Brazilian Jiu-Jitsu	Grappling	176 lbs	Middleweight
UFC 2	Royce Gracie	Brazilian Jiu-Jitsu	Grappling	176 lbs	Middleweight
UFC 3	Steve Jennum	Ninjitsu	Mixture	215 lbs	Heavyweight
UFC 4	Royce Gracie	Brazilian Jiu-Jitsu	Grappling	180 lbs	Middleweight
UFC 5	Dan Severn	Wrestling	Grappling	260 lbs	Heavyweight
UFC 6	Oleg Taktarov	Sambo	Grappling	210 lbs	Heavyweight
UFC 7	Marco Ruas	Vale Tudo	Mixture	210 lbs	Heavyweight
UU 95	Dan Severn	Wrestling	Grappling	238 lbs	Heavyweight
UFC 8	Don Frye	Wrestling	Grappling	206 lbs	Heavyweight
UFC 9	n/a	n/a	n/a	n/a	n/a
UFC 10	Mark Coleman	Wrestling	Grappling	245 lbs	Heavyweight
UFC 11	Mark Coleman	Wrestling	Grappling	250 lbs	Heavyweight
UU 96	Don Frye	Wrestling	Grappling	217 lbs	Heavyweight

Winner – The winner of the 8/16 man knockout tournaments.

Discipline – The winning fighter's main fighting discipline.

Style – Was the winner predominantly a striker, grappler, or mixture of both.

Weight – The weight of the winner at the time of the event.

Division – The weight division that the winner would fall under had modern day weight classes existed.

(UU 95 & 96 represents the events titled 'The Ultimate Ultimate').

Analysis into the knockout tournaments prior to UFC 12, see *figure 9.2*, reveals that all of the winners, apart from Royce Gracie, would be classified as heavyweights according to the modern day weight classification system. This suggests that weight could have been a factor during the early events, although analysis into the average size of competing athletes appears to dispel this theory, as the majority of participants would be classified as either heavyweights or super heavyweights in the modern era.³³⁵ There were relatively few athletes who could be classified as light heavyweights, while Royce was the only noteworthy fighter who fought as a

³³⁵ There is currently no super heavyweight division in the UFC. During the early events there were many fighters who weighed in excess of the 265lbs heavyweight limit. Sumo wrestler Emmanuel Yarborough weighed an astonishing 616lbs, meaning he would be unable to compete under modern day weight classes.

middleweight. The current weight classifications were implemented into the sport in UFC 31; ultimately creating five different champions (one in each division). The UFC has profited from these changes as championship bouts have become more frequent, thus producing more interest, and consequently higher PPV buys.

UFC 8, promoted as a ‘David vs. Goliath’ event, featured a knockout tournament designed to identify whether the small man could defeat the big man in a no-holds-barred contest. The Championship bout and the entire first round of the tournament featured smaller athletes against bigger athletes. As it turned out, the entire competition continued the trend, including both semi-finals and the final; with all bouts featuring a minimum weight difference of at least 23lbs. The smaller guy proved to be more successful, winning five of the eight contests. The problem with the event’s format was that a number of the larger athletes were not in the right physical condition to potentially fight three times in one night; as several of them became severely fatigued during their bouts.³³⁶ Gary Goodridge was the only large athlete to gain some form of recognition; finishing as runner-up in the tournament. Unlike the other large athletes, Goodridge’s weight was predominately muscle mass as opposed to body fat; providing him with a strength advantage over his opponents. Excess body fat is likely to be a disadvantage to a fighter, as it increases their chances of fatiguing during a bout.³³⁷

³³⁶ Paul Varelans won his first round bout but was forced to retire due to fatigue. Both Gary Goodridge (in the final) and Scott Ferrozzo were in control of their bouts before succumbing to fatigue.

³³⁷ Tank Abbott was a heavyweight fighter whose weight was predominately body fat. Although his size advantage would help him on occasions; it would ultimately prove to be his downfall on a number of occasions, as he would begin to suffer from fatigue in long bouts, and ultimately lose.

Figure 9.3 – Current Weight Divisions

Division	Weight	Difference
Lightweight	145 - 155 lbs	10 lbs
Welterweight	156 - 170 lbs	14 lbs
Middleweight	171 - 185 lbs	14 lbs
Light Heavyweight	186 - 205 lbs	19 lbs
Heavyweight	206 - 265 lbs	59 lbs
Avg		23.2 lbs³³⁸

Weight – The weight category.

Difference – The difference between the lightest and heaviest possible weight limits in that division.

Figure 9.4 – Analysis of Wins by Big and Small Athletes based on figure 9.3’s average data³³⁹

Event	Big	Small	Event	Big	Small
UFC 1	1	4	UU 96	3	3
UFC 2	4	4	UFC 12	1	2
UFC 3	3	2	UFC 13	1	3
UFC 4	2	2	UFC 14	2	2
UFC 5	3	0	UFC 15	2	1
UFC 6	1	4	Ultimate Japan	1	2
UFC 7	3	4	UFC 16	0	0
UU 95	1	1	UFC 17	0	0
UFC 8	3	5	Ultimate Brazil	0	1
UFC 9	2	2	UFC 18	0	0
UFC 10	3	0	UFC 19	0	2
UFC 11	3	1	UFC 20	0	0
			Total	39	45

Big – The number of fighters that defeated an opponent weighing a minimum of 23lbs less than them.

Small – The number of fighters that defeated an opponent weighing a minimum of 23lbs more than them.

³³⁸ This figure is an average based on the differences from each current weight division. It can be argued that the difference in weight in the Heavyweight Division is much larger compared to the other weight classes and this somehow distorts the average figure. However, during the early days of the UFC, the majority of competitors weighed more than 200lbs; with a number of these weighing in excess of the 265lbs limit which is currently in place today. The figure of 23lbs also represents a substantial difference in weight which is an important requirement in determining whether weight is a key factor in winning fights. Rival Japanese promotion Pride FC employed a system in matches between fighters of different weight classes. The lighter fighter was given the choice on whether to permit knees or kicks to the face when in the ‘four points’ position, in fights featuring a weight difference of 22lbs (or on some occasions 33lbs). This figure is almost identical to the figure of 23.2lbs calculated using the differentiation of modern day weight classes.

³³⁹ Data is based on all events up to and including UFC 20. Alternate bouts are not included in the results.

Analysis of *figure 9.4* reveals that weight classes were not necessarily required when they were implemented into UFC 12. Up until this point, smaller fighters were still able to hold their own against bigger athletes; with results indicating both to have won *thirty-two* contests each.³⁴⁰ It is likely that the changes were implemented to appease government officials who were intent on banning the sport due to its violent nature. Many of these critics had no understanding of the sport and felt that pitting a bigger athlete against a smaller one was unfair and likely to result in significant harm. Analysis of the UFC's first twenty-four events, based on *figure 9.3's* average figure, reveals smaller athletes to have been slightly more successful than their larger counterparts in bouts where there was a weight difference which exceeded 23lbs, winning *forty-five* bouts in comparison to the larger athlete's total of *thirty-nine*.³⁴¹ Although larger athletes possessed a weight advantage, their fitness levels were usually much lower in comparison, thus addressing the balance in some sense.

One of the problems with weight divisions is that many athletes will attempt to cut weight prior to a contest. This process frequently occurs in combat sports to help athletes qualify for a lower weight class. The fighter will change their dieting, attempt to lose muscle mass, and dehydrate themselves immediately before weigh-ins. Once they have met the required weight limit, they will begin the process of re-hydration, whilst consuming small meals at regular intervals, particularly carbohydrate based foods. Weight cutting ultimately makes the fighter heavier and stronger, giving them an advantage over their opponent (as long as they do not do the same thing). The advantage of weight cutting was emphasised at UFC 18 in the bout between Tito Ortiz and Jerry Bohlander. Ortiz weighed in at 199.9lbs, the maximum possible weight for the division; however he walked into the Octagon weighing 218lbs. The extra size and strength enabled Ortiz to completely dominate Bohlander, who was the heavy favourite going into the bout.

³⁴⁰ These figures are correct up to and including the Ultimate Ultimate 96. Only bouts with a difference in weight of 23lbs or more have been recorded. Alternate contests are not included.

³⁴¹ These statistics were gathered from the first twenty-four UFC events. The majority of events after UFC 20 employed some form of weight divisions to ensure parity between fighters. This concept became a legal rule at UFC 31 where the current weight classes employed today were introduced.

9.7 – Problems with Competitiveness

9.7.1 – Rules and Regulations

One of the first rule changes to occur in the UFC was the legalising of groin strikes. Art Davie³⁴² explained, “After listening to all the debate after the first show, with all the letters to the editor at *Black Belt*³⁴³... saying that strikers were handicapped by rules like no groin shots, I pushed Rorion³⁴⁴ [who didn’t like the idea] and SEG to allow them in”³⁴⁵. Groin strikes were eventually outlawed several years later, as the UFC attempted to rid the sport of its unpleasant elements, not before several fighters used them to their advantage; most notably Keith Hackney, who used them to repeatedly strike his opponent Joe Son, in their bout at UFC 4. Before Hackney reverted to these underhand tactics, he was struggling to mount any form of offence in the contest. UFC 4 witnessed an important change concerning the use of alternate fighters. The previous event had seen alternate fighter Steve Jenum advance straight to the tournament final, without having previously fought. This gave Jenum an unfair advantage over his fatigued opponent as he was fresh and ultimately went on to win the tournament. To ensure this type of incident did not occur again, alternate fighters were required to face each other before the start of the tournament, with the winner becoming one of the alternates for the event, should they be required.

The grabbing of the Octagon fence by fighters became a major issue at UFC 11. The event featured two bouts in which one fighter would continuously hold the fence to deliberately stop their opponent from mounting any form of

³⁴² Flush with capital, Art Davie amalgamated himself with Rorion Gracie to create W.O.W. Promotions and entered into an equitable partnership with Semaphore Entertainment Group (SEG).

³⁴³ Black Belt is the world’s leading martial arts magazine.

³⁴⁴ Rorion Gracie was the co-owner of W.O.W. Promotions with Art Davie; and is the older brother of UFC legend Royce Gracie

³⁴⁵ Art Davie, Gentry, C. (2004) ‘No Holds Barred’, Milo Publishing, p61.

offence.³⁴⁶ In the bout between Tank Abbot and Scott Ferrozzo, Abbott held Ferrozzo against the fence for the entire duration of the contest. These tactics negated both fighters' offence; producing a lacklustre contest. The new rules allowed bouts to become free flowing, whilst minimising the possibility of stall tactics. UFC 43 witnessed the introduction of a similar rule, designed to improve fairness amongst fighters. In the event of a stoppage, the referee was given authority to restart a fight in the position that it was stopped in. In the championship decider between Tito Ortiz and Guy Mezger at UFC 13, Ortiz was in control of the contest and had Mezger in a dominant position. However the referee was forced to intervene and stand both fighters up so the ringside doctor could inspect a cut suffered by Mezger. The contest was restarted and Mezger was able to immediately submit Ortiz as he attempted a takedown. It did not seem fair that Ortiz was forced to relinquish his dominant position, only for the contest to continue with both fighters standing. Had this rule been in force at the time, it is more than likely that Ortiz would have gone on to win the contest.

9.7.2 – Scoring System of Bouts

The scoring of contests in the UFC has significantly changed over time. Before the introduction of Judges' decisions, bouts reaching the allotted time limit would end in a draw. The lack of an outcome prompted the organisers to introduce some form of scoring system to ensure that all bouts had a winner and loser. The original scoring format consisted of three ringside judges who had the responsibility of scoring the bout in favour of one of the fighters should it go the distance. A draw was not an option, so contests would end either with a unanimous decision (all three judges scoring the contest in favour of one fighter) or with a majority decision (two judges

³⁴⁶ The grabbing of the fence enables fighters to easily defend against takedown attempts. This favours the striker, who prefers to be standing upright as opposed to grappling on the mat.

scoring the fight in favour of one of the fighters, with the other scoring the fight in favour of the other fighter).³⁴⁷ The problem with this scoring system was that several decisions were based predominantly on the latter stages of bouts; without taking into account proceedings from the early stages. The heavyweight championship bout between Bas Rutten and Kevin Randleman at UFC 20 highlighted such problems. Randleman dominated large parts of the early fight, while Rutten was able to mount a comeback in the latter stages. The judges ruled in favour of Rutten primarily because he was the aggressor towards the end of the bout.

The introduction of five minute rounds and a new scoring system ahead of UFC 21 was intended to modernise the competitive aspect of the sport. The *10-point must system*³⁴⁸, currently used in boxing and other combat sports, allows judges to score each individual round as opposed to the previous system which scored the entire bout. After the events of UFC 22, there was a general belief that the new scoring method was less effective than the previous one. In a two round bout featuring Jens Pulver and Alfonso Alcaraz, Pulver won the first round in dominant fashion, while Alcaraz won a close second round resulting in the bout being ruled a draw under the *10-point must system*. It was clear to viewers that Pulver deserved to win the bout and under the previous system, it is likely that Pulver would have been awarded the decision. In a three round bout between Ron Waterman and Tim Laczik, Waterman won two of the three rounds but had a penalty point called against him for a low blow, thus the match also ended as a draw. Once again under the previous system, Waterman would have been the clear winner. These two results cast doubt over the accuracy of the *10-point must system*.

³⁴⁷ The main event of UFC 9 between Ken Shamrock and Dan Severn is an example of a bout that should have been ruled a draw, but because of the scoring system in place at that time, there had to be a winner.

³⁴⁸ Under the 10-point must system, judges must give the winner of a round 10 points, and the loser 9 points or fewer. A knock down usually results in a score of (8) for the fighter who was knocked down, and (10) for his opponent (provided, of course, the knocked-down fighter gets up before the end of the count and finishes it). A judge may occasionally award a 10-8 score if the round's winner is obviously dominating the other fighter.

9.8 – Summary

Some martial arts are very popular, real crowd pleasers, because they look good, have smooth techniques. But beware. They are like a wine that has been watered. A diluted wine is not a real wine, not a good wine, hardly the genuine article.

Some martial arts don't look so good, but you know that they have a kick, a tang, a genuine taste. They are like olives. The taste may be strong and bitter-sweet. The flavour lasts. You cultivate a taste for them. No one ever developed a taste for diluted wine.³⁴⁹

In terms of the fighting aspect of MMA, it appears that Bruce Lee was right all along by identifying the importance of cross-training in several disciplines in order to be considered the complete fighter. The problem with these claims was there was very little evidence to substantiate them at the time. The creation of the UFC dispelled beliefs that one particular martial art was superior to another. During the first few UFC events, Brazilian Jiu-jitsu appeared to be the dominant discipline, with many fighters unfamiliar with the submission techniques utilised. Wrestlers then proceeded to dominate the sport, as they were able to avoid the takedown attempts of Brazilian Jiu-jitsu practitioners, nullifying their offence in the process. It is at this point that fighters began to cross-train in several disciplines in an attempt to counter the dominance of individual disciplines. This, combined with a number of rule changes regarding the permissible striking areas of opponents, ensured that to remain competitive in the sport, a fighter would have to possess knowledge of a number of fighting styles in order to remain successful.

To emphasise how far the sport of MMA had developed over the years, Dana White arranged a bout between former UFC legend Royce Gracie and current welterweight champion Matt Hughes. Gracie had remained undefeated in his early tenure with the UFC; however, the sport had changed drastically since then and this was emphasised

³⁴⁹ Lee, B. (1975) 'Tao of Jeet Kun Do', California: Ohara Publications.

in the contest, as Hughes was able to easily defeat Royce.³⁵⁰ During the contest Hughes appeared to have Royce in a debilitating arm submission, however he purposely let go of the manoeuvre; “Sure I was wanting the stop but he’s never going to tap... no matter what’s going on, he would have let me break his arm”³⁵¹. The dominance of Hughes emphasised how much the sport had developed since the early days, with cross-training in several disciplines a necessity in order to realistically compete with modern martial artists.

In comparison to other combat sports such as boxing, MMA appears to be much more competitive. In boxing there are many fighters that have amassed impressive win/loss records throughout their career³⁵², whereas in MMA there are very few fighters who can claim to possess similar records; suggesting that either the level of competition in MMA is much higher, or the sport is far more difficult to allow a fighter to amass an impressive win/loss ratio. In boxing, a fighter will only agree to face an opponent if the financial income is sufficient enough for both parties. In MMA, the individual governing bodies (e.g. UFC) have the final decision as to who faces who. Matchmaking responsibilities lie solely with the owners, whereas in boxing, it is the managers and promoters of fighters that have the majority of match making influence. The UFC will only grant a competitor a title shot based on their results and ability³⁵³; whereas many highly regarded boxers may go through their entire career without receiving an opportunity to compete for a title, mainly due to their lack of financial appeal to promoters.

Research into the UFC has identified a hierarchy system that governs the majority of combat sports in North America. The basis for the sport’s core rules is derived from

³⁵⁰ The bout between Royce Gracie and Matt Hughes at UFC 60 produced record PPV buys for an event at the time.

³⁵¹ Matt Hughes discusses his bout with Royce Gracie at UFC 60 and explains why he purposely let go of the arm submission hold; in Matt Hughes vs. Royce Gracie – How the Battle of Champions went down, Cliff Montgomery. <http://www.extremeproports.com>.

³⁵² Rocky Marciano, Terry Marsh, Sven Ottke, Joe Calzaghe and Floyd Mayweather JR are just a few boxers who remained undefeated during their boxing careers. Each of these boxers amassed impressive win/loss records, and held at least one world title.

³⁵³ The only notable modern day exception made to this rule is former professional wrestler Brock Lesnar, who was allocated a title shot in his fourth competitive MMA fight.

local laws passed down by governors and politicians. The rules of each individual State differs, with requirements needing to be met before an event of this nature can be staged within its parameters.³⁵⁴ Rules can be amended and adjusted accordingly by the sport's governing body, as long as the changes do not infringe on the basis of rules outlined by the law makers.³⁵⁵ Amendments will generally be made to maintain and improve the competitive balance of the sport; in this instance, allowing modifications to rules relating to spectator interest, the health and safety of athletes, and rule breaking within the sport. Occasionally a government or State may consider allowing a sport to infringe various rules, provided the exception benefits the development of the sport.³⁵⁶ Failure to amend the rules of a sport, by either the sport's governing body or the law makers, could potentially set in motion a negative chain reaction; resulting in a reduction in the number of viewers, followed by financial loss, and compounded by a decline in the quality and competitiveness of events. It would be in a government's best interests to assist in a sport's development, as its growth and success will ultimately prove to be profitable for the economy, whilst providing international recognition and success for the nation.

³⁵⁴ This was the case during the early years of MMA, with very few States willing to stage UFC events. As there was no official set of rules regarding MMA, the majority of States applied the criteria used in boxing to determine whether the sport met the requirements outlined in State law.

³⁵⁵ This is the most common rule changing procedure adopted by sports governing bodies. Examples include the introduction of time limits and rounds, judges' decisions, mandatory apparel (such as gloves), weight classes, and win bonuses.

³⁵⁶ UFC 97 was scheduled to take place in Montreal, Canada, however there was some debate regarding the unified rules of MMA which were utilised by the UFC. The UFC had all ready agreed to ban foot stomps from the event, on the request of the Quebec boxing commission, and were considering moving the event to Las Vegas if Quebec officials insisted on drastic rule changes; however, public sentiment and the intervention of government officials, forced the commission to back down, allowing the event to take place as agreed.

Chapter 4 – The Commercialisation of Sport

Influence of Sponsors and the Broadcast Media

10.1 – Introduction

The growing influence of commercialisation in sport has enabled modern day athletes to be able to live off the money generated from sponsorship, endorsements, contracts and prize money. Athletes can now make more money from lucrative sponsorship agreements than their basic wage or prize money on offer. The financial revenue received from sponsorship and television agreements has provided sport with the opportunity to expand on a global scale, increasing its popularity whilst improving the overall product. Although commercialisation appears to have been beneficial to athletes competing in individual sports, there are concerns that the distribution of revenue in team sports has created a gulf amongst teams, with the big teams becoming richer and the small teams struggling to compete. This competitive imbalance has led to a number of competitions becoming predictable, with the same teams competing for honours. Rectifying this problem is likely to result in a deterioration of the overall product, as a redistribution of television revenue or limit on sponsorship agreements is likely to reduce the financial income of the big teams, and in turn limit their ability to recruit the best talent.

10.2 – Sponsorship

Sponsorship can be traced back to Ancient Greece, where wealthy Athenians would contribute financially to expenses related to culture, defence, the state, and sports; in a bid to make them more accessible to all citizens.³⁵⁷ In modern sport, sponsorship is utilised as a marketing tool to increase brand awareness, strengthen the corporate image, and communicate with existing consumers. *Shank (1999)* defines sponsorship

³⁵⁷ In return, the state honoured them by engraving their name on marble tablets. This tribute was a mark of respect, value, and high appreciation.

as, “a cash or in kind deal under which a sponsor pays a sponsorship fee to a sports entity (athlete, league, team, event) to support overall organisational objectives and promotional strategies”³⁵⁸. The impact of sponsorship on sport in recent times has been enormous, and without it, athletes are likely to have limited access to state of the art training facilities, equipment, apparel, dietary supplements, and medicine; and are unlikely to be able to afford the services of world class trainers and coaches.

Figure 10.1 – Break-up of Salaries, Winnings, and Endorsements

The Highest Earning American Athletes of 2010³⁵⁹

Athlete	Salary/Win	Endorse	Total	Sport	I/T
Tiger Woods	\$20,508,163	\$70,000,000	\$90,508,163	Golf	I
Phil Mickelson	\$9,660,757	\$52,000,000	\$61,660,757	Golf	I
Floyd Mayweather Jr.	\$60,000,000	\$250,000	\$60,250,000	Boxing	I
LeBron James	\$15,779,912	\$30,000,000	\$45,779,912	Basketball	T
Alex Rodriguez	\$33,000,000	\$4,000,000	\$37,000,000	Baseball	T
Shaquille O'Neal	\$21,000,000	\$15,000,000	\$36,000,000	Basketball	T
Kobe Bryant	\$23,034,375	\$10,000,000	\$33,034,375	Basketball	T
Derek Jeter	\$21,000,000	\$10,000,000	\$31,000,000	Baseball	T
Peyton Manning	\$15,800,000	\$15,000,000	\$30,800,000	A.Football	T
Dwyane Wade	\$15,779,912	\$12,000,000	\$27,779,912	Basketball	T

Salary/Win – The total salary or winnings attained by the athlete

Endorse – The total endorsements attained by the athlete.

Total – The combined total earnings of the athlete.

Sport – The athlete’s sport.

I/T – Is the sport individual or team based.

³⁵⁸ Shank, M. (1999) ‘Sports Marketing: A Strategic Perspective’, Upper Saddle River, NJ: Prentice-Hall Sports Marketing Surveys, www.sportsmarketingsurveys.com.

³⁵⁹ <http://sportsillustrated.cnn.com/specials/fortunate50-2010/index.html>.

The Highest Earning American Athletes of 2011³⁶⁰

Athlete	Salary/Win	Endorse	Total	Sport	I/T
Tiger Woods	\$2,294,116	\$60,000,000	\$62,294,116	Golf	I
Phil Mickelson	\$4,185,933	\$57,000,000	\$61,185,933	Golf	I
LeBron James	\$14,500,000	\$30,000,000	\$44,500,000	Basketball	T
Peyton Manning	\$23,070,000	\$15,000,000	\$38,070,000	A.Football	T
Alex Rodriguez	\$32,000,000	\$4,000,000	\$36,000,000	Baseball	T
Kobe Bryant	\$24,806,250	\$10,000,000	\$34,806,250	Basketball	T
Kevin Garnett	\$18,832,044	\$14,000,000	\$32,832,044	Basketball	T
Matt Ryan	\$32,250,000	\$450,000	\$32,700,000	A.Football	T
Tom Brady	\$20,007,280	\$10,000,000	\$30,007,280	A.Football	T
Dwight Howard	\$16,647,180	\$12,000,000	\$28,647,180	Basketball	T

Salary/Win – The total salary or winnings attained by the athlete

Endorse – The total endorsements attained by the athlete.

Total – The combined total earnings of the athlete.

Sport – The athlete’s sport.

I/T – Is the sport individual or team based.

Distinguishing an athlete’s salary or winnings from their sponsorship income is important in determining the value of sponsorship agreements in sport. Analysis into the highest earning American athletes in 2010 and 2011, see *figure 10.1*, reveals golf to be the most profitable sport in terms of potential income, with Tiger Woods and Phil Mickelson occupying the top two spots in consecutive years; however the majority of their earnings are from various endorsements as opposed to prize money. In comparison, boxer Floyd Mayweather Jr. (the third highest earner in 2010) made the bulk of his income from prize money, dispelling the theory that athletes competing in individual sports rely heavily on sponsorship revenue. The remainder of both lists are comprised of athletes who compete in teams sports, and with the exception of LeBron James³⁶¹, the athlete’s salary exceeds the amount of revenue received from endorsements. Analysis into the breakdown of an athlete’s annual income indicates athletes competing in sports which require them to tour the globe in search of events (e.g. golf and tennis³⁶²) rely heavily on individual sponsorship

³⁶⁰ <http://sportsillustrated.cnn.com/specials/fortunate50-2011/index.html>.

³⁶¹ LeBron James is currently the most marketable basketball player in the NBA and has several endorsement contracts with Nike, Sprite, Upper Deck, McDonalds, State Farm, and Glacéau.

³⁶² <http://www.thisismoney.co.uk/money/article-1727115/The-worlds-highest-earning-tennis-players.html>.

agreements to supplement their travel, living, and training costs; athletes competing in combat sports (e.g. boxing and mixed martial arts³⁶³) rely heavily on prize money as they can only realistically fight in two or three contests a year, with little opportunity to acquire sponsorship; and athletes competing in team sports do not rely solely on sponsorship income as they have the financial security of a fixed salary.

10.2.1 – Individual Sports

The growth of sponsorship in individual sports has essentially enabled athletes to turn professional and train full time without the added pressures of having to work; and because of this, sports such as tennis and golf have grown both in stature and quality, whilst attracting a greater number of participants in the process. Without sponsorship revenue, athletes who are injured or underperforming will struggle to support themselves as prize money and winnings are often dependent on success. There are instances when a sponsor demands the right to exercise control over the activities of the sponsored entity, potentially creating conflict between the commercial interests of the sponsor and the sporting interests of an individual athlete, the sporting organisation, or a particular sport as a whole. *Aris (1990)* suggests that competing on sponsored circuits now carries more status than competing for one's country in a major event³⁶⁴. Athletes competing in sports such as golf and tennis are most likely to be affected by sponsor demands, with athletes touring the globe and entering events according to their current ranking, the prize money available, and the prestige of the competition; as opposed to other sports which are comprised of structured leagues. Sponsors are unlikely to be happy with athletes who enter low profile events, with the unnecessary risk of injury and potential for a shock defeat their likely

³⁶³ Sponsors are often reluctant to enter into agreements with boxers and mixed martial artists due to the nature of their sports.

³⁶⁴ Aris, S. (1990) 'Sportsbiz: Inside the Sports Business', London: Hutchinson.

concerns, making participation in these type of events an unattractive proposition for sponsors. In contrast, sponsors intent on achieving greater visibility may encourage their athletes to participate in a greater number of events, increasing the potential for injury, inciting fatigue which can lead to poor performance, and reducing public interest as a result of overexposure.

There are several disadvantages of sponsorship in individual sports, particularly when a sponsor decides not to renew an agreement, placing the beneficiary in a difficult position. Athletes that underperform or suffer frequent injuries are less likely to be able to secure sponsorship, and with this in mind, athletes could be pressured into putting their health at risk by over training and failing to recuperate sufficiently from injuries. Other disadvantages can relate to the apparel and equipment used by the athlete, with sports manufacturer sponsors insisting that the recipient use their specific brand. This can hinder an athlete's ability to attain success, particularly in instances whereby a specific brand of equipment or clothing is proven to be more effective than others; as was the case with the Speedo LZR Racer swimsuit. Sponsorship has the potential to undermine the competitiveness of national sports, with a growing number of athletes, particularly in athletics, switching national allegiance in return for lucrative sponsorship agreements from wealthier countries. Mia Audina won a silver medal for Indonesia in 1996 in the women's singles badminton. In 2004 she repeated the feat, winning another silver medal; although this time it was for the Netherlands. This dilemma can be resolved with sports governing bodies agreeing to adopt similar policies implemented by FIFA, whereby once an individual has competed for a particular nation, they can no longer compete for other nations.³⁶⁵ This policy protects the integrity of international football and eliminates the possibility of countries using their financial wealth to tempt highly skilled players to compete for them.

³⁶⁵ Only in exceptional circumstances may an athlete swap national allegiance in modern day football after appearing for a particular country; a procedure which usually involves the break-up of a nation due to civil war.

10.2.2 – Team Sports

Athletes competing in team sports are not as dependent on the financial income of sponsorship agreements, as they are employed by clubs and receive a weekly or monthly wage regardless of performance and success. Teams do however rely on sponsorship revenue to bolster their squad, both in terms of playing talent and training methods and equipment. Team sponsorship can take the form of shirt sponsorship (including kit manufacturer and shirt sponsor), stadium naming rights, associated merchandising, and various other endorsements. The problem with sponsorship in team sports is its ability to reward the most marketable teams, creating a financial and competitive imbalance amongst teams. The revenue imbalance that currently exists in football, primarily due to sponsorship agreements, television revenue and sugar daddies³⁶⁶, has ultimately forced UEFA to act by introducing a set of financial fair play rules which are designed to install competitive balance amongst teams by limiting the amount of money clubs are able to spend on transfer fees and player wages³⁶⁷. Manchester City's unprecedented £400m sponsorship agreement with Etihad Airways³⁶⁸ to sponsor their club shirt and stadium appears to be an attempt by the club's owners to circumvent the new financial regulations, with both Manchester City and Etihad sharing Abu Dhabi links.³⁶⁹ UEFA are currently looking into the agreement but it appears that there are loopholes within the new regulations.

³⁶⁶ A sugar daddy is a term used to refer to a wealthy owner who invests huge amounts of finance into a sports team, with the aim of rapidly improving their performance levels and media exposure. Chelsea's Roman Abramovich and Manchester City's Sheik Mansour are considered to be modern day sugar daddies.

³⁶⁷ Clubs hoping to take part in the Champions or Europa Leagues must balance their football-related expenditure over a three-year period.

³⁶⁸ The deal is reportedly worth around £400m over a ten year period.

³⁶⁹ Etihad Airways is owned by the Abu Dhabi government. The oil-rich state's ruler, Sheikh Khalifa bin Zayed Al Nahyan, is Sheikh Mansour's half-brother, the owner of Manchester City.

10.2.3 – Event Sponsorship

In professional sport, event sponsorship equates to greater prize money and organisation on a larger scale; whereas in amateur sport, event sponsorship is often the difference between an event surviving or folding. The gap between heavily sponsored mainstream sports like football, rugby, and cricket, and minor sports which attract little or no sponsorship, has grown enormously over time and the over-emphasis on certain sports is ultimately detrimental for sport in general. English football and the Premier League has profited enormously from sponsorship revenue. In 1993 Carling paid £12m for a four year agreement, and renewed this for another four years with a 300% increase. In 2001 Barclaycard became the new sponsors for £48m over three years. Barclays took over in 2004 with their renewal price for 2007 coming in at £65.8m for three seasons. This increased revenue has ensured that English clubs can compete on a global scale in terms of transfer fees and wages; an important factor which has seen some of the best overseas players grace the Premier League.

The negative factors of event sponsorship include a loss of control on behalf of the organiser, and the sponsor's demand that the best athletes and teams participate in events to attract wider audiences, creating greater brand awareness for them. This has led to the expansion of several competitions, most notably the Rugby World Cup, which features national teams that are severely out of their depth in terms of playing ability, resulting in very one-sided contests. There are also concerns regarding the modification of rules in competitions, as governing bodies may be forced into altering these to accommodate the needs of sponsors. The new regulations governing athletics track events, and in particular the sprints, state that any athlete who false starts is automatically disqualified. Usain Bolt's disqualification in the 2011 World Championships 100m final, along with the elimination of several other top athletes, is unlikely to appease event sponsors who require the best

athletes to be competing in finals to maximise television audiences, and in turn brand awareness.

10.3 – Ronaldo and World Cup 98

The 1998 World Cup final between France and Brazil caused much controversy concerning Brazil's team selection of star player Ronaldo. Regarded by many at the time to be the best player in the world, Ronaldo was initially left out of coach Mario Zagalo's side when the team sheet was issued seventy-two minutes before kick-off, however half an hour later, he was back in the line-up. It was revealed that Ronaldo had suffered a seizure, hours before the match was scheduled to begin. Adrian Williams, a professor of clinical neurology, conceived that Ronaldo would have been feeling the after effects of his seizure during his below-par performance in Brazil's 3-0 loss to France.

The idea that someone would be able to carry on a few hours after a seizure is wrong... I'm not saying that it would be dangerous, but there is no way that he would have been able to perform to the best of his ability within twenty-four hours of his first fit – if it was his first fit.³⁷⁰

Sports manufacturer Nike had signed a \$160m (£105m) contract with the Brazilian Football Confederation in 1996, the largest sponsorship deal with a national team at that time. The enormity of the deal led many to speculate that Nike pressured the Brazilian Football Association into selecting Ronaldo in their starting line-up, as his absence is likely to have affected the commercial interests of Nike, and jeopardised future sponsorship agreements between the Brazilian national team and Nike. Although merely speculation, this highly publicised incident served as a warning to sports governing bodies, highlighting the potential problems of sponsors acquiring too much influence within sport, and in particular athletes and teams.

³⁷⁰ Adrian Williams (professor of clinical neurology at Birmingham University), Sports Illustrated, posted on Tuesday 15th September 1998.

10.4 – The Broadcast Media

The media has played a huge role in the development of sport, with *Brookes (2002)* noting that it was only after the press published league tables that the County Cricket Council was established and the Marylebone Cricket Club began organised competition in English cricket in 1894³⁷¹. The broadcast media, and in particular the development of Pay-TV, which has brought a step change in broadcast capacity, allowing premium channels to offer the extensive live coverage, analysis and other exposure, has ultimately raised the profile of sport on a global scale. Continuing technological advances, the proliferation of delivery platforms, and the development of high speed internet connections to the mass market have extended the range of methods available to the consumer. Due to the influence of broadcast media, sport has been forced to alter its scheduling, with events and games taking place to accommodate television demand. The match schedule of the 2011 Rugby World Cup has been designed with this in mind, with the top games in each group staggered for alternate match weekends to keep viewers interested. The top four seeded teams are also afforded plenty of recuperation time between games; a stark contrast to many of the smaller teams which are forced to play two competitive matches within four days, putting them at a disadvantage in terms of fatigue and the potential for injuries. In football, the scheduling of Premier League games allows certain teams an advantage in terms of playing after their rivals and knowing what is required of them.

10.5 –The Introduction of the Premier League

The introduction of the Premier League enabled English football's top division to acquire commercial independence from the Football Association and the Football League, giving the Premier League license to negotiate its own broadcast and

³⁷¹ Brookes, C. (1978) 'English Cricket', London: Weidenfield and Nicolson.

sponsorship agreements³⁷²; with the extra income allowing English clubs to compete with teams across Europe. The lucrative television deal with Sky Sports (owned by BSkyB) has revolutionised English football, and maintaining a structured distribution of this revenue has been key to maintaining competitiveness within the league.

*We believe that our income distribution mechanism, the most equitable of Europe's major football leagues, rewards sporting success while also guaranteeing a significant amount of broadcast revenue to each club in order that they can plan from one season to the next.*³⁷³

³⁷² The fundamental difference between the old Football League and the breakaway league (what became the Premier League) is that the money in the breakaway league would only be divided between the clubs active in that division whilst it was shared between all Football League clubs in the old First Division.

³⁷³ Premier League Chief Executive Peter Scudamore,
<http://www.premierleague.com/staticFiles/fe/72/0,,12306~160510,00.pdf>.

