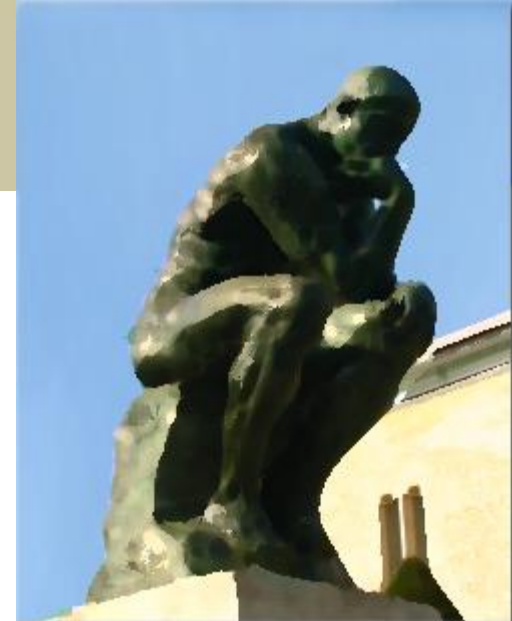


ius est ars boni et aequi
Celsus, ca. 120 A.D.

**Sports and safety
inside and outside the stadium**

***Strict Liability of Football Clubs
for their Supporters?***

AIJA Annual Congress
Prague 2014



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Strict Liability of Football Clubs for their Supporters?

Heysel Stadium Disaster

- English clubs were banned from UEFA competitions for 5 years (Liverpool: 6 years)
- It was not Liverpool's fault („only“ the fault of their supporters)
- And: It was definitely not the fault of the other English clubs



Strict Liability of Football Clubs for their Supporters?

Questions:

- Are sports associations allowed to punish clubs in the absence of any fault or negligence?
- What do you think, Manchester United would say nowadays if they were banned nowadays from UEFA competitions for several years?



Strict Liability of Football Clubs for their Supporters?

UEFA Disciplinary Regulations:

Article 8 - Responsibility

A member association or club that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its **members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.**



Strict Liability of Football Clubs for their Supporters?

DFB Rechts- und Verfahrensordnung:

§ 9a:

Clubs ... are responsible ... for the conduct of their players, officials, ..., supporters, spectators, ...

But: Are these provisions valid?



Strict Liability of Football Clubs for their Supporters?

Duties of the clubs

- Home Teams as the organizers of the event
 - Security measures
 - Support of the police (who pays?)
 - Germany: no pyrotechnics allowed in the stadium

- Away teams (and of course home teams, too):
 - Try to control their supporters
 - Awareness campaigns
 - Contact to supporter groups



Strict Liability of Football Clubs for their Supporters?

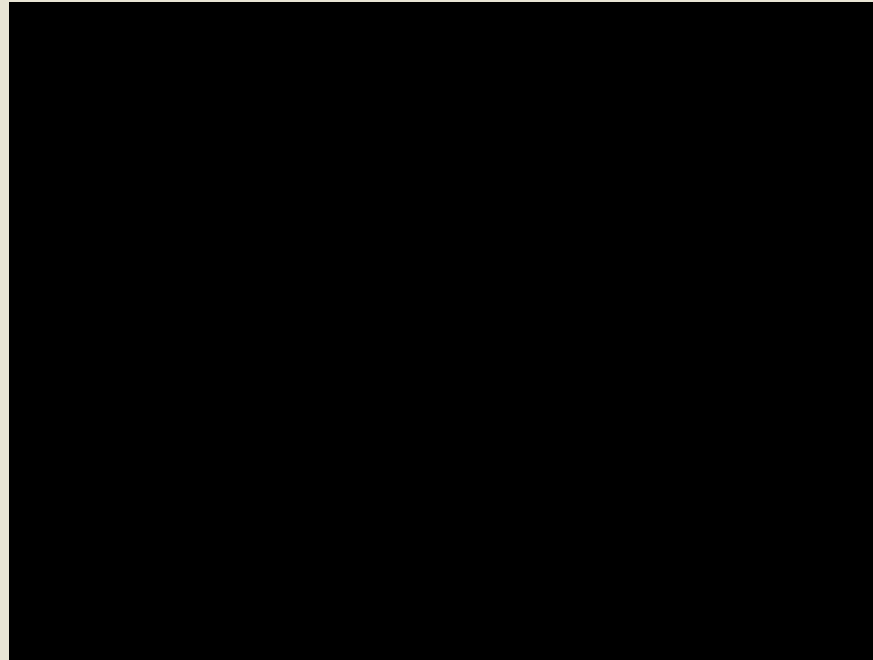
Supporters nowadays (I)



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Strict Liability of Football Clubs for their Supporters?

Supporters nowadays (II)



Frankfurt Ultras vs. UEFA - forbidden choreo in last Euro League game

Strict Liability of Football Clubs for their Supporters?

CAS, 20.04.2007, Feyenoord Rotterdam ./ UEFA

- EuroLeague game in Nancy
 - Riot of supporters without tickets outside the stadium
 - Police decided to let them in
 - After the first goal riot inside the stadium

- Disqualification of Feyenoord and 100.000 CHF fine confirmed:
 - Strict Liability for supporters according to UEFA rules
 - Validity of clause not even discussed
 - Wise decision of UEFA, not to define „supporter“
 - Anyone who can be deemed as a supporter is a supporter



Strict Liability of Football Clubs for their Supporters?

German decisions (I)

- 1959: Federal Court of Justice
 - Associations may impose „small“ sanctions in the absence of any fault or negligence

- 1972: Federal Court of Justice
 - Associations may impose sanctions on their members for conduct of third persons if there is a provision in the articles of the associations
 - Principle of self-government of associations



Strict Liability of Football Clubs for their Supporters?

German decisions (II)

- 1967: Federal Constitutional Court
 - Constitutional right not to be sanctioned in the absence of any fault or negligence

- 2000: Court of Appeals Frankfurt – Dieter Baumann
 - If occupational freedom is involved, associations may not punish their members in the absence of any fault or negligence
 - But: burden of proof may be shifted partly



Strict Liability of Football Clubs for their Supporters?

German decisions (III)

- DFB Ständiges Schiedsgericht, 14.05.2013 – Dynamo Dresden
 - Repeated riots of Dresden supporters in the DFB cup competition games
 - Ban from DFB cup competition for next season confirmed
 - § 9a DFB Rechts- und Verfahrensordnung is valid
 - Occupational freedom is involved
 - but: the ban is not a sanction but a reasonable security measure

- Court of Appeals Frankfurt dismissed action for an injunction on procedural grounds



Strict Liability of Football Clubs for their Supporters?

Conclusions

- If clubs are punished for the conduct of their supporters, they should
 - avoid the CAS
 - try to argue that it was not their fault and that they are not responsible for their supporters.



Strict Liability of Football Clubs for their Supporters

Game over!
Thank you for your attention!



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