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Corruption and Gambling

POLICE v TANDY (p.337)

“Circumstantial evidence and match fixing”

- Tandy was found guilty of attempting to fix a rugby league game
- An exotic bet was made that the first score would be a penalty goal
- Tandy was charged under s 192E(1)(b) with attempt to dishonestly obtain a financial advantage for Sam Ayoub (Tandy’s agent) and John Elias (Friend) of \$113,345 from Tabcorp
- Tandy engaged in a number of acts viewed as circumstantial evidence of a criminal conduct
→ Already had debt, telephone records in which he spoke to people who placed bets, records of bets placed for that event, suspicious activity throughout game

= Tandy dropped ball deliberately but can’t be known beyond reasonable doubt, neither can it be proven that Tandy was slow getting off the player to incur a penalty, however due to pieces of evidence accumulated Tandy’s involvement in match fixing was rational and found guilty, fined \$4000 and place on a 12-month good behaviour bond

MARJEED v THE QUEEN (p.340)

“Receiving or offering a corrupt reward” s.248B crimes act

- Cricket player Westfield who took a corrupt amount of money to concede 12 runs after the first bowl
- Majeed was the player agent of Butt and Asif and was charged with offering an inducement

= Held the above charges as well as both being convicted under s.42 which provides a person commits an offence if he cheats at gambling or does anything for the purpose of enabling or assisting another person to cheat at gambling

COLLINGWOOD CASE (p.348)

“Statutes S.193Q”

- Shaw shared in \$20 bet that Maxwell would kick the first goal of the match (an event that didn’t ultimately occur)
- Maxwell disclosed info about positional change, leading to further bets placed by family

= AFL fined Shaw \$20,000 and suspended him for 14 matches (six were remitted) and Maxwell was fined \$5000 with a \$5000 suspension for disclosing the information

R v AMIR (p.356)

“Corruption and Conspiracy – spot fixing”

- Amir and Asif agreed with a fourth man, Majeed, the player agent of Butt and Asif, that they would engage in spot-fixing by bowling ‘no-balls’ as specified moments during the match
- Agency sent an investigator who was a reporter, the fixer revealed to reporter that he fixes games and offered to do for him

= Amir and the Captain were fined, and it was held career ending for Captain. Domestic tribunal banned Butt for 10 years reduced to 5 years, Amir 5 reduced to 2 years.

R v ONG (p.358)

“Corruption and Conspiracy”

- Ong hired someone to switch lights off during soccer game
- The result of this is the final score of the game at that point

= Held that Ong was charged with conspiracy to defraud and conspiracy to cause a public nuisance. In which defraud was dropped when pleading guilty, but his 4 years imprisonment was upheld.

HANSIE CRONJE AND THE UNITED CRICKET BOARD OF SOUTH AFRICA (p.361)

“Internal remedies – match fixing”

- United Cricket Board of South Africa became aware that Cronje alleged in match-fixing
- Cronje denied wrong-doing when confronted
- Cronje confessed two days later he accepted money from bookmakers to manipulate the game between South Africa and India
- Cronje also approached two players, one paid \$15,000 on condition he wouldn’t score more than 19 runs and another paid \$15,000 to bowl poorly for 50 runs or more
- Cronje was informed he breached his contract and it wouldn’t be renewed

= Held that Cronje was banned for life and tried to appeal to this, was successful and court removed some of the other sanctions, eg. was allowed to return to watch the sport only

ORIEKHOV v UEFA (p.366)

“Apprehended Corruption”

- Oriekhov: Referee from Ukraine, was interviewed in regards to match fixing in which he denied to take part in due to being concerned about his career
- Oriekhov wasn’t charged with match fixing, however he failed to report the apprehended corruption to officials (UEFA) therefore going against the spirit of loyalty, integrity and sportsmanship of the sport.

= Held he was banned for life and all he did was be approached, the CAS found this a proportionate sanction

BRADLEY v THE JOCKEY CLUB (p.367)

“The question of proportional penalty”

- Bradley was an x-steeple chase jockey
- A mate, Wright was charged for possession of an illegal substance
- Bradley volunteered to give evidence to the court that Wrights money came from betting with inside information from Bradley
- Wright got let off, Bradley got penalised

= Bradley suspended for 8 years from riding, but claimed that 8 years was not proportional to inside information and as he needed to work, court held that “When an individual takes up a profession or occupation that depends critically upon the observance of certain rules, and then deliberately breaks those rules, he cannot be heard to contend that he has a vested right to continue to earn his living from that profession or occupation”. The penalty was not adjusted.