Figure 10.2 – Broadcast Payments to Premier League Clubs in 2010-11

Team	Pos	Live	BBC	Not	Equal	Facility	Merit	Overseas	Total Pay
Arsenal	4	22	38	16	13,819,031	11,616,454	12,864,852	17,926,595	56,226,932
Aston Villa	9	15	38	23	13,819,031	8,235,713	9,081,072	17,926,595	49,062,411
Birmingham City	18	10	38	28	13,819,031	5,820,898	2,270,268	17,926,595	39,836,792
Blackburn Rovers	15	10	38	28	13,819,031	5,820,898	4,540,536	17,926,595	42,107,060
Blackpool	19	10	38	28	13,819,031	5,820,898	1,513,512	17,926,595	39,080,036
Bolton Wanderers	14	10	38	28	13,819,031	5,820,898	5,297,292	17,926,595	42,863,816
Chelsea	2	22	38	16	13,819,031	11,616,454	14,378,364	17,926,595	57,740,444
Everton	7	13	38	25	13,819,031	7,269,787	10,594,584	17,926,595	49,609,997
Fulham	8	10	38	28	13,819,031	5,820,898	9,837,828	17,926,595	47,404,352
Liverpool	6	23	38	15	13,819,031	12,099,417	11,351,340	17,926,595	55,196,383
Manchester City	3	19	38	19	13,819,031	10,167,565	13,621,608	17,926,595	55,534,799
Manchester United	1	26	38	12	13,819,031	13,548,306	15,135,120	17,926,595	60,429,052
Newcastle United	12	16	38	22	13,819,031	8,718,676	6,810,804	17,926,595	47,275,106
Stoke	13	10	38	28	13,819,031	5,820,898	6,054,048	17,926,595	43,620,572
Sunderland	10	11	38	27	13,819,031	6,303,861	8,324,316	17,926,595	46,373,803
Tottenham Hotspur	5	17	38	21	13,819,031	9,201,639	12,108,096	17,926,595	53,055,361
West Brom	11	10	38	28	13,819,031	5,820,898	7,567,560	17,926,595	45,134,084
West Ham United	20	14	38	24	13,819,031	7,752,750	756,756	17,926,595	40,255,132
Wigan Athletic	16	10	38	28	13,819,031	5,820,898	3,783,780	17,926,595	41,350,304
Wolves	17	10	38	28	13,819,031	5,820,898	3,027,024	17,926,595	40,593,548
Total	n/a	288	760	472	276,380,620	158,918,704	158,918,760	358,531,893	952,749,977

Pos – The team’s finishing position within the league.

Live/Not – The number of games streamed/not streamed live on TV.

BBC – The number of games featured on the BBC’s Match of the Day highlights.

Equal – The equal payment distributed amongst teams.

Facility – The payments received for use of team’s facilities.

Merit – The payments received on merit.

Overseas – The payments received for the sale of overseas television rights.

Total Pay – The total pay received by each team.

The Founder Members' Agreement of the Premier League sees 50% of UK broadcast revenue split equally between the twenty clubs, 25% paid in Merit Payments (depending on where a club finishes in the final league table) and the final 25% paid in Facility Fees each time a club's matches appear on TV in the UK during a season. All international broadcast revenue is split equally amongst the twenty clubs. *Figure 10.2* reveals that Premier League winners Manchester United received the highest total payment with just over £60.4m while Blackpool's payments, totalling £39.08m, were the lowest for 2010-11. Each position in the table was worth £756,756 in prize money, with that amount going to the bottom club (West Ham) and twenty times that amount (£15,135,120) going to Manchester United. Although revenue distribution appears to be competitive, it is essentially the financial gulf between the Premier League and the Football League that makes recruiting top players difficult for smaller teams and newly promoted teams, who are wary of the financial problems that coincide with relegation.

10.5.1 – Comparisons with the Old Football Division One League

Figure 10.3 – Comparisons with the Old Football Division One League

Football League	Cham	Premier League	Cham
Liverpool	10	Manchester United	12
Everton	2	Arsenal	3
Arsenal	2	Chelsea	3
Leeds United	2	Blackburn Rovers	1
Derby County	1		
Nottingham Forest	1		
Aston Villa	1		

Football League – The teams that won the football league between 1973-74 and 1991-92.

Premier League – The teams that won the premier league between 1992-93 and 2010-11.

Cham – The number of championships won by a particular team in this period.

Comparisons between the Football League Division One (prior to the introduction of the Premier League) and the Premier League, see *figure 10.3*,

indicate the huge amounts of money invested into football by BSkyB has had relatively little effect on the competitiveness of the league championship, with both Liverpool (ten championships) and Manchester United (twelve championships) managing to dominate during respective nineteen year periods before and after the introduction of the Premier League.

10.5.2 – Impact on European Football

The introduction of the Premier League and the financial revenue received from its broadcasting market has ultimately presented English teams with the opportunity to compete financially with European teams, enabling them to acquire the top players and compete for European honours. The Premier League is currently ranked number one in the UEFA coefficient rankings, with seven English teams appearing in the previous seven UEFA Champions League finals.³⁷⁴ However, the amount of revenue generated by teams competing in the Champions League appears to be detrimental to domestic leagues in terms of competitiveness. Prior to the 2009-10 season, the same four teams (Manchester United, Chelsea, Arsenal, and Liverpool) qualified for the Champions League in five of the previous six seasons³⁷⁵; highlighting the difficulty facing those teams attempting to break this monopoly.

³⁷⁴ UEFA Champions League finalists include: Liverpool (2005) and (2007), Arsenal (2006), Manchester United (2008), (2009), and (2011), and Chelsea in (2008).

³⁷⁵ In the 2004-05 season Everton finished in fourth place and entered the Champions League qualifying round, but failed to reach the group stage. Liverpool qualified for the Champions League as champions, after UEFA granted them special dispensation.

10.6 – Comparisons with other European Leagues

Figure 10.4 – Television Contracts for European Leagues

League	TV Licensor	Contract	Value	Annual	T
Premier League	Sky Sports	2009-10 to 2012-13	€3,538m	€1,179m	20
Serie A	Sky-Italia and Mediaset	2010-11 to 2011-12	€1,822m	€911m	20
Ligue 1	Canal Plus and Orange	2008-09 to 2011-12	€2,672m	€668m	20
La Liga	Mediapro	2009-10 to 2011-12	€1,500m	€500m	20
Bundesliga	Premiere AG	2009-10 to 2012-13	€1,648m	€412m	18
Eredivisie	RTL-Nederland	2008-09 to 2010-11	€300m	€100m	18

TV Licensor – The official TV Licensor(s) of that particular league.

Contract – The length of the current contract.

Value – The total value of the contract.

Annual – The annual breakdown of the contract agreement.

T – The number of teams in the league.

Figure 10.4's analysis into the top six European leagues reveals that Spain's La Liga earns less in domestic TV revenue than Italy's Serie A and France's Ligue 1, despite the fact that the league boasts arguably the two biggest clubs in world football – Barcelona and Real Madrid. The disparity between the top and bottom of the Spanish league is enormous, with the top two clubs receiving a massive €140m each through domestic TV revenue (over half the annual television revenue), whereas bottom dwellers Sporting and Málaga received just €12m each in 2010. In comparison, the English Premier League is far more balanced in terms of its TV revenue distribution with the top team Manchester United receiving €58.2m, whereas strugglers Middlesbrough received €34.9m. In Germany, Bayern Munich received €28.1m compared to Hoffenheim at €13.3m, and in France, Marseille received €49.9m in comparison to relegation battlers Le Havre who received €13.9m. The ratio from top to bottom earning clubs in the Premier League, based on central broadcast payments, was 1.66:1 in 2009-10 and has reduced to 1.54:1 in 2010-11. The most recent figures for other European leagues show ratios of top to bottom earning clubs as: La Liga (12.5:1), Serie A (10:1), Ligue 1 (3.5:1), Bundesliga (2:1).

Figure 10.5 – Deloitte Highest Earning Football Clubs 2009-10³⁷⁶

Team	Cou	Rev	Match	%	Broad	%	Com	%
Real Madrid	Spa	€438.6m	€129.1m	30	€158.7m	36	€150.8m	34
Barcelona	Spa	€398.1m	€97.8m	25	€178.1m	44	€122.2m	31
Manchester United	Eng	€349.8m	€122.4m	35	€128.0m	37	€99.4m	28
Bayern Munich	Ger	€323.0m	€66.7m	21	€83.4m	26	€172.9m	53
Arsenal	Eng	€274.1m	€114.7m	42	€105.7m	38	€53.7m	20
Chelsea	Eng	€255.9m	€82.1m	32	€105.0m	41	€68.8m	27
AC Milan	Ita	€235.8m	€31.3m	13	€141.1m	60	€63.4m	27
Liverpool	Eng	€225.3m	€52.5m	23	€97.1m	43	€75.8m	34
Inter Milan	Ita	€224.8m	€38.6m	17	€137.9m	62	€48.3m	21
Juventus	Ita	€205.0m	€16.9m	8	€132.5m	65	€55.6m	27
Manchester City	Eng	€152.8m	€29.8m	20	€66.0m	43	€57.0m	37
Tottenham Hotspur	Eng	€146.3m	€44.9m	31	€62.9m	43	€38.5m	26
Hamburger SV	Ger	€146.2m	€49.3m	34	€33.7m	23	€63.2m	43
Olympique Lyonnais	Fra	€146.1m	€24.8m	17	€78.4m	54	€42.9m	29
Marseille	Fra	€141.1m	€25.2m	18	€70.8m	50	€45.1m	32

Cou – The country the team competes in (Spa – Spain, Eng – England, Ger – Germany, Ita – Italy, Fra – France).

Rev – The revenue received by each team.

Match – Match day revenue.

Broad – Broadcast revenue.

Com – Commercial revenue.

% – The percentage breakdown for each figure.

The English, German, and French leagues are currently the most competitive, whereas the Spanish league has become predictable, and the Italian league is at its lowest point in terms of its quality and UEFA coefficient ranking (which is currently fourth). *Figure 10.5's* analysis into the highest earning football clubs of 2009-10 reveals their revenue breakdown in terms of match day, broadcasting, and commercial income. The top Italian teams rely heavily on broadcasting revenue, whereas the top German teams favour commercial income, and the top English teams receive sizeable income from match day revenue. What is noticeable is that there are six English teams present in the top fifteen compared to only two Spanish teams, despite Spain's second place coefficient ranking, indicating a huge gulf in terms of ability between Barcelona and Real Madrid, and the rest of the Spanish league. Italian teams poor commercial income is an indicator that their domestic

³⁷⁶ http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Sports%20Business%20Group/UK_SBG_DFML2011.pdf.

league is struggling in terms of quality, resulting in a lack of interest from spectators and sponsors.

Figure 10.6 – 2011-12 La Liga Television Revenue Distribution

Team	TV Rev
Real Madrid	€140m
Barcelona	€140m
Valencia	€48m
Atlético Madrid	€46m
Sevilla	€31m
Betis	€29m
Villarreal	€28m
Getafe	€18m
Espanyol	€17m
Athletic Bilbao	€17m
Real Sociedad	€15m
Real Zaragoza	€15m
Osasuna	€14m
Málaga	€14m
Mallorca	€14m
Levante	€14m
Sporting de Gijón	€14m
Granada	€14m
Rayo Vallecano	€14m
Racing Santander	€13m

TV Rev – The amount of television revenue received by each team.

Real Madrid and Barcelona have dominated Spain’s top division in recent years³⁷⁷, with their ability to negotiate their own television agreements (as opposed to the league selling the collective rights), a huge factor in this. The financial gulf amongst teams has created competitive imbalance within the league, which is likely to affect the league’s UEFA coefficient rankings in the future.³⁷⁸ This financial disparity, displayed in *figure 10.6*, has reduced both the quality and competitiveness of La

³⁷⁷ Barcelona and Real Madrid have finished in the top two positions in six of the previous seven La Liga campaigns (2004-05 – 2010-11).

³⁷⁸ A similar situation occurred in Italy when Inter Milan and AC Milan began to dominate the league after the demise of Juventus (who were relegated after the Italian match fixing scandal of 2006). Serie A has currently fallen down the UEFA coefficient rankings and is currently only allocated three Champions League places, as opposed to four.

Liga, with runners-up Real Madrid finishing a huge *twenty-one* and *twenty-five* points ahead of the third place team in the last two seasons³⁷⁹, while several top players at clubs outside of the big two have moved on to pastures new. David Silva, Sergio Agüero, Diego Forlan, Luis Fabiano, Juan Mata, and David De Gea have all left Spain, and those of a certain calibre that do stick around invariably levitate to the top, as was the case with David Villa and Sergio Canales. If the distribution of television revenue is not addressed soon then La Liga will find itself in the same situation as Italy's Serie A, with low uncertainty of outcome and a decline in spectator interest resulting in a poorer league in terms of ability and a lower UEFA coefficient ranking.

10.7 – Summary

The vast amounts of money currently circulating in sport make it one of the most commercially powerful forms of business. Although sport was previously accepted as a form of business, sporting success would traditionally outweigh financial profit as the primary aim; however, the pursuit of money has increasingly begun to represent the aim of sport. Studies by *Hofmann and Greenberg (1989)* valued the gross national sports product at \$50.2 billion³⁸⁰; an amount much greater than what is spent on oil and coal in the United States, amounting to roughly 1% of the country's gross national product³⁸¹. Unfortunately the commercialisation of sport, particularly at the highest level in European team sports, has enabled the gap between the rich and the small teams to widen, creating competitive imbalance in the process. Although sponsorship at the highest level enables the top athletes to acquire the best trainers, dietary supplements, and various other amenities; it is ultimately their individual skill and ability that prevails. In team sports, the marketability of a club can have a huge influence on its financial income from sponsors. Manchester

³⁷⁹ Runners-up Real Madrid finished twenty-five points clear of third place Valencia in 2009-10, and twenty-one points clear of the same team (who coincidentally finished third again) in 2010-11.

³⁸⁰ Sports Inc. magazine conducted a study in 1987 to try and find out how much money was circulating in sport.

³⁸¹ Hofmann, D. and Greenberg, M.J. (1989) 'Sport\$biz', Champaign, Illinois: Leisure Press, pxi.

United recently signed a new £40m sponsorship deal with logistics firm DHL for their domestic training kit; a figure that exceeds the value of all but five main shirt sponsors in the Premier League.³⁸² This agreement is further evidence of the club's global commercial clout; and it is their marketability which has enabled them to become England's most dominant and successful club in the past two decades.

Although the income received from broadcast revenue has played a huge role in the development of sport, its distribution process, particularly in team sports, has created competitive imbalance within a number of leagues. Allowing teams to negotiate their own individual television agreements allows the big clubs to acquire a greater share of the overall revenue, which in turn enables them to purchase the best talent. There are measures which can be taken to improve the distribution of broadcast revenue, with the collective sale of television rights appearing to be the way forward. A successful league or competition requires support from all participating members and not just the dominant few. Allowing the top teams to negotiate their own television deals may be beneficial in the short term (e.g. improving the chances of success for these teams in cross-country competitions like the UEFA Champions League), but ultimately this strategy is likely to result in the decline of the league as competitive imbalance will set in and uncertainty of outcome will decrease along with spectator interest and financial revenue; as was the case with Serie A in the mid-noughties.

³⁸² The sponsorship agreement took place in August of 2011 and will net Manchester United a little over £40m across four years.

UEFA Financial Fair Play

11.1 – Introduction

In recent times, a number of football clubs, particularly in Europe, have encountered financial difficulties due to overspending and a mismanagement of funds. Leeds United and Portsmouth FC are two clubs which overspent in previous seasons. Both teams were forced to sell their best players and were eventually relegated from the Premier League, before being forced to enter administration. In 2012, Deloitte³⁸³ calculated the net debt of Premier League clubs to be around £2.4 billion.³⁸⁴ UEFA's introduction of Financial Fair Play is intended to ensure that clubs in European competition live within their means; reducing the number of teams encountering financial difficulties. UEFA also hopes that these new regulations will install more of a level playing field amongst teams by preventing clubs with rich owners from gaining a financial advantage over teams who are run on more of a sustainable business model; thus encouraging lower levels of spending.

11.2 – The Aims of Financial Fair Play

UEFA's Executive Committee unanimously approved a Financial Fair Play concept for the game's well-being in September 2009. The concept has also been supported by the entire football family, with its principal objectives being:

1. To introduce more discipline and rationality in club football finances;
2. To decrease pressure on salaries and transfer fees and limit inflationary effect;
3. To encourage clubs to compete within their revenues;
4. To encourage long-term investments in the youth sector and infrastructure;

³⁸³ The Deloitte Annual Review of Football Finances 2012.

³⁸⁴ This figure fell by £351m (13%); its lowest level since 2006.

5. To protect the long-term viability of European club football;
6. To ensure clubs settle their liabilities on a timely basis.³⁸⁵

Financial Fair Play Regulations are being implemented over a three-year period, with clubs participating in UEFA club competitions having their transfer and employee payables monitored since the summer of 2011, and the break-even assessment covering the financial years ending 2012 and 2013 to be assessed during 2013-14. Originally there were concerns that the punishments handed down to teams exceeding the expenditure cap would be perceived as a restraint of trade; however, UEFA and the European Commission have since signed a joint agreement endorsing Financial Fair Play, with the rules being deemed to be fully compliant with European Union law, thus closing any possible loopholes that could be exploited by overspending clubs.

11.3 – The likely Benefits of Financial Fair Play

In recent times, particularly in some of the more established leagues like the English Premier League and the German Bundesliga, many clubs have neglected the development of youth players in favour of purchasing ready-made talent. This influx of foreign talent often limits the number of opportunities available to youth players, and this can in turn reduce the number of talented players eligible for national teams. With the new regulations restricting spending, clubs are now likely to refocus their efforts on the development of academies and young players in a bid to save on expenditure whilst improving their playing talent. This policy is also beneficial to smaller clubs, inviting them to produce high calibre players, which can either improve their current team, or be sold on to raise funds which can be spent on more established talent. Financial Fair Play will also help prevent rich clubs from pulling away from the rest of the field, thus maintaining the competitive balance of a league.

³⁸⁵ <http://www.uefa.com/uefa/footballfirst/protectingthegame/financialfairplay/index.html>

11.4 – Potential Problems of Financial Fair Play

There are a number of potential problems with UEFA's Financial Fair Play Regulations. The differing tax rates between countries means that some clubs may have to pay much higher wages to a player, to ensure they receive a similar net salary to the one they previously received in another country. Teams based in countries with higher tax rates are therefore more likely to have higher expenditure rates than those based in countries with lower tax rates, reducing the team's overall spending ability. Another problem concerns the distribution of television revenue, with some leagues insisting on a collective sale of rights, and others allowing teams to negotiate their own agreements (*see chapter 10 - Influence of Sponsors and Broadcast Media*). Teams like Real Madrid and Barcelona, who earn around half of the total television revenue in La Liga, are more likely to generate greater revenue streams than teams like Manchester United and Chelsea, who are forced to enter into a collective sale of television rights, which ultimately spreads the income more evenly amongst teams; thus giving the two Spanish teams a financial advantage over other teams participating in European competitions.

Teams competing in the UEFA Champions League will inevitably generate greater revenue streams than those who are not; thus widening the gap between teams within their national leagues. Whereas previously, teams with rich owners could bridge this financial gap and compete, the new regulations restrict these owners from investing huge amounts into the team in a bid to make them competitive. Manchester City's rapid rise to prominence only occurred because of their ability to spend vast amounts of money in a bid to acquire Champions League qualification. Without qualifying for this prestigious competition, the team would have found it much more difficult to attract the top quality playing talent that recently helped them win the Premier League in 2012.

11.5 – The Current Impact of Financial Fair Play

Although it is still relatively early to determine how effective Financial Fair Play will impact upon club football, there are signs that UEFA is serious about punishing those who choose to ignore the new regulations. On the 13th September 2012, Europe's football governing body decided to withhold prize money owed to twenty-three clubs competing in European competition in 2012-13. The punishments were handed out due to outstanding transfer payments from previous deals, in an attempt to motivate the clubs into clearing some of the debt they owe. Clubs that continue to ignore these new regulations are likely to be subjected to further punishments including fines, transfer bans, and disqualification from European competition; although it remains to be seen whether the more severe sanctions will be enforced.

11.6 – Attempts to Circumvent Financial Fair Play

Manchester City and Paris Saint-Germain are two clubs that have attempted to circumvent Financial Fair Play in recent seasons. Both clubs are owned by 'sugar daddies' who have attempted to buy success by spending vast amounts of money in a short period of time. In a bid to abide by the new regulations enforced by Financial Fair Play, both clubs have signed lucrative sponsorship deals with companies which possess strong ties with the club's owners. In 2011, Manchester City signed a £400m sponsorship agreement with Etihad Airways, with both parties sharing Abu Dhabi links; while Qatari owned Paris Saint-Germain recently signed a huge sponsorship deal with the Qatar Tourist Authority. The four year deal is rumoured to be worth €150m rising to €200m in the final year of the arrangement; with the deal being backdated, allowing Paris Saint-Germain to receive the full €150m in the first year of the contract, in a bid to relieve their huge summer spending spree in 2012.³⁸⁶

³⁸⁶ Since the summer of 2012, Paris Saint-Germain has purchased: Thiago Silva (£37m), Zlatan Ibrahimović (£18.5m), Ezequiel Lavezzi (£23m), Gregory van der Wiel (£5.5m), and Lucas Moura (£35m); all for huge sums of money.

Both of these agreements appear to have been made in a bid to circumvent Financial Fair Play, as both clubs have spent heavily in recent seasons, and are unlikely to meet the new requirements without this vast injection of cash. It still remains unclear whether or not UEFA will allow the sponsorship agreements to stand, particularly as the link between the sponsors and the clubs is clearly visible. If UEFA fails to act, then Financial Fair Play is likely to fall at the first hurdle, as other clubs will simply follow suit and cover their expenditures with lucrative and over the top sponsorship agreements with companies that they possess strong ties with. This apparent loophole is an indication of the difficulties facing UEFA, as clubs will continue to find new methods of evading the financial restraints enforced upon them.

11.7 – Will Financial Fair Play prove to be Effective?

UEFA's Financial Fair Play Regulations are primarily concerned with installing financial sustainability amongst clubs to ensure that they live within their means and do not overspend; a policy that will reduce the likelihood of clubs encountering financial difficulties. Although Financial Fair Play is likely to achieve its aim of installing financial stability amongst teams, it is less likely to improve competitive balance within leagues, as teams with greater commercial exposure will always be able to generate greater revenue streams, allowing them to invest greater amounts of money in playing talent. Manchester United's commercial strength is far greater than any of the other teams in the Premier League, and this has enabled them to outspend their rivals in previous times; however in recent years, the emergence of free-spending Chelsea and Manchester City, who are funded by rich 'sugar daddies', has improved the competitiveness of the league by enabling these clubs to compete financially with Manchester United. Financial Fair Play will ultimately reduce the amount of money these so called 'oil-rich' teams can spend on playing talent, therefore allowing the commercially strong teams to once again pull away from the rest.

UEFA's rationale for implementing these new regulations is to safeguard the long term future of clubs; however free spending teams like Chelsea, Manchester City, Paris Saint-Germain, and Anzhi Makhachkala are unlikely to encounter financial difficulties, as they are funded by wealthy benefactors; although the same could have been said about Málaga CF, before their owner appeared to lose interest in his project and halted investment, leaving the club with huge financial debts. From a purely ethical standpoint, teams who spend a vast amount of money in a short period of time are deemed to be buying success; a complete contrast to the traditional method of building a team over a number of seasons. These new regulations will preserve the tradition and historical records of past teams, ensuring that these achievements live long in the memory, and are not eroded by so called 'mercenary teams' which have been comprised of talented, yet expensive players, who have very little affiliation with the club and its supporters.

One of the drawbacks of Financial Fair Play is that emerging European Leagues, like the Russian Premier League and France's Ligue 1, will find it a lot harder to close the gap on the more established leagues. Paris Saint-Germain's recent spending spree, which included the recruitment of high profile stars like Zlatan Ibrahimović, Thiago Silva, and Javier Pastore; and Anzhi Makhachkala and Zenit Saint Petersburg's recruitment of Samuel Eto'o, Hulk and Axel Witsel is evidence that both leagues are steadily improving in terms of playing talent and appeal; however, by limiting the amount of money these clubs can spend on players, UEFA is slowing down the league's overall development process.

11.8 – Summary

Financial Fair Play's main benefactors are likely to be Europe's top established teams: Manchester United, Barcelona, Real Madrid, Bayern Munich, and Inter Milan. These teams boast huge fan bases, generate large amounts of revenue from sponsors and television agreements (particularly Barcelona and Real Madrid), and possess

state of the art facilities and training centres. The new regulations essentially reduce the number of teams who have a realistic opportunity of competing for domestic and European honours, as the so called established teams will always be able to generate greater amounts of revenue which can be invested in playing talent. Whilst Financial Fair Play is likely to install financial sustainability amongst clubs, it's unlikely to improve competitive balance in national and European competitions.

A salary cap would appear to be a more appropriate method of financial regulation as it would not only reduce the level of spending within football, but also improve the competitive aspect in both domestic leagues and European competitions. There would however be a few complications involved with the introduction of a salary cap. The first point centres around its eligibility under European Union law (*see Chapter 16 – The Salary Cap*) and whether or not it would be deemed a restraint of trade; and the second point relates to the difference in economic climates of individual countries within Europe, as a cap enforced upon English football would have to allow for greater spending than a cap enforced upon Danish football in order for it to be effective, otherwise a rich team in a smaller league could just simply spend up to the maximum of the cap, and therefore have an advantage over the other teams within their league. This would in turn create problems for European competitions, as teams from leagues with greater spending capacities would have a competitive advantage over clubs from leagues which generate smaller revenues.

Combating Corruption in Sport

12.1 – Introduction

Corruption and cheating is no new phenomenon in international sports. *Maennig (2005)* highlights the first documented case, when the athlete of Eupolos of Thessalia bribed three of his competitors in the fist-fighting tournament at the Olympic Games of AD 388, among them the reigning Olympic champion Phormion of Halikarnassos³⁸⁷. Notable cases in the modern era include the Chicago White Sox scandal in 1919³⁸⁸, the scandal in the German Bundesliga in 1971³⁸⁹ and in 2005³⁹⁰ concerning corrupt athletes and officials, and the performance of the umpires in the boxing final (under 71kg) of the Seoul Olympics in 1988³⁹¹. The financial growth of sport has ultimately led to an increase in match fixing, with more and more athletes succumbing to bribes and financial incentives offered by betting rings. Match fixing in football, for example, is believed to have recently yielded over £55 billion annually, a figure equivalent to legal betting.³⁹² Sport therefore requires stringent rules and regulations as it attempts to combat corruption and maintain a level playing field amongst athletes and teams; ensuring that the result of contests is decided largely on the individual skill of the athlete(s) and the tactics³⁹³

³⁸⁷ Maennig, W. (2005) 'Corruption in International Sports and Sport Management: Forms, Tendencies, Extent, and Countermeasures', *European Sport Management Quarterly*, 5(2), p187-225.

³⁸⁸ Eight players of the Chicago White Sox baseball team took bribes during the World Series in return for purposely losing games.

³⁸⁹ Fifty-two players, two managers, and six club functionaries were punished for their role in the match fixing scandal.

³⁹⁰ The discovery of a €2m match fixing scandal centred on second division referee Robert Hoyzer, who confessed to fixing and betting on matches in the 2nd Bundesliga, the DFB-Pokal (German Cup), and the third division Regionalliga.

³⁹¹ Roy Jones Junior lost in the final with a 3-2 decision to South Korean boxer Park Si-Hun despite pummelling him for three rounds, landing 86 punches to Park's 32. It was later revealed that the three judges who ruled in favour of Park had been wined and dined by South Korean officials, and they were eventually suspended.

³⁹² <http://uk.eurosport.yahoo.com/18052011/58/world-football-fifa-match-fixing-worth-55bn.html>.

³⁹³ The tactics employed within team sports can have a huge influence on the outcome of a contest, with individual skill and ability alone often not enough to triumph.

employed.³⁹⁴ Corruption and cheating also has the potential to significantly alter the outcome of a contest, undermining the principles of fair play and the competitive integrity of sport.

12.2 – Defining Corruption and Cheating

Corruption can be defined as, ‘requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof’³⁹⁵. *Maennig (2006)* identifies corruption as the use of a position by its occupant in such a way that as to fulfil the tasks required of the occupant by the employing institution in a manner consciously at variance with the objectives of the institution³⁹⁶. These activities may take the form of embezzlement or misuse of funds, exploitation in the hosting of games, match fixing of results or altering of scores, or dishonesty in player transfers. The most common form of corruption usually centres on betting rings who attempt to corrupt athletes and officials with bribes. In return for these financial incentives, athletes and officials will attempt to alter the result or scoring of a contest according to the corruptor’s demands; disrupting the notion of a level playing field amongst competitors.

Cheating is essentially a form of corruption; a paradigm ethical failing which gives rise to a paradigm set of excuses. *Gert (1988)* defines cheating as intentionally gaining an advantage over others by violating standards of fair play³⁹⁷; while *Luschen (1977)* ascertains that cheating is the act through which the manifestly or latently agreed upon conditions for winning such a contest are changed in favour of

³⁹⁴ Occasionally a contest may be decided on a lucky bounce of the ball or an unintentional incorrect decision by the referee.

³⁹⁵ Civil Law Convention on Corruption (ETS 174), Article 2 – Definition of Corruption.

³⁹⁶ Maennig, W. (2006) ‘Corruption’, in Andreff, W. and Szymanski, S. ‘Handbook on the Economics of Sport’, Edgar Elgar Publishing Limited.

³⁹⁷ Gert, B. (1988) ‘Morality: A New Justification of the Moral Rules’, New York: Oxford University Press, p129.

one side. As a result, the principle of equality of chance beyond differences of skill and strategy is violated³⁹⁸. The problem with this definition is that it omits any consideration of intention, as an athlete could unwittingly break the rules without necessarily cheating³⁹⁹; as is the case with the concept of strict liability which is used in anti-doping regulations, rendering the athlete culpable for their actions regardless of intent. *McIntosh's (1994)* adaptation of *Luschen's* account leads to his conclusion that, "Cheating is an offence against the principles of justice as well as against a particular rule or norm of behaviour"⁴⁰⁰. Therefore athletes who choose to cheat are ultimately contravening the moral principles and ethics of fair play which comprise sport and are universally agreed upon prior to commencement. Cheating is considered a more severe offence than gamesmanship as the perpetrator intentionally breaks the rules to alter the result and scoring of a contest. Gamesmanship simply amounts to a category of actions that do not violate the rules of a particular sport but do appear to violate the spirit of the contest.⁴⁰¹

12.3 – Why do Athletes Cheat?

The majority of athletes who cheat do so for individual success or financial incentives. The competitive aspect of sport is what distinguishes it from recreational activities, with athletes given the opportunity to compete against opponents for the prestige and honour that accompanies victory. Winning contests is the ultimate aim for athletes; however there are some that believe in winning at all costs, a policy which ultimately undermines competitive balance and the principle of fair play.

³⁹⁸ Luschen, G. (1977) 'Cheating in Sport', in Landers, D. 'Social Problems in Athletics', Urbana: University of Illinois.

³⁹⁹ For example, if a mixed martial arts fighter has a forbidden substance applied (Deep Heat) to bodily damage without his knowledge, then he has not cheated even though the rules have been broken to his advantage. Disqualification would be made on the basis that the rules were broken by those who attend to him.

⁴⁰⁰ McIntosh, P. (1994) 'Fair Play: Ethics in Sport and Education', London: Heinemann.

⁴⁰¹ Diego Maradona's 'hand of God' goal during the 1986 World Cup is a clear example of gamesmanship. His actions are not considered to be cheating in the sense that he seriously compromised the competitive integrity of the contest. Maradona simply took advantage of a situation that would usually be deemed an infringement within the laws of the game, similar to a mistimed tackle, resulting in the award of a free kick to the opposition.

These athletes are only motivated by success and have no qualms about using underhand methods to acquire it. As the career of a professional sportsman is often short in comparison to other professions, athletes are faced with the task of acquiring as much income as possible whilst they are actively competing. Athletes who choose to cheat for financial incentives usually do so because they realise they have very little chance of winning the events and competitions they enter. Those who are capable of competing for honours are less likely to accept financial bribes as they have a genuine opportunity to win; which in turn generates increased sponsorship and prize money. When deciding whether or not to accept financial bribes or to cheat in other ways, an athlete has to take into consideration the financial repercussions of being caught.

12.3.1 – Cheating to Win

Athletes who cheat to win usually do so for individual success and glory; with doping, match fixing, and sabotage of a rival being the most common methods employed. Doping is a practice often used by athletes in individual sports to gain an unfair advantage over an opponent⁴⁰²; however team sports would require several members of a team to dope in order to improve their chances of success. Tactics also play an important role in team sports, so although doping would improve individual performance, it would not be able to account for tactically astute and well-organised opponents. In comparison, match fixing is considered a far more effective method of ensuring success. Match fixing with the intention of winning is a more effective method than doping as its sole aim is to produce a favourable outcome in a contest, whereas doping focuses on improving individual performance which may not necessarily be sufficient enough to alter the outcome of a contest.⁴⁰³

⁴⁰² For a detailed analysis of doping in sport, refer to chapter eight.

⁴⁰³ Although doping practices may improve one's performance, it does not necessarily mean that the athlete will win or improve their finishing position in a competition, as their competitor(s) may potentially be far superior to them in terms of ability, or be using doping practices themselves.

There are a variety of methods that can be successfully implemented by an athlete intent on match fixing. Competitions which restrict entry based on age often do so to allow young athletes the opportunity to compete against opponents of similar physical stature, ensuring that size and strength are not the deciding factors. Baseball player Danny Almonte helped guide his Bronx, New York baseball team into the 2001 Little League World Series (LLWS) with a string of dominating pitching performances; however, his team was later stripped of its multiple regional championships and third-place showing at the 2001 LLWS when it was revealed that Almonte was fourteen years old, two years older than the LLWS age limit. In another well publicised incident, marathon runner Rosie Ruiz appeared to have won the 1980 Boston Marathon, after attaining the third-fastest time ever recorded for a female runner⁴⁰⁴. Organisers immediately became suspicious, as not only was Ruiz barely sweating, but course officials had no evidence of her passing checkpoints and fellow competitors had no recollection of her. Eventually it was discovered that Ruiz had joined the race during its final half-mile and simply sprinted to the finish line.⁴⁰⁵ As a result, organisers stripped Ruiz of her title and awarded it to the real winner, Jacqueline Gareau.⁴⁰⁶ In both instances, the athlete's rationale for cheating was based on achieving individual success.

The use of illegal apparel in sport is another method employed by athletes in an attempt to gain an unfair advantage. During the 1976 Olympic modern pentathlon, Boris Onishchenko, a former Russian pentathlete, competed in the fencing discipline with a modified sword that allowed him to score points at will.⁴⁰⁷ He was discovered and disqualified from the event along with his

⁴⁰⁴ Two hours, thirty-one minutes, and fifty-six seconds.

⁴⁰⁵ It was revealed that Ruiz obtained her above average time by riding the Manhattan subway.

⁴⁰⁶ Ruiz deceived officials in the previous New York Marathon, the race she used to qualify for the Boston event.

⁴⁰⁷ In electric épée fencing, a touch is registered on the scoring box when the tip of the weapon is depressed with a force of 750 grams, completing a circuit formed by the weapon, body cord, and box. It was found that his épée had been modified to include a switch that allowed him to close this circuit without actually depressing the tip of his weapon.

team. The 1963 boxing match between Cassius Clay and Sir Henry Cooper witnessed Clay's corner using smelling salts, a clear violation of the rules, to help revive Clay who had just been knocked down by Cooper. This enabled Clay to regroup and go onto win the bout by means of a technical knockout. The term 'corking' refers to the illegal tactics of baseball players who insert cork into the interior of a baseball bat in a bid to make it lighter, and thus easier to swing without reducing hitting power. Baseball has witnessed numerous corking incidents, including the infamous Sammy Sosa of the Chicago Cubs, who shattered his bat during the middle of a game, spraying the field with bits of cork. A study in 2007 has since determined that corked bats absorb more kinetic energy than uncorked bats, and therefore do not provide its users with an unfair advantage.⁴⁰⁸

Athletes usually win competitions and events if their performance is better than their opponents. By reducing the performance of a rival, the perpetrator is effectively improving their own performance. Sabotage of a rival is considered a particularly underhand tactic, as not only does it improve the perpetrator's chances of success, it also seriously hinders the performance of the sabotaged athlete(s). Sabotage is usually a last resort employed by athletes who believe that enhancing their own performance would not be sufficient enough to defeat their opponent. One such incident occurred prior to the 1994 U.S. Figure Skating Championships in Detroit⁴⁰⁹, with Tonya Harding's involvement in the attack on competitor Nancy Kerrigan eventually resulting in a lifetime ban⁴¹⁰ for Harding, who was also stripped

⁴⁰⁸ According to 'MythBusters – a science entertainment TV program produced in Australia' (8th August 2007 Baseball special) the ball hit by a corked bat travels at only half the speed of a ball hit by an unmodified bat, causing it to go a shorter distance. The cork inside the bat actually absorbs the kinetic energy like a sponge, hindering the batter's performance. In addition, because corked bats are lighter, they have less mass to transfer force into the ball, bringing them to the conclusion that the use of a corked bat had fewer benefits over a regular bat.

⁴⁰⁹ Nancy Kerrigan's absence at the event allowed Tonya Harding to win the 1994 U.S. Figure Skating Championship.

⁴¹⁰ Tonya Harding was banned for life from participating in USFSA-run events as either a skater or a coach.

of her U.S. Championship title.⁴¹¹ Sport in the modern era is fully aware of the potential for sabotage, so event organisers now often employ umpires and referees to monitor and punish this type of activity.

Another incident involved Formula 1 driver Michael Schumacher who appeared to intentionally drive into championship rival Damon Hill in the final race of the 1994 season, eliminating both drivers from the race, and ensuring Schumacher won the drivers' championship.⁴¹² The race stewards judged the collision a racing accident, and no action was taken against Schumacher. A similar event occurred in the final race of the 1997 season; once again Schumacher appeared to intentionally drive into his championship rival Jacques Villeneuve.⁴¹³ However on this occasion, Schumacher only managed to eliminate himself from the race, as Villeneuve was able to continue and finish third to claim the drivers' championship ahead of Schumacher.⁴¹⁴ Although race stewards once again failed to respond, the Fédération Internationale de l'Automobile (FIA)⁴¹⁵ stepped in and disqualified Schumacher from the entire 1997 season.⁴¹⁶ The FIA's severe punishment sent out a strong message that sabotage would not be tolerated in the sport of motor racing.

⁴¹¹ Nancy Kerrigan's ex husband hired an individual to break her right leg so that she would be unable to participate in the upcoming U.S. Championships. Although her leg was only bruised in the attack, Kerrigan was unable to compete at the event which was won by Tonya Harding. It was later revealed that Harding was involved in the cover-up of the attack, and failed to appropriately act before it took place.

⁴¹² Going into the 1994 Australian Grand Prix, the final race of the 1994 season, Schumacher led Damon Hill by a single point in the Drivers' Championship.

⁴¹³ As Villeneuve attempted to pass Schumacher at the Dry Sack Corner on lap 48, Schumacher turned in and the right-front wheel of Schumacher's Ferrari hit the left side pod of Villeneuve's car.

⁴¹⁴ Going into the race, Schumacher led Jacques Villeneuve by one point in the Drivers' Championship. By finishing in third place, Villeneuve picked up four points, securing the drivers' championship in the process.

⁴¹⁵ Fédération Internationale de l'Automobile is the governing body of Formula 1 motor racing.

⁴¹⁶ Schumacher is the only driver in the history of the sport to be disqualified from a drivers' world championship.

12.3.2 – Cheating to Lose

Athletes who cheat with the intention of losing usually do so for financial gain; although there are occasions when an athlete may be forced into ‘throwing a game’ due to political pressure.⁴¹⁷ This form of match fixing is synonymous with gambling and usually involves betting rings persuading athletes to intentionally underperform in exchange for lucrative bribes.⁴¹⁸ These financial incentives are often aimed at corrupting athletes who are unlikely to be competing for honours; although there are occasions when betting scandals effect sport at the highest level. The Chicago White Sox scandal involved eight basketball players who intentionally underperformed to allow the Cincinnati Reds to claim the 1919 World Series.⁴¹⁹ The player’s motivation for the fix was fuelled by greed and a dislike of penurious club owner Charles Comiskey. Subsequently, all the players involved were banned from the sport for life, including those that knew of the fix but failed to report it.⁴²⁰ In 1964 an English football betting scandal resulted in eight professional players being imprisoned for their involvement in match fixing.⁴²¹ Three of the corrupt players even bet against their own team. The scandal was exposed when the main instigator sold his story to a national newspaper.⁴²²

There is an argument that clubs which field weakened teams with the intention of losing are essentially cheating. This is particularly common in

⁴¹⁷ Iranian judoka, and double world featherweight champion, Arash Miresmaeili was favourite for the gold medal in the 2004 Summer Olympics. Slated to fight Israeli competitor Ehud Vaks in the first round, Miresmaeili was disqualified from competing because he was over the weight limit for his class. It is widely believed that Miresmaeili deliberately set out to be disqualified rather than compete against an Israeli. Miresmaeili was heralded as a national hero and awarded \$125,000 by his government.

⁴¹⁸ Athletes in specialised positions, like goalkeepers in football or penalty kickers in rugby, are more likely to be approached by betting rings due to their ability to influence a game.

⁴¹⁹ The incident is also known as ‘The Black Sox Scandal’.

⁴²⁰ This included George ‘Buck’ Weaver who attended initial meetings, but did not go in on the fix.

⁴²¹ The players were also banned from playing football for life.

⁴²² The corruptor, Jimmy Gauld, sold his story to the *Sunday People* in return for a final ‘payday’. The evidence incriminated both Gauld and the players involved.

North American sports which employ draft systems, as the lower you finish within a league, the greater your chance of obtaining the first pick in the upcoming player draft. This can reduce competitiveness amongst teams, rendering contests predictable and uninteresting. Unlike gambling scandals, the club does not receive any financial incentives for intentionally underperforming; although by obtaining a higher draft pick, they have a greater opportunity of acquiring a more valuable player. Although underperformance with the intention of losing contravenes the ethical principles of sport, there are circumstances when it may prove beneficial for a team to lose in terms of improving the long term ambitions of the club.

12.3.3 – Point Shaving

Point shaving is a practice commonly associated with the sports betting industry which exploits the discontinuity in the betting line's payout structure. *Gibbs (2007)* notes that while the betting line is designed to balance the betting market, it does not correspond to the incentives of the games; as the teams only care about wins and losses⁴²³. This asymmetry is essentially an opportunity for players on the favoured team to shave points without adversely affecting their teams' wins and losses.⁴²⁴ Although point shaving does not necessarily alter the result of a contest, its practice contravenes the ethical principles of sport in terms of athletes performing to their maximum potential. Point shaving could also affect other teams within a league as net scoring or run rate could be the deciding factor in a team advancing from their group or league to the latter stages of a competition. Basketball is a particularly easy medium for shaving points because of the

⁴²³ Gibbs, J. (2007) 'Point Shaving in the NBA: An Economic Analysis of the National Basketball Association's Point Spread Betting Market', Department of Economics, Stanford University, Stanford, CA 94309.

⁴²⁴ A player on a favoured team could reduce his effort to change the expected final margin without changing his team's likelihood of winning. This decrease in effort, in conjunction with the placement of a bet on the team's opponent to cover the point spread, is point shaving.

scoring tempo of the game and the ease by which one player can influence key events. By deliberately missing shots or committing well-timed turnovers or fouls, a corrupt player can covertly ensure that his team fails to cover the point spread, without causing them to lose the game.

The Boston College basketball point shaving scandal of 1978-79 centred on a betting scandal instigated by mobsters. The perpetrators recruited several key players from the Boston College basketball team⁴²⁵ in a bid to ensure the team would not win by the required margin in certain games; thus allowing the mobsters to place bets against the team.⁴²⁶ Bets were placed on a total of nine games during the season, which produced mixed results for the gamblers.⁴²⁷ The scheme was eventually uncovered a year later, with the main perpetrators sentenced to ten years in prison.⁴²⁸ The CCNY⁴²⁹ point shaving scandal of 1950-51 involved seven schools from Greater New York and the Midwest, and thirty-two players. The scandal underlined the Court's attempts to rid sports of gambling corruptors, with the punishments handed out to these individuals far more severe than those given to the players involved.⁴³⁰ This appears to be the correct approach as it is the gamblers and fixers who initiate corruption by inducing young, naive, and financially stricken individuals into underperformance and point shaving.

⁴²⁵ The players involved in the point shaving scheme made \$2,500 each, and sometimes more, per game.

⁴²⁶ The Boston College basketball team ended the 1978-79 season with a 22-9 record.

⁴²⁷ The betting mobsters were only victorious in four of the nine games. Two games resulted in a 'push', whilst the outcome of the other three games did not favour the gamblers.

⁴²⁸ Sentencing ranged between four and ten years.

⁴²⁹ CCNY refers to the City College of New York.

⁴³⁰ The majority of the gamblers and fixers involved in the scandal were sentenced to a minimum of one year in prison, whereas the majority of players involved were either acquitted, had their charges dropped, or received a suspended sentence.

12.4 – The Economics behind Corruption and Cheating

According to *Becker (1968)*, corruption can generally be regarded as a choice made by an individual in the face of a number of legal and illegal alternatives for action, whereby the course of action is chosen which promises the greatest expected net utility for the individual at the time of deciding⁴³¹. A greater probability of detection is likely to deter athletes from cheating. Greater investment in the monitoring of the performance and behaviour of athletes can be implemented by sports governing bodies to increase deterrence, although this would require assistance from the betting industry to report unusual betting patterns. Deterrence is also likely to be increased if the probability of a fix being successful is lowered. Individual sports like tennis or squash are easier to fix than complex interactive sports like football and rugby, as only one athlete has to underperform, whereas even a significant subset of players would find it difficult to arrange the outcome of a team game.⁴³² Another consideration that has to be taken into account is the potential gain from a fix. Corruption is likely to be at its greatest in liquid markets, with detection risk low and greater amounts of money available.⁴³³ More stringent betting rules are required to control the amount of corruption scandals, although the globalisation of the market makes it more difficult to control rules in other jurisdictions.

The severity of the financial penalties administered to those found guilty of corruption is likely to influence an athlete's decision to participate in match fixing; although the high salaries in professional sports is likely to offer some insurance.⁴³⁴ NBA basketball players and Premier League footballers are far less likely to indulge in match fixing due to their high earnings and the risk posed to future earnings were they to be caught. This principle suggests that referees and umpires may be a more

⁴³¹ Becker, G.S. (1968) 'Crime and Punishment: an Economic Approach', *Journal of Political Economy*, 76, p169-217.

⁴³² Match fixing in team sports is more likely to be based on specific aspects of the game, with bets placed on outcomes such as the number of penalty conversions in a rugby match and the number of runs scored by a particular player in a cricket match.

⁴³³ There may be cases where threats, as well as or instead of inducements, are offered to players.

⁴³⁴ At the highest level, huge sums of money are likely to be required to induce an athlete into match fixing.

suitable target for betting rings who are intent on fixing top-level sports games, as these individuals are typically paid much less than players. The problem with financial penalties and bans as a combative measure is that the career of a sportsman is short, with athletes forced to make large sums of money in a short period; whilst bans are unlikely to deter veteran players coming to the end of their careers.⁴³⁵ The skill and ability of an athlete is also likely to have a bearing on whether they enter into match fixing. Athletes in contention for trophies are less likely to indulge in corrupt activities as they have a greater chance of attaining the recognition and prestige which accompanies winning. Risk to the integrity of a contest therefore increases when there is little on offer to the players and supporters.⁴³⁶

12.5 – Corruption on behalf of Referees and Umpires

Officials are responsible for overseeing contests by enforcing the rules and regulations which govern the sport; whilst their presence is essential in preserving fair play and competitive balance. Officials overseeing team sports are more likely to be approached by betting rings as they have the authority to make contentious decisions which can have a significant effect on the outcome of a contest. The officials most likely to be approached by gamblers are those who possess sole authority over a sporting contest, and the capacity to make split-second judgement calls without the aid of video technology. Currently football does not employ video technology, so contentious decisions such as the awarding of goals, penalties, and red cards, are left solely to the interpretation and discretion of the official in charge. After the 1973 European Cup Winners' Cup final, Leeds United attempted to have the fixture replayed after it emerged that referee Christos Michas had been bribed by

⁴³⁵ A veteran goalkeeper is more likely to be targeted by a betting ring than a mid-career midfielder due to his low future earnings from the sport, and high influence on match outcome.

⁴³⁶ Routine one day cricket internationals, of which so many are played, are more likely to provoke a fix than World Cup matches; whilst contests within a 'dead rubber' may be a more plausible setting for malpractice than a series decider.

the winners AC Milan.⁴³⁷ Michas was banned from officiating for life; however Leeds United was not awarded the trophy or even a replay. UEFA's failure to punish AC Milan ultimately enabled the corruptors to prosper from the scandal.

Former NBA referee Tim Donaghy was sentenced to fifteen months in prison after admitting to gambling on games he officiated in and transmitting wagering information through interstate commerce.⁴³⁸ Donaghy's methods included calling games so as to give more points to each team. This is relevant to betting interests involved in the 'over-under' market and is less likely to come to light than fixing match outcomes since it does not require the referee to display bias towards one side. The scandal forced the NBA to revise its guidelines on the behaviour of its referees; with more accessible in-season training and counselling on gambling, an increase in thorough background checks, and greater in-depth analysis in the statistical relationship between NBA games and referees' gambling patterns for those games. The 2005 Bundesliga scandal centred on referee Robert Hoyzer who engineered the result of a cup game by awarding his favoured team two highly dubious penalties and a damaging red card to their opponents.⁴³⁹ Hoyzer's blatantly biased decisions were investigated, which eventually led to him admitting to the fix.⁴⁴⁰ Hoyzer's confession revealed that corruption was widespread in German football, primarily in lower divisions.⁴⁴¹ The huge amounts of money generated from match fixing allowed gamblers to offer generous incentives to referees that were relative to their salaries.⁴⁴² Hoyzer was subsequently sentenced to twenty-nine months in prison for his part in the scandal.

⁴³⁷ AC Milan won the game 1-0 after referee Christos Michas made a number of unfair decisions in favour of the Italians.

⁴³⁸ By passing on information to an illegal bookmaker, Donaghy was able to make \$5,000 per correct selection.

⁴³⁹ Desperate measures were called for since the team whose victory he was to facilitate already trailed by two goals. His intervention was successful as the team came from behind to win 4-2.

⁴⁴⁰ This led to the investigation of four other referees and the trial of one other.

⁴⁴¹ Prosecutors claimed that twenty-three matches had been fixed between April and December 2004.

⁴⁴² Hoyzer received over €60,000 for fixing this particular game.

The 2006 Italian football scandal involved several of Italy's top professional football teams. AC Milan, Juventus, Fiorentina, Lazio, and Reggina were all discovered to be involved in the scandal which centred on club owners handpicking referees for high profile games, in the hope that they would manipulate results in their favour.⁴⁴³ All the clubs involved were punished, with Juventus receiving the most severe punishment which included being stripped of their two recent Serie A titles, and automatic demotion to Serie B along with a points reduction for the following season.⁴⁴⁴ The aftermath of the scandal left Italian club football in poor condition, with its strongest team demoted a division, and several high profile players moving to other leagues. Since the incident, Inter Milan have dominated Italy's top league⁴⁴⁵, winning the title on all but one occasion. The reduction in the overall quality of the league is evidenced by the loss of a UEFA Champions League place, which subsequently went to Germany's Bundesliga.⁴⁴⁶ This is not the first scandal to occur in Italian football; a betting scandal took place prior to the 1982 World Cup. Coincidentally on both occasions, the Italian national team was somehow galvanised by what had occurred and managed to regroup and win the FIFA World Cup.⁴⁴⁷

12.6 – Corruption, the State, and Sports Governing Bodies

State intervention in sport is usually instigated by an athlete's home nation in a bid to acquire national success and prestige. The State's politicians and sports hierarchy will attempt to corrupt officials and judges into favouring their athletes and teams by inducing them with gifts, financial incentives, and threats. Italian politician Benito Mussolini is believed to have played a major role in Italy's World Cup triumph in

⁴⁴³ A number of telephone interceptions showed a thick network of relations between team managers and referee organisations.

⁴⁴⁴ The other teams involved all received points reductions in some form. The team most affected, other than Juventus, was Fiorentina who subsequently lost their Champions League place for the following season.

⁴⁴⁵ Inter Milan acquired several key players from Juventus after they were demoted a division. Signings included influential players Patrick Vieira and Zlatan Ibrahimović.

⁴⁴⁶ The Italian league lost this Champions League place to the German league at the end of the 2010-11 season.

⁴⁴⁷ Italy won the World Cup in 1982 and 2006.

1934. Not content with home advantage, Mussolini decided which referees would officiate at each match, something that would prove decisive in his quest for victory.⁴⁴⁸ The quarter-final replay against Spain aroused further suspicion of corruption, with the referee awarding a series of contentious decisions in Italy's favour, ensuring the hosts progressed.⁴⁴⁹ There was more controversy in the semi-final against Austria, with many believing Swedish referee Ivan Eklind had been bribed ahead of the game.⁴⁵⁰ Despite these claims, the Italians were forced to rely on a contentious goal which many believed was offside.⁴⁵¹ Once again, Mussolini insisted that controversial referee Eklind was to officiate the final. Italy's aggressive style of play again went unpunished, and the team went on to win their first World Cup. The 2002 Winter Olympic Games figure skating scandal focused on the contentious decision to award the gold medal to the Russian duo ahead of the Canadians. French judge Marie-Reine Le Gougne later admitted that she had been pressured by the head of the French skating organisation, Didier Gailhaguet, into voting for the Russian pair regardless of how others performed. Le Gougne and Gailhaguet were suspended for three years, while the International Skating Union (ISU) adopted a policy of 'secret judging', in which judges' marks are posted anonymously, as part of the new judging system for figure skating. The problem with this system is that the secrecy only prevents the public and media from being able to identify cheating.

⁴⁴⁸ <http://www.overtimeonline.co.uk/?p=1330>.

⁴⁴⁹ Swiss referee Rene Mercet was later suspended by the Swiss Football Federation for his performance in the replayed quarter-final match between Italy and Spain.

⁴⁵⁰ It is heavily thought that the pair had dinner together the night before the match to 'talk tactics'.

⁴⁵¹ One report even stated that the referee was seen intercepting a pass by an Austrian player and heading the ball back to the Italians.

Figure 12.1 – Incidents which have favoured Barcelona

Home	Score	Result	Away	Year	Round	N
Barcelona	0-1	2-1	Chelsea	2005	Last 16	1
Chelsea	1-0	1-1	Barcelona	2009	Semi-finals	2
Barcelona	0-0	1-0	Inter Milan	2010	Semi-finals	3
Barcelona	1-1	3-1	Arsenal	2011	Last 16	4
Real Madrid	0-0	0-2	Barcelona	2011	Semi-finals	5
Barcelona	0-0	1-1	Real Madrid	2011	Semi-finals	6

Home – The home team.

Away – The away team.

Score – The current score at which the incident occurred.

Result – The final result of the game.

Year – The year the game occurred.

Round – The round of the competition.

N – The corresponding notes for the incident.

1 – A controversial red card (second yellow) is awarded to Chelsea player Didier Drogba after the break, amid rumours that Barcelona’s manager Frank Rijkaard had entered the referee’s dressing room during the halftime interval.

2 – Chelsea is denied what appear to be four clear penalties in their favour.

3 – A controversial red card is awarded to Inter Milan player Thiago Motta during the first half for an alleged elbow, although replays indicate there to be no clear contact.

4 – A controversial red card (second yellow) is awarded to Arsenal player Robin Van Persie during the second half for apparently kicking the ball away one second after the referee blew his whistle for an offside decision.

5 – A controversial red card is awarded to Real Madrid player Pepe in the second half, although replays indicate the challenge to be no more than a yellow card offence.

6 – Real Madrid is denied what appears to be a legitimate goal by Gonzalo Higuaín.

Although there is currently no evidence of sports governing bodies being directly involved in match fixing scandals, there have been suggestions of governing bodies favouring teams, particularly those that are successful and possess large fan bases. Real Madrid manager José Mourinho recently implied that FC Barcelona was given preferential treatment over teams in a bid to aid their progress to the final of the UEFA Champions League. *Figure 12.1* highlights a number of incidents in high profile games that have gone in favour of Barcelona, particularly in contests they were struggling in. The most contentious of these decisions occurred in the 2009 semi final against Chelsea, when the home team was denied four clear penalties, allowing Barcelona to advance to the final on away goals. Although there is currently no tangible evidence to indicate corruption on behalf of UEFA or Barcelona, there is adequate speculative data to begin an investigation into these

allegations.⁴⁵² FC Barcelona is one of the biggest football clubs in Europe with a huge following. They play attractive attacking football which embraces the spirit of the game. Since the introduction of manager Pep Guardiola, the team is considered to be one of the best ever in club football.⁴⁵³ Their failure to reach the latter stages of Europe's premier club competition is likely to reduce both interest in the competition and the financial incentives from lucrative sponsors and advertisers. It would therefore be in UEFA's best interest for a club of this stature to advance as far as possible in the competition.⁴⁵⁴ Barcelona, like many other big clubs, will argue that these type of accusations are often labelled at teams who are victorious, with the allegations amounting to nothing more than jealousy on behalf of less successful clubs. These incidents also fail to take into account decisions that went against Barcelona, such as the blatant foul on their goalkeeper which led to Chelsea's winning goal in the second leg of their 2005 encounter, and the disallowed goal against Arsenal in the first leg of their 2011 tie. It must be stressed that this is merely speculation, and there is no tangible evidence to confirm that UEFA has aided Barcelona's progress in European competitions, or that referees have felt pressured into awarding contentious decisions in their favour.

12.7 – Corruption in Cricket

Cricket is an ideal sport for all types of betting as it does not require all eleven players to throw a match. The rise of spread betting makes it easier for corrupt players, gamblers, and bookmakers to make huge amounts of money, with a variety of betting options available including, how many runs an individual player will score, how many wickets a bowler will take, or how many wides there might be in an

⁴⁵² *Figure 12.1* highlights six incidents from high profile games in recent years, in which Barcelona appeared to receive favourable treatment from the referees. All of these incidents occurred whilst Barcelona was struggling, significantly altering the outcome of the game.

⁴⁵³ Barcelona have won the three of the last six UEFA Champions League titles, and dominated their domestic league in recent seasons.

⁴⁵⁴ José Mourinho stated after Real Madrid's 2-0 defeat to Barcelona in the first leg of the 2011 Champions League semi-final, "If we go there (Nou Camp) and score a goal, they will kill us again. We have no chance. They have to get to the final and that's that".

innings. International cricketers are paid less than top footballers, golfers, or tennis players and have relatively short and uncertain playing careers, often without contracts, and are therefore more vulnerable to corrupt approaches. The high number of One Day Internationals which ultimately reduces the prestige and national pride at stake in matches, along with the ability to receive money from potential corruptors in exchange for innocuous information, without being forced to fix matches, makes it easier for cricketers to overcome moral boundaries. The Hansie Cronje affair was one of the biggest scandals to affect cricket, with four South African players, including Cronje, found to have received money in return for fixing the outcome of matches. Investigations revealed that Cronje himself was the instigator, with his role as captain pivotal in enabling him to persuade teammates to underperform. Captains in cricket maintain a powerful position as they decide on declarations⁴⁵⁵ and instruct batsmen how they should play on a scale between cautious and reckless.⁴⁵⁶ The inquiry resulted in the suspension of two players, while Cronje was handed a lifetime ban due his influential role in the scandal.

Ball tampering is an action commonly used in cricket which involves a fielder illegally altering the condition of the ball with the purpose of achieving more favourable bowling conditions. Unlike point shaving and underperformance, these actions are conducted with the intention of winning the game by gaining an unfair advantage. A common method involves alteration of the quarter seam, as this can aid conventional and reverse swing and is particularly difficult to detect. In July 2000, Waqar Younis became the first cricketer to be banned for ball tampering and was fined fifty percent of his match fee, while India's Sachin Tendulkar was banned for one game after television footage suggested he had been involved in scuffing the seam of the ball. The use of foreign substances to polish the ball is a method employed to enhance the swing of the ball. The moisture gained from spit or sweat

⁴⁵⁵ The final test between South Africa and England in the 1999-00 series was a 'dead rubber', with South Africa having already won the series. Cronje's decision to forfeit an innings gave England a chance of winning which they took.

⁴⁵⁶ In the case of a batsman, scoring few runs is relatively easy to engineer and this raises risks to the level previously associated with one-on-one sports. In the case of bowlers, the captain is perhaps required as a co-conspirator since he may otherwise take off a bowler who is underperforming.

when combined with polishing, smoothens one half of the ball, allowing air to pass more rapidly over one side of the ball. When bowled correctly, a bowler has a greater chance of manoeuvring the ball from one side to the other through the air. Although no player has been officially charged with the offence, in 2004 India's Rahul Dravid was fined after he rubbed the sweetened saliva from a lolly directly onto the ball. Although allegations of ball tampering are common, a lack of substantial evidence often enables the culprits to escape unpunished.

12.7.1 – Spot Fixing

Spot fixing refers to the illegal activity in a sport where a specific part of a contest is fixed. Spot fixing attempts to illegally defraud bookmakers by a player agreeing to perform to order by pre-arrangement. Unlike match fixing and point shaving, spot fixing is more difficult to detect as the offence is often something as minor as timing the first throw-in or corner in football.⁴⁵⁷ Although spot fixing is an unethical attempt by a sportsperson to gain a financial advantage, it is not as severe as other forms of cheating and corruption, as the offence does not usually alter the outcome of a contest. Sports like cricket are more susceptible to this form of corruption as the timing of a no ball or a wide delivery can easily go unnoticed. The Pakistan spot fixing scandal centred on several team members deliberately underperforming at certain periods during the fourth test match at Lord's cricket ground in 2010.⁴⁵⁸ The conspiracy was eventually uncovered, resulting in Salman Butt, Mohammad Asif, and Mohammad Amir all

⁴⁵⁷ Southampton footballer Matt Le Tissier bet on the timing of the first throw-in in a match he played against Wimbledon in 1995. The plan failed when a teammate who was unaware of the scam managed to keep his under hit pass on the pitch. Le Tissier was forced to quickly kick the ball from play to prevent himself losing money.

⁴⁵⁸ Fast bowlers Mohammad Asif and Mohammad Amir deliberately bowled no balls at specific points in an over.

receiving lengthy prison sentences for their part in the scandal.⁴⁵⁹ Combating spot fixing is difficult and relies on sports governing bodies cooperating with betting markets in an attempt to identify irregular betting patterns.⁴⁶⁰

12.8 – Combating Corruption in Sport

Although it is difficult to completely eradicate corruption from sport, the severity of punishments handed out to the participants and perpetrators is likely to have an effect on whether these type of incidents reoccur or not. Each incident requires individual analysis to identify the nature of the crime, the characteristics of the participant(s) involved, and the measures that are required to deter further incidents. Identifying the motive behind the scandal is essential in determining the length of the ban that should be imposed upon the culprit. *Heidenheimer (1989)* classifies corruption into three categories: black corruption, white corruption, and grey corruption. Black corruption is an activity widely condemned by all levels of society (match fixing), white corruption is the behaviour which is almost ignored by society and concerns activities that do not necessarily warrant punishment (gamesmanship), and grey corruption is an activity that falls in between the two (doping)⁴⁶¹.

Cheating to win is considered a lesser offence as the athlete retains their competitive integrity to succeed⁴⁶², whereas those who cheat to intentionally lose do so purely for financial gain, and often have no regard for the fundamental principles that

⁴⁵⁹ Bookmaker Mazhar Majeed and cricketers Salman Butt, Mohammad Asif, and Mohammad Amir were all given prison sentences ranging from six to thirty-two months. The three cricketers were also banned by the ICC for terms of between five and ten years.

⁴⁶⁰ Canterbury-Bankstown rugby league player Ryan Tandy was found guilty of spot fixing during a 2010 game against North Queensland. Observers noted that there had been an unusually high proportion of bets taken on the penalty goal option for the game.

⁴⁶¹ Heidenheimer, A.J. (1989) 'Perspectives on the perception of corruption', in Heidenheimer, A.J., Johnston, M. and Levine, V. 'Political Corruption: A Handbook', New Brunswick, Canada.

⁴⁶² In reference to Heidenheimer's views, this type of behaviour is likely to be categorised as 'grey corruption'.

comprise the essence of sport⁴⁶³. Punishments therefore need to represent the crime, with those who have no interest in adhering to the fundamental principles of sport receiving more severe bans and financial penalties. As previously noted, there is no retribution in handing out a lengthy ban to a veteran athlete who only has a few years of their career left. Likewise, the use of financial penalties is unlikely to deter the top athletes who earn millions through salaries and other endorsements. A more effective punishment for these athletes would be to exclude them from various events and strip them of previous victories, medals, and records. Prison sentences are reserved for the most serious offences and are usually administered to those found to have instigated match fixing. These individuals often have no association with sport, and merely use it as a tool for their own financial gain.

In instances whereby one member of a team has cheated in order to gain an unfair advantage for their team, a punishment must be administered to both parties to ensure the team is unable to profit from the illicit act. During a World Cup qualifying match between Brazil and Chile in 1989, a firework landed close to the Chilean goalkeeper Roberto Rojas, who then feigned injury by cutting his own face with a razor blade he had hidden in his glove. His team refused to continue the match (as they were a goal down at the time). The plot was discovered and resulted in a twelve year suspension for Rojas, whilst Chile was banned from the 1994 World Cup. The sanction effectively ended the career of Rojas, while the Chilean national team was punished for refusing to continue the game. Although severe, the punishments were necessary to act as a deterrent to others.⁴⁶⁴ Similarly, Spain was stripped of their intellectual disability basketball gold medals shortly after the 2000 Summer Paralympics in Sydney, after it was confirmed that ten of the twelve members were not disabled.⁴⁶⁵ There were even accusations that the Spanish Federation for the Mentally Handicapped Sports (FEDDI) deliberately chose to sign-up athletes who were not intellectually disabled in a bid to win medals and gain

⁴⁶³ In reference to Heidenheimer's views, this type of behaviour is likely to be categorised as 'black corruption'.

⁴⁶⁴ This type of incident has not reoccurred in football at the highest level.

⁴⁶⁵ Investigations found that the required mental tests, which should show that the competitors have an IQ of no more than seventy, were not conducted by the Spanish Paralympic Committee.

more sponsorship⁴⁶⁶. Although there were two members of the team not directly involved in the scandal, it is reasonable to assume that the team's success was largely due to the ability of the athletes who were not disabled.

UEFA is an organisation determined to eradicate corruption from European football. The governing body recently set-up a Betting Fraud Detection System which monitors some 29,000 games across Europe, including all UEFA competition fixtures, as well as all first and second division, and national and cup matches across its fifty-three member associations. The system monitors the betting market all around the world, twenty-four hours a day. UEFA president Michelle Platini underlined the intentions of his organisation stating, "Any player who is caught will never play football again. Those who corrupt football at refereeing level will never referee again. Anyone who corrupts as a president or coach will never manage or coach again"⁴⁶⁷. The system was recently called into question in the wake of Lyon's 7-1 victory away to Dinamo Zagreb in a 2011 UEFA Champions League game⁴⁶⁸; although the system did not detect any suspicious betting patterns or irregularities, despite the controversy surrounding the nature of the goals scored.⁴⁶⁹ The French online gaming authority (ARJEL) also did not detect any suspicious betting patterns, lending further support to the effectiveness of UEFA's anti-corruption system. UEFA's Betting Fraud Detection System appears to be the way forward for sports, as the growth of betting markets has increased the opportunities available to betting rings. By continually analysing betting markets on a global scale, a governing body is able to identify potential betting scandals before they occur, allowing them to

⁴⁶⁶ http://news.bbc.co.uk/sport1/hi/other_sports/1039129.stm.

⁴⁶⁷ See <http://www.uefa.com/uefa/aboutuefa/organisation/president/news/newsid=1453813.html>.

⁴⁶⁸ To advance to the knockout stages, Lyon required Real Madrid to defeat Ajax whilst they defeated Dinamo Zagreb, producing a seven goal swing in the process. Ajax had two legitimate goals disallowed in their defeat to Real Madrid, whilst Lyon managed to score six goals in the second half of their game.

⁴⁶⁹ Many of these goals gave the impression that the Zagreb defence was giving the game away. Goalie Ivan Kelava made some very strange mistakes, as did defender Domagoj Vida. Footage recorded after Lyon scored their fifth goal was of particular interest. In it, Vida can be seen giving a thumbs-up and winking at Lyon striker Bafétimbi Gomis, who managed to score three goals in no more than seven minutes.

launch a prompt investigation in a bid to identify the culprits, and take action to prevent the contest from being compromised.

12.9 – The Distinction between Cheating, Gamesmanship, and Fair Play

Loland (2002) defines cheating as, “... an attempt to gain an advantage by violating the shared interpretation of the rules (the ethos) of the parties engaged without being caught and held responsible for it”⁴⁷⁰. In the modern era of professional sport, to play within the rules is no longer an adequate definition of ‘good sportsmanship’, since the rules are in fact a mixture of types of prescriptions ranging from those that define the nature of the competition to those that seek to regulate behaviour, or ensure well-matched contests, or even effective play. Occasionally the penalty for breaking a rule is an insufficient deterrent, leading to intentional foul play. Huge financial incentives and the pressures of being a role model can often distort an athlete’s morals, resulting in the adoption of a ‘win at all costs’ mentality.

Whysall (2012) identifies various types of rules that apply to sport: constitutive rules which actually define the sporting activity⁴⁷¹, regulative rules which are concerned with the conduct of a game⁴⁷², auxiliary rules which may concern aspects of safety or eligibility⁴⁷³, and rules which are advisory but do not appear in any formal rule book⁴⁷⁴.⁴⁷⁵ In terms of fair play, athletes are expected to conform to constitutive and regulatory rules, and not infringe auxiliary rules such as age and weight eligibility. *Butcher and Schneider (1998)* state, “... if an athlete breaks the agreement to

⁴⁷⁰ Loland, S. (2002) ‘Fair Play in Sport: A Moral Norm System’, London and New York: Routledge, p96.

⁴⁷¹ These rules often define the playing area, the number of participants, and the size of acceptable equipment.

⁴⁷² Unsportsmanlike behaviour in football is often punished i.e. when a player intentionally dives in an attempt to win a penalty.

⁴⁷³ Protective clothing

⁴⁷⁴ Young athletes will be coached to adopt a conventional stance at the wicket in cricket or at the table in snooker.

⁴⁷⁵ Whysall, P. (2012) ‘Ethical implications of the professionalization of sport: the nature of the problem’, Nottingham Business School.

compete, he or she ceases to compete, and so, can no longer be in a position to win. That is, if one cheats one cannot win”⁴⁷⁶. However, many rule violations are unintentional, particularly in fast pace sports like football and basketball. ‘Gamesmanship’ is a term used to describe a category of actions that contravene the spirit of a contest, but do not violate the rules of the sport. ‘Cheating’ is an immoral act used to achieve a goal by breaking the rules of a contest in a bid to gain an unfair advantage. The act of cheating requires intention and premeditation, whereas acts of gamesmanship can be both spontaneous and pre-empted. This does not mean that one should not do one’s best to prevent an opponent utilising their particular skills or playing to their strengths; however they should not cross the line in terms of gaining an unfair advantage.⁴⁷⁷

Athletes can be categorised into three stereotypical groups. There are those who uphold the integrity of sport and embrace the principles of fair play; whilst conducting themselves in an appropriate manner, both on and off the field of play. Then there are those who, for the most part, abide by the regulative rules of a sport but occasionally commit acts of gamesmanship and indulge in unsportsmanlike behaviour. Finally there are those who possess few or no ethical principles and are prepared to break a sport’s constitutive rules whilst going undetected. These athletes are only concerned with personal gain, and often have little or no regard for their fellow competitors or the integrity of the competition.

Fraleigh (1982) believes there must be intent to break the rules for cheating to occur⁴⁷⁸, but this still leaves the issue of intentionally playing to the limit of the rules which makes a rule violation more likely. Athletes who use performance enhancing drugs, intentionally underperform for financial gain, and sabotage an opponent’s chances of success are considered ‘cheats’, as their actions are premeditated and can

⁴⁷⁶ Butcher, R. and Schneider, A. (1998) ‘Fair play as respect for the game’, in Morgan, W.J., Meier, K.V., and Schneider, A.J. (2001) ‘Ethics in Sport’, Champaign, Illinois: Human Kinetics, p27.

⁴⁷⁷ Adopting a more physical approach in a football match is a common approach taken by teams facing superior opposition; however if a team sets out to intentionally injure an opposing player, this would be considered unsporting behaviour.

⁴⁷⁸ Fraleigh, W. (1982) ‘Why the Good Foul is Not Good’, *Journal of Physical Education, Recreation & Dance*.

have a significant impact on the result of a contest. Gamesmanship is considered an unsavoury act which has crept into modern day professional sport, whereas cheating is recognised as the ultimate sporting crime.

There does appear to be a clear distinction between those who unintentionally break regulative rules and those who indulge in gamesmanship. A long jumper will strive to get as close to a foul jump without actually committing one as possible. The bowler in cricket will similarly risk bowling a no-ball in order to minimise the batsman's time to select a shot. An athlete who happens to miss time a jump or misjudge a throw does not do so intentionally; they are merely attempting to gain the maximum advantage without breaking the sport's regulative rules. Gamesmanship is an intentional act, either spontaneous or premeditated, which is used by individuals to gain an advantage during the course of play. Breaking the flow of a contest is a common tactic used by athletes and teams content with the current score. Intentionally standing in an opponent's line of sight in snooker, feigning injury, and time wasting are all acts of gamesmanship. In football, if an official suspects an athlete of indulging in simulation, they have the ability to punish them with a yellow card; although it is often difficult to determine whether or not their actions are intentional.

Although unsporting behaviour appears to be on the rise in football, governing bodies are now beginning to act and enforce the principles of fair play and sportsmanship. UEFA recently intervened and suspended Shakhtar Donetsk's Luiz Adriano for one match⁴⁷⁹, after the Brazilian scored a goal as his team tried to play the ball back to the Danish side's goalkeeper following an injury to a Nordsjaelland player.⁴⁸⁰ This incident has set a precedent in football and is likely to deter others from committing similar acts, although there will be occasions when players act instinctively in the heat of the moment, with little regard to the impending repercussions. At the 2002 World Cup, FIFA fined Brazilian striker Rivaldo after

⁴⁷⁹ The UEFA Control and Disciplinary Body charged Adriano with violation of the principles of conduct (Article 5, UEFA Disciplinary Regulations).