SAVIC v PROFESSIONAL TENNIS INTEGRITY OFFICERS (p.)

“Court of Arbitration for Sport and proportionality”

- Savic was in China and another player was in China, who Savic approached
- Savic said throw the first set and I’ll give you money
- Player reported Savic to Tennis integrity, in which Savic later sent a message to the player reminding to throw the first set again
- Savic was charged with corruption and fined \$100,000 and banned for life
- Savic appealed that the message sent was not from him and that the penalty was too severe
- Tribunal had not used the right standard of proof (Savic claimed) eg. Criminal and Civil

= Court of arbitration rejected the submission, stating that as long it was in accordance with the law the tribunal had the discretion. To choose standard of proof, penalty wasn’t adjusted and given the nature of players conduct it sufficiently warrant a life ban

WATERHOUSE v RACING APPEALS TRIBUNAL (p.367)

“Fine Cotton Affair 1984”

- Robbie Waterhouse charged in 2002 with ‘conduct prejudicial to the image’ of racing (AR 175A) and with breaching Local Rule of Racing 91(q), which requires that:
 - Every bookmaker must: (q) enter accordingly all book bets in a recognisable name of the person with whom they are made and none but legitimate wagers must be so entered
- CASE: Waterhouse had a mate who entered a bet with him (bookmaker) \$20 with odds of 500 to 1, which means he could win \$10,000 on each bet and won 6 horse (\$60,000), which the Stewards investigated as the odds were way too high
- Concerned it was being used to launder money, Waterhouse claimed all he had done was give the opportunity to mate to pay back money owed to him

= Held that Stewards said it was an illegitimate bet after several appeals, Waterhouse was charged with 9 months suspension

Doping

WORLD ANTI-DOPING AGENCY V PAKISTAN CRICKET BOARD (pg. 397)

“World anti-doping code 2015”

- Drug tests revealed 2 players showing higher levels of Norandrosterone
- Players were suspended immediately within Anti-Doping commission (ADC) rules
- ADC concluded a 2-year ban and 1-year ban
- Both athletes appealed the decision arguing that they had not intended to engage in performance enhancing drugs
- Argued that substances used were not banned and he was never warned
- Pakistan cricket board said they can be let off
- Was taken to the CAS

= Held that the CAS had no jurisdiction and the players were let off

STAN LAZARDIS (pg. 397)

“World anti-doping code 2015”

- Tested positive for a banned masking agent that was in his medication for hair loss
- TUE but failed to complete required application for TUE in Aus

= Held 12 month ban by the Football Federation of Australia

PECHSTEIN v INTERNATIONAL SKATING UNION (pg. 405)

“CAS – Court arbitration for sport”

- Speed skater stripped of gold medals, after results showed blood doping leading to a 2yr ban
- Throughout her career was tested but never failed tests

= Held that CAS has authority

INTERNATIONAL RUGBY BOARD V TROY (pg. 439)

“Offences and definitions of doping”

- Troy made a customs declaration
- Bought testosterone instead
- Along the way ordered and signed documents
- ASADA was informed of actions and took actions against him for attempted use of prohibited substance
- Argued he didn't know they contained prohibited substances

= Held that the WADA and IRP appealed decision of arbitration of sport, who held that he must have purposely engaged in conduct and taken a substantial step to secure the prohibited substance

UKRANIAN ROWER SERHII BUDKO

“4-year ban”

= Held that there was a significant element of fault and negligence on the part of the athlete. ... The fault was that the Athlete did not apparently take any steps to check if the substance was permitted at the time of ingestion which would normally be expected of an experienced and apparently educated athlete

WADA v YADAV

“Intentional and Unintentional doping”

- Yadav a wrestler was a competitor of Kumar who trained out of the same facility
- Kumar’s leader Jithesh was in the kitchen and contaminated a curry which was then thrown out but not mentioned at all
- Yadav alleged that his energy drink had been contaminated by Jithesh and a day later Yadav was given an out of competition anti-doping test
- Yadav tested positive and was provisionally suspended
- After WADA tested foods and drinks and found no banned substance, Yadav filed a complaint with the police alleging sabotage by Jithesh

= Initially held that the Anti-Doping Disciplinary Panel decided that there was no fault or negligence. WADA appealed and Yadav did not argue and was given a maximum 4-year ban

FOSHI v FEDERATION INTERNATIONALE DE NATION AMATEUR

“Strict liability”

- Foschi tested positive for a metabolite, explicitly listed as a banned substance
- Athlete and camp denied taking or giving substance to Foschi and couldn’t explain the positive test result
- All underwent and passed polygraph examinations and Foschi underwent medical forensic analysis which confirmed no evidence of present or past use