⁴⁸⁰ Luiz Adriano was also required to perform one full day of community football service.

video footage confirmed he had intentionally feigned injury in a bid to deceive the official into dismissing an opposing player⁴⁸¹; however they failed to carry this precedent forward in subsequent tournaments.

12.10 – Summary

Corruption and cheating in sport has been in existence since the time of the ancient Olympic Games and has continued into the modern era. Cheating in individual sports appears to be motivated by personal success, which ultimately leads to financial gain, whereas cheating in team sports is primarily instigated for financial incentives. Cheating ultimately compromises the competitiveness of sport, raising questions of its integrity and reducing spectator interest in the process. Sport is an opportunity for individuals to test their natural abilities against others, and it embraces competitiveness by regulating fair play and preserving a level playing field amongst participants. Sports governing bodies are entrusted with the task of eliminating cheating by investigating peculiar, unexpected, and extraordinary outcomes and results. Severe punishments are required in order to deter others from implementing methods that would give them an unfair advantage in competitions.

The histories of sport and gambling have been closely entwined since modern games first developed. *Munting (1996)* notes that the laws of both cricket and golf were codified for the first time in 1744, and in each case, it was with betting interests that the initiative originated⁴⁸². Although gambling is seen as an unethical practice by most societies, its historical association with sport means that separating the two is likely to prove a difficult task. Deterrence has become an increasing problem for authorities due to the financial growth of sport. Advancements in technology have enabled betting markets to expand globally, with numerous variations of bets now

⁴⁸¹ Rivaldo was fined £5,180 for feigning injury during Brazil's 2-1 victory over Turkey in their group game at the 2002 FIFA World Cup. A disciplinary committee examined video evidence of the incident and found the player guilty of 'simulation'; however they decided not to suspend him.

⁴⁸² Munting, R. (1996) 'An Economic and Social History of Gambling', Manchester University Press.

available to consumers. Monitoring suspicious betting patterns appears to be the most effective method of combating corruption in sport, as the greed of corruptors is likely to draw attention to their illegal activities. Ultimately corruption in sport needs to be addressed quickly, tackled heavily, and punished severely. Lifetime bans and prison sentences need to be administered to the instigators of corruption, as it is these individuals who are intent on reducing competitiveness in sport for their own personal gain.

Regulation, raising awareness, knowledge and surveillance, and an integration of resources are all essential in tackling corruption in sport. An adoption of standards prohibiting stakeholders from indulging in sports betting and communicating sensitive information to third parties, along with an obligation to report any attempted approaches, is required in order to minimise the possibility of an athlete becoming embroiled in such activities. Awareness can be raised at grassroots level by implementing a programme aimed at educating young athletes of the methods used by corruptors, whilst highlighting the potential risk to their career. Sports organisations must be in a position to understand the exposure of their discipline to sports betting. By drawing up lists of authorised bets by sport and classifying them according to a scale of risk, and monitoring surveillance during sports competitions (i.e. the way in which a contest develops, and its significance to the overall competition), governing bodies will be better equipped to identify suspicious activity. An integration of resources, including coordination within a unit dedicated to combating fraud in sport, establishing a network of points of contact (i.e. sports betting integrity officers), and implementing a set of protocols to follow in the event of an approach or suspicion, will further increase a governing body's ability to minimise and deter sporting corruption.

Third Party Contracts: The Carlos Tévez Dispute

13.1 – Introduction

It is a little bit like a loan deal between two clubs, except it is a loan deal between the club and a third party. Third party transfers are a way of bringing outstanding players to clubs that would not be able to afford them ordinarily, so they increase the competition.⁴⁸³

Third party ownership in football terms is the ownership of a player's transfer rights by third party sources, such as football agents or sports management agencies. These loan deals allow clubs the opportunity to acquire high profile players that they would not ordinarily be able to afford. This not only improves the quality of smaller teams, but also gives them an opportunity to realistically compete with bigger clubs. These type of transfers could potentially increase competition within a league by improving the quality of a smaller club's squad. The downside is that there is no stability in transfers, with players continually moving from one club to another. There is also the possibility that a third party could influence a player's performance (e.g. pressurising them to underperform in certain games).

13.2 – The Carlos Tévez and Javier Mascherano Affair

In August 2006 West Ham United secured the transfers of Argentine players Carlos Tévez and Javier Mascherano from Brazilian club Corinthians. The club also entered into separate agreements with the companies owning the economic rights to the players. The agreements allowed the companies to terminate the players' contracts in any transfer window. West Ham did not initially disclose the separate agreements to the Premier League. The agreements and their concealment were in breach of Premier League regulations and in April 2007, West Ham United was fined £5.5m

⁴⁸³ Kia Joorabchian (the owner of Media Sports Investments; the company owning the economic rights of Javier Mascherano and Carlos Tévez) views on third party ownership.

by a Premier League commission.⁴⁸⁴ By that time, Javier Mascherano had joined Liverpool FC, but Carlos Tévez remained at West Ham and continued playing for the club until the end of the 2006-07 season. He scored the winning goal in West Ham's final game of the season against Manchester United, securing the club's Premier League status. Sheffield United, one of West Ham's closest rivals in the fight against relegation, ended their season with three points fewer than West Ham (although they had a better goal difference), and were subsequently relegated.

Sheffield United challenged the Premier League Commission's decision in an arbitration chaired by Lord Justice Otton, but was unsuccessful and a subsequent court challenge was also dismissed. Sheffield United then proceeded to invoke the jurisdiction of the Football Association⁴⁸⁵ and an arbitration tribunal was convened, chaired by the former law lord, Lord Griffiths. The FA Tribunal found West Ham liable to compensate Sheffield United for loss suffered as a result of Sheffield United's relegation from the Premier League in 2007. West Ham appealed to the CAS, but Sheffield United obtained a High Court injunction restraining them from doing so.⁴⁸⁶

13.3 – The FA Tribunal

The FA Tribunal derived its jurisdiction from Rule K1 of the FA Rules, which provides: "... any dispute or difference (a 'dispute') between any two or more participants... shall be referred to and finally resolved by arbitration under these rules". The Tribunal concluded with a finding on liability in favour of Sheffield United, with quantum to be assessed later. The following conclusions were reported after the award was made:

⁴⁸⁴ The club was in breach of the following regulations, U18: 'No Club shall enter into a contract which enables any other party to that contract to acquire the ability materially to influence its policies or the performance of its team', and B13: 'In all matters and transactions relating to the League, each Club shall behave towards each other Club and the League with the utmost good faith'.

⁴⁸⁵ The Premier League's Rules and Regulations.

⁴⁸⁶ Sheffield United FC Limited v West Ham United FC plc [2008] EWHC 2855 (Comm).

On the totality of the evidence, we have no doubt that West Ham would have secured at least three fewer points over the 2006-07 season if Carlos Tévez had not been playing for the club.

*Indeed, we think it more likely than not on the evidence that we heard, that even over the final two games of the season, West Ham would have achieved at least three points less overall without Mr Tévez. He played outstandingly well in the two wins that West Ham secured in those last two games.*⁴⁸⁷

The Tribunal held that Sheffield United was entitled to recover damages from West Ham ‘for breach of contract’. There are two likely bases to establish a contract between the clubs in the 2006-07 season. First, the rules of a sport’s governing body constitute a contract between the members of that governing body. Second, the ruling in the case of *Clarke v Earl of Dunraven*⁴⁸⁸, which dealt with a collision between two yachts competing in a regatta, found that the competitors had entered into a contract with each other to observe the rules of the competition. This decision has been considered to apply more generally to sporting competitions.

In dealing with causation, assuming that Sheffield United suffered recoverable loss; only loss which was caused by West Ham’s breach would have been recoverable. According to media reports, the Tribunal appears to have reached a conclusion that it was the playing performance of Carlos Tévez which caused Sheffield United’s loss. This conclusion appears debateable on the basis that football is a team sport, and it is invidious to single out a particular player as having caused the gain of a specific number of points. This was the view of the West Ham manager, Gianfranco Zola, who said after the award, “Obviously a great player can make a hell of a difference, but you still need all the other players to support you”⁴⁸⁹. Although a credible statement, a great player can make a difference to the outcome of a game.⁴⁹⁰

⁴⁸⁷ Reports on the Tribunal’s judgement – www.dailymail.co.uk, 23rd September 2008; www.guardian.co.uk, 23rd September 2008. As the FA Tribunal hearing and decision were private and confidential, the detail of the argument is not in the public domain and so must remain a matter of conjecture.

⁴⁸⁸ *Clarke v Earl of Dunraven* [1897] AC 59.

⁴⁸⁹ www.guardian.co.uk, 26th September 2008.

⁴⁹⁰ Several teams have relied on great players ‘carrying’ them to success. 1986 FIFA World Cup winners Argentina relied heavily on the presence of Diego Maradona to single handily win them the trophy. He would also guide Italian club Napoli to its only two Serie A titles. Portugal’s third place

There is also room for argument that the cause of Sheffield United's loss was not Carlos Tévez's performance, but its own inability to secure the necessary points to remain in the Premier League. In the last match of the 2006-07 season, Sheffield United simply required a draw in their home game against fellow strugglers Wigan Athletic, regardless of the outcome of West Ham's final game. Sheffield United lost the game, finishing level on points with Wigan Athletic, and was consequently relegated on goal difference. It should be remembered however, that if a defendant's breach is found to be one of two causes resulting in a loss to the claimant, the defendant will be liable as long as his breach was an effective cause of the loss.⁴⁹¹ It is important to note that loss of chance can also be claimed under contract law; however the test is higher than the 'reasonably foreseeable' test in tort.⁴⁹²

With regards to remoteness, a defendant's loss must not be too remote as a matter of law. The case of *Hadley v Baxendale*⁴⁹³ discussed the issue of remoteness of damage, with the court finding that;

*Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.*⁴⁹⁴

13.4 – Should there have been a Points Deduction?

The Premier League should have deducted West Ham points as soon as they discovered there had been a breach of their regulations. Gordon Taylor, chief

finish at the 1966 World Cup was a result of the goal scoring prowess of striker Eusébio. Goalkeeper Oliver Kahn single handedly guided Germany to runners-up of the 2002 World Cup, conceding only one goal on route to the final.

⁴⁹¹ See the case of *County Limited v Girozentrale Securities* [1996] 3 All ER 834, CA.

⁴⁹² See Chitty on Contract, 30th edition, 26-059.

⁴⁹³ *Hadley v Baxendale* [1854] 9 Ex 341.

⁴⁹⁴ The Court's decision in *Hadley v Baxendale* [1854] 9 Ex 341.

executive of the Professional Footballer’s Association, believes West Ham escaped a points deduction because of their predicament. He added: “Fans of other clubs may not be happy with the verdict, but if you need to stay in a division because another club has been deducted points, it is not the sporting ethos you would want”⁴⁹⁵. It appears that the Premier League failed to deduct West Ham points because they were worried of a possible appeal had they been relegated, which could of potentially created massive instability within the league. As West Ham ultimately broke the rules, a more sufficient punishment was warranted, not only to deter other clubs from replicating their actions, but to also act as a remedy to the clubs contesting relegation. West Ham argues that there was no actual interference on behalf of the third party; however the possibility of interference is enough to warrant a breach of regulations.

Figure 13.1 – Final Premier League Table for 2006-07 Season

Pos	Club	Pld	W	D	L	F	A	GD	Pts
15	West Ham United	38	12	5	21	35	59	-24	41
16	Fulham	38	8	15	15	38	60	-22	39
17	Wigan Athletic	38	10	8	20	37	59	-22	38
18	Sheffield United	38	10	8	20	32	55	-23	38
19	Charlton Athletic	38	8	10	20	34	60	-26	34
20	Watford	38	5	13	20	29	59	-30	28

Pos – The teams’ final finishing position.

W – Win, **D** – Draw, **L** – Loss.

A – The number of goals against.

Pts – The team’s final points tally.

Pld – The number of games played.

F – The number of goals for.

GD – The team’s final goal difference.

Figure 13.1 reveals the final standings for the 2006-07 Premier League relegation battle. If Sheffield United had defeated Wigan Athletic on the final day of the season, Wigan would have been the team that was relegated, and they would have finished six points behind West Ham. According to media reports from the Tribunal’s judgement, West Ham would have secured at least three fewer points over the

⁴⁹⁵ Gordon Taylor, chief executive of the Professional Footballer’s Association, Mail Online 27th April 2007.

season had Carlos Tévez not been playing for the club.⁴⁹⁶ If this was the case, Wigan Athletic would still have been relegated which poses the question of whether a three point deduction would have been sufficient punishment for West Ham. The record fine of £5.5m handed down to the club appears insufficient in comparison to relegation, which is estimated to cost around £30m.

13.5 – Did Carlos Tévez contribute to Sheffield United’s Relegation?

Determining the contribution of Carlos Tévez in West Ham’s fight against relegation was an important factor in the FA Tribunal coming to the decision that Sheffield United should be entitled to recover damages. The Tribunal believed that without the services of Tévez, West Ham would have secured three fewer points and therefore been relegated on the final day of the 2006-07 season. The problem with this theory is that it is implausible to highlight the positive impact of Tévez’s performances in West Ham’s final two games, without identifying his contribution as a whole in the thirty-eight game season. Another misconception is that as Tévez scored the winner against Manchester United on the final day of the season, he alone secured West Ham the three points they required to avoid relegation. This assumption is incorrect as had Tévez not of scored, the game is likely to have finished goalless, providing West Ham with the precious point they required.

⁴⁹⁶ *Ibid* 487.

Figure 13.2 – Player Statistics from the 2006-07 Premier League Season

Player	Team	GS	SB	G	A	SH	SG	FC	FS
Carlos Tévez	West Ham United	19	7	7	4	78	34	28	29
Javier Mascherano*	West Ham United	3	2	0	0	3	1	6	2
Bobby Zamora	West Ham United	27	5	11	4	49	23	62	39
Marlon Harewood	West Ham United	19	13	3	1	46	17	39	27
Nigel Reo-Coker	West Ham United	35	0	1	1	29	16	85	66
Carlton Cole	West Ham United	5	12	2	1	12	9	12	8
Lee Bowyer	West Ham United	18	2	0	3	19	10	24	31
Yossi Benayoun	West Ham United	25	4	3	3	40	22	19	22
Hayden Mullins	West Ham United	21	9	2	0	21	11	32	20
Matthew Etherington	West Ham United	24	3	0	2	23	8	13	28
Didier Drogba	Chelsea	32	4	20	4	111	46	58	50
Cristiano Ronaldo	Manchester United	31	3	17	14	200	90	12	98
Benedict McCarthy	Blackburn Rovers	36	0	18	1	69	44	65	36

Team – The player’s team.

GS – Games started.

SB – Used as a substitute.

G – Goals scored.

A – Number of assists.

SH – Shots.

SG – Shots on goal.

FC – Fouls committed.

FS – Fouls suffered.

* Javier Mascherano transferred to Liverpool during the January transfer window, so his statistics are based on half the regular season.

It is difficult to prove that one player alone is responsible for the survival of a club. The data in *Figure 13.2* compares various statistics of Javier Mascherano and Carlos Tévez with a number of their team mates, and the top scorer and PFA Players’ Player of the Year⁴⁹⁷ in the 2006-07 season. This provides an insight into how Tévez in particular, performed in comparison to other notable players in his team, and the so called best players in the league. Javier Mascherano only made five appearances for West Ham before he transferred permanently to Liverpool, neither scoring nor creating a goal, thus having very little influence in West Ham’s results.⁴⁹⁸ Tévez, however, appeared twenty-six times for West Ham, scoring seven goals and assisting four others. For a striker, a goal ratio of one every 3.7 games in the Premier

⁴⁹⁷ The PFA Players’ Player of the Year award is given to the player who is adjudged to have been the best player of that particular season in English football.

⁴⁹⁸ It must be noted that Javier Mascherano occupied more of a defensive role in the West Ham team, and was therefore less likely to score goals and create chances, although it is accepted that the more attacking players are responsible for actually winning games.

League is not clinical when compared to the league's top scorer Didier Drogba, who had a ratio of one goal every 1.8 games. Likewise, Tévez's assist ratio was also poor, creating one goal every 6.5 games in comparison to Manchester United's Cristiano Ronaldo, who created one goal every 2.4 games.

Figure 13.3 – Analysis of Goal and Assist Ratios

Player	Team	GA	AA	T
Carlos Tévez	West Ham United	3.7	6.5	2.4
Javier Mascherano*	West Ham United	0	0	0
Bobby Zamora	West Ham United	2.9	8	2.1
Marlon Harewood	West Ham United	10.6	32	8
Nigel Reo-Coker	West Ham United	35	35	17.5
Carlton Cole	West Ham United	8.5	17	5.7
Lee Bowyer	West Ham United	N/A	6.6	6.6
Yossi Benayoun	West Ham United	9.6	9.6	4.8
Hayden Mullins	West Ham United	15	N/A	15
Matthew Etherington	West Ham United	N/A	13.5	13.5
Didier Drogba	Chelsea	1.8	9	1.5
Cristiano Ronaldo	Manchester United	2	2.4	1.1
Benedict McCarthy	Blackburn Rovers	2	36	1.9

Team – The player's team.

GA – Goal average ratio.

AA – Assist average ratio.

T – Total ratio of goals and assists.

* Javier Mascherano transferred to Liverpool during the January transfer window, so his statistics are based on half the regular season.

Figure 13.3 reveals that Tévez was not the most clinical goal scorer for West Ham in the 2006-07 season; that honour went to Bobby Zamora who averaged a goal every 2.9 games, although he did play more games than Tévez. West Ham's most effective attacking player was once again Bobby Zamora, who either scored or created a goal in every 2.1 games. Tévez was the second most prolific attacking player at the club, creating or scoring a goal every 2.4 games. These two players were by far the most effective for West Ham, with the next most influential player, Yossi Benayoun, only making a significant contribution once every 4.8 games. On the basis of this evidence it appears that the Tribunal were right in stating that Carlos Tévez did play a significant role in West Ham's survival. The argument that Tévez is a striker and

therefore it is his job to score and create goals for a team is relevant to some degree, however it is generally accepted that great attacking players are more likely to have a positive influence on a team than great defensive players. Another potential argument is that statistics reveal Tévez to be far less effective than other players in the league, for example Didier Drogba and Cristiano Ronaldo. The problem with this statement is that each team is comprised of a variety of players with varying ability and skill levels. Teams possessing more skilful players are expected to produce and score more goals, hence the need to judge each player individually within the context of their team. Although Tévez possessed a poor shot-to-goal ratio, he was still the second best striker at the club; and had an alternate striker played instead, a few of the results may have been less favourable and possibly resulted in the team acquiring three fewer points, according to data based on the last quarter of the season.

Figure 13.4.1 – Scoring and Assist Statistics of Carlos Tévez for 2006-07⁴⁹⁹

Game	Against	G	A	Start	Time	Res	Score	PG
29	Tottenham Hotspur	1	2	Yes	90 min	Lose	3-4	0
30	Blackburn Rovers	1	0	Yes	84 min	Win	2-1	2
31	Middlesbrough	1	1	Yes	82 min	Win	2-0	2
34	Chelsea	1	0	Yes	83 min	Lose	1-4	0
37	Bolton	2	1	Yes	90 min	Win	3-1	3
38	Manchester United	1	0	Yes	82 min	Win	1-0	2

Figure 13.4.2 – Scoring and Assist Statistics of Bobby Zamora for 2006-07

Game	Against	G	A	Start	Time	Res	Score	PG
1	Charlton Athletic	2	0	Yes	82	Win	3-1	2
2	Watford	1	0	Yes	83	Draw	1-1	1
3	Liverpool	1	0	Yes	90	Lose	1-2	0
4	Aston Villa	1	0	Yes	83	Draw	1-1	1
10	Blackburn Rovers	0	1	Yes	90	Win	2-1	2
23	Fulham	1	1	No	77	Draw	3-3	1
25	Liverpool	0	1	No	17	Lose	1-2	0
29	Tottenham Hotspur	1	0	No	7	Lose	3-4	0
30	Blackburn Rovers	1	0	No	34	Win	2-1	2
31	Middlesbrough	1	0	Yes	67	Win	2-0	0
32	Arsenal	1	0	Yes	65	Win	1-0	2
35	Everton	1	0	Yes	71	Win	1-0	2
36	Wigan Athletic	0	1	Yes	68	Win	3-0	0

Game – West Ham United’s game number in the 2006-07 season (1 being the first and 38 being the last).

Against – The team that Carlos Tévez or Bobby Zamora scored or assisted against.

G – Number of goals.

A – Number of assists.

Start – Whether Carlos Tévez or Bobby Zamora started the game.

Time – The total time Carlos Tévez or Bobby Zamora played for in that particular game.

Res – The final result of the game.

Score – The final score of the game.

PG – The number of points Carlos Tévez or Bobby Zamora gained for West Ham United in that particular game.

Figure 13.4.1’s data regarding Carlos Tévez’s goal scoring and assist records for the season reveals that he was most effective in the final quarter of the season, scoring seven goals and assisting four others. In the six games which he made a significant

⁴⁹⁹ Statistics relating to the number of points gained by Tévez do not necessarily equate to West Ham being nine points better off with him, as Tévez relied on assistance from teammates. There is also the possibility that had an alternative striker played, they would have made some, albeit probably limited, contribution.

contribution, West Ham won four of them, losing the other two. In each of these games he played for at least eighty-minutes, which is more than enough time to make a significant contribution. Further analysis into the final score of these contests reveals that Tévez's goals and assists accumulated an extra nine points for West Ham. These points came at a crucial stage of the season as West Ham won seven of their remaining nine games. Team mate Bobby Zamora possessed similar statistics throughout the course of the season, see *figure 13.4.2*; earning his club an extra thirteen points with his goals and assists. The main difference between the two is that Zamora's significant contributions were evenly spread over the season, whereas Tévez was most effective in the final quarter of the season.

Although statistics reveal Tévez to have been influential in West Ham's fight against relegation, there is still no conclusive evidence to suggest that he alone was the sole reason for West Ham avoiding relegation. The FA Tribunal was right to highlight his performances; however they failed to identify the contributions of other players, most notably Bobby Zamora, who had similar impressive statistics. In comparison to the best players from other teams; Tévez's goal ratio was average. Had Tévez possessed goal scoring statistics similar to players like Drogba, McCarthy, and Ronaldo; he would have had to perform unbelievably on a consistent basis throughout the season. These type of consistent performances may have been sufficient enough to determine that Tévez was the main reason for West Ham avoiding relegation. As it stands though, Tévez's overall performance throughout the season was not sufficient enough to hold him responsible for single handily saving the club from relegation.

13.6 – Amendments to the Rules

Since the Tévez and Mascherano affair, FIFA has incorporated a new rule within its Regulations on the Status and Transfer of Players, Article 18, which provides: 'No club shall enter into a contract which enables any other party to that contract or any

third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams'. This is similar to the Premier League former rule U18 (of which West Ham fell foul), now rule V20. The FIFA rule catches third parties as well as a club's counterparty to a contract. The ownership by third parties of economic rights in players is not banned under FIFA and Premier League rules. However, since the Tévez and Mascherano affair, the Premier League has introduced new rules L34 and L35, in a section titled 'Prohibition on Third Party Investment'. These rules only permit transfer payments to selling clubs, their guarantors, authorised agents and the football authorities, where applicable. Rule L35 permits a buying Premier League club to buy out the interest of an economic rights holder, if the holder already has an agreement with a player or his selling club that the holder will be paid when the player is transferred.

13.7 – Summary

Third party ownership appears to have several positive and negative effects on competitiveness within football. Without these form of agreements, West Ham are unlikely to have been able to afford the services of high profile players such as Tévez and Mascherano. The ability to acquire such players through third party ownership not only improves the quality of the league as a whole, but also gives smaller teams an opportunity to compete with bigger clubs. Third party agreements also shield clubs from the risk of poor investment, which is instead shouldered by the investor. This allows underperforming players to be moved on without any significant capital outlay or loss for the club. The downside to these type of agreements is that they create player instability, as the third party owners may potentially decide to sell their player at any time against the club's wishes. This could disrupt the team and possibly force the club to seek an immediate replacement. With third party contracts now banned in the Premier League, there is a concern that the league's top teams could be placed at a disadvantage when competing in UEFA

competitions, as the new financial fair play rules⁵⁰⁰ enable teams from other European leagues to exploit certain loopholes by utilising these type of contracts. Investors could potentially place players in teams, allowing clubs to recruit at a fraction of the upfront cost.⁵⁰¹

West Ham was found to have breached Premier League regulations, and therefore was guilty of rule breaking. The Premier League's failure to deduct points compromised the integrity and competitiveness of the league. By allowing West Ham to field Carlos Tévez in their remaining games, the Premier League was increasing the club's chances of survival by giving them an unfair advantage over their opponents. Rule breaking in team sports needs to be dealt with in a manner that punishes the whole team and not just the owners. This would ensure teams are unable to gain an advantage in the knowledge that the repercussions are only likely to affect the hierarchy of the club. The Premier League has acknowledged the potential problems with third party ownerships and has introduced new regulations relating to these type of transfers. These new rules will ensure that the competitiveness of the league is protected from potential adverse influences of third parties.

⁵⁰⁰ Financial fair play rules require clubs to break even, losing no more than £38m in total over the next three seasons. For English clubs, this limits transfer spending and wages to what can be covered by trading and legitimate football income.

⁵⁰¹ Portuguese club Benfica generated £37.7m from the sale of rights to an investment fund in 2009.

The Webster and Matuzalém Cases

14.1 – The Webster Case

Andy Webster is a Scottish footballer who transferred to Heart of Midlothian football club (Hearts) in 2001. During his time at Hearts, Webster signed an extension to the initial contract which was to run until 30th June 2007. Webster developed into an important player for the Scottish club, featuring in the first eleven and gaining a call-up to the national team. Hearts attempted to bind Webster to a longer contract because of his success at the club; however their offers were rejected by the player. During this period, Hearts did not field Webster in a number of games, leading the player to believe that the club was attempting to put pressure on him through tactical considerations, to accede to the club's proposals. The relationship between the two parties began to collapse, prompting Webster to notify the club that he wished to terminate his employment contract on the basis of dismissal without 'just cause', outlined in the provisions of Article 17 of the FIFA Regulations for the Status and Transfer of Players 2005. On the 9th August 2006, Webster decided to join Wigan Athletic, signing a three year contract with the club. Neither Webster nor Wigan offered Hearts any compensation, and as a consequence, Hearts filed a claim before the FIFA Dispute Resolution Chamber (DRC) seeking compensation of circa £500,000.

14.2 – The Ruling

The DRC took many factors into consideration before delivering its ruling. This included Heart's contribution towards the player's development, and the fact that Webster still had to serve one more year with the club. On 4th April 2007, the DRC concluded that:

1. Webster had unilaterally breached his contract outside the protected period⁵⁰² and accordingly had to pay £625,000 in compensation;
2. Wigan was jointly and severally liable for the payment; and
3. Webster failed to give Hearts due notice of termination and accordingly he was ineligible for two weeks from the beginning of next season.⁵⁰³

As a general rule, the DRC considers that a player cannot buy his way out of an employment contract at any desired time or under any circumstances, simply by paying the residual value of the contract. The DRC arrived at the compensation amount by taking the residual value of Webster's contracted salary in his first year with Wigan, and multiplying this by a coefficient of 1.5. Neither Hearts, nor Webster or Wigan was satisfied with this transfer compensation, so they lodged an appeal with the CAS.

The CAS rejected the DRC's decision and produced a new division on the basis of R57 of the CAS Code.⁵⁰⁴ Their duty was to determine whether the DRC was correct in its assessment of the £625,000 compensation and in particular the substantive elements. The CAS's interpretation and application of Article 17 found there not to be a provision to allow a club or player to terminate an employment without just cause. Such termination would be deemed a breach of contract, with the only issue remaining being the level of compensation due. Article 17 was also not intended to deal directly with training compensation. The amounts invested in player development were deemed to be irrelevant. As there was no amount of compensation or criteria for its calculation specified in the player's contract, the wording of Article 17 was to be followed.

⁵⁰² Under Article 17, players who sign contracts under the age of twenty-eight are able to unilaterally break them after three years. If the player is older than twenty-eight, he can break his contract after two years. This period of time in which players are unable to break their contract is known as the 'protected period'.

⁵⁰³ This sanction was handed down after Webster failed to give notice of termination within fifteen days of the last official match of the season, as outlined in Article 17.

⁵⁰⁴ Code of Sports-related Arbitration, R57: "The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged...".

The CAS identified the following issues:

1. The estimated value of the transfer fee (£4m) is irrelevant in determining compensation, as it would both enrich the club and be punitive against the player. The Panel could find no moral or legal justification for the club to be able to claim the market value of the player as 'lost profit'.
2. The right to reimbursement of any portion of the original transfer fee (£70,000) paid by the club is irrelevant, as the fee must be deemed amortised over the term of the contract and here, the player remained at the club for a period longer than his initial contract of four years.
3. The remuneration and benefits due to the player under his new contract (£300,000) is not an appropriate criterion in cases of unilateral termination outside of the protected period, because rather than focussing on the contract that has been breached, it is linked to the player's financial future and this would be potentially punitive.
4. The club established neither the causality nor existence of sporting and commercial losses (£70,000) allegedly suffered.
5. In all the circumstances, the amount of compensation owed is the amount of remuneration expressed as the residual value of the player's contract (£150,000).

With regards to liability, Wigan was held to be jointly liable with the Player for payment of (£150,000) compensation, even though there was no evidence to suggest it had played any part in the player's decision to terminate his contract with Hearts. As a result of this ruling, any player under the age of twenty-eight can buyout their contract after three years for the remaining salary owed, while anyone over the age of twenty-eight can do the same after two years of their current contract.⁵⁰⁵

⁵⁰⁵ CAS 2007/A/1298 Wigan Athletic FC v Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v Heart of Midlothian.

14.3 – Possible Ramifications for Football

The decision is believed to have shifted the balance of power in favour of the player. Footballers were now at an advantage when renegotiating their contracts. Sepp Blatter was unhappy with the ruling stating, “The decision which CAS took is very damaging for football and is a pyrrhic victory for those players and their agents, who toy with the idea of rescinding contracts before they have been fulfilled”⁵⁰⁶. As the current president of FIFA, Blatter was worried that the ruling would affect stability in the transfer market. Contracts could potentially be rendered worthless and smaller clubs faced the possibility of losing their star players for very little money.

*I laugh when I hear all this stuff about ‘player power’. The truth is that players still have relatively little power. All Article 17 does is ensure that clubs can no longer put a totally subjective and often mad price on the head of a player who is coming towards the end of his contract.*⁵⁰⁷

Fraser Wishart, the Chief Executive of PFA Scotland, viewed the decision as a positive step in redistributing power in favour of the player. The problem with this is the transfer market needs to be regulated to ensure some form of stability. Clubs were unlikely to spend huge sums of money on transfer fees knowing that there was a possibility they may not receive an adequate sell-on-fee for the player should they decide to sell them after the protected period. Many clubs also became inclined to sell their star players before the protective period expired. There were several measures that clubs could take to ensure some form of protection against Article 17. One solution was to sign players to longer contracts. Should a player decide to break their contract after the protected period, the club would receive a substantial amount more as the compensation would take into account the remainder of the player’s salary.

⁵⁰⁶ Sepp Blatter, the current president of FIFA, views on the decision in Webster.

⁵⁰⁷ Fraser Wishart, the Chief Executive of PFA Scotland, who guided Webster from the outset of his case, views on the outcome of the Webster case.

Another option was for clubs to form some sort of agreement between themselves to ensure that no club would sign a player who decides to buyout their remaining contract by invoking Article 17. There was a suggestion that a gentleman's agreement did exist between several of Europe's biggest clubs, with Karl-Heinz Rummenigge, Chairman of the European Club Association (ECA), reportedly stating that the ECA clubs have agreed not to use Article 17.⁵⁰⁸ Supposedly, any club choosing to ignore this agreement would find it very difficult to enter into transfers between any of these clubs in the future. These reports seem to be untrue as ECA member Atlético Madrid signed midfielder Paulo Assunção from FC Porto in 2008 after the player had bought out the remainder of his contract under Article 17.

14.4 – The Matuzalém Case

Matuzalem Francelino da Silva (Matuzalém) is a Brazilian footballer who signed for Ukrainian side Shakhtar Donetsk in 2004, on a five-year contract running from 1st July 2004 to 1st July 2009. On 2nd July 2007, Matuzalém notified his club Shakhtar in writing that he was unilaterally terminating their contractual relationship with immediate effect. Shakhtar wrote to Matuzalém indicating that they deemed his contract with the Ukrainian club to still be in force, ordering him to report for pre-season training. However, two days later, Matuzalém signed a three-year contract with Spanish club Real Zaragoza, which ran until 2010. Shakhtar initiated proceedings with the FIFA DRC, seeking payment from Matuzalém and Real Zaragoza jointly and severally for €25m (this being the amount specified as the minimum release fee in Matuzalém's contract). The circumstances were different from those of *Webster*, as the transfer was not amortised when the player terminated his contract, with two remaining years to run and no renewal of contract involved. In November 2007, the DRC awarded Shakhtar €6.8m in compensation, leaving both Matuzalém and Real Zaragoza to appeal the decision to the CAS in March 2008.

⁵⁰⁸ See <http://orgmal.fifpro.net/printone.php?id=17149&bid=87>.

14.5 – The Ruling

The CAS decided to raise the amount of compensation ordered by the DRC to approximately €11.85m plus interest. It was undisputed before the CAS that Matuzalém terminated his contract with Shakhtar unilaterally, prematurely and without just cause. The CAS stressed that:

1. Article 17 does not provide a legal basis for a party to freely terminate an existing contract at any time, prematurely, without just cause; and
2. Even if the termination occurs without the protected period, this remains a serious violation of the obligation to respect the existing contract.

In accordance with Article 17 of the FIFA Regulations, compensation was therefore payable. Matuzalém and Real Zaragoza argued that the fee should be in the region of €3.2m, while Shakhtar sought €25m due to the release clause in Matuzalém's contract, which was the agreed fee, should he leave before the expiry of his contract. The CAS ruled that:

1. The clause Shakhtar sought to rely on could not be said to be addressing a situation of unilateral, premature breach and therefore the factors of Article 17 were applicable in assessing compensation;
2. It is not possible to evaluate the amount of compensation that will be due in advance – the judging party will have to establish the damage suffered on a case-by-case basis, taking into consideration the circumstances of the individual case, the arguments raised and the evidence produced;
3. The purpose of Article 17 is to reinforce contractual stability; and
4. In determining the compensation, the judging authority should aim at determining an amount that puts the injured party in the position that the same party would have had if the contract was performed properly.⁵⁰⁹

⁵⁰⁹ CAS 2008/A/1519 FC Shakhtar Donetsk v Matuzalém Francelino da Silva & Real Zaragoza & FIFA.

Matuzalém and Real Zaragoza were held jointly and severally liable for compensation in the amount of €11,858,934 plus interest of 5% per annum from 5th July 2007 until payment. In evaluating the amount due to Shakhtar, the CAS applied the following criteria:

1. The value of the lost services of Matuzalém to Shakhtar;
2. The amount of salary expenses that Shakhtar did not have to pay to Matuzalém, and;
3. The status and behaviour of the player. Matuzalém left the club just a few weeks before the start of the qualification rounds for the 2007-08 UEFA Champions League, after a season in which he had become Shakhtar captain and been voted player of the year. As a result, the CAS awarded an additional amount equal to six months of his salary.

Soek (2009) correctly predicted that the CAS would one day reach a different decision in a case where the facts coincide with those in the *Webster*⁵¹⁰. This ruling has adjusted the balance of power; reinstalling parity between player and club.

14.6 – The Ramifications of this Ruling

Real Zaragoza was hoping the *Webster* ruling meant that any player three (or two) years into their contract could be bought for a fee equal to their remaining salary. This would have potentially saved the club a huge sum of money as Matuzalém's contract contained a minimum release fee of €25m; in comparison to the €6.8m which was the original amount of compensation awarded to Shakhtar. However, the ruling in Matuzalém ensures that every *Webster-like* case will be judged on an individual basis. The decision signals a power swing back in favour of the football club and reinstalls some form of contractual stability. The financial loss that clubs

⁵¹⁰ Soek, J. (2009) 'The Prize for Freedom of Movement: The Webster Case', in EU, Sports Law and Policy, Asser Press.

previously suffered when players terminated their contracts under Article 17 has now been softened; with the compensation fee to be determined by taking the player's value to a team into consideration. The ruling is likely to act as a deterrent, as any player who decides to terminate their contract under Article 17 will have no idea what compensation he and his new club will be ordered to pay.

One of the main distinctions between the amount of compensation awarded in the *Webster* and *Matuzalém* cases was the issue of the amortisation of the player's transfer fee. In *Webster*, the amount was not important as the CAS stated that as Webster had renewed his previous contract with Hearts, such a renewal was in fact acceptance that the initial transfer fee was already amortised, and as such, the panel did not consider that the remaining year had to be calculated as compensation for the amortisation of such transfer fee. This was not the case with Matuzalém, as he was still serving his original agreement. The CAS took this factor into consideration and reflected it in the compensation fee awarded to Shakhtar. It is more than likely that clubs will attempt to renew player's contracts in the future to 'reset the counter to zero', as this will restart the so-called protected period. This could potentially decrease the possible compensation for future breach of contract by a player, as the renewal will immediately impede the amortisation of the transfer fee paid by the club.

14.7 – Analysis into Football Transfers

In 2007 Cristiano Ronaldo signed a new five-year contract with Manchester United, which was to run until the summer of 2012. Ronaldo was surprisingly sold to Real Madrid in 2009 for around £80m. Under the previous *Webster* ruling; had Manchester United refused to sell Ronaldo, he could have potentially terminated his contract the following season by paying the club around £10m. Under the recent ruling in *Matuzalém*, this compensation fee would have been much larger, as it would take into account the value of the player to the club, ensuring that Manchester

United were adequately compensated for their loss. Chelsea midfielder Frank Lampard was in a similar situation in 2008, as he had one year left on his contract and could conceivably have left his club for a fee of around £4m; far less than the amount it would cost Chelsea to adequately replace him. Lampard however decided to remain at Chelsea, signing a new five-year contract with the club. Michael Owen was another high profile player that could have terminated his contract using Article 17. The England striker's contract was due to expire at the end of the 2009 season. It would have cost Owen around £5m to leave Newcastle United in 2008; however he decided to stay on with the club, eventually leaving on a free transfer in the summer of 2009.

Figure 14.1 – Most Expensive Transfers after the Webster Ruling⁵¹¹

Player	From	To	Fee (m)
Robinho	Real Madrid	Manchester City	£32.5
Dimitar Berbatov	Tottenham Hotspur	Manchester United	£30.5
Fernando Torres	Atletico Madrid	Liverpool	£26.5
Danny	Dynamo Moscow	Zenit St Petersburg	£24
Arjen Robben	Chelsea	Real Madrid	£24
Dani Alves	Sevilla	Barcelona	£23.5
Pepe	FC Porto	Real Madrid	£20
Lassana Diarra	Portsmouth	Real Madrid	£20
Robbie Keane	Tottenham Hotspur	Liverpool	£19
Wesley Sneijder	Ajax	Real Madrid	£18.5
Franck Ribéry	Marseille	Bayern Munich	£18
Jô	CSKA Moscow	Manchester City	£18
Javier Mascherano	Media Sports Investments	Liverpool	£18
Anderson	FC Porto	Manchester United	£18
Owen Hargreaves	Bayern Munich	Manchester United	£18
Simão Sabrosa	Benfica	Atletico Madrid	£18
Klaas-Jan Huntelaar	Ajax	Real Madrid	£17
Nigel De Jong	Hamburg	Manchester City	£17
Luka Modrić	Dinamo Zagreb	Tottenham Hotspur	£16.5
Darren Bent	Charlton Athletic	Tottenham Hotspur	£16.5

⁵¹¹ This period includes the following five transfer windows: January 2007, summer 2007, January 2008, summer 2008, and January 2009.

Figure 14.2 – Most Expensive Transfers after the Matuzalém Ruling⁵¹²

Player	From	To	Fee (m)
Cristiano Ronaldo	Manchester United	Real Madrid	£80
Kaká	AC Milan	Real Madrid	£56
Fernando Torres	Liverpool	Chelsea	£50
Zlatan Ibrahimović	Inter Milan	Barcelona*	£40
Sergio Agüero	Atletico Madrid	Manchester City	£38
Javier Pastore	Palermo	Paris Saint-Germain	£36
Andy Carroll	Newcastle	Liverpool	£35
Radamel Falcao	FC Porto	Atletico Madrid	£34.5
David Villa	Valencia	Barcelona	£34.5
Karim Benzema	Olympique Lyonnais	Real Madrid	£30
Xabi Alonso	Liverpool	Real Madrid	£30
Cesc Fàbregas	Arsenal	Barcelona	£29
Fábio Coentrão	Benfica	Real Madrid	£27
Edin Džeko	Wolfsburg	Manchester City	£27
David Silva	Valencia	Manchester City	£26
Mario Gómez	Stuttgart	Bayern Munich	£26
Emmanuel Adebayor	Arsenal	Manchester City	£25
Carlos Tévez	Media Sports Investments	Manchester City	£25
Mario Balotelli	Inter Milan	Manchester City	£24
Yaya Touré	Barcelona	Manchester City	£24

From – The club the player transferred from.

To – The club the player transferred to.

Fee (m) – The total fee in millions; an estimate is given in transfers where the fee is undisclosed.

* The full transfer details included Zlatan Ibrahimović moving from Inter Milan to Barcelona for £40m and Cameroon striker Samuel Eto'o.

The twenty most expensive transfers since the *Webster* decision (*figure 14.1*) totalled approximately £413.5m.⁵¹³ In comparison, the twenty most expensive transfers since the *Matuzalém* decision (*figure 14.2*) totalled around £697m.⁵¹⁴ These figures indicate that the amount of money spent on transfer fees has increased since the ruling in *Matuzalém*, with almost £300m more spent on the top twenty transfers. The increase in transfer fees could be attributed to the positive outcome in

⁵¹² This period includes the following five transfer windows: summer 2009, January 2010, summer 2010, January 2011, and summer 2011.

⁵¹³ These transfers occurred between the January transfer windows of 2007 and 2009 inclusive. The figure of £413.5m was accumulated over five transfer windows.

⁵¹⁴ These transfers occurred between the summer transfer windows of 2009 and 2011 inclusive. The figure of £697m was accumulated over five transfer windows.

Matuzalém, with clubs now more inclined to purchase expensive players, safely knowing that should a player decide to terminate their agreement using Article 17, the amount of compensation due would be judged individually. It can be argued that the increase in spending power of Manchester City and Real Madrid is one reason why the amount of money being spent on transfer fees has increased; however, closer analysis reveals that both clubs have spent huge sums of money on players, before and after the *Matuzalém* decision.⁵¹⁵ Since *Matuzalém*; Spanish giants Real Madrid have broke the world transfer record twice in the space of a month, with many other clubs following the trend, spending huge amounts of money on transfer fees, safe in the knowledge that should a player decide to invoke Article 17; the club would be protected against huge financial losses.

There are two factors relevant to this equation, but both tend to cancel each other out – on the one side there is general inflation; and on the other there are stronger budgetary constraints related to the global recession. A third factor perhaps is the so called ‘sugar daddy’ effect of rich men purchasing football clubs.⁵¹⁶ UEFA president Michel Platini has acknowledged the excessive spending of several clubs and has suggested the introduction of a ‘squad cap’, which would put a ceiling on the total amount paid in wages, which could potentially be fixed at a percentage of a club’s revenue. “We know that an individual salary cap would be very difficult to enforce in European law, but we need to talk to the EC about clubs spending only a percentage of income on salaries”⁵¹⁷. Should this idea be enforced, it could reinstall parity between clubs within their prospective leagues, as teams would be unable to

⁵¹⁵ Manchester City and Real Madrid were responsible for purchasing eight out of the twenty most expensive players transferred in the post-Webster period. They were both involved in a similar amount of transfers in the post-Matuzalém period, purchasing twelve out of the twenty most expensive players.

⁵¹⁶ Roman Abramovich began this trend when he purchased Chelsea FC and invested hundreds of millions into the team with the aim of bringing success to the club. Manchester City followed this trend when they were taken over by wealthy Arab investors, spending vast amounts on player transfers and wages, in a bid to compete with the top clubs. Several other clubs have been bought by rich investors, including Manchester United, Liverpool FC, Aston Villa, Birmingham FC, and Queens Park Rangers, although the amount of money invested into player transfers is on a lower scale in comparison.

⁵¹⁷ William Gaillard, UEFA’s communications director, on behalf of Michel Platini. 15th July 2008, <http://www.goal.com/en/news/9/england/2008/07/15/776894/platini-calls-for-salary-cap>.

acquire debt in a bid to improve their squad. The downside to the ‘squad cap’ is that teams would be unable to purchase large numbers of skilful players without infringing the new rules regarding expenditure; thus negating a team’s potential ability.

14.8 – Summary

Crespo (2008) finds the CAS decision in *Webster* and other cases based on Article 17 to be dissimilar to the impact of *Bosman*⁵¹⁸. He appears to be right, as the ruling in *Matuzalém* ensures that similar cases will be treated as unique and specific according to the issues of each contract and the situation of a player. Following the decision in *Webster*, *De Weger (2009)* called for a response from football clubs, suggesting they insert clauses into contracts whereby the club reserves the right to extend the agreement unilaterally⁵¹⁹. Should clubs conclude contracts for a period of two (or three) years with a unilateral extension option of two more years; the protected period would recommence after two years, resulting in the player being prevented from unilaterally terminating his contract. Another solution would have been to include ‘buyout clauses’ in player’s contracts. This would have stipulated the amount the player would have to pay as compensation after the protected period, when unilaterally terminating the contract.⁵²⁰ There are, however, some countries that are unable to include a buyout clause in their contracts, as they are not compatible with mandatory labour law.⁵²¹

The ruling in *Matuzalém* has clearly readdressed the balance of power in the transfer market. Clubs are now safe in the knowledge that should a player decide to terminate their contract after the protected period, the amount of compensation will

⁵¹⁸ Crespo, J. D. (2008) ‘Player Contracts: FIFA: Webster, Matuzalém and the future of Article 17’, *World Sports Law Report*: 6(6).

⁵¹⁹ De Weger, F. (2009) ‘The Prize for Freedom of Movement: The Webster Case’, in *EU, Sports Law and Policy*, Asser Press.

⁵²⁰ FIFA Regulations on the Status and Transfer of Players 2005, Article 17, Para 2.

⁵²¹ Certain countries such as Spain (Real Decreto 1006) made it compulsory for a buyout clause to be included in contracts.

be based on the value of the player to the team, rather than just the player's remaining salary. In terms of competitiveness within football, smaller clubs are now more likely to invest money into their team in a bid to compete with the bigger clubs. Previously, these clubs are likely to have been reluctant to purchase expensive players, as there would be very little transfer value in them once they had reached the end of the protected period. Smaller clubs are now also able to keep hold of star players, whereas previously they may have been tempted to cash-in and sell them; weakening the team and reducing the competitiveness of the league.

Chapter 5 –
European and
North American
Regulation of
Competitive
Balance in Team
Sports

The Promotion and Relegation System

15.1 – Introduction

Promotion and relegation is considered to be a fundamental aspect of European sports; with *Parrish and Miettinen (2008)* praising the system's ability to reward excellence through promotion, and punish under-performance through relegation⁵²². *Lewis and Taylor (2003)* describe the process as an essential mechanism for ensuring not only competitive balance, but also a collective approach based on solidarity throughout all levels of the game⁵²³. Although the system appears to promote competitiveness, it does not install solidarity within leagues, as teams continually change divisions, whilst being forced to buy and sell players according to their current league status. In comparison, the North American model of 'closed leagues' is considered to be inconsistent with these fundamental principles⁵²⁴, as there is no allowance for admittance of new members. The promotion and relegation system effectively permits entry on merit to all-comers, whereas the North American closed league model has a fixed number of members, with entry rare and only granted by permission of the incumbents. However, the closed league model does guarantee financial stability, which ensures members do not have to face the financial consequences that coincide with relegation.⁵²⁵

Ross and Szymanski (2002) believe that promotion and relegation tends to raise consumer welfare by increasing effective competition amongst teams within a league. Teams relegated to a lower division after an unsuccessful season will play a lower standard of competition and create less interest among fans, reducing the

⁵²² Parrish, R. and Miettinen, S. (2008) 'The Sporting Exception in European Union Law', Asser Press, p17-20.

⁵²³ Lewis, A. and Taylor, J. (2003) 'Sport: Law and Practice', Butterworths.

⁵²⁴ See the European Model of Sport Consultation Document of DG-X, November 1998.

⁵²⁵ Leeds United FC and Leicester City FC are just two examples of teams that have suffered financial problems resulting in them entering administration, due to the financial instability that exists within the promotion and relegation system.

potential to generate revenue for their owners⁵²⁶. *Noll (2002)* describes the effect of promotion and relegation on competitive balance as ambiguous, with the negative effect arising because the system inevitably places some teams in leagues for which they have no realistic chance to afford a winning team^{527, 528}. This is not always the case, as a number of teams, particularly in the English Premier League, have been successful in higher divisions after gaining promotion. Blackburn Rovers managed to win the Premier League title three years after gaining promotion to the league.⁵²⁹ In the two seasons prior to winning the Premier League title, Blackburn finished a respectable fourth and second; although to accomplish similar feats in the modern era is likely to require a significant amount of financial output.⁵³⁰

15.2 – Benefits of Promotion and Relegation

15.2.1 – Excitement and Entertainment

The process of promotion and relegation creates an extra dimension to the interest in a season's play. Although the prospect of participating in a higher division may appear more lucrative in terms of revenue and prestige; the negative factors surrounding demotion far out way the positives. In a closed league, teams not in contention for the league title have little incentive to perform to their best and win contests. The main intention of the playoff

⁵²⁶ Ross, S. and Szymanski, S. (2002) 'Open competition in league sports', *Wisconsin Law Review*, 3, p625-56.

⁵²⁷ Noll, R. (2002) 'The Economics of Promotion and Relegation in Sports Leagues: the case of English football', *Journal of Sports Economics*, 3(2), p169-203.

⁵²⁸ Derby County FC's recent relegation from the English Premier League in 2008 is a clear example of a promoted team being unable to compete in a higher league. They achieved the lowest points total ever in the Premier League, obtaining only 11 points from a possible 114, winning only one game all season, conceding the most goals and scoring the fewest in a season, finishing with the worst goal difference recorded in Premier League history.

⁵²⁹ Blackburn Rovers won the Premier League Championship in the 1994-95 season, finishing one point ahead of title chasing rivals Manchester United.

⁵³⁰ Blackburn Rovers were able to compete financially with their rivals due to the huge amount of investment from their chairman Jack Walker. This has also been the case with Fulham FC and Portsmouth FC, where Mohammed Al Fayed and Milan Mandaric respectively, invested huge amounts of money into their teams in order to challenge the top teams within the league.

system, particularly in North American sports, is to ensure that the majority of teams have an incentive to compete at their maximum level for as long as possible. The threat of relegation guarantees that weak or struggling teams have an incentive to continue to perform in an effort to avoid dropping a division; while promotion enables turnover among teams, increasing the variety of contests available to supporters.

15.2.2 – Inclusiveness

Szymanski and Valletti (2005) note that promotion and relegation tends to be governed by bodies which take an interest in the development of the sport at all levels⁵³¹; with a proportion of income generated at the highest level of the game being reinvested into the development of the sport. This process frequently occurs in football's biggest competition the FIFA World Cup, where a substantial amount of money generated is successfully invested into developing countries of Asia and Africa, in a bid to advance the game. Recent results at the World Cup suggest this process is beginning to take effect, with four Asian teams and three African teams advancing through to the knockout stages in the past three tournaments.⁵³² Closed leagues however, tend to neglect this aspect of the game and invest very little in the advancement of sport in developing countries.

⁵³¹ Szymanski, S. and Valletti, T. (2005) 'Promotion and Relegation in Sporting Contests', *Rivista di Politica Economica*, 95 (5/6), p3-39.

⁵³² In the 2002 FIFA World Cup, Japan reached the last sixteen, Senegal reached the quarter-finals, and South Korea finished in fourth place. In 2006, Ghana managed to reach the last sixteen, and in 2010 both Japan and South Korea reached the last sixteen, whilst Ghana exited the competition at the quarter-final stage. These results indicate progress within Asia and Africa, as in previous tournaments, countries from these continents would often fail to claim a point, let alone qualify from their group.

15.2.3 – Free Entry

The main advantage of the promotion and relegation system is the ability for any team within a league hierarchy to achieve promotion to the highest division. With the right amount of investment, a team can begin at amateur level and reach the pinnacle of the hierarchy, transforming into a professional team in the process. *Szymanski (2006)* notes that in the North American closed league, teams have been able to extract significant financial concessions from local taxpayers faced with the threat of relocation, exploiting the limited scope for new teams to enter the market⁵³³. These type of threats do not occur in leagues utilising the promotion and relegation system, as any town or city can invest in its own team which can then begin winning promotion to the highest division. The ability for an unknown amateur team to climb its way up a league hierarchy personifies the romance of sport, with the so called ‘underdog’ often appealing to the neutral spectator.

15.3 –Downsides of Promotion and Relegation

15.3.1 – Using the System as a form of Punishment

Although this system possesses many benefits, there are several negative issues which surround the format. One of these involves using the system as a form of punishment for teams found guilty of cheating and corruption. Demoting a team to a lower division on this basis is likely to be detrimental to both leagues; with the top league losing a team more than capable of competing in that division, and the lower league becoming less competitive due to the demoted team’s likely dominance. This was the case in Italy’s

⁵³³ Szymanski, S. (2006) ‘The Promotion and Relegation System’, in Andreff, W. and Szymanski, S. ‘Handbook on the Economics of Sport’, Edward Elgar Publishing Ltd, p687.

Serie A, when reigning champions Juventus were demoted as punishment for their part in the Italian football scandal of 2006. The team managed to retain their better players, and although penalised with a heavy points deduction, gained immediate promotion by winning the division with several games to spare.⁵³⁴ On the plus side, having a big club in a lower league will increase the drawing potential of spectators in away games, which ultimately generates greater revenue for other teams. This form of punishment is often used when the severity of the crime exceeds regular punishments such as points deductions and fines; and is more of a deterrent to rich clubs who are unaffected by financial penalties.

15.3.2 – Financial Instability

The financial instability of the promotion and relegation system often leads to demoted teams incurring huge debts which can result in a team entering into administration.⁵³⁵ Lower leagues generate less support and television revenue, hindering a team's ability to purchase the best playing talent. The vast reduction in revenue often results in teams being unable to pay the huge wages of contracted players, and as a result, they are forced to sell them for much smaller fees than their valuation. It is not only promoted teams that are wary of investing money into their teams; a number of stable clubs are also reluctant to, fearing relegation. One solution to reduce the financial loss incurred from relegation is for teams to include relegation release clauses within player contracts to ensure a pay cut in wages, should the team be demoted.

⁵³⁴ Juventus achieved promotion as winners of their league with three games to spare. This triumph was attained despite starting the campaign with a nine point deduction. French club Olympique Marseille also won their league in 1994-95, after having relegation forced upon them, however they did not return to France's top tier of football due to financial problems.

⁵³⁵ Leeds United FC and Leicester City FC are recent examples of clubs that have been forced to enter administration after being relegated to a lower division. In both instances, the clubs were unable to honour players' contracts due to huge wage bills. As of 2008, both clubs have suffered further relegation and now they both compete in England's third tier of football.

15.3.3 – Parachute Payments

In a bid to ensure teams relegated from the Premier League do not encounter financial difficulty and enter into administration, the Premier League decided to introduce ‘parachute payments’ as a means of cushioning the financial blow which effects the three relegated teams from England’s top division. These payments were introduced at the beginning of the 2006-07 season and consisted of £6.5m being paid to the relegated clubs in each of their first two seasons in the lower leagues. This figure rose to £11.2m per year for clubs relegated in the 2007-08 season; and increased further in the 2010-11 season, rising to £48m over four years. The payments are designed to help clubs adjust to the loss of television revenue, as the average Premier League team receives £45m in comparison to the average Football League Championship club which receives around £1m. These payments also allow clubs to keep hold of a number of their better players, thus improving their chances of gaining immediate promotion back to the Premier League.

Figure 15.1 – Parachute Payments

Season	Relegated Teams	Promoted Teams	BB
2006-07	Sheffield Utd, Charlton, Watford	Sunderland, Birmingham, Derby	n/a
2007-08	Reading, Birmingham, Derby	West Brom, Stoke, Hull City	0
2008-09	Newcastle, M'brough, West Brom	Wolves, Birmingham, Burnley	1
2009-10	Portsmouth, Burnley, Hull City	Newcastle, West Brom, Blackpool	2
2010-11	West Ham, Birmingham, Blackpool	QPR, Norwich, Swansea	0

Relegated Teams – The three teams that were relegated from the Premier League.

Promoted Teams – The three teams that were promoted from the Football League Championship.

BB – The number of teams that ‘bounced back’ from relegation and won promotion to the Premier League the following season.

Abbreviation – M'brough/Middlesbrough

The problem with parachute payments is that they appear to give relegated teams an unfair financial advantage over their rivals in the lower leagues; widening the gap between teams that have reached the Premier League, and

those who have not. Although the compensation payments have only been in existence for a few seasons, *figure 15.1*'s results suggest that immediate promotion is not guaranteed, with only *three* out of a possible twelve clubs gaining promotion back to the Premier League in the following season. In terms of competitive balance, parachute payments are beneficial to the Premier League, as promoted clubs are able to acquire highly skilled players in a bid to realistically compete against other teams in the division, in the safe knowledge that should they be relegated, the club will receive these parachute payments as a means of financial security. In theory, these payments distort the parity between teams in the Football League Championship division, as relegated teams are able to hold onto the majority of their players, giving them a greater chance of achieving immediate promotion back to the Premier League; although retaining the services of such players is difficult as they are likely to want to play in the Premier League, and will often seek employment elsewhere.

15.3.4 – Criteria regarding Promotion

Promotion and relegation requires rules regulating the conditions under which teams are promoted or relegated. Whilst this is determined on the basis of a points tally, other technical criteria may be imposed which could be subject to legal challenge. In the case of *Stevenage Borough FC Ltd v Football League Ltd*⁵³⁶, recent winners of the league title in the top non-league division, Stevenage Borough, challenged the rules imposed on teams entering the Football League regarding stadium criteria. In theory, the system allows for the prospect that a lower league club could enter European competitions, potentially compromising EU law. *Parrish and Miettinen (2008)* maintain that if such a question was to arise in EC Competition law, a

⁵³⁶ *Stevenage Borough FC Ltd v Football League Ltd* [1997] 9 Admin LR 109, Times August 1st, 1996.

rule which imposes minimum stadium requirements on promoted clubs may be considered inherent in the operation of safe sport and removed from the scope of Articles 81 and 82 of the EC Treaty, so long as the rule is proportionate⁵³⁷. The decision in *Stevenage Borough* could be construed as being negative in terms of promoting competitiveness, as league entry should be based on ability and not legal technicalities.

15.4 – Does the Promotion and Relegation System promote Competitiveness?

15.4.1 – Overview

The European Commission (1998) identifies the system of promotion and relegation as one of the key features of the European model of sport. It is argued that this feature gives European sports an added edge over North American sports, as the arrival of new competitors ensures that leagues are more exciting than closed competitions. *Parrish and Miettinen (2008)* agree that the system imposes a fiercely competitive sporting mentality on clubs, which in turn has a positive impact on competitive balance, as smaller clubs have strong incentives to perform to the best of their ability throughout an entire season⁵³⁸. In closed leagues, underperformance is unlikely to affect a player's salary, whereas in open leagues, the threat of relegation is an incentive for players to continually perform, as demotion is likely to result in the top earners being forced to take a pay cut, or face being sold. *Barros et al. (2002)* maintain that to determine whether the system allows for a more attractive competition overall, the unresolved research issue regarding whether there is a connection between the existence of promotion and relegation and the failure of European leagues to agree significant income

⁵³⁷ Parrish, R. and Miettinen, S. (2008) 'The Sporting Exception in European Union Law', Asser Press.

⁵³⁸ *Ibid.*

redistribution, needs to be solved⁵³⁹. This may be true; however it is unlikely to have any lasting effect on the entertainment aspect of the sport, although it is likely to reduce the number of teams with a realistic chance of competing for honours.

In terms of excitement and suspense, the promotion and relegation system maintains spectator interest for a longer period, particularly at the lower end of the league. The system also allows for the creation of a wide variety of contests. When analysing the policy of 'free entry' within English football, Wigan Athletic⁵⁴⁰ and Wimbledon FC⁵⁴¹ are two examples of teams that have successfully climbed the Football League ladder and achieved entry into the top tier of football. The recent rise of German club 1899 Hoffenheim, from amateur status to the Bundesliga, the top tier in German football, is further evidence that small clubs can rise to the top of the pyramid. This is however, a rarity in modern day football, as in most instances, teams require a huge financial investment; an indication that success relies heavily on financial backing.

⁵³⁹ Barros, C.P., Ibrahimo, M. and Szymanski, S. (2002) 'Transatlantic Sport: The Comparative Economics of North American and European Sports', Edward Elgar Publishing Ltd.

⁵⁴⁰ It took approximately ten years for Wigan Athletic to climb the English football pyramid from the fourth tier to the first. This achievement was made easier with the financial backing of local businessman Dave Whelan.

⁵⁴¹ Wimbledon FC worked their way up the pyramid, beginning life as an amateur team, and finally reaching the top division within eight years.

15.4.2 – Analysis of the English Premier League

Figure 15.2 – Premier League’s Promotion and Relegation Statistics

Season	Champions	Pts	PD	C	R	T
1992-93	Manchester United	*49	*35	0	2	2
1993-94	Manchester United	*43	*50	0	6	6
1994-95	Blackburn Rovers	*46	*44	2	**2	4
1995-96	Manchester United	38	44	2	5	7
1996-97	Manchester United	41	35	0	4	4
1997-98	Arsenal	40	38	0	2	2
1998-99	Manchester United	37	43	2	0	2
1999-00	Manchester United	34	58	0	2	2
2000-01	Manchester United	35	46	0	0	0
2001-02	Arsenal	37	51	0	2	2
2002-03	Manchester United	43	41	0	2	2
2003-04	Arsenal	34	57	0	0	0
2004-05	Chelsea	34	62	0	4	4
2005-06	Chelsea	35	57	0	0	0
2006-07	Manchester United	38	51	0	3	3
2007-08	Manchester United	36	51	2	4	6
2008-09	Manchester United	35	56	0	4	4
2009-10	Chelsea	31	56	2	0	2
2010-11	Manchester United	40	41	0	5	5
Total	n/a	***36.750	***49.188	10	47	57

Champions – The Champions of that particular season.

Pts – Refers to the number of points that would have ensured safety for a team in that particular season.

PD – Refers to the difference in points between the champions and the team occupying the last relegation place (18th in the final league table).

C – Refers to the amount of teams contesting the championship on the last day of the season. If the league has all ready been decided before the last day, the figure is recorded as 0.

R – Refers to the total amount of teams still contesting the relegation places on the last day of the season. In instances where the relegation places have all ready been decided, the figure is recorded as 0.

T – Refers to the total number of teams competing to either win the championship or to avoid relegation on the last day of the season.

* These figures are based on seasons in which the league was contested by 22 teams, with each of them playing 42 matches.

** In this particular season four teams were relegated and only two were promoted to allow for the shortening of the league to 20 teams.

*** This figure is an average based on figures from 38 game seasons only, as the first three seasons were contested by 22 teams, which would significantly increase the average if included.

Figure 15.3 – Number of Games required to win the Premier League

Season	Champions	When they Won	RG
1992-93	Manchester United	After 41 Games*	1
1993-94	Manchester United	After 41 Games*	1
1994-95	Blackburn Rovers	Final Day*	0
1995-96	Manchester United	Final Day	0
1996-97	Manchester United	After 37 Games	1
1997-98	Arsenal	After 37 Games	1
1998-99	Manchester United	Final Day	0
1999-00	Manchester United	After 34 Games	4
2000-01	Manchester United	After 33 Games	5
2001-02	Arsenal	After 37 Games	1
2002-03	Manchester United	After 37 Games	1
2003-04	Arsenal	After 34 Games	4
2004-05	Chelsea	After 35 Games	3
2005-06	Chelsea	After 36 Games	2
2006-07	Manchester United	After 36 Games	2
2007-08	Manchester United	Final Day	0
2008-09	Manchester United	After 37 Games	1
2009-10	Chelsea	Final Day	0
2010-11	Manchester United	After 37 Games	1
Average	n/a	n/a	**1.47

Champions – The team that won the championship.

When they Won – The number of games that were required to win the Premier League title.

RG – The number of games remaining after the championship has been secured.

* These figures are based on seasons in which the league was contested by 22 teams, with each of them playing 42 games.

** This figure is an average based on the number of games usually remaining after the Premier League title has been won.

Analysis of the English Premier League, see *figure 15.2*, provides an insight into the effectiveness of the promotion and relegation system in maintaining competitiveness amongst its members. Since the league's introduction in 1992, only four clubs have managed to win the league title.⁵⁴² The majority of these titles have been won by Manchester United with twelve triumphs in nineteen attempts⁵⁴³. On the seven occasions that Manchester United did not win the title, they finished no lower than third in the league table. Their

⁵⁴² Manchester United, Blackburn Rovers, Arsenal, and Chelsea are the only teams to have won the Premier League.

⁵⁴³ This figure is correct up until and including the 2010-11 season.

continued dominance indicates an imbalance at the top of the league, with a lack of realistic title contenders. This lack of championship uncertainty, combined with the fact that the league title has only been decided on the final day of the season on five occasions, see *figure 15.3*, suggests that championship uncertainty is low and predictable; although the average number of games remaining after the league title has been decided is *1.47*, an indication that the title race is competitive up until the final few games.

The relegation battle appears to be much more competitive, with at least two teams on average battling to avoid the drop on the final day of the season. The average number of points required to avoid relegation is between *thirty-six* and *thirty-seven*; although there have been instances when teams have accumulated over *forty* points and still been relegated.⁵⁴⁴ In nineteen seasons there have been *forty-seven* teams contesting relegation on the final day of the season; an indication that the bottom of the league is more competitive than the top; although it must be noted that there is only one league title compared to three relegation places. These statistics confirm that the promotion and relegation system is effective at prolonging competitiveness at the lower end of a league, providing a greater spectacle for viewers. On average, there is between a *forty-nine* and *fifty* point difference between the team finishing in first place and the team occupying the final relegation place. This indicates a huge gap between the top and bottom teams, which can be attributed to the revenue generated by the top teams when entering the lucrative UEFA Champions League; a process which continues to widen the gap amongst teams.

⁵⁴⁴ This was the case in the 2002-03 season as West Ham United were relegated in eighteenth place after accumulating forty-two points.

15.5 – How effective is the ‘Closed League’ Format in terms of Competitiveness?

15.5.1 – Overview

Barros et al. (2002) state that due to the nature of the closed league format, small market teams can make greater profit by fielding weak teams and relying on the drawing power of visiting talent, rather than fielding a competitive (and expensive) home team⁵⁴⁵. In theory this process appears feasible as high calibre players competing for visiting teams are likely to attract spectators to games, regardless of the opposition. The downside is that teams with average players are less likely to be competing for playoffs positions towards the end of the season; lowering home attendances, as spectators lose interest in the team. *Parrish and Miettinen (2008)* agree that games towards the end of a closed league season can often be meaningless for those whose prospect of winning a title or entering post-season competition is non-existent⁵⁴⁶. This appears to be the case when comparing NBA attendance figures against performance. It is not uncommon for teams unable to make the playoffs to field reserve players in a bid to acquire experience, and to ensure that the first team players do not pickup needless injuries. This policy seems unfair on paying spectators, which is emphasised by the poor attendance figures (see *figure 15.6*) for teams with nothing to play for.

15.5.2 – Analysis of the NBA League in North America

The National Basketball Association (NBA) is the premier professional men’s basketball league, which utilises the closed league format. The

⁵⁴⁵ Barros, C.P., Ibrahim, M. and Szymanski, S. (2002) ‘Transatlantic Sport: The Comparative Economics of North American and European Sports’, Edward Elgar Publishing Ltd.

⁵⁴⁶ Parrish, R. and Miettinen, S. (2008) ‘The Sporting Exception in European Union Law’, Asser Press, p20-22.

league's thirty teams are divided into two conferences, with each conference containing three divisions. Teams in the same conference and division play against each other more frequently than they do against teams from the opposing conference. The top eight teams in each conference advance to the knockout format of the competition, known as the playoffs. This is a best of seven series; with the winners competing in the finals to determine the NBA champions. Teams are seeded accordingly, with the top seeds playing the bottom seeds. Should a series be tied at 3-3, the top seed is allocated home advantage in the deciding contest. Competition within the NBA does not appear to be in its purest form, as teams do not compete against each other an equal amount of times.⁵⁴⁷ There have been occasions when all five teams from a division have qualified for the playoffs⁵⁴⁸; an indication that the division is highly competitive. There have also been instances whereby only one team from a division has advanced to the playoffs⁵⁴⁹; an indication that the division is less competitive in comparison to others within the conference. The closed league format does appear to be more effective at providing a variety of winners in both conferences; although this may have more to do with regulatory measures such as the salary cap and the player draft.

⁵⁴⁷ A league in its purest form would result in each team playing each other an equal number of times, with home advantage divided equally amongst teams.

⁵⁴⁸ This was achieved in the 2005-06 season, when the Detroit Pistons, Cleveland Cavaliers, Indiana Pacers, Chicago Bulls and Milwaukee Bucks all qualified from the Central Division, to reach the end-of-season playoffs. This was the first time in twenty years that all five teams had made the playoffs, highlighting the rarity of the achievement.

⁵⁴⁹ This was the case in the Eastern Conference during the 2005-06 season, when the New Jersey Nets were the only team from the Atlantic division to qualify for the playoffs.

15.5.3 – Comparisons between the Eastern and Western Conferences

Figure 15.4.1 – NBA Statistics for the Eastern Conference

Season	Winners	Division	T	E/W	WR	LW
1992-93	New York Knicks	Atlantic	No	E	41	22
1993-94	Atlanta Hawks	Central	No	W	42	20
1994-95	Orlando Magic	Atlantic	No	W	35	21
1995-96	Chicago Bulls	Central	Yes	E	42	18
1996-97	Chicago Bulls	Central	Yes	E	44	15
1997-98	Chicago Bulls	Central	Yes	E	43	16
**1998-99	Miami Heat	Atlantic	No	W	27	13
1999-00	Indiana Pacers	Central	No	W	42	17
2000-01	Philadelphia 76ers	Atlantic	No	W	41	15
2001-02	New Jersey Nets	Atlantic	No	W	42	21
2002-03	Detroit Pistons	Central	No	W	42	17
2003-04	Indiana Pacers	Central	No	E	36	21
*2004-05	Miami Heat	Southeast	No	W	42	13
*2005-06	Detroit Pistons	Central	No	E	40	23
*2006-07	Detroit Pistons	Central	No	W	40	24
*2007-08	Boston Celtics	Atlantic	Yes	E	37	15
*2008-09	Orlando Magic	Southeast	No	W	39	19
*2009-10	Boston Celtics	Atlantic	No	W	41	12
*2010-11	Miami Heat	Southeast	Yes	E	37	19
Total	n/a	Central 9	5	E 8	***40.3	***18.2

Winners – The winners of that particular Conference.

Division – Refers to the division that the conference winners belong to.

T – Whether the conference winners went on to claim the NBA title in the playoffs.

E/W – The conference that won the NBA Finals in that particular season, be it East or West.

WR – The amount of wins required for the eighth placed team in each conference, to advance to the playoffs.

LW – The lowest wins tally in the entire conference.

Division Total – The division with the highest number of conference championships.

E/W Total – The total number of championships won by that particular conference.

* In these particular seasons, each conference was divided into three divisions rather than two, as was the previous format.

** Due to a Lockout, all 29 teams played a shortened 50 game regular schedule.

*** This figure is an average and does not include results for the 1998-99 season.

Figure 15.4.2 – NBA Statistics for the Western Conference

Season	Winners	Division	T	E/W	WR	LW
1992-93	Phoenix Suns	Pacific	No	E	39	11
1993-94	Seattle SuperSonics	Pacific	No	W	42	13
1994-95	San Antonio Spurs	Midwest	No	W	41	17
1995-96	Seattle SuperSonics	Pacific	No	E	39	15
1996-97	Utah Jazz	Midwest	No	E	36	14
1997-98	Utah Jazz	Midwest	No	E	41	11
**1998-99	San Antonio Spurs	Midwest	Yes	W	25	8
1999-00	LA Lakers	Pacific	Yes	W	44	15
2000-01	San Antonio Spurs	Midwest	No	W	47	17
2001-02	Sacramento Kings	Pacific	No	W	44	21
2002-03	San Antonio Spurs	Midwest	Yes	W	44	17
2003-04	Minnesota Timberwolves	Midwest	No	E	36	28
*2004-05	Phoenix Suns	Pacific	No	W	45	18
*2005-06	San Antonio Spurs	Southwest	No	E	44	21
*2006-07	Dallas Mavericks	Southwest	No	W	42	22
*2007-08	LA Lakers	Pacific	No	E	50	20
*2008-09	LA Lakers	Pacific	Yes	W	48	17
*2009-10	LA Lakers	Pacific	Yes	W	50	15
*2010-11	Dallas Mavericks	Southwest	No	E	46	17
Total	n/a	Pacific 9	5	W 11	***43.2	***17.2

Winners – The winners of that particular Conference.

Division – Refers to the division that the conference winners belong to.

T – Whether the conference winners went on to claim the NBA title in the playoffs.

E/W – The conference that won the NBA Finals in that particular season, be it East or West.