= Held confirmed application to sanction but reducing the period of suspension from 2 years to 6 months

SQUIZZATO v FEDERATION INTERNATIONALE DE NATATION AMATEUR

“Article 10.5”

- Squizzato tested positive for anabolic agent, which she claims to be a cream for skin infection in toes selected and purchased by mother who was not aware
- Cream had no impact on performance

= Held that Squizzato had exceptional circumstances a reduction in the period of sanction was to 2 years as it was demonstrated no significant fault or negligence

ALBERTO CONTADOR

“Mitigation of strict liability 10.4”

- Contador found to have prohibited substance in testing listed on WADA list
- Contador was immediately suspended
- Contador argued it was found in meat containing the banned agent
- He relied on various anabolic agents used in local cattle industry

= Held Contador was given a one-year ban from the sport, shortened by the time he had already been out of competition. In the absence of finding that there was sufficient evidence to satisfy the requirements of WADC 10.5 a sanction of 2 years was imposed.

POBYDONOSTSEV v INTERNATIONAL ICE HOCKEY FEDERATION

“Mitigation of strict liability 10.4”

- Poby a professional ice hockey player was found to have committed an anti-doping offence when a prohibited substance was found in his body
- During a game he tested positive and IIHF imposed a 2 year suspension
- Poby appealed to CAS
- Poby claimed he was without fault he was rushed to the hospital for an acute heart failure
- IIAF claimed that he would still have obligation to care about what substances were received
- From evidence Poby had no control over what was being administered

= Held that there was no fault or negligence, due to Poby having no control over being treated for a heart condition

ADAMS v CANADIAN CENTRE FOR ETHICS IN SPORT

“Mitigation of strict liability 10.4”

- Adams a disabled track athlete tested positive for a banned substance but claimed no fault or negligence
- Adams was pretending to sleep when a woman stuck fingers in mouth and created a numb feeling for Adam
- Friend gave evidence that she saw the woman do this and saw she had a white powder bag
- Adams didn't record the incident on the doping control form and stated after research online that the cocaine after a week should've been out of his system
- A doping tribunal imposed 2 years ineligibility on Adams, disqualification of results and financial support, in which Adams appealed
- Found that no substance was found in body only the catheter

= Held that Adams was restored with financial support and exempt from ineligibility, the CAS disqualified Adam's competition result, medals and points received in last race

INTERNATIONAL TENNIS FEDERATION v SHARAPOVA

“Article 10.5.2 other forms of no significant fault or negligence”

- 2016 Sharapova charged with blood doping breach
- Taking mildronate for repeated colds which was added to list in 2016
- Initially was argued by tennis federation that her and her coach had known the whole time she was taking it illicitly and for performance enhancement intentionally
- Claimed intentionally utilizing therefore 4-year ban
- Tennis federation conceded that she believed it was not prohibited (reduced to 2 years)

= Held that the CAS reduced the ban of 2 years to 15 months.

FRENCH V ASC

“Non-analytical positives and circumstantial evidence”

- French was suspended for the mandatory 2 year minimum and fined \$1000 after a plastic bucket containing prohibited substances was found in a room he had occupied
- French admitted to injecting himself with vitamin supplements which contained a banned substance
- Despite French never testing positive, it was found with evidence that French was trafficking
- French appealed and it was proved he was not engaging in trafficking

= Held on the standard of proof that the panel concluded that the offences must be proven to a higher level of satisfaction than the balance of probabilities.

USADA v Armstrong

“Non-analytical positives and circumstantial evidence”

- Armstrong had been suspected of doping
- Despite Armstrong never testing positive USADA concluded that he doped throughout majority of his career
- USADA relied on former team-mates evidence and banking statements
- Armstrong was clear in testing from following training plans to avoid detection
- USADA ultimately concluded that Armstrong should be sanctioned for use, possession, trafficking and administration for assisting others and covering up the violations

= Held that Armstrong was subjected to a lifetime ineligibility as well as disqualification of all results over his 12-year career

Employment

ROONEY v TYSON (p. 512)

“Formation of employment contract”

- Oral contract made between Tyson (boxer) and Rooney (personal trainer)
- Statement was that Rooney was his trainer for as long as he fought professionally
- Tyson went against agreement
- Question was whether the statement operated as an express term of contract, if so excluding common law

= Held that it was an express term and was sufficiently clear to define to duration of the employment contract. All employers and employees would be advised to put agreed terms in writing so as to avoid costly disputes at a later date. Rooney sued Tyson for \$49 million for breach of contract