WR – The amount of wins required for the eighth placed team in each conference, to advance to the playoffs.

LW – The lowest wins tally in the entire conference.

Division Total – The division with the highest number of conference championships.

E/W Total – The total number of championships won by that particular conference.

* In these particular seasons, each conference was divided into three divisions rather than two, as was the previous format.

** Due to a Lockout, all 29 teams played a shortened 50 game regular schedule.

*** This figure is an average and does not include results for the 1998-99 season.

A comparison of both conferences in the last nineteen seasons, see *figures 15.4.1 and 15.4.2*, reveals a number of similarities, particularly in the average number of wins gained by the lowest ranked team and the average number of wins required for the eighth place team to qualify for the

playoffs.⁵⁵⁰ These statistics indicate both leagues to be evenly balanced in terms of ability and skill levels. Analysis into the records of teams finishing in the bottom half of each conference reveals a similar trend, with many finishing the regular season with heavy losing streaks. The Miami Heat finished fourth in 2006-07, winning *forty-four* games; however in the following season, the team struggled and appeared to underperform once the playoffs were beyond them, losing *ten* of their last *twelve* games to finish bottom of the Eastern conference. In terms of divisional success, both conferences appear a little imbalanced, with the Central and the Pacific Divisions providing *nine* winners in their respective conferences in the last nineteen seasons.⁵⁵¹ The Eastern conference has been fairly balanced in terms of providing a variety of conference champions. There was a three year period of dominance by the Chicago Bulls; although this is largely attributed to the performances of arguably the NBA's greatest player of all time, Michael Jordan.⁵⁵² The Western conference, however, has been dominated somewhat by the L.A. Lakers and the San Antonio Spurs in the previous nineteen seasons, with both teams winning the conference on *four* and *five* occasions respectively.

Analysis of an eighth placed⁵⁵³ team's win record often provides an insight into how competitive a conference was in a particular season, in terms of the playoffs. In 1994-95, *thirty-five* wins were required to qualify for the playoffs in the Eastern conference, whereas *forty-one* wins were required in the Western conference; an indication that the Western conference was slightly more competitive at the top. In the same season, the lowest amount of wins attained in the Eastern conference was *twenty-one*, compared to *seventeen* in the Western conference; conformation that there was a greater

⁵⁵⁰ The average number of wins required to reach the playoffs is *40.3* for the Eastern conference, and *43.2* for the Western conference. The average number of wins attained by the lowest teams is *18.2* and *17.2* respectively.

⁵⁵¹ There are three divisions within each conference.

⁵⁵² The 1995-96 Chicago Bulls team is generally regarded as the greatest NBA team of all time.

⁵⁵³ Eighth place is the final playoff position within the NBA conferences.

gulf in class between the top and bottom teams in the Western conference. In the previous three seasons (2008-11), the average number of wins required to reach the playoffs in the Eastern and Western conferences was *thirty-nine* and *forty-eight* respectively. These figures indicate an imbalance between the two conferences in recent times; although teams from the Western conference only managed to win *two* out of the three NBA championships during this period of superiority; suggesting that both the league and knockout stages require analysis to conclusively determine the NBA's level of competitive balance.

15.5.4 – Underperformance in the NBA (An analysis of the Eastern Conference)

Figure 15.5 – Teams Bottom of the Eastern Conference (Last Fifteen Games)

Season	Team	W	L	Pct 1	*W	*L	Pct 2	Y/N
2000-01	Chicago Bulls	15	67	0.183	4	11	0.267	Y
2001-02	Chicago Bulls	21	61	0.256	4	11	0.267	Y
2002-03	Cleveland Cavaliers	17	65	0.207	5	10	0.333	Y
2003-04	Orlando Magic	21	61	0.256	2	13	0.133	N
2004-05	Atlanta Hawks	13	69	0.159	2	13	0.133	N
2005-06	New York Knicks	23	59	0.280	4	11	0.267	N
2006-07	Boston Celtics	24	58	0.293	4	11	0.267	N
2007-08	Miami Heat	15	67	0.183	3	12	0.200	Y
2008-09	Washington Wizards	19	63	0.232	3	12	0.200	N
2009-10	New Jersey Nets	12	70	0.146	5	10	0.333	Y
2010-11	Cleveland Cavaliers	19	63	0.232	6	9	0.400	Y

Team – The team finishing bottom of the Eastern Conference in that particular season.

W – The number of games won. **L** – The number of games lost.

***W** – The number of wins attained in the final fifteen games.

***L** – The number of losses attained in the final fifteen games.

Pct 1 – The win percentage for the entire season.

Pct 2 – The win percentage for the final fifteen games.

Y/N – Was the team's final fifteen game win percentage better than their season win percentage.

The general perception is that in a closed league format, teams unable to make the end-of-season playoffs are more likely to underperform in a bid to improve their chances of obtaining a higher draft pick. Analysis into the performances of teams finishing bottom in the Eastern conference, particularly in the final fifteen games, see *figure 15.5*, reveals mixed results. In the previous eleven seasons, *six* bottom placed teams posted a greater win percentage in their final fifteen games of the season than in their entire regular season; the *five* other bottom placed teams posted a greater regular season win percentage than their final fifteen games win percentage. In most cases, the difference between the win percentages for the regular season and the final fifteen games is marginal. Although these statistics do not conclusively determine whether a team intentionally underperforms once they are unable to make the playoffs, they do reveal a similarity in the result patterns of the worst teams in their final games. Every bottom placed team in the Eastern conference between 2000 and 2011 lost more games than they won in their final fifteen contests, with no team posting a win percentage greater than 0.400. If a team was intent on finishing as low as possible within their conference, then surely they would ensure that they lost all of their final games. What is conclusive is that all of these teams performed poorly during the regular season, winning the fewest amount of games in the conference; with their win percentages in their final fifteen games either marginally improving, or not improving at all.

15.5.5 – NBA Attendance Figures

Figure 15.6 – Attendance Figures in Recent NBA Seasons⁵⁵⁴

Cleveland Cavaliers – Eastern Conference

Season	Pos	Wins	Avg H Att
2002-03	15	17	11,496
2003-04	9	35	18,287
2004-05	9	42	19,128
2005-06	4	50	19,326
2006-07	2	50	20,436
2007-08	4	45	20,465
2008-09	1	66	20,010
2009-10	1	61	20,562
2010-11	15	19	20,112

Orlando Magic – Eastern Conference

Season	Pos	Wins	Avg H Att
2002-03	8	42	14,778
2003-04	15	21	14,359
2004-05	10	36	14,583
2005-06	10	36	15,561
2006-07	8	40	17,094
2007-08	3	52	17,301
2008-09	3	59	17,043
2009-10	2	59	17,461
2010-11	4	52	18,972

⁵⁵⁴ Teams were selected on the basis of having the worst win/loss records in the NBA. For example, the Cleveland Cavaliers had the worst win/loss record in 2002-03, whilst the Orlando Magic had the worst win/loss record in 2003-04.

Atlanta Hawks – Eastern Conference

Season	Pos	Wins	Avg H Att
2002-03	11	35	12,894
2003-04	12	28	13,798
2004-05	15	13	14,456
2005-06	14	26	15,068
2006-07	13	30	15,594
2007-08	8	37	16,280
2008-09	4	47	16,748
2009-10	3	53	16,545
2010-11	5	44	15,648

Portland Trail Blazers – Western Conference

Season	Pos	Wins	Avg H Att
2002-03	6	50	19,420
2003-04	10	41	16,585
2004-05	13	27	16,594
2005-06	15	21	15,053
2006-07	12	32	16,360
2007-08	10	41	19,550
2008-09	4	54	20,524
2009-10	6	50	20,497
2010-11	6	48	20,510

Memphis Grizzlies – Western Conference

Season	Pos	Wins	Avg H Att
2002-03	12	28	14,910
2003-04	6	50	15,084
2004-05	8	45	16,862
2005-06	5	49	15,793
2006-07	15	22	14,654
2007-08	13	22	12,770
2008-09	12	24	12,745
2009-10	10	40	13,485
2010-11	8	46	14,650

Miami Heat – Eastern Conference

Season	Pos	Wins	Avg H Att
2002-03	13	25	15,322
2003-04	4	42	15,207
2004-05	1	59	19,881
2005-06	2	52	19,954
2006-07	4	44	19,725
2007-08	15	15	19,463
2008-09	5	43	18,229
2009-10	5	47	17,730
2010-11	2	58	19,778

Sacramento Kings – Western Conference

Season	Pos	Wins	Avg H Att
2002-03	3	59	17,317
2003-04	4	55	17,317
2004-05	6	50	17,317
2005-06	8	44	17,317
2006-07	11	33	17,317
2007-08	11	38	14,150
2008-09	15	17	12,571
2009-10	14	25	13,254
2010-11	14	24	13,890

New Jersey Nets – Eastern Conference

Season	Pos	Wins	Avg H Att
2002-03	2	49	15,184
2003-04	2	47	14,952
2004-05	8	42	15,089
2005-06	3	49	16,866
2006-07	6	41	16,925
2007-08	10	34	15,656
2008-09	11	34	15,147
2009-10	15	12	13,103
2010-11	12	24	14,179

Minnesota Timberwolves – Western Conference

Season	Pos	Wins	Avg H Att
2002-03	4	51	15,699
2003-04	1	58	17,635
2004-05	9	44	17,181
2005-06	14	33	16,150
2006-07	13	32	15,998
2007-08	13	22	14,476
2008-09	11	24	14,505
2009-10	15	15	15,101
2010-11	15	17	15,242

Pos – The final position of the team in the league.

Wins – The amount of wins attained by the team.

Avg H Att – The average home attendance for that particular team in the NBA league.

Analysis of a team's attendance figures, see *figure 15.6*, is often an indication into how a team is performing. In North American sports, supporters usually only attend home contests due to the huge geographic spread of teams throughout the continent (the U.S. and Canada). Attendance in a closed league varies according to the importance of a contest, and the current fortunes of the team. The Cleveland Cavaliers finished bottom of their conference in 2002-03, drawing an average attendance of 11,496 for the season; however in 2006-07, the team performed much better, achieving second place in the league, whilst attracting an average attendance of 20,436 for the season. In 2003-04 the Miami Heat finished fourth in their conference, recording an average attendance of 15,207. The following season they won the Eastern conference, posting an average attendance of 19,881; an increase of over 4,500 within the space of a season. Between 2002-06, the Sacramento Kings made the playoffs in each of these seasons, posting average attendances of around 17,000; however a sudden decline in the following four seasons resulted in attendance figures falling to an average of around 13,000. These figures indicate that spectators are less likely to attend contests in which the home team is out of contention for the playoffs. The absence of relegation thus renders contests meaningless between the lower

teams, resulting in a decline in attendance. What is noticeable is that attendance decline usually occurs over a period of three-to-four years, as opposed to being instantaneous, as the deterioration of a team is usually gradual.

15.6 – Summary

The promotion and relegation system is more effective at preserving competitiveness at the lower end of a league, as teams are forced to fight against relegation. This increases the number of meaningful contests within a campaign, maintaining spectator interest for longer periods, whilst prolonging the excitement and uncertainty of the league. At the top end, the championship race can be a little one-sided if there is a dominant team; although qualification places for European competitions ensures that competitiveness is prolonged. The major downside to the system is its lack of financial stability, with a number of demoted teams suffering financially; although parachute payments have eased this blow somewhat in recent seasons. This instability can have an effect on promoted teams, who may be less willing to invest in their squad, in fear of the financial implications which accompany relegation. The upside is that promotion allows for a variety of contests between teams, widening interest within the league.

The closed league format is far less competitive at the lower end of the league, as teams have no incentive to perform once they are unable to make the playoffs; creating a greater number of meaningless contests between teams, which reduces spectator interest and results in a decline in attendance. Competition at the top of the league is very competitive, with the playoff positions often prolonging spectator interest until the final few games of the season. Teams that are guaranteed a playoff place are encouraged to continue to perform as the higher a team finishes, the easier their opponents in the knockout stages. Home advantage is also designated to the higher seed, making it easier for teams to progress to the final(s) of the competition.

The format is also effective at promoting financial stability, protecting the welfare and security of teams, whilst encouraging them to invest in their squads. The downside to this is that there is little variety in the number of contests, with the same teams competing against each other every season.

The Salary Cap

16.1 – Introduction

A salary cap limits the amount of money a club can spend on player wages. There are two types of cap currently utilised in sport; a hard cap and a soft cap.⁵⁵⁵ Hard caps forbid teams from spending more than a fixed sum on their players; with *Weiler (2000)* believing it to be far more effective in preserving competitive balance, based on the variety of teams winning their respective leagues⁵⁵⁶. Soft caps are more flexible and allow clubs to spend a proportion of their individual revenues on player salaries, rewarding efficiency by allowing wealthy clubs to spend more than their poorer rivals, although at the potential cost of competitive balance. The NBA was the first sports league to cap salaries in 1984; with the NFL adopting a hard cap soon after in 1994. In North America's other two major sports, salary caps were contested in both 1994-95 MLB strike and the 1994-95 lockout in the NHL. In both instances, the respective sports unions were able to fend off acceptance of a general cap, although 'luxury taxes' were put into effect on baseball team payrolls exceeding specified amounts, and ice hockey now employs a salary cap for rookie participants. In recent times, European sports have become more inclined to use salary caps in a bid to restore competitive balance within their leagues. Rugby league is a prime example, with the sport implementing the salary cap within the newly formed Super League in 1996.

16.2 – Advantages and Disadvantages of the Salary Cap

Fort and Quirk (1995) believe that by imposing a rigid limit on the amount any team can spend on talent, the league protects itself from the threat of wealthy owners

⁵⁵⁵ The NFL currently employs a hard cap, while the NBA prefers to use a soft cap.

⁵⁵⁶ Weiler, P. (2000) 'Levelling the Playing Field: How the Law can make Sports better for fans', Harvard, p193.

bidding salaries through the roof in their desire to create a championship winning team⁵⁵⁷. These limits ensure that owners are unable to purchase success, and reduce the possibility of clubs becoming bankrupt due to excessive spending. *Késenne (2000)* praises the cap's ability to improve competitive balance⁵⁵⁸; however *Vrooman (1995)* disagrees, citing the possibility for small market teams to sell a star player to a large market team, while agreeing to pay a portion of the player's salary to ensure the opposing team stays within its cap⁵⁵⁹. This is only likely to occur if a club is in financial debt and unable to pay the player's full wage, or if the owner's sole intention is to make a financial profit. Although a salary cap imposes a limit on salaries, teams situated in revenue-rich regions may undo competitive balance by outspending small-market teams for quality coaches, managers and other non-playing personnel.

A soft cap is far less effective at regulating competitive balance than a hard cap, as there are several ways in which NBA teams can exceed the cap. *Marburger (2006)* highlights the use of the *Larry Bird exception* which allows teams to routinely bypass the salary cap⁵⁶⁰. The Larry Bird exception allows teams to exceed the salary cap to re-sign their own free agents, at an amount up to the maximum salary. To qualify as a Bird free agent, a player must have played three seasons without being waived or changing teams as a free agent. A player can obtain 'Bird rights' by playing under three one-year contracts, or a single contract of at least three years. When a player is traded, his Bird rights are traded with him, enabling his new team to use the exception to re-sign him.⁵⁶¹ The rookie exception is another method which allows teams to circumvent the cap; allowing NBA teams to sign their first round draft picks even if their payroll exceeds the cap. The salary cap for the 2010-11

⁵⁵⁷ Fort, R. and Quirk, J. (1995) 'Cross-subsidisation, Incentives and Outcomes in Professional Team Sports Leagues', *Journal of Economic Literature*, XXXIII, p1265-1299.

⁵⁵⁸ Késenne, S. (2000) 'The Impact of Salary Caps in Professional Team Sports', *Scottish Journal of Political Economy*, Blackwell Synergy.

⁵⁵⁹ Vrooman, J. (1995) 'A General Theory of Professional Sports Leagues', *Southern Economic Journal*, April, p971-90.

⁵⁶⁰ Marburger, D.R. (2006) 'Chasing the Elusive Salary Cap' in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing Limited, p648.

⁵⁶¹ Under the 2011 Collective Bargaining Agreement (CBA), Bird-exception contracts can be up to five years in length, down from six under the 2005 CBA.

NBA season was just over \$58m; however the Los Angeles Lakers spent \$91.6m on player salaries, the Dallas Mavericks \$90.7m, and the Orlando Magic \$89.1m. Only six of the NBA's thirty teams (the Oklahoma City Thunder, the Chicago Bulls, the Cleveland Cavaliers, the Minnesota Timberwolves, the Los Angeles Clippers, and the Sacramento Kings) spent less than the payroll limit. These figures highlight the soft cap's inability to effectively limit teams' expenditure on payrolls.

16.3 – Major League Baseball's Luxury Tax

Gustafson (2006) describes the luxury tax as a more flexible version of the salary cap; allowing teams to spend more than the specified threshold, as long as they are willing to be taxed for this privilege⁵⁶². The luxury tax was essentially designed to slow the growth of salaries and to prevent large market teams from signing several of the top players within a league. It is currently utilised in the MLB as an alternative to the salary cap, and ensures that teams whose payroll total exceeds a certain figure (determined annually) are taxed on the excess amount. The money derived from this tax is then distributed among the financially weaker teams. A team that exceeds the payroll total for the first time in a five-year period pays a penalty of 22.5% of the amount they were over; second-time violators pay a 30% penalty, and teams that exceed the total three or more times pay a 40% penalty. Repeat offender the New York Yankees paid an \$18m penalty in 2010 for exceeding the limit by \$45.1m (40% tax).

⁵⁶² Gustafson, E. (2006) 'The Luxury Tax in Professional Sports', in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing Limited, p652.

Figure 16.1 – Analysis of the MLB’s Luxury Tax

Team	2003	2004	2005	2006	2007	2008	2009	2010
<i>Luxury Tax Threshold</i>	117	120.5	128	136.5	148	155	162	170
New York Yankees	11.8	26	34.1	26	23.88	26.9	25.69	18
Boston Red Sox	n/a	3.15	4.1	0.498	6.06	n/a	n/a	1.49
Anaheim Angels	n/a	0.927	n/a	n/a	n/a	n/a	n/a	n/a
Detroit Tigers	n/a	n/a	n/a	n/a	n/a	1.3	n/a	n/a

Team – A list of teams exceeding the luxury tax’s payroll total.

Luxury Tax Threshold – The luxury tax threshold for that particular year.

2003, 2004, etc – The penalty charge for exceeding the payroll total.

The general perception is that the luxury cap is a weaker form of a salary cap. With a hard salary cap, no team is permitted to exceed the cap, regardless of its willingness to pay a penalty. With a luxury cap, teams may choose to exceed the tax threshold as long as they are willing to pay the tax. *Figure 16.1* reveals the New York Yankees and the Boston Red Sox to have been the luxury tax’s most common victims, with both teams repeatedly exceeding the payroll total.⁵⁶³ The only other teams to have exceeded the payroll total are the Anaheim Angels in 2004 and the Detroit Tigers in 2008. The Yankees have paid over \$190m in penalties, while the Red Sox have paid over \$15m in penalties. Despite the massive amount of money given up by the Yankees and the Red Sox, both teams have only managed to win the *World Series*⁵⁶⁴ on three occasions (the Yankees in 2009, and the Red Sox in 2004 and 2007) since the luxury cap was introduced in 2003; an indication that competitive balance is improving within the MLB.⁵⁶⁵ As the benefits of fielding a high calibre team is likely to be enormous for large market teams such as the Yankees, it may be worthwhile for these teams to exceed the cap and pay the tax; whereas the cost of doing so for small market teams is likely to exceed the possible benefits.

⁵⁶³ The New York Yankees have exceeded the payroll total every year since its existence, and the Boston Red Sox have exceeded the total on five occasions.

⁵⁶⁴ The World Series is the annual championship series of Major League Baseball and concludes the MLB post season.

⁵⁶⁵ Prior to the introduction of the luxury tax, the Yankees had dominated the World Series winning it on four occasions in five seasons (1996, 1998, 1999, and 2000).

16.4 – The Salary Cap’s effect on Players

The top athletes dislike the salary cap for obvious reasons, as it limits the potential wages available to them. There have been several instances when a dispute over a salary cap has resulted in player strikes. This was the case in the MLB in 1993, resulting in the entire season being cancelled. The NBA has also endured several disputes over a salary cap, with a 204-day lock-out in 1998-99, the result of a disagreement between owners and players on the level of the cap. The salary cap also has the potential to adversely affect older players entering into negotiations towards the end of their careers, as teams are less likely to pay high salaries to a player whose performance levels have a greater chance of deteriorating. The introduction of a salary cap into a sport like football could potentially result in a number of players becoming unemployed, as clubs would only be able to sign a set number of players due to the wage restrictions imposed upon them by the cap. This is also likely to affect the performance of several teams, particularly those suffering from a number of injuries, as the recruitment of loan players would likely result in the club exceeding the cap’s limit.

16.5 – The Application of EC Competition Law to Salary Caps

EU Competition law has potential applications to both varieties of cap, provided that trade in players’ services between Member States is affected. Domestic competition law (such as the UK Competition Act 1998) is still likely to apply, even if international trade is not affected. The free movement of persons provisions may also apply, should the cap be accompanied by restrictions on player movement in Europe, with a view to achieving competitive balance (as is the case with the U.S. draft system). EC competition law requires appreciable restrictions of competition to be identified in a relevant market(s). If this threshold test is satisfied, then agreements can benefit from exemption under Article 81(3) if the outcome is judged to be beneficial in accordance with detailed criteria. In common law, the restraint of

trade doctrine, which focuses on individuals' freedom, is also likely to apply. Both 'hard' and 'soft' salary caps are horizontal agreements between competitors which restrict the amount of money they are able to spend on key input; and both amount to joint purchasing agreements which normally fall within Article 81(1) and require justification under Article 81(3).⁵⁶⁶ A hard cap imposes a flat ceiling on the spending of all teams, whilst a soft cap links spending to a percentage of revenue. *Hornsby (2002)*, in applying times of economic crisis to salary caps, implies that a hard cap is likely to fall outside the rules of competition altogether, as it is a reasonable restraint of clubs' and players' trade; however, despite its less restrictive nature, a soft cap does not address problems raised by an economic crisis; therefore falling within Article 81(1) and failing to satisfy the requirements of Article 81(3)⁵⁶⁷.

16.6 – Restraint of Trade under European Union Law

Restraint of trade may prove a more promising line of attack for those who oppose the salary cap, as the doctrine simply requires the identification of a restriction.⁵⁶⁸ If successful, it is then for the defendant to convince the Court that the restriction is reasonable both in the overall interests of the parties and, more generally, in the interests of the public.⁵⁶⁹ Once a restriction on individual freedom has been established, it is difficult to validate the reasonableness of the restriction. Courts in common law jurisdictions have been sceptical about appeals to wider considerations which have included market analysis.⁵⁷⁰ Although there is currently no UK law on the application of any form of salary cap in sport, there is ample antipodean

⁵⁶⁶ Although a soft cap is less restrictive than a hard cap, it is unlikely to escape the attentions of Article 81(1).

⁵⁶⁷ Hornsby, S. (2002) 'The Harder the Cap, the Softer the Law?', *Sport and the Law Journal*, 10(2).

⁵⁶⁸ Lord MacNaughton in *Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd* [1894] AC 535, p565 stated, "All inferences with individual liberty of action in trading and all restraints of trade of themselves, if there is nothing more, are contrary to public policy and therefore that is the general rule".

⁵⁶⁹ See Farrell, R. (1997) 'Salary Caps and Restraint of Trade', *S&LJ* 5(1) for an analysis of relevant cases.

⁵⁷⁰ See *Kerr v Morris* [1987] Ch 90 where reasonableness as between the parties and public interest were dealt with as separate issues.

authority⁵⁷¹, with the leading case being *Adamson v NSW Rugby League*⁵⁷². In this case, the system challenged was a draft system in which players could be effectively compelled to work for a given team. Wilcox J, who rejected the justifications of the system advanced by its organisers, stated, “How in a free society can anyone justify a regime which requires a player to submit intensely personal decisions to the determination of others”⁵⁷³.

In considering the facts in *Eastham v Newcastle United FC*⁵⁷⁴ and *Bosman* (a case decided under free movement provisions which are structurally similar), the courts appear to be objecting to the element of compulsion. The retain-and-transfer system meant that George Eastham was tied to Newcastle United, forcing him to continue working for the club. Similarly, Jean Marc Bosman was unable to depart his club until some form of money changed hands, despite being out of contract. These scenarios can be clearly contrasted to what happens to players under a hard salary cap. A player re-negotiating a contract with their existing club, who wants more than the club can pay under a hard cap, must move on to obtain greater financial rewards, but they are not compelled to work for a given new club. A player who is out of contract, faced with different offers from clubs, can accept the best financial offer; however, if their chance of regular selection is greater with a club who can pay less, then the player may elect to choose this club if these matters are deemed a greater priority. *Hornsby (2002)* believes there to be a fundamental difference between the hard cap and the draft, retain, and transfer systems struck down in *Adamson*, *Eastham*, and *Bosman*. A compelling argument exists that the restraint of trade and competition law outcomes should be the same for hard caps, and that challenges by clubs and players should be rejected. On the other hand, soft caps should fail to pass the muster under the restraint of trade doctrine just as they fail to pass the competition law test⁵⁷⁵.

⁵⁷¹ For an in-depth analysis see Pengilley, W. (1997) ‘Restraint of Trade & Anti-Trust: A Pigskin Review Post Super League’, *Canterbury Law Review*, 6, p610-70.

⁵⁷² *Adamson v NSW Rugby League Limited* [1991] ATPR 41-141 9 (Full Court of Australia).

⁵⁷³ N17 Full Federal Court at p53, O35.

⁵⁷⁴ *Eastham v Newcastle United FC Ltd* [1963] 3 All ER 139; [1964] Ch 413.

⁵⁷⁵ *Hornsby, S. (2002) ‘The Harder the Cap, the Softer the Law?’*, *Sport and the Law Journal*, 10(2).

16.7 – An Analysis of the NFL’s Hard Cap

Following an unsuccessful attempt to obtain unrestricted free agency through collective bargaining, the union decertified and sued the NFL in the case of *McNeil v NFL*⁵⁷⁶. The court’s decision forced management and the union into further negotiations, with both parties finally agreeing to opportunities for unrestricted free agency, coupled with a salary cap.

16.7.1 – How is the NFL Salary Cap Determined?

Within the NFL, the term ‘salary’ refers to all compensation paid to a player, including money, property, investments, loans or anything else of value. The cap is determined on the income that teams earn during a league season. Originally this ‘pot’ was limited to what was known as Defined Gross Revenues (DGR), which consisted of the finance generated from the national television contracts, ticket sales, and merchandise sales. Under the new agreement the ‘pot’ has been expanded to include total revenue, which includes such items as naming rights and local advertising. This total revenue is then divided equally amongst all thirty-two teams to calculate the salary cap. Under the new Collective Bargaining Agreement (CBA), the cap for 2011 is \$120.375m per team. Each team must average \$119.2m. That is a league-wide average, not an individual team minimum. League-wide teams must spend 99% of the cap in 2011 and 2012. In 2013 and beyond, they must spend 95% of the cap. In the event that player costs are less than this overall league minimum, then the NFL shall pay an amount equal to such deficiency directly to the players. The NFL’s utilisation of a hard cap ensures that no team can exceed the limit placed upon teams. Every contract must go through the NFL League Office before the agreement can be finalised. If an

⁵⁷⁶ *McNeil v National Football League*, 790 F.Supp. 871, D.Minn, [1992].

agreement is determined to be in violation of the cap, then it is likely to be rejected.

16.7.2 – The Signing Bonus

Teams with heavy payloads often circumvent the salary cap by back loading player contracts by pushing the bulk of the salary towards the end of the contract. Over the years, new rules have been introduced to keep this practice in check; including limitations on the number of years in which a signing bonus can be prorated, and capping the base salary increase from uncapped years to capped years. The circumvention process is likely to take its toll on a team's salary limit in the final year of a player's contract, leaving teams with two options; to either release the player outright to avoid having to pay the player's salary altogether, or to renegotiate a more 'cap friendly' contract. Without large signing bonuses, players are unlikely to enter into contracts in which the bulk of their salary could potentially remain unpaid, particularly as teams are not obligated to pay out the remaining years of a contract. Signing bonuses act as an incentive for players to enter into these type of agreements; guaranteeing them a large sum of money. Although signing bonuses may be perceived as a form of cheating, they actually form part of a player's salary, and are prorated over the length of the contract.⁵⁷⁷ If a player is released, traded, or waived, then the remainder of this money is accelerated to the present year, and counts towards the following season's cap. There is currently no cap on signing bonuses, although there is a limit ensuring that signing bonuses can only be prorated for up to five years.

⁵⁷⁷ For example, if a player signs a four-year deal with a \$1m signing bonus, \$250,000 of that bonus will count towards team salary for each contract year (\$1m divided evenly over the four-year contract is \$250,000 per year). If a team releases a player, the unamortised bonus money (the remaining prorated bonus money) counts immediately against the cap.

16.7.3 – An Analysis of Points Difference within the NFL

Figure 16.2 – Win Difference before the Introduction of the Salary Cap⁵⁷⁸

Season	AFC pts	AFC avg	NFC pts	NFC avg
1977-78	10	0.714	10	0.714
1978-79	10	0.625	10	0.625
1979-80	8	0.500	9	0.563
1980-81	7	0.438	11	0.688
1981-82	10	0.625	9	0.563
*1982-83	7.5	0.833	6	0.667
1983-84	10	0.625	12	0.750
1984-85	12	0.750	12	0.750
1985-86	10	0.625	13	0.813
1986-87	9	0.563	12	0.750
1987-88	6.5	0.433	10	0.667
1988-89	7.5	0.469	9	0.563
1989-90	7	0.438	13	0.813
1990-91	12	0.750	9	0.563
1991-92	12	0.750	11	0.688
1992-93	9	0.563	10	0.625
1993-94	9	0.563	8	0.500

AFC pts – Refers to the difference in wins between the first and last place teams within the American Football Conference.

AFC avg – Is an average figure based on the wins difference divided by the number of teams in the conference.

NFC pts – Refers to the difference in wins between the first and last place teams within the National Football Conference.

NFC avg – Is an average figure based on the wins difference divided by the number of teams in the conference.

* In this particular season there was a player strike resulting in teams only playing nine games in the regular season as opposed to sixteen.

⁵⁷⁸ Statistics are taken from the NFL's regular league season, with teams playing sixteen games each.

Figure 16.3 – Win Difference after the Introduction of the Salary Cap⁵⁷⁹

Season	AFC pts	AFC avg	NFC pts	NFC avg
1994-95	10	0.625	10	0.625
1995-96	10	0.625	8	0.500
1996-97	12	0.750	10	0.625
1997-98	10	0.625	9	0.563
1998-99	11	0.688	12	0.750
1999-00	12	0.750	10	0.625
2000-01	12	0.750	9	0.563
2001-02	10	0.625	13	0.813
2002-03	9	0.563	9	0.563
2003-04	10	0.625	8	0.500
2004-05	11	0.688	11	0.688
2005-06	12	0.750	10	0.625
2006-07	12	0.750	10	0.625
2007-08	15	0.938	10	0.625
2008-09	11	0.688	12	0.750
2009-10	10	0.625	12	0.750
2010-11	10	0.625	11	0.688

AFC pts – Refers to the difference in wins between the first and last place teams within the American Football Conference.

AFC avg – Is an average figure based on the wins difference divided by the number of teams in the conference.

NFC pts – Refers to the difference in wins between the first and last place teams within the National Football Conference.

NFC avg – Is an average figure based on the wins difference divided by the number of teams in the conference.

* In this particular season there was a player strike resulting in teams only playing nine games in the regular season as opposed to sixteen.

Figure 16.4 – Analysis of Data in Figures 16.2 and 16.3

Results from figure 16.2

Pts	AFC no.	NFC no.
0.400 - 0.499	4	0
0.500 - 0.599	4	5
0.600 - 0.699	4	6
0.700 - 0.799	4	4
0.800 - 0.899	1	2
0.900 - 1.000	0	0

⁵⁷⁹ To take into account drawn games, a win accounts for 1 point and a draw accounts for 0.5 points.

Results from *figure 16.3*

Pts	AFC no.	NFC no.
0.400 - 0.499	0	0
0.500 - 0.599	1	5
0.600 - 0.699	10	8
0.700 - 0.799	5	3
0.800 - 0.899	0	1
0.900 - 1.000	1	0

Pts – The average number of wins based on the AFC/NFC Avg column in *figures 16.2* and *16.3*.

AFC/NFC no. – Refers to the number of seasons with averages falling between these point categories

To determine the effectiveness of the salary cap within the NFL, analysis of the points difference between the top and bottom teams within each conference, is required. *Figures 16.2* and *16.3* reveal the win difference for both conferences between the highest and lowest placed teams. These statistics analyse a seventeen year period before and after the introduction of the salary cap. Wins are recorded as *1.0* and draws are recorded as *0.5*. The wins total is then divided by the number games played by each team (usually sixteen) to give an average. The closer the figure is to *zero*, the more competitive the conference was in that particular season; while the closer the figure is to *one*, the less competitive the conference; with *Figure 16.4* recording the results from this study. Results reveal that the salary cap has marginally improved competitiveness within the NFC. Prior to the introduction of the cap, *eleven* seasons posted points averages falling between *0.000* and *0.699*, compared to *thirteen* seasons falling within the same category after the implementation of the cap.

Results from the AFC are slightly less conclusive; an indication that the salary cap has had less of an effect on the competitiveness of the conference. Prior to the cap in the AFC, *twelve* seasons posted a points average between *0.000* and *0.699*, whereas only *eleven* seasons posted the same points average after the cap was introduced. These statistics do not take into account the

presence of extremely weak or strong teams. In the 2007-08 season, the New England Patriots became the first team to complete the regular (league) season undefeated, since its expansion to a sixteen game season in 1978. In the same season, the Miami Dolphins proved to be very weak, winning only one of their games. Analysis of the four divisions within the conference is likely to produce a clearer indication of a conference's competitiveness. In the same season, the AFC North and South divisions were relatively competitive, with a win difference of *five* games between the top and bottom teams in both divisions. The win difference of the AFC East and West divisions were a lot less competitive, with a win difference of *fifteen* and *seven* games respectively.

16.8 – The Variety of Winners within the NFL

Figure 16.5 – NFL Champions before the Introduction of the Salary Cap

Season	Winners	Runners-up	AFC Winners	NFC Winners
1977-78	Dallas	Denver	Denver	Dallas
1978-79	Pittsburgh	Dallas	Pittsburgh	Los Angeles
1979-80	Pittsburgh	Los Angeles	San Diego	Dallas
1980-81	Oakland	Philadelphia	San Diego	Philadelphia
1981-82	San Francisco	Cincinnati	Cincinnati	San Francisco
1982-83	Washington	Miami	Los Angeles	Washington
1983-84	Los Angeles	Washington	Miami	Washington
1984-85	San Francisco	Miami	Miami	San Francisco
1985-86	Chicago	New England	Miami	Chicago
1986-87	New York	Denver	Cleveland	Chicago
1987-88	Washington	Denver	Denver	San Francisco
1988-89	San Francisco	Cincinnati	Cincinnati	Chicago
1989-90	San Francisco	Denver	Denver	San Francisco
1990-91	New York	Buffalo	Buffalo	San Francisco
1991-92	Washington	Buffalo	Buffalo	Washington
1992-93	Dallas	Buffalo	San Diego	San Francisco
1993-94	Dallas	Buffalo	Buffalo	Dallas
Total	San Francisco 4	Buffa/Denver 4	Mi/Bu/De/Sa 3	San Francisco 6
Number	8	9	8	6

Figure 16.6 – NFL Champions after the Introduction of the Salary Cap

Season	Winners	Runners-up	AFC Winners	NFC Winners
1994-95	San Francisco	San Diego	Pittsburgh	San Francisco
1995-96	Dallas	Pittsburgh	Kansas City	Dallas
1996-97	Green Bay	New England	Denver	Green Bay
1997-98	Denver	Green Bay	Kansas City	Green Bay
1998-99	Denver	Atlanta	Denver	Minnesota
1999-00	St. Louis	Tennessee	Jacksonville	St. Louis
2000-01	Baltimore	New York	Tennessee	New York
2001-02	New England	St. Louis	Pittsburgh	St. Louis
2002-03	Tampa Bay	Oakland	Tennessee	Philadelphia
2003-04	New England	Carolina	New England	Philadelphia
2004-05	New England	Philadelphia	Pittsburgh	Philadelphia
2005-06	Pittsburgh	Seattle	Indianapolis	Seattle
2006-07	Indianapolis	Chicago	San Diego	Chicago
2007-08	New York	New England	New England	Dallas
2008-09	Pittsburgh	Arizona	Tennessee	New York
2009-10	New Orleans	Indianapolis	Indianapolis	New Orleans
2010-11	Green Bay	Pittsburgh	New England	Atlanta
Total	New England 3	New Eng/Pitts 2	Pit/Ten/N Eng 3	Philadelphia 3
Number	12	15	8	11

Winners – Refers to the overall winners in the NFL in that particular season, otherwise known as the Super Bowl winners.

Runners-up – Refers to the runners up of the Super Bowl final in that particular season.

AFC Winners – Refers to the winners of the American Football Conference in that particular season.

NFC Winners – Refers to the winners of the National Football Conference in that particular season.

Total – Refers to the team that achieved this feat the most in this particular period of time.

Number – The number of different teams to achieve this feat within this time period.

One method to determine the salary cap’s effectiveness at promoting competitive balance within the NFL is to analyse the variety of winners. The NFL is comprised of two stages; the league stage and the knockout stage. Within the league stage, teams are split into two conferences with the top six teams from each conference competing in the knockout stages. The winners from each knockout stage meet in the final game, known as the Super Bowl, to determine the overall winners. Analysis of a seventeen year period, both before and after the introduction of the salary cap, see *figures 16.5 and 16.6*, reveals it to be effective in providing a greater variety of Super Bowl winners and runners-up, and a greater variety of AFC winners. Prior to the cap, there were *eight* different Super Bowl winners, *nine* different runners-up, *eight* different AFC winners, and *six* different NFC winners. In comparison, since

the introduction of the salary cap, there have been *twelve* different Super Bowl winners, *fifteen* different runners-up, *eight* different AFC winners, and *eleven* different NFC winners. The salary cap also appears to have quelled San Francisco's domination of the NFC, with the team winning the conference on *six* occasions prior to the cap, and only *once* since the cap was implemented into the NFL. Although the salary cap does not appear to have provided a greater variety of AFC winners in the seventeen year period, the conference has not suffered any sustained periods of dominance; with Pittsburgh, Tennessee and New England all winning the conference title on *three* occasions.

Analysis reveals the salary cap to have increased competitive balance within the NFL, with a greater variety of teams now capable of reaching the Super Bowl. The cap has also broken the minor dominance of San Francisco in the NFC, improving the conference's uncertainty of outcome. This unpredictability heightens spectator interest, allowing for a more interesting and competitive campaign. The downside to this is that the league suffers in terms of producing 'great teams', as the restrictions imposed by the cap makes it difficult for teams to win consecutive championships. Although it can be refreshing to see different teams competing for honours, it is important to ensure that the variation of winners is not too extensive as to reduce the prestige of a team achieving glory.

16.9 – Summary

The salary cap is generally considered to have a positive effect on the industry of professional team sports. The cap improves both the competitive balance within a league, and the player salary distribution; holding down the excessive top player salaries in the process. It also guarantees club owners a reasonable profit rate, ensuring that new investments in the industry will not be discouraged. There are however a few negative aspects; *Késenne (2000)* notes the departure from the

Pareto-optimal point so that total league revenues are decreased⁵⁸⁰; although it is arguably the irrational behaviour of owners and managers, who do not realise the damage caused by bidding up top player salaries in a free agency player market, that make these regulations necessary. *Hornsby (2002)* identifies the impracticality of introducing a salary cap into leagues utilising the promotion and relegation system⁵⁸¹. It would be impossible to adopt the same cap amongst all leagues within a hierarchy, as lower leagues are unlikely to be able to generate the same amounts of revenue. Problems will arise when teams are relegated to a lower league; as players are still likely to be under contract, thus resulting in the relegated team exceeding the limit for that division. There would also be complications relating to cross-country competitions between different European nations; as teams from countries without a cap would have an advantage over those which are restricted by salary limits placed upon them. These complications are not necessarily insurmountable, as a cap is only likely to be required for the top divisions in football, as the pay of lower divisions naturally tends to find a lower level and has rarely been much of a problem. The worst case scenario is that a team could spend a large amount of money in a bid to gain promotion to the top division. To ensure the cap does not hinder the opportunities of clubs competing in European competitions, UEFA could introduce rules similar to the financial fair play regulations which are soon to be introduced into football, forcing clubs to limit their spending accordingly or face expulsion from UEFA competitions. This would place all teams on a level playing field, regardless of whether their domestic league utilises a salary cap or not.

Staudohar (1999) concludes that there is very little difference between a soft cap and a luxury tax as far as placing limits on salary growth is concerned; although if a salary cap were enforced as a hard cap, the difference might be greater as a firm limit would be established⁵⁸². Although a hard cap is more successful at enforcing

⁵⁸⁰ Késenne, S. (2000) 'The Impact of Salary Caps in Professional Team Sports', *Scottish Journal of Political Economy*, Blackwell Synergy, p429.

⁵⁸¹ Hornsby, S. (2002) 'The Harder the Cap, the Softer the Law?', *Sport and the Law Journal* 10(2).

⁵⁸² Staudohar, P. (1999) 'Salary Caps in Professional Team Sports', in Jeanrenaud, C. and Késenne, S. 'Competition Policy in Professional Sports: Europe after the Bosman Case', *Standaard Editions Ltd, Belgielei 147a, 2018 Antwerp, Belgium*, p89.

total expenditure on team salaries, *Barriger et al. (2004)* note that teams can still undermine the effectiveness of the cap by restructuring their players' contracts (deferring payments, for example)⁵⁸³. A signing bonus is not counted fully against a salary cap in the year in which it is paid; allowing teams to prorate the bonus throughout the length of the contract. Even though a player might receive a \$4m signing bonus in 2011, only \$1m of that amount would count towards the cap for that year, if a four year contract was signed. *Weiler (2000)* suggests the introduction of a salary tax as a form of combating circumvention of the cap⁵⁸⁴. A well-designed tax system would provide incentives for every team to behave in the fashion that serves the collective good of the entire league, while avoiding the distorting effects that rigid legal regulation tends to impose on the market needs of individual teams.

⁵⁸³ Barriger, A., Sharpe, J., Sullivan, B. and Sommers, P. (2004) 'Has a Salary Cap in the NFL Improved Competitive Balance?', Middlebury College Economics Discussion Paper No. 04-02.

⁵⁸⁴ Weiler, P. (2000) 'Leveling the Playing Field (How the Law can make Sports Better for Fans)', Harvard University Press, p104-115.

The Player Draft

17.1 – Introduction

The player draft, or rookie draft as it is sometimes referred as, is a process used to allocate certain players to sports teams. In 1935 two NFL teams, the Brooklyn Dodgers and the Philadelphia Eagles, entered into a bidding war for the services of rookie Stan Kostas, a talented All-American football player from the University of Minnesota, driving the salary offer up to \$5,000; an extremely large sum at the time. To avoid such bidding wars for college players in the future, the NFL implemented the first ‘reverse-order-of-finish’ draft in 1936. The reverse-order-to-finish meant that the team with the worst record in the previous season was the first to select from college players for the next season. The team with the second-worst record picked second, and so on.⁵⁸⁵ In 1949 the NBA adopted a college draft for the forthcoming season, whilst the NHL and MLB adopted drafts much later in 1963 and 1965 respectively, as they relied less on college talent and more on minor leagues as a source for new talent.

17.2 – The NBA Player Draft

17.2.1 – The Draft Origins

The NBA player draft was introduced to improve competitive balance between teams. During its early years, the draft was subject to several changes with the aim of enhancing numerous aspects of the sport. From 1947-65, territorial picks were introduced, allowing teams the chance to forfeit its first-round draft pick in exchange for a player from its immediate

⁵⁸⁵ Kahane, L. (2006) ‘The Reverse-order-to-finish draft in sports’, in Andreff, W. and Szymanski, S. ‘Handbook on the Economics of Sport’, Edward Elgar Publishing, p643-645.

area, presumably with a strong local following. Territorial picks were implemented into the draft to include fan bases and improve attendances. From 1966-84, coin flips between the last placed finishers in each of the NBA's two conferences were utilised to determine which team would open the draft; with the remaining teams continuing to pick in inverse order of their win/loss records. The idea of the coin flip was that the worst team was not guaranteed first pick in the draft, and therefore had no incentive to underperform and intentionally lose games.

17.2.2 – The NBA Random Lottery Draft

The first Lottery Draft took place in 1985, and was won by the New York Knicks who went on to pick Patrick Ewing. The seven teams that failed to reach the playoffs were entered into the lottery and each team had an equal chance of becoming the first draft lottery winner. Under this system, teams unable to make the post-season playoffs no longer had an incentive to intentionally lose games. The downside to the random lottery was that teams with the worst records in the league were unlikely to improve unless they were lucky enough to obtain one of the higher picks. In 1986, the Board of Governors decided that the lottery would determine the order of selection for the first three teams only. Therefore, the team with the worst record in the league was assured of picking no worse than fourth, the team with the second-worst record no worse than fifth and so on. This system was designed to ensure that teams with the worst records were still assured of a relatively high pick, and it provided an incentive for teams to perform to their maximum potential in games.

17.2.3 – The NBA Weighted Lottery System

In October of 1989, the Board of Governors adopted a weighted system beginning with the 1990 NBA Draft Lottery, which included eleven teams due to expansion. The team with the worst record during the regular season received eleven chances at the top pick (out of a total of sixty-six), the second team was allocated ten chances and the team with the best record among the non-playoff teams was given one chance. The Orlando Magic defied the new lottery odds by winning the No.1 pick two years in a row. In 1992, Orlando won the No.1 pick with the second-worst record (21-61) in the league, choosing Shaquille O’Neal. In the following season, with O’Neal in the team, Orlando made a twenty-game win improvement and just missed out on the playoffs. With just one chance out of sixty-six, Orlando won the No.1 pick yet again and selected forward Chris Webber, who was immediately traded for Memphis guard Penny Hardaway and future draft picks.

In 1993, due to Orlando’s considerable luck in the draft lottery, the Board of Governors decided to increase the chances of teams with the worst records in the league winning one of the top three picks in the draft, while decreasing the lottery chances of the teams with the best records. The new system increased the chances of the team with the worst record drawing the first pick in the draft from 16.7% to 25%, whilst decreasing the chances of the team with the best record among lottery teams from 1.5% to 0.5%. Although these changes increase the chances of weaker teams improving, they also increase the chances of teams intentionally underperforming and losing games towards the end of a season, in order to enhance their chances of obtaining a higher draft pick. It was for this reason why the lottery draft was originally implemented; to deter teams from intentionally underperforming.

17.2.4 – Analysis of the Various Systems

Figure 17.1 – Teams with the Worst Win/Loss Records in the NBA⁵⁸⁶

Year	1 st	2 nd	3 rd	4 th	5 th	Total
1980-81	15	21	24	28	28	116
1981-82	15	17	25	28	30	115
1982-83	14	20	23	25	28	110
1983-84	26	27	28	29	30	140
1984-85	22	22	24	31	31	130
1985-86	23	26	29	30	30	138
1986-87	12	24	24	28	29	117
1987-88	17	19	20	24	28	108
1988-89	15	20	21	21	26	103
1989-90	17	18	18	19	22	94
1990-91	20	24	25	26	26	121
1991-92	15	21	22	24	25	107
1992-93	11	19	22	25	26	103
1993-94	13	20	20	20	24	97
1994-95	17	21	21	24	26	109

1st – The total number of wins attained by the team with the worst record in that particular NBA season.

2nd – Total number of wins attained by the team with the second worst record in that particular NBA season.

3rd – Total number of wins attained by the team with the third worst record in that particular NBA season.

4th – Total number of wins attained by the team with the fourth worst record in that particular NBA season.

5th – Total number of wins attained by the team with the fifth worst record in that particular NBA season.

Total – The total number of wins attained between the five teams with the worst records in that particular NBA season.

The NBA player draft has gradually evolved since the inaugural draft in 1947.

Several implementations have been made to the draft in a bid to establish a

balance between a team's integrity to compete to their maximum potential in

⁵⁸⁶ Only the records of the five worst teams in the NBA have been sampled in this analysis, as this is an estimated average of the number of teams that are likely to attempt to lose games intentionally, in a bid to obtain a higher draft pick. Teams finishing above these positions are likely to still have a chance of finishing in the playoff positions.

every game, and the process of awarding weaker teams with a greater chance of securing a higher draft pick. As both factors counteract each other, it is almost impossible to develop a perfect solution. There have been four major types of draft implemented within the NBA:

1. 1966-84 Reverse-Order-To-Finish
2. 1985-86 Random Lottery
3. 1987-89 Top Three Team Lottery
4. 1990-present Weighted Lottery System

Analysis of the *reverse-order-to-finish* draft between 1980 and 1984 indicates a problem with teams underperforming once they are unable to make the playoffs, in a bid to claim a higher draft pick. The average win total for the five worst teams during this period was *120.3*, a relatively low figure in comparison to the *random lottery* which posted a win average of *134* during its use. The *top three team lottery* recorded a win average of *109.3*, whilst analysis into the current *weighted lottery system* between 1989 and 1995 recorded a win average of *105.2*; the lowest win average of the four draft systems utilised within the NBA. The data reveals the *random lottery* to be the most competitive method of determining which team receives first pick in the upcoming player draft. With an equal chance of obtaining this reward, teams had no incentive to finish as low as they could in their respective conference. The current *weighted lottery system* is effective in terms of improving the quality of weaker teams; however, statistics confirm that a problem still exists regarding the motivation of teams once they are unable to reach the playoffs. Although *figure 17.1* offers an insight into team performances during the various adaptations of the player draft, the data does not take into account the relative potential of individual teams. Although it is difficult to determine a team's relative potential prior to each season, betting odds could be used as a means of predicting the likelihood of a team

qualifying for the playoffs. Unfortunately bookmakers do not keep records of pre-season betting odds.

17.3 – Concerns regarding Competitive Balance

There are a few concerns regarding the effectiveness of the player draft in terms of promoting competitive balance. The first applies to sports with a large number of players per team such as baseball and American football. In these sports, one good prospective player per year is unlikely to make much difference to the overall team talent. At the end of the first round of player selections, the prior season's champion selects, followed directly by the second pick of the team with the poorest record. Except for the beginning of the first round, the championship team and the worst team in the league receive consecutive choices. If there is a continuum of player skills and uncertainty about how new players will perform at the professional level, the team picking second among consecutive selectors can easily obtain the better players. This reduces the advantage of the weaker team to only its first round selection. In sports with a small number of players per team, such as basketball and ice hockey, one excellent player can occasionally make a difference to a team. Although effective, the draft system in larger team sports appears to work much slower in terms of improving the capability of weaker teams.

Another concern, discussed by *Coase (1960)*⁵⁸⁷ and *Demsetz (1974)*⁵⁸⁸, is captured in the well-known *Coase Theorem* which states that if property rights are well defined and the costs of buying and selling those rights are not prohibitive, resources will eventually gravitate to their most valuable use, no matter who is given the rights initially. If the rights are obtained by the party that values them the most, it is unlikely that anyone else will make an offer for those rights that exceeds their value to the initial owner, and no transfer will occur. *Siegfried (1995)* notes that if the

⁵⁸⁷ Coase, R. (1960) 'The Problem of Social Cost', *Journal of Law and Economics*, 3.

⁵⁸⁸ Demsetz, H. (1972) 'Product, Information Costs and Economic Organisation', in Alchian, A. 'American Economic Review', 62: p777-795.

rights are initially assigned to a team that values them less than other teams, an opportunity arises to trade those rights with the team that values them the most, ensuring that both the initial owner and purchaser end up better off⁵⁸⁹. In sporting terms, if a highly skilled player is worth more to another team located in a large metropolitan area, but is drafted by a weaker team located in a low-populated area; there is more of an incentive for the weaker team to sell its rights to acquire the new player, to the stronger team. To benefit both parties, the price needs to exceed the added revenues the weaker team would enjoy if it retained the new player, and be less than the added revenues the new player can stimulate in the larger populated city. Although there are occasions when it would be beneficial for a team to immediately trade a draft pick to a more successful team, this rarely occurs (see *figures 17.2 and 17.3*); disparaging theories that the draft simply redistributes wealth between weak and strong teams.

17.4 – Criticisms of the Player Draft

The main criticism of the player draft is its inability to promote competitive balance whilst preserving the integrity of a sport. This raises the question as to what is more important; maintaining competitive balance within a league by ensuring player talent is distributed equally amongst teams; or ensuring that every contest is performed within the spirit of the game, with both teams attempting to win. Maintaining the integrity of sport is surely the priority. Spectators are less likely to attend contests in which one or both teams are intentionally underperforming; whereas an imbalanced contest is still likely to be entertaining, despite the lack of match uncertainty. The draft also raises questions as to whether failure should be rewarded within sport; as teams will always be inclined to seek the most beneficial option. One possible solution is the introduction of financial aid for weaker teams, in a bid to reduce the imperative for them to trade their best players. This could be based on redistribution or bias in allocation of commercial rights from television and sponsorship revenue.

⁵⁸⁹ Siegfried, J. (1995) 'Sports Player Drafts and Reserve Systems', *The Cato Journal*, 14(3).

Another criticism relates to the loopholes enabling teams to recruit young foreign players outside of the draft. These concerns were illustrated in an incident that occurred in 1998, involving baseball player Orlando Hernandez. Fleeing Cuba after being banned from its national team, Hernandez sought asylum in the U.S., and under the advice of his agent, chose to relocate to Costa Rica, where he would be exempt from the MLB draft which did not cover foreign players. The escape route allowed the New York Yankees to outbid the Cleveland Indians for Hernandez's services by offering him a \$6.6m contract. This case highlights an important gap in the MLB draft coverage, with over twenty percent of league rosters coming from foreign countries. As a result, teams not only receive the picks reserved for it in the draft of North American players, but also have the opportunity to acquire the cream of the foreign crop, as the Yankees did with Hernandez.⁵⁹⁰ One possible solution is to place all foreign players in a separate draft; with draft picks allocated in similar fashion to the rookie draft. Teams could also be given the option of selecting either a rookie or a foreign player with their pick; although this could stunt the development of young players, should teams choose to go with experience over raw talent.

17.5 – The Effect of the Draft on Individuals

The draft system has a direct impact on the marketability of rookies. Draftees have no opportunity to negotiate with and secure competitive bids from several teams; instead, each draftee is 'reserved' to the single club which uses one of its picks to select them. This process reduces the chances of the best young players achieving early success within their careers, as they are often assigned to struggling teams. *Siegfried (1995)* believes the draft places certain players (namely rookies) in a weaker bargaining position than they would otherwise enjoy⁵⁹¹. Players subject to the draft are likely to be paid less than they could potentially earn in an open

⁵⁹⁰ Weiler, P. (2000) 'Leveling the Playing Field (How the Law can make Sports Better for Fans)', Harvard University Press, p200-205.

⁵⁹¹ Siegfried, J. (1995) 'Sports Player Drafts and Reserve Systems', *The Cato Journal*, 14(3).

market.⁵⁹² The upside is that the redistribution of wealth amongst team owners, particularly teams which draft players whose value is greater elsewhere, captures some of the differential value through transfer price. A fully commercial system may also be less sustainable, as it would be more prone to teams becoming bankrupt due to the amount of money spent on transfer fees.

17.6 – Legality of the Player Draft

The *Sherman Antitrust Act s.1*⁵⁹³ prohibits agreements among competitors which restrain trade. This creates a problem for the utilisation of player drafts in North American sports, as there is a clear agreement among teams, not to contract with players selected by other teams. This agreement is known as the ‘reserve system’, and without it, there would be nothing to stop teams from intervening and stealing young players from each other. Major League Baseball is exempt from the Sherman Act under the 1922 Supreme Court decision in *Federal Baseball Club of Baltimore, Inc v National League of Professional Baseball Clubs*⁵⁹⁴, in which the court determined that baseball did not meet the interstate commerce requirement for practices that can be regulated by the federal government. The court in this instance concluded that baseball is not ‘commerce’, likening it instead to scholarly lectures. The decision has since been reaffirmed in the cases of *Flood v Kuhn*⁵⁹⁵, and *Toolson v New York Yankees*⁵⁹⁶. Other North American sports have managed to avoid *Sherman Act* prosecution, primarily through the labour exemption of the Act. This exemption relies on collective bargaining with the respective players’ unions; with these unions in return, agreeing to continue a draft for young players and including a provision for it in their union agreement. It appears that baseball is the extreme case,

⁵⁹² Quirk, J. and Fort, R. (1992) conclude that salaries in professional baseball became noticeably less equally distributed as free agency was ushered in after 1976. They find that a disproportionate share of the benefits of free agency accrued to experienced players.

⁵⁹³ The Sherman Antitrust Act [1890] s.1.

⁵⁹⁴ *Federal Baseball Club of Baltimore, Inc v National League of Professional Baseball Clubs*, 259 U.S. 200 [1922].

⁵⁹⁵ *Flood v Kuhn*, 407 U.S. 258 [1971].

⁵⁹⁶ *Toolson v New York Yankees*, 346 U.S. 356 [1952].

with only the more promising first year players being subject to a draft and bound to the team which drafts them (for one year). However, *White (1986)* notes the possibility for conspiracies among experienced players and team owners against new players, who are not party to the union of negotiations that perpetuate the draft and reserve clause for new players⁵⁹⁷.

The introduction of the player draft into European sports is likely to fall foul of the restraint of trade doctrine under EU law. The draft is a mechanism designed to control a player's ability to seek employment; with the player having very little influence on the team that selects them. Should they refuse to sign with the team, they are likely to remain unemployed for the entire season, due to the reserve clause adopted amongst teams. Article 81(1) EC Treaty deals with restrictive vertical agreements and prohibits the restriction of competition within the common market. In *Kowalska*⁵⁹⁸ the court decided that the principle of equal pay could not be overridden by even a genuine process of collective bargaining. Insofar as any player draft in sport affected by rights of free movement, it is submitted that it would be struck down both under EC law and at Common law. This is in contrast to the position in U.S. law, where a right to choose one's employer can be bargained away collectively.

⁵⁹⁷ White, M.D. (1986) 'Self-Interest Redistribution and the National Football League Players Association', *Economic Inquiry* 24, p669-80.

⁵⁹⁸ Case C-33/89 *Kowalska* [1990] ECR I-2591.

17.7 – Analysis into the NBA and NFL Drafts

Figure 17.2 – No.1 Draft Picks and their length of time with teams in the NFL

Year	Player	Team Drafted	Left	Reason	Years
1980	Billy Sims	Detroit Lions	1984	Retired	5
1981	George Rogers	New Orleans Saints	1984	Traded/Free Agent	4
1982	Kenneth Sims	New England Patriots	1989	Retired	8
1983	John Elway	Baltimore Colts	1983	Traded/Free Agent	0
1984	Irving Fryar	New England Patriots	1993	Traded/Free Agent	9
1985	Bruce Smith	Buffalo Bills	1999	Traded/Free Agent	15
1986	Bo Jackson	Tampa Bay Buccaneers	1986	Chose Baseball*	0
1987	Vinny Testaverde	Tampa Bay Buccaneers	1992	Traded/Free Agent	6
1988	Aundray Bruce	Atlanta Falcons	1991	Traded/Free Agent	4
1989	Troy Aikman	Dallas Cowboys	2000	Retired	12
1990	Jeff George	Indianapolis Colts	1993	Traded/Free Agent	4
1991	Russell Maryland	Dallas Cowboys	1995	Traded/Free Agent	5
1992	Steve Emtman	Indianapolis Colts	1994	Traded/Free Agent	3
1993	Drew Bledsoe	New England Patriots	2001	Traded/Free Agent	9
1994	Dan Wilkinson	Cincinnati Bengals	1997	Traded/Free Agent	4
1995	Ki-Jana Carter	Cincinnati Bengals	1999	Traded/Free Agent	5
1996	Keyshawn Johnson	New York Jets	1999	Traded/Free Agent	4
1997	Orlando Pace	St. Louis Rams	2008	Traded/Free Agent	12
1998	Peyton Manning	Indianapolis Colts	n/a	Still Playing	14+
1999	Tim Couch	Cleveland Browns	2003	Traded/Free Agent	5
2000	Courtney Brown	Cleveland Browns	2004	Traded/Free Agent	5
2001	Michael Vick	Atlanta Falcons	2008	Life Ban**	8
2002	David Carr	Houston Texans	2006	Traded/Free Agent	5
2003	Carson Palmer	Cincinnati Bengals	2011	Traded/Free Agent	9
2004	Eli Manning	San Diego Chargers	2004	Traded/Free Agent	0
2005	Alex Smith	San Francisco 49ers	n/a	Still Playing	7+
2006	Mario Williams	Houston Texans	n/a	Still Playing	6+
2007	JaMarcus Russell	Oakland Raiders	2009	Released	3
2008	Jake Long	Miami Dolphins	n/a	Still Playing	4+
2009	Matthew Stafford	Detroit Lions	n/a	Still Playing	3+
2010	Sam Bradford	St. Louis Rams	n/a	Still Playing	2+
2011	Cam Newton	Carolina Panthers	n/a	Still Playing	1+

Player – The player that was selected as the number one draft pick in that particular season.

Team Drafted – The team that acquired the number one draft pick for that particular season.

Left – The year in which the player left the team.

Reason – The reason why the player left the team.

Years – The number of years the player was at that particular team before leaving.

* Bo Jackson was drafted as the number one pick but decided to pursue a career in baseball.

** Michael Vick was suspended indefinitely after pleading guilty to illegal dog fighting and gambling operations.

Analysis of the NFL's No.1 draft picks between 1980 and 2011, see *figure 17.2*, reveals the instant trading of No.1 drafted players to be rare⁵⁹⁹; dismissing theories that small teams are more likely to trade these players in exchange for financial incentives; although teams do occasionally trade their picks prior to the draft. The majority of No.1 draft picks remain with their team for a minimum of three years, with many continuing to remain there for several years after; highlighting the importance of the No.1 draft pick within the NFL.

⁵⁹⁹ This has only occurred on three occasions in the thirty-two seasons analysed.

Figure 17.3 – The Top Ten NFL Draft Picks and the Player’s length of time with their team

Year	Instant	First	Second	Total	Choice
1980	1	0	0	1	1
1981	0	0	0	0	n/a
1982	0	0	0	0	n/a
1983	2	0	0	2	0
1984	1	1	0	2	1
1985	0	1	0	1	1
1986	2	0	0	2	1
1987	1	1	2	4	1
1988	0	0	0	0	n/a
1989	0	0	0	0	n/a
1990	0	0	0	0	n/a
1991	0	0	0	0	n/a
1992	0	0	0	0	n/a
1993	0	0	0	0	n/a
1994	0	0	1	1	0
1995	0	0	0	0	n/a
1996	0	0	1	1	1
1997	0	0	0	0	n/a
1998	0	0	0	0	n/a
1999	0	0	0	0	n/a
2000	0	0	0	0	n/a
2001	0	0	0	0	n/a
2002	0	0	0	0	n/a
2003	0	0	0	0	n/a
2004	2	0	0	2	0
2005	0	0	1	1	0
2006	0	0	0	0	n/a
2007	0	0	0	0	n/a
2008	0	0	0	0	n/a
2009	0	0	0	0	n/a
2010	0	0	n/a	0	n/a
2011	0	n/a	n/a	0	n/a
Total	9	3	5	17	6

Instant – The number of players being traded instantly after being selected in the Draft.

First – The number of players leaving their team after one season.

Second – The number of players leaving their team after two seasons.

Total – The total number of players that left their team within two seasons after being selected in that particular draft.

Choice – The number of players that either chose a different profession, different league, was subsequently banned, or was forced to retire.

Figure 17.3's analysis into the length of time that the top ten drafted players spend with their new team reveals continuity to be high, with only *nine* from a possible 320 being instantly traded.⁶⁰⁰ *Three* players were traded one year after being drafted, with a further *five* traded in the following season. Only *seventeen* top ten drafted players from a possible 320 were traded within three years of being recruited; an indication that the NFL draft has been successful in distributing young playing talent across weaker teams, whilst ensuring that the majority of these players are not simply traded for financial incentives.⁶⁰¹

Figure 17.4 – Analysis into the Competitiveness of the NBA Draft

Year	Team	Player	Previous	Season	Impro
1995	Golden State Warriors	Joe Smith	26-56	36-46	Yes
1996	Philadelphia 76ers	Allen Iverson	18-64	22-60	Yes
1997	San Antonio Spurs	Tim Duncan	20-62	56-26	Yes
1998	Los Angeles Clippers	Michael Olowokandi	17-65	9-41	No
1999	Chicago Bulls	Elton Brand	13-37	17-65	No
2000	New Jersey Nets	Kenyon Martin	31-51	26-56	No
2001	Washington Wizards	Kwame Brown	19-63	37-45	Yes
2002	Houston Rockets	Yao Ming	28-54	43-39	Yes
2003	Cleveland Cavaliers	LeBron James	17-65	35-47	Yes
2004	Orlando Magic	Dwight Howard	21-61	36-46	Yes
2005	Milwaukee Bucks	Andrew Bogut	30-52	40-42	Yes
2006	Toronto Raptors	Andrea Bargnani	27-55	47-35	Yes
2007	Portland Trail Blazers	Greg Oden	32-50	41-41	Yes
2008	Chicago Bulls	Derrick Rose	33-49	41-41	Yes
2009	Los Angeles Clippers	Blake Griffin	19-63	29-53	Yes
2010	Washington Wizards	John Wall	26-56	23-59	No
2011	Cleveland Cavaliers	Kyrie Irving	19-63	n/a	n/a

Team – The Team allocated first pick in the Player Draft.

Player – The player selected as the No.1 pick in that seasons draft.

Previous – The team's win/loss record from the previous season before the draft.

Season – The team's win/loss record from the following season after the draft.

Impro – Whether there was an improvement in games won from the previous season.

Win/loss improvement for the 1998 and 1999 drafts were calculated using the team's average percentage of wins due to them only playing 50 games because of the NBA lockout in the 1998-99 season.

⁶⁰⁰ This data is based on the top ten NFL draft picks between 1980 and 2011.

⁶⁰¹ The NFL draft is based on the reverse-order-to finish draft previously employed within the NBA, where teams are allocated draft picks based on their win/loss record from the previous season, with weaker teams obtaining higher draft picks. The only exception concerns expansion teams who join the league, as they will automatically acquire the first pick.

Analysis into the advantages of possessing the No.1 NBA draft pick between 1995 and 2010, see *figure 17.4*, indicates that teams generally improve on their previous season's record; with *twelve* teams bettering their win/loss record in the previous sixteen drafts.⁶⁰² As basketball only requires five players to be on the court at any one time for each team, a player can have much more of an influence on a contest in comparison to a sport which requires a large number of players. This data not only reveals the effectiveness of the draft's ability to restore parity amongst teams, but also highlights the importance of obtaining the No.1 pick and the incentive teams may have to underperform in a bid to improve their chances of securing this valuable privilege.

⁶⁰² In the sixteen most recent NBA player drafts, twelve teams have improved their win/loss record after obtaining the number one pick in the draft.

Figure 17.5 – Analysis into a Team’s Progression in the NBA

Year	1 st	PS	FS	2 nd	PS	FS	3 rd	PS	FS
1980	Boston Celtics	61	62	Utah Jazz	24	28	Golden State Warriors	24	39
1981	Dallas Mavericks	15	28	Detroit Pistons	21	39	New Jersey Nets	24	44
1982	Los Angeles Lakers	57	58	San Diego Clippers	17	25	Utah Jazz	25	30
1983	Houston Rockets	14	29	Indiana Pacers	20	26	Houston Rockets*	14	29
1984	Houston Rockets	29	48	Portland Trail Blazers	48	42	Chicago Bulls	27	38
1985	New York Knicks	24	23	Indiana Pacers	22	26	Los Angeles Clippers	31	32
1986	Cleveland Cavaliers	29	31	Boston Celtics	67	59	Golden State Warriors	30	42
1987	San Antonio Spurs	28	31	Phoenix Suns	36	28	New Jersey Nets	24	19
1988	Los Angeles Clippers	17	21	Indiana Pacers	38	28	Los Angeles Clippers*	17	21
1989	Sacramento Kings	27	23	Los Angeles Clippers	21	30	San Antonio Spurs	21	56
1990	New Jersey Nets	17	26	Seattle SuperSonics	41	41	Denver Nuggets	43	20
1991	Charlotte Hornets	26	31	New Jersey Nets	26	40	Sacramento Kings	25	29
1992	Orlando Magic	21	41	Charlotte Hornets	31	44	Minnesota Timberwolves	15	19
1993	Orlando Magic	41	50	Philadelphia 76ers	26	25	Golden State Warriors	19	50
1994	Milwaukee Bucks	20	34	Dallas Mavericks	13	36	Detroit Pistons	20	28

1st – The team selecting first in the player draft.

2nd – The team that picked second in the player draft.

3rd – The team that picked third in the player draft.

PS – The amount of games won by the team in the previous season.

FS – The amount of games won by the team in the following season.

* Indicates that a team received more than one pick in the first round of the draft.

Figure 17.5 – Analysis into a Team’s Progression in the NBA (Continued)

Year	4 th	PS	FS	5 th	PS	FS	Play	Div	Con	Run	Cha	Impr	%
1980	Chicago Bulls	30	45	Denver Nuggets	30	37	2	1	1	0	1	5/5	100%
1981	Atlanta Hawks	31	42	Seattle SuperSonics	34	52	3	0	0	0	0	5/5	100%
1982	Dallas Mavericks	28	38	Kansas City Kings	30	45	1	1	1	1	0	5/5	100%
1983	San Diego Clippers	25	30	Chicago Bulls	28	27	0	0	0	0	0	4/4	100%
1984	Dallas Mavericks	43	44	Philadelphia 76ers	52	58	5	0	0	0	0	4/5	80%
1985	Seattle SuperSonics	31	31	Atlanta Hawks	34	50	1	0	0	0	0	3/5	60%
1986	Indiana Pacers	26	41	New York Knicks	23	24	3	1	1	1	0	4/5	80%
1987	Los Angeles Clippers	12	17	Seattle SuperSonics	39	44	2	0	0	0	0	3/5	60%
1988	New Jersey Nets	19	26	Golden State Warriors	20	43	1	0	0	0	0	4/4	100%
1989	Miami Heat	15	18	Charlotte Hornets	20	19	1	1	0	0	0	3/5	60%
1990	Orlando Magic	18	31	Charlotte Hornets	19	26	1	0	0	0	0	3/5	60%
1991	Denver Nuggets	20	24	Miami Heat	24	38	2	0	0	0	0	5/5	100%
1992	Dallas Mavericks	22	11	Denver Nuggets	24	36	1	0	0	0	0	4/5	80%
1993	Dallas Mavericks	11	13	Minnesota Timberwolves	19	20	2	0	0	0	0	4/5	80%
1994	Minnesota Timberwolves	20	21	Washington Bullets	24	21	0	0	0	0	0	4/5	80%

4th – The team that picked fourth in the player draft.

5th – The team that picked fifth in the player draft.

PS – The amount of games won by the team during the previous season.

FS – The amount of games won by the team in the following season.

Play – The number of teams reaching the Play-offs in the following season.

Div – The number of teams that won their Divisional championship in the following season.

Con – The number of teams that won their Conference championship in the following season.

Run – Did one of the teams finish as Runners-up in the NBA finals in their following season?

Cha – Did one of the teams manage to win the NBA finals in their following season?

Impr – The number of teams that managed to improve their win record in the following regular season.

% – The percentage of teams that improved their win record in the following regular season.

One method in which to determine the immediate effect of the NBA player draft is to compare a team's previous record with their results in the following season. *Figure 17.5* lists the first five teams to pick in each NBA draft between 1980 and 1994. Results reveal that the teams with the first five picks in the NBA draft generally improve in the following season, with *sixty* teams from a possible seventy-three⁶⁰³ improving on their previous season's win/loss record.⁶⁰⁴ *Twenty-five* of these teams were successful in achieving a playoff position, with *four* teams attaining this feat by winning their divisional championship. *Three* of the four divisional champions were also triumphant in winning their respective conference title. Only *one* of these teams managed to win the NBA playoff championship. In the fifteen seasons analysed, a minimum of *three* out of the five teams bettered their previous win/loss record each season, confirming the importance of the player draft in maintaining competitive balance amongst teams, ensuring they do not become too strong or too weak relative to one another.

17.8 – Summary

The preservation of competitive balance in sport is essential to its long term survival. The player draft has been successful in deterring teams from entering into bidding wars; ensuring rich teams are unable to use their financial clout to recruit the best young playing talent. The reserve system strengthens the credibility of the player draft; encouraging players to join the team that selects them, or face being stranded without a team for the upcoming season. One of the draft's main intentions was to restore parity amongst teams; however this created a new problem in the form of teams intentionally underperforming towards the end of a season, in a bid to gain a higher draft pick. There is currently no perfect solution to this problem, as increasing the randomness of the draft ultimately reduces the chances of weak teams obtaining

⁶⁰³ There are only seventy-three teams as opposed to seventy-five, as the Houston Rockets and Los Angeles Clippers received more than one pick in the 1983 and 1988 drafts respectively.

⁶⁰⁴ Sixty teams managed to improve on their win/loss records in the following season, two teams managed to tie their previous records, and thirteen teams were unsuccessful in improving their win/loss records.

higher picks. One possible solution would be to increase the prize money for each position within the league. This extra finance could be generated from improved sponsorship and television agreements; although to be effective, it must exceed the amounts generated from obtaining a higher draft pick.

There is currently no conclusive evidence that teams intentionally lose games in a bid to finish as low as possible within their conference. Statistics and results only indicate that teams have been performing poorly and losing games. *Soebbing and Mason (2009)* suggest using the betting market as an accurate predictor of match outcomes⁶⁰⁵. This would provide an indication as to whether teams are intentionally underperforming. This information could then be relayed to sports governing bodies, which could then launch an inquiry. Unfortunately, the credibility of betting markets is likely to be questioned as they do not take into account factors such as injury, loss of form, the resting of several key players, and tactical naivety on behalf of coaches. Although the player draft is an effective method of regulating competitive balance within a league, the importance of the salary cap must not be overlooked. Without the combination of the two balancing mechanisms, rich teams could simply purchase unlimited numbers of ready-made talent (as opposed to young emerging talent from college leagues), stifling the development of these players in the process.

⁶⁰⁵ Soebbing, B. and Mason, D. (2009) 'Managing Legitimacy and Uncertainty in Professional Team Sport: The NBA's Draft Lottery', Faculty of Physical Education and Recreation, University of Alberta, Edmonton, Canada.

Chapter 6 - **Conclusion**

Conclusion

18.1 – Introduction

The preservation of competitive balance in sport is essential to its long term survival. At the highest level, professional sport is a form of entertainment for spectators. As with other forms of entertainment (e.g. going to the cinema or theatre), maintaining the interest of spectators is key to generating revenue. Regulating competitive balance is a difficult task, particularly in European sports, as governing bodies are forced to comply with domestic and national laws. The EU's primary concern is safeguarding the interests and freedoms of society; and this can occasionally hinder the development of European sports. There are five key factors that require consideration when introducing new rules and regulations into a sport: the health and safety of an athlete, the sustainability of participants and teams, the interests of sponsors and the broadcast media, the preservation of competitive balance, and prolonging spectator interest.

Although competitive balance is a desirable component of sport, the health and safety of an individual is paramount. There are no rules in society which intentionally endanger the wellbeing of an individual, and sport must ensure it adopts a similar approach. For example, were a sport's governing body to legalise the use of performance enhancing drugs, they would essentially be encouraging athletes to gamble with their health in a bid to remain competitive; contravening one of the key benefits of participating in sport. Analysis into the growth of MMA and the UFC highlights the difficulties in developing a sport when there are concerns regarding the competitor's safety. Political interference, unwanted publicity, and limited commercial access are just some of the hurdles that sports governing bodies are likely to face should they fail to act when a safety issue arises.

The transformation of modern day sport has enabled sponsors and the broadcast media to gain more of an influence on the organisation of sporting events. There are instances when the broadcast media's influence on sport can be positive in terms of pressurising a governing body into amending the format of contests, which inadvertently improves the health and safety aspect of the sport. The demand for PPV television resulted in the UFC introducing time limits in contests, reducing the risk of injury and long-term fatigue for participants. However, one could argue that the commercial demand for sport has increased the risk of injury and long term fatigue for athletes; contravening the primary objective of sports governing bodies.

The commercialisation of sport has had a huge impact on the sustainability of athletes. Without the vast amounts of revenue generated from sponsors and television companies, many athletes would not have been afforded the opportunity to turn professional; which in turn allows them to focus exclusively on their sport without the worries of having to support themselves financially. The top athletes have access to the most advanced equipment and apparel, state of the art facilities, modernised training schedules, premium dietary supplements, and the best coaches. Sustainability does have its drawbacks, most notably in team sports where clubs are inclined to overspend on wages and transfer fees in a bid to remain competitive. Leeds United FC gambled on qualifying for the lucrative UEFA Champions League by overspending on player wages and transfer fees; a move which did not pay off and ultimately resulted in their demise as a top tier football team.

The status of a professional sport is determined by spectator demand. Without this appeal, a sport cannot survive at the highest level, as competitors will gradually seek other forms of employment and young aspiring athletes will gravitate to sports with a higher profile and greater opportunity for rewards. Once the demand for a sport begins to dwindle, so does the revenue generated. The popularity of darts has grown in recent years, and this has attracted the attention of high profile sponsors and resulted in lucrative television agreements, providing greater prize money and exposure for the sport. Although maintaining the demand for darts is essential, there

are other factors which can influence its long term appeal. The previous darts boom during the early eighties came to an abrupt end when the sport began to haemorrhage sponsors and lose television coverage. Many players turned professional during its peak; however a sudden drop in prize money and a lack of exposure meant players were unable to generate a sufficient income to preserve their professional status. This decline was largely attributed to the bad publicity the sport received⁶⁰⁶ and the inability of the British Darts Organisation to acquire new sponsors. This decline also highlights the importance of maintaining the image of a sport in a bid to retain its lucrative commercial ties.

Preserving the integrity of a sport is essential in combating corruption and cheating, which can tarnish the image of a sport. The demand for boxing has declined in recent times due to a rising number of questionable outcomes and the ensuing backstage politics which ultimately determines marquee fights. MMA has profited from this turmoil, increasing in popularity by converting a number of traditional boxing fans. Similarly, the increased use of performance enhancing substances in athletics resulted in widespread negative publicity, reducing spectator demand; however the individual governing bodies, along with the cooperation of WADA, increased their war on drugs, improving the sport's image and restoring faith in the public.

⁶⁰⁶ Darts players were allowed to drink alcohol and smoke cigarettes on the stage during matches, reflecting the detrimental image of the game.

18.2 – A Comparison of European and North American Regulation of Competitive Balance in Team Sports

Figure 18.1 – A Comparison of European and North American Sports Leagues⁶⁰⁷

	The European Model	The North American Model
Objectives	Utility maximisation (with negative profits)	Profit maximisation
Structure	Open leagues with promotion and relegation	Closed leagues
Size	Large numbers of clubs per head of population	Restricted number of clubs
Geographical Pattern	Restricted geographical movement of clubs	Exclusive territories but franchise mobility
International Competition	Important at club and national level	Absent
Player Drafts	None	Extensive
Sale of Players	Sale of players for cash common	Restrictions on sales of players for cash
Roster Limits	None	Extensive
Revenue Sharing	Limited	Extensive
Salary Capping	Limited, but increasing	Extensive
Stock Market Flotation	Recent	Restricted

Sloane (2006) identifies various distinguishing features between European and North American models in *figure 18.1*. The European model is based on a promotion and relegation system, limited salary capping, restricted geographical movement of clubs, and does not utilise player drafts. The North American model is based on a closed league format, extensive salary capping, franchise mobility, and utilises a player draft⁶⁰⁸. *Nafziger (2009)* notes that the European sports model is based largely

⁶⁰⁷ Sourced from Sloane, P. (2006) 'The European Model of Sport', in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing Limited, p301.

⁶⁰⁸ Sloane, P. (2006) 'The European Model of Sport', in Andreff, W. and Szymanski, S. 'Handbook on the Economics of Sport', Edward Elgar Publishing Limited, p301.

on just one sport that dominates attention in Europe namely, football⁶⁰⁹. Other European sports have their own distinctive structures; such as rugby which utilises a salary cap. Competition law and regulations in the North American system are as paramount as they are in the European system. Articles 1 and 2 of the Sherman Act are similar to Articles 81 and 82 of the EC Treaty, in that both prohibit anti-competitive agreements and market dominance.

It is difficult to determine the most effective all-round model in terms of prolonging competition, preserving competitive balance, safeguarding the welfare of incumbents, and maintaining the integrity of contests. Each model has its strengths and weaknesses. The North American model appears to be more modernised as it promotes financial stability by limiting player wages with salary caps; implements revenue sharing between big and small drawing teams; and meets the demands of commercialisation by supplying a greater number of contests (with the exception of the NFL, due to its physicality). Although the regulation of European sports is hindered somewhat by EU law, it does appear to be more effective at deterring underperformance, as failure is punished by relegation; which in turn prolongs the competitiveness of a league.

18.2.1 – Regulatory Measures in Developing Sports Leagues

Regulatory measures are difficult to implement into new developing sports leagues like Major League Soccer (MLS), as these leagues are essentially playing catch-up to established leagues, and such measures are likely to hinder their growth and expansion. Salary caps are effective in the NBA and the NFL as these sports leagues are established, and therefore the limitations placed upon the spending capability of teams does not affect the league's ability to attract and recruit the best playing talent. The MLS is currently

⁶⁰⁹ Nafziger, J. (2009) 'A Comparison of the European and North American Models of Sports Organisation', in Gardiner, S., Parrish, R. and Siekmann, R. 'EU, Sport, Law and Policy', Asser Press, 3, p35.

hamstrung by its salary cap, as clubs are unable to purchase a greater number of top players (who demand greater salaries). Similarly, the player draft (known as the SuperDraft) puts players in a difficult position; forcing them to either sign for the club that selects them in the draft, or seek employment elsewhere in a different league. Unfortunately, top players are often reluctant to join struggling teams, and therefore decide to move abroad. One method in which to combat this would be to place mandatory requirements that need to be met in order for a player to be eligible for the U.S. and Canadian national teams. For example, a player could be required to have played at least three full seasons within the MLS in order to be eligible for national selection. North Americans are typically patriotic, and playing for their country is likely to be a huge honour; one that deters them from immediately signing for a foreign team without playing in the MLS.

Removing the constraints of a salary cap and the SuperDraft may not necessarily be a positive move in terms of improving the status of the MLS, as it would enable teams in large metropolitan areas to spend unlimited amounts of money on transfer fees and wages, thus potentially distorting the league's competitive balance. A decline in spectator demand would likely ensue, reducing the league's exposure and the volume of revenue generated. This could potentially threaten the sustainability of teams in low-to-medium demand regions, during a period in which the MLS is actually looking to expand its product. The MLS's most assured move would be to continue growing at a steady pace, gradually lifting some of the restraints to meet consumer demand, and ensuring the brand does not expand too hastily.

18.2.2 – Summary

The North American model of sports leagues appears to be more commercialised in comparison to the European model as it safeguards the

interests of all incumbents, and promotes competitiveness through regulatory measures such as the salary cap, player draft, and the end of season playoffs. It is also more beneficial to society, ensuring that all young players acquire an education (usually a college degree) to fall back on, should they fail to make the grade of a professional athlete.⁶¹⁰ Its main drawback concerns the incentives for teams at the lower end of a league to underperform in a bid to acquire a higher pick in the annual player draft. Although regulatory measures such as the salary cap and player draft are effective at promoting competitive balance in sports leagues, it would be difficult to implement these into European sports, particularly football, as there is far greater competition and players will eventually gravitate towards leagues that can pay higher salaries. The European model appears to be more traditional than the North American model, which essentially distinguishes amateur sport from professional sport. Teams in lower divisions have the opportunity to work their way up the pyramid structure; adding to the romance of sport, whilst providing spectators with enthralling clashes between Davids and Goliaths. Although the European model has its merits, it is more likely to gravitate towards an Americanised style model in the future, particularly if the top teams get their way, as this will safeguard their futures and generate greater revenue streams through the commercialisation of a single league, as opposed to several leagues with interchangeable teams of varying abilities.

Maintaining the wellbeing of athletes is the primary objective of the two models. The *two footed tackle*⁶¹¹ in football was outlawed due to its potential to cause long term injuries to players. The offence is deemed serious foul play and is punishable by a straight red card and a three match suspension in

⁶¹⁰ In European sports, youngsters that do not become professional sportsmen are often left with minimal qualifications (e.g. GCSEs) to fall back on.

⁶¹¹ The *two footed tackle* is a dangerous foul in which a player lunges or slides into an opponent with both studs raised, making contact with the player below the knee.

the Premier League. Similarly, the *chop block*⁶¹² in American football was banned as a strategy due to the extreme likelihood of knee injuries occurring. The penalty is fifteen yards from the previous line of scrimmage and a replay of the down. Both of these rule changes occurred despite the limitations they impose on defensive play; emphasising the importance of maintaining health and safety in sport.

18.3 – Sport and Exemption from European Union Law

Unlike other industries, sport can be identified as both a social activity and a highly commercial business. In *Walrave*⁶¹³, the ECJ recognised that certain sporting activities were not subject to Community law; making a distinction between economic and uneconomic sporting activity⁶¹⁴. In *Meca-Medina*⁶¹⁵, the ECJ confirmed that uneconomic sporting activity remains beyond the scope of Community law. Currently, there is no explicit Treaty basis for the Community to involve itself in sporting activity; although, according to existing Court jurisprudence, only national eligibility criteria remain within a territory of rule removed from the scope of the Treaty on ‘purely sporting’ grounds under *Walrave*⁶¹⁶. Other sporting rules have required justification under competition law or free movement. *Parrish and Miettinen (2008)* note that in competition law, the collective sale of broadcasting rights satisfies the exemption criteria under Article 81(3); and in free movement law, only transfer windows have been successfully justified⁶¹⁷; whereas nationality restrictions in club sports and regulatory rules designed to protect commercial positions, have all failed to justify their existence.

⁶¹² The *chop block* is a term for a blocking strategy in which an offensive player will block a defensive player, and second offensive player will attempt to cut down the defensive player by blocking him down around the knees.

⁶¹³ Case 36/74 *Walrave and Koch v Association Union Cycliste Internationale and Others* [1974] ECR 1405.

⁶¹⁴ *Walrave* para. 4.

⁶¹⁵ Case C-519/04 *Meca-Medina and Majcen v Commission* [2006] ECR I-6991.

⁶¹⁶ *Walrave* para. 8.

⁶¹⁷ Parrish, R. and Miettinen, S. (2008) ‘The Sporting Exception in European Union Law’, Asser Press, p239.

European Union law has had a significant influence on the development of European sports in recent times. The *Bosman*⁶¹⁸ decision essentially changed the dynamics of football, transferring power from the club to the player, whilst inadvertently widening the gap between the rich and the poor. The abolishment of nationality quotas in sport has enabled the rich leagues to recruit the best foreign talent at the expense of smaller leagues. This has widened the gap between nations, as evidenced by results in cross-country competitions like the Champions League. Some would argue that the decision in *Bosman* has enabled sport to grow through commercialisation, with sponsors and television companies investing greater amounts of money into the top leagues which benefited from the abolishment of nationality quotas. EU law remains an obstacle that sports governing bodies have yet to overcome. In order to improve competitive balance within leagues, governing bodies require further exemptions from the scope of the EC Treaty, in order to implement restrictive regulatory measures, which will close the gap between the rich and the poor. Without these exemptions, governing bodies will continue to have their hands tied, and be unable to readdress issues of competitive imbalance in sport.

18.4 – Which is more effective: Financial Fair Play or a Salary Cap?

UEFA believe Financial Fair Play will safeguard European club football by ensuring teams live within their means by not overspending, preserving their status in the process. They also anticipate that the new regulations will improve competitive balance within leagues by ensuring that wealthy billionaire owners can no longer spend their way to success, levelling the playing field so to speak. In reality this is unlikely to happen due to the huge differentiation in commercial income generated by clubs. A salary cap would appear more beneficial in terms of safeguarding the financial survival of clubs and improving the competitive balance of leagues;

⁶¹⁸ Case C-415/93 Union Royale Belge Sociétés de Football Association and others v Jean-Marc Bosman and others [1995] ECR I-4921.

although it would require approval under European Union law and the differing league statuses could potentially cause a problem in cross-country competitions.

One possible solution would involve partially modifying the cap to relate to salaries of those taking the field in particular competitions. For example, you might have a low cap for the Danish league, a medium sized cap for English Premier League, and a medium or slightly higher cap for the UEFA Champions League. This would allow a Danish team to select its most expensive players when competing against an English team. The downside to this solution is that realistically, clubs will not purchase expensive players to sit out league contests and only play in European competitions. The problem with having a Europe wide salary cap is that the best players are likely to gravitate to the more established leagues, particularly as there are no restrictions with regards to the amount of foreign players a team can field. There would also be the issue of reducing the potential of the top teams by limiting the amount of money they can spend on star players.

The introduction of Financial Fair Play highlights the importance of sustainability, particularly in team sports. In individual sports, athletes require a sufficient amount of income in order to train full time and compete at the highest level; however it is very difficult for sports governing bodies to intervene and maintain their sustainability, as revenue is closely linked to success. In team sports, a limitation needs to be imposed on clubs and teams in order to deter them from recklessly overspending. UEFA's new regulations suggest that sustainability (the primary objective) is of greater importance than competitive balance (the secondary objective), as an unstable club encountering financial difficulties is likely to be forced into selling their best players, which in turn reduces their competitiveness.

18.5 – Final Summary

Sport is an integral part of many people's lives. Amateur sport is an opportunity for individuals to integrate into society and socialise with others. It enables individuals to maintain their health and recover from injuries and illness. The physical benefits acquired distinguish it from other pastimes and hobbies. Many thrive on the competitive element of sport. For some, it is an opportunity to exhibit a particular talent. The euphoria of success can often provide individuals with a confidence boost and greater self-esteem, which can then be applied to the struggles of everyday life. Professional sport is a form of entertainment. It enables individuals to build a rapport with an athlete or a team. This allegiance or loyalty can often satisfy one's need to be associated with something of importance. The anticipation of watching one's favourite team perform provides a respite from the rigours of a weekly routine. It is these characteristics which distinguish sport from other forms of activity.

Although competitive balance is a desirable component of sport, it is not the primary concern of sports governing bodies and the law makers. As with most rules in general society, the welfare of an individual is paramount. The preservation of human life is the foremost priority; therefore, any rule that is adjudged to endanger one's health is unlikely to be accepted, regardless of its ability to promote competitive balance. Rules and regulations are often amended to prevent athletes from incurring serious injury, and even death; as was the case with a number of rules utilised in the early days of MMA. Nevertheless, competitive balance is still essential to the long term survival of professional sports. Occasionally, the integrity of sport will be overlooked in a bid to improve its overall competitive balance, as evidenced by the NBA's continued use of the weighted lottery draft system, which inadvertently encourages underperformance. The future of sport will remain healthy, so long as it keeps track of the impending threats of doping and corruption. Upholding the integrity of sport and abiding by the principle of fair play is essential in maintaining a level playing field amongst athletes, which in turn provides a basis for the regulation of competitive balance.

18.6 – Recommendations

The thesis highlights the importance of preserving the long term competitive balance of sports leagues. There are a number of regulatory measures and strategies that sports governing bodies can implement to maintain competitiveness, and these vary according to the type of sport (e.g. individual or team based), and the current status of the league or competition (e.g. established or emerging). Regulation of individual sports is difficult as success depends largely on the athlete's individual skill and ability; however there are a number of measures which can be taken to maintain a level playing field amongst competitors. The biggest threat to individual sports is the use of performance enhancing drugs and their ability to reward those who have little or no regard to their long term health. More stringent testing procedures are required to deter athletes from doping. Athletes seeking to avoid testing positive for doping use various methods to deceive testers; with the most common including urine replacement⁶¹⁹, diuretics⁶²⁰, and blood transfusions⁶²¹. It is difficult to detect these methods of deception without violating a player's privacy, and potentially their human rights (e.g. implementing full body searches prior to an athlete providing a urine sample). Punishments vary according to the nature of the doping offence and the athlete's degree of fault; with first time violations punished by two years ineligibility, and second time violations punished with lifetime ineligibility.⁶²² Refusal to take a test will result in a two year ban, whereas the punishment for a missed test varies between one and two years, depending on the athlete's degree of fault. WADA's punishments appear to be severe but fair; an indication that the problem of doping in sport may lie with the testing procedures currently employed.

⁶¹⁹ Urine replacement involves replacing urine with clean urine from someone who has not taken a banned substance; often by the use of catheterization.

⁶²⁰ Diuretics are used to cleanse the system before having to provide a sample.

⁶²¹ Blood transfusions increase the blood's oxygen carrying capacity, in turn increasing endurance without the presence of drugs that could trigger a positive test result.

⁶²² An athlete will have the opportunity, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing this sanctioning as provided in Article 10.5 of WADA's World Anti-Doping Code.

Athletics is a high risk sport which has been the subject of numerous doping scandals in recent years. Random testing is not a sufficient deterrent, as culprits may escape detection. To deter athletes from doping, drug tests need to be administered to every athlete at least once within their sporting calendar, with little or no prior notice. Additional tests should also be administered to all medal winners, and those who have performed exceptionally above their usual standards. Punishments need to focus on stripping guilty athletes of their medals and trophies, and banning them from competing in the most prestigious competitions such as the Olympic Games and the World Championships, as the recognition gained from winning such events is often more important to an athlete than the financial rewards.

The biggest threat to competitive balance in team sports is the presence of cheating and corruption which appears to be on the rise. Simulation and the feigning of injury is the biggest threat to football, as the speed of the game has increased in recent years. Contests are increasingly being influenced and decided by poor refereeing decisions in the form of penalties and red cards; although *Groot (2008)* believes that the erratic performances of referees actually increases competitive balance, provided errors are made in an impartial way⁶²³. To combat this on-field form of cheating requires the use of video technology. FIFA argue that the use of video technology is likely to detract from the excitement of a contest, particularly as football is a free flowing game with few stoppages in comparison to other sports such as American football and basketball. To ensure contests are not affected, the use of video technology could be reviewed after games, with key incidents reported to the appropriate governing body for review. A panel comprised of ex-players and referees could review the footage and determine whether or not the offender has feigned injury in a bid to get an opponent sent off or committed an act of simulation. For example, a player who intentionally dives in a bid to win his team a penalty could be handed a three game ban (the same suspension handed down for serious foul play) and a hefty fine, regardless of whether the penalty is converted or not. The

⁶²³ Groot, L. (2008) 'Economics, Uncertainty and European Football: Trends in Competitive Balance', Edward Elgar Publishing, Inc., p42.

use of video technology will eventually make players think twice about acts of gamesmanship, and this will help preserve the principles of fair play in sport.

Another threat likely to affect the competitive balance of team sports in the future is the growth of commercialisation. The influence and control of sports governing bodies has been transferred somewhat in recent years, with corporate sponsors and media moguls gaining a much tighter grip on the running of sports. The amount of money in circulation within the sports industry is huge. The need for sports governing bodies to satisfy the needs and requirements of influential sponsors is integral to maintaining current revenue streams. The organisation of tournaments and contests now relies heavily on the scheduling of television companies who spend vast amounts of money to acquire the rights to televise events. The Premier League's bid to become a global brand has ultimately forced it to cave into demands from BSkyB; with teams increasingly being forced to play two games in close succession. The lack of a rest period often results in a number of lacklustre contests, as fatigue makes it difficult for players to replicate their usual high standards. Early kickoffs are now also a common occurrence to ensure the lucrative Far East market (e.g. China, Japan, and Korea) can tune into live games. This affords certain teams advantages, particularly those playing later in the evening or the following day.⁶²⁴ Sports governing bodies must maintain a degree of control to ensure the sport does not decline in terms of quality; as sponsors and television companies are only interested in generating money, and are likely to seek alternate options if the money dries up; placing the league in a precarious financial position. The law needs to step in and ensure that governing bodies maintain full autonomy over the day-to-day running of sports, overruling decisions which they perceive to be detrimental to the sport.

⁶²⁴ Teams playing after their rivals know what is required of them, and do not necessarily have to go all out for the win, as they would if both teams were playing simultaneously.

18.7 – Further Research

Further research needs to be carried out on the emerging problems of doping and corruption in sport. Advancements in medicine and technology have presented governing bodies with new problems in the form of gene and technological doping; whilst the expansion of betting markets places sport at higher risk from betting rings intent on corrupting athletes for their own personal gain. In combating gene doping, *Haisma (2004)* suggests promoting the development of detection methods at a global scale, closely informing athletes on the potential consequences of gene doping, and evaluating current regulations on genetic materials from a doping perspective⁶²⁵. These preventive measures are aimed to deterring athletes from using gene modification, thus enabling organisations like WADA to buy some time in their continued search for an accurate detection method. It appears that the issues of corruption and doping will continue to disrupt the development of sport until they are dealt with accordingly.

Additional research also needs to be carried out on the implementation of Financial Fair Play in European football, as the next few years are likely to provide a clearer indication as to whether free-spending clubs like Chelsea and Manchester City have been forced to curb their spending; although these findings will be inconsequential should UEFA fail to resolve the current loopholes currently being exploited by Manchester City and Paris Saint-Germain. Further exploration into North American team sports could also be conducted in a bid to find a more effective solution in deterring teams from intentionally underperforming come the end of the season; although this will be difficult as any changes are likely to have an adverse effect on competitive balance within the leagues.

⁶²⁵ Haisma, H.J. (2004) 'Gene Doping', Netherlands Centre for Doping Affairs, Capelle aan den IJssel, p31.

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Appendix 1 – Rule Changes within the UFC

The list states the event that the rule came into effect and the main reasoning for its introduction. (**Health & Safety, Competitiveness, Legal Reasons, Spectator Interest**)

1. UFC 1 – Although the advertising said ‘*there are no rules*’, there were in fact some rules: no biting, no eye-gouging, and rounds were to last five minutes, although no match in the first tournament lasted that long. Fights ended only in the event of a knockout, a submission (usually signalled by tapping the hand three times on the mat or opponent), or by the corner throwing in the towel. Despite this, the first match in UFC 1 was won by referee stoppage, even though it was not officially recognised as such at the time.⁶²⁶ (**Health & Safety**)
2. UFC 2 – Time limits were dropped, mainly because there was no need for them in the first tournament. Groin strikes were made legal, although it was still deemed illegal to attempt to grab the genitals. Modifications were made to The Octagon, with higher fences and less floor padding. (**Competitiveness**)
3. UFC 3 – The referee was officially given authority to stop a fight in case of a fighter being unable to defend himself. Fighters wearing shoes were unable to kick their opponents. (**Health & Safety**)
4. UFC 4 – Alternates (replacement fighters) were required to win a pre-tournament bout to qualify for the role of an alternate. This rule was implemented after Steve Jennum won UFC 3 by winning only one bout.

⁶²⁶ In the opening match of the event, Gerard Gordeau knocked out several of Telia Tuli’s teeth with a kick. The referee decided to intervene and stop the bout due to the severity of the injury sustained by Tuli.

Jenum automatically advanced to the final as a substitute for an injured fighter.⁶²⁷ **(Competitiveness, Spectator Interest)**

5. UFC 5 – As the previous final in UFC 4 lasted for a then record time; organisers introduced a thirty minute time limit for bouts.⁶²⁸ This event was also the first to feature a one-off bout, with the winner being crowned the ‘Superfight Champion’ and having the duty of defending his title at the next event. **(Spectator Interest)**
6. UFC 6 – Due to a lack of action in the previous event’s Superfight, the referee was given authority to restart the fight if both fighters were entangled in such a position. A five minute extension to the thirty minute rule was also introduced to try and determine a winner in contests. **(Spectator Interest)**
7. UFC 8 – Changes were made to time limits, with ten minutes allocated to the first two rounds of the tournament, and fifteen minutes in the tournament final and Superfight. As fights were potentially shorter in time, judges’ decisions were introduced to determine a winner at the end of each fight. **(Competitiveness, Spectator Interest)**
8. UFC 9 – To appease local authorities, closed fists were banned for this event only. These changes were implemented at the last minute to prevent the cancellation of the event.⁶²⁹ **(Legal Reasons)**
9. Ultimate Ultimate 1996 – Fighters were not allowed to grab the fence of the octagon as this was deemed to give them an unfair advantage when grappling. **(Competitiveness)**

⁶²⁷ The UFC’s owners did not want to replace injured fighters with fighters that had previously lost in the tournament because they wanted the winner to be undefeated. A tournament winner with a loss to their name could potentially devalue the credibility of the competition.

⁶²⁸ Up until this point, no televised match had lasted longer than five minutes. As time came to a close on the broadcast; the fight continued to go on. The event organisers were able to extend the pay-per-view to the satellite carriers, but unfortunately most major cable systems were automatic, and at 11pm Eastern time, the show went off the air, leaving the majority of viewers to miss the conclusion of the match. The success in selling the event was tempered by the huge amount of money that cable companies refunded to irate customers.

⁶²⁹ The event’s existence was in question up until the day of the show as political pressure was beginning to build on the organisation. Senator John McCain had begun to criticise the UFC publicly and Michigan officials nearly forced the card at Detroit’s Cobo Arena to be cancelled. Fighters were warned before the event not to punch with closed fists or use head-butts as they could face arrest.

10. UFC 12 – This was the first tournament to feature two different weight classes. Fighters were split into heavyweight and lightweight divisions, with only four fighters competing in each knockout tournament. The eight-man tournament was abandoned because of the amount of injuries sustained by fighters in the previous event. Mark Coleman won the final of UFC 11 by default after all the alternate fighters had been used in previous rounds. The Superfight title was also replaced by the Heavyweight Championship belt. **(Competitiveness, Spectator Interest)**
11. UFC 14 – Due to the number of injuries sustained to the knuckles of fighters; padded gloves became a mandatory piece of equipment. **(Health & Safety)**
12. UFC 15 – Limits on permissible striking areas were introduced to protect the welfare of fighters. Head butts, groin strikes, and elbow strikes to the back of the neck and head were outlawed, along with kicks to a downed opponent, small joint manipulation, pressure point strikes, and hair pulling. **(Health & Safety)**
13. UFC 21 – Five minute rounds were introduced, with preliminary bouts consisting of two rounds, regular non-title bouts at three rounds, and title bouts at five rounds. The *10-point must system* was also introduced to score bouts ending in a draw. This system is identical to the one used in boxing. **(Competitiveness)**
14. UFC 28 – The UFC decided to adopt the newly developed *Unified Rules of Mixed Martial Arts*, to allow them to stage their first sanctioned event in New Jersey. Major changes to the UFC’s rules included barring knee strikes to the head of a downed opponent, elbow strikes to the spine and neck, and punches to the back of the neck and head. Limits on permissible ring attire, stringent medical requirements, and regulatory oversight were also introduced. A new weight class system was also implemented into the sport. **(Health & Safety, Competitiveness, Legal Reasons)**
15. UFC 31 – Weight classes were re-aligned to the current standard. Bantamweight moves from 150lbs to 155lbs and becomes known as lightweight. Lightweight becomes known as welterweight, middleweight

becomes light-heavyweight, and a new middleweight class is introduced at 185lbs. (**Competitiveness**)

16. UFC 43 – To ensure fairness, in the event of a stoppage, a fight is ordered to restart in the position that it was stopped in. (**Competitiveness**)

Index

A

Athletic Superiority, 49
Attendance, 25, 26, 27, 232, 242, 243, 311

B

Broadcast Media, 4, 8, 149

C

CAS, 4, 67, 68, 73, 100, 101, 102, 194, 207, 208, 209, 210, 211, 212, 213, 217
Cheating, 41, 113, 167, 168, 169, 173, 176, 185, 191, 303, 305
Commercialisation, 2, 3, 4, 33, 141, 157, 286, 288, 290, 295
Community Law, 75, 76, 289
Competition, 9, 10, 12, 14, 16, 18, 19, 20, 21, 23, 24, 25, 29, 31, 33, 34, 36, 37, 43, 47, 48, 55, 56, 58, 60, 62, 64, 69, 74, 77, 78, 81, 84, 87, 88, 92, 99, 106, 108, 114, 116, 117, 118, 120, 124, 131, 138, 144, 149, 158, 169, 174, 181, 182, 187, 193, 195, 220, 221, 222, 227, 232, 233, 243, 249, 251, 271, 286, 288, 289, 293, 299, 303, 312, 314
Competitive Balance, 2, 3, 4, 5, 6, 7, 8, 9, 20, 23, 26, 27, 28, 29, 30, 31, 32, 34, 50, 82, 119, 122, 139, 146, 168, 177, 220, 221, 226, 227, 237, 245, 246, 248, 249, 258, 259, 262, 267, 268, 279, 280, 282, 286, 288, 290, 292, 293, 294, 295
Corruption, 4, 33, 34, 166, 167, 175, 176, 178, 180, 181, 184, 185, 186, 187, 192, 223, 292, 294, 296, 301
Cricket, 35, 40, 149, 182, 298, 300

D

Disability, 3, 7, 8, 64, 65, 66, 186
Doping
Gene, 3, 8, 33, 36, 41, 58, 88, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 168, 169, 185, 292, 293, 294, 296, 298, 299, 304

E

ECJ, 75, 76, 77, 78, 82, 85, 86, 89, 90, 289
Economic Importance, 45
Erythropoietin, 58, 96, 109, 110
EU Law, 2, 4, 6, 19, 30, 75, 77, 85, 89, 90, 226, 271, 286, 290, 303

F

Fair Play, 29, 30, 33, 36, 38, 40, 41, 43, 55, 64, 93, 101, 112, 146, 167, 168, 177, 192, 205, 260, 292, 295
FIFA, 4, 10, 28, 46, 49, 53, 79, 82, 85, 89, 98, 106, 145, 179, 195, 203, 206, 209, 210, 211, 217, 222, 294, 299
Football, 6, 17, 20, 21, 22, 29, 52, 78, 79, 82, 83, 85, 87, 88, 90, 98, 100, 102, 104, 142, 143, 148, 149, 150, 152, 153, 155, 180, 194, 209, 213, 225, 226, 228, 252, 254, 255, 258, 271, 290, 294, 301, 303, 304, 308
Fosbury, 50

G

Gamesmanship, 33, 38, 39, 40, 41, 42, 43, 168, 185, 295, 309
Gender, 3, 7, 8, 55, 57, 59, 309

H

Health and Wellbeing, 47
Hormones, 57, 58
Human Rights, 59, 88, 89, 298

I

IAAF, 57, 66, 67, 73, 87, 94, 99, 101, 105
Individual Sports, 2, 9, 16, 20, 41, 50, 141, 143, 144, 145, 169, 191, 293
IOC, 13, 14, 56, 60, 64, 98, 104

L

Luxury Tax, 247, 248, 260

M

Male-to-Female, 58, 61
Matuzalém, 4, 206, 210, 211, 212, 213, 215, 216, 217, 299
MLB, 30, 31, 245, 247, 248, 249, 262, 269
MMA, 8, 18, 117, 118, 119, 126, 127, 128, 137, 138, 139, 292

N

NBA, 24, 105, 143, 174, 176, 178, 232, 234, 235, 236, 237, 239, 242, 245, 246, 249, 262, 263, 264, 265, 266, 272, 275, 276, 277, 278, 279, 280, 286, 292, 300, 306

NFL, 25, 46, 71, 245, 252, 254, 256, 257, 258, 259,
261, 262, 272, 273, 274, 275, 286, 298
Nike, 71, 143, 148

O

Oscar Pistorius, 66, 73

P

Player Draft, 3, 5, 30, 174, 233, 262, 265, 266, 267,
268, 271, 277, 278, 279, 280, 285, 287, 288

Political and National Importance, 48

Premier League, 26, 27, 79, 83, 84, 85, 147, 149,
150, 151, 152, 153, 154, 158, 176, 193, 194,
196, 197, 199, 200, 204, 205, 221, 225, 229,
230, 295

Promotion and Relegation, 220, 226

Pursuit of Excellence, 33, 44, 53, 95

R

Recreational Activity, 16, 17, 19

Restraint of Trade, 4, 78, 86, 87, 88, 99, 250, 251,
271

Role Models, 97

Rules in Sport, 34

S

Salary Cap, 245, 246, 249, 252, 254, 255, 257, 258,
261, 298, 301, 303

Social Importance, 47

Spectator Interest, 6, 8, 20, 25, 26, 27, 32, 44, 139,
157, 158, 192, 228, 243, 259

Sponsorship, 8, 27, 49, 108, 118, 141, 143, 144,
145, 146, 147, 148, 150, 157, 158, 169, 187,
268, 280

Sportsmanship, 34, 36, 37, 41, 43, 309

Spot Fixing, 184

Strict Liability, 99, 100, 102, 114, 168

Swimming, 51

T

Team Sports, 2, 3, 4, 5, 20, 21, 23, 25, 30, 47, 50,
51, 53, 86, 141, 144, 146, 157, 158, 166, 169,
176, 177, 191, 205, 259, 267, 294, 295

Technological Doping, 107

Testosterone, 58, 60, 61, 62, 63, 64, 72, 96

Tévez, 4, 193, 195, 196, 198, 199, 200, 202, 203,
204, 205, 215

Therapeutic, 102

Third Party Contracts, 193, 204

Transsexuals, 3, 8, 58, 59, 60, 61, 62, 63, 72

U

UEFA, 10, 27, 29, 37, 53, 78, 79, 80, 81, 82, 83, 85,
98, 146, 153, 155, 156, 158, 178, 179, 181, 182,
187, 204, 212, 216, 231, 260

UFC, 117, 118, 119, 120, 121, 122, 123, 124, 125,
126, 128, 129, 130, 131, 132, 133, 134, 135,
136, 137, 138, 139, 313, 314, 315, 316

Uncertainty of Outcome, 2, 6, 23, 25, 27, 32, 157,
158, 259

Underperformance, 5, 49, 84, 174, 175, 183, 227,
286, 292

W

WADA, 97, 98, 99, 102, 103, 105, 106, 108, 109,
111, 114, 116, 293, 296, 310

Webster, 206, 207, 208, 209, 210, 212, 213, 214,
215, 216, 217, 299, 307

West Ham, 151, 152, 193, 194, 195, 196, 197, 198,
199, 200, 202, 203, 204, 205, 225, 231