

Sports and Safety Inside and Outside the Stadium Legal challenges

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QUESTIONNAIRE

1. General Safety Aspects

1. What is the legal framework applicable to the general safety aspects of big sports events in your country (prevention of violence, access and behaviour inside the venues)?

Occupier's Liability Act, 1995

The *Occupier's Liability Act, 1995* (the “**1995 Act**”) governs the obligations of stadia and other locations where sport is played. The wide definition of “premises” given by the 1995 Act enables it to apply to virtually anywhere a sporting event is held.¹

The 1995 Act addresses situations in which an entrant onto land may sue the occupier of that land for injury suffered on those premises.² Section 2 of the 1995 Act defines the “occupier” as one who is in sufficient control of the premises that it is reasonable to impose a duty towards the entrant upon him. The 1995 Act classifies three separate types of “entrant”, visitors, recreational users and trespassers, according each a differing level of protection. The Act imposes a duty on the occupier towards any visitor (e.g. an entrant as of right (such as using a right of way over a golf course) or a entrant by virtue of having bought a ticket) to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety) to ensure that a visitor does not suffer injury or damage by reason of any danger existing on the premises. Where the entrant is a recreational user (e.g. a non-paying participant), the occupier merely owes a duty not to cause harm intentionally or recklessly.

As it can be seen, the 1995 Act covers only harm sustained as result of the “state of the premises”. Therefore, any injury occasioned by acts done on the premises (e.g. acts of violence by spectators) are dealt with under the auspices of the tort of negligence and common law principles (unless the negligent construction of the premises is genuinely causative of the injury, as opposed to a small, contributing factor).

Criminal Justice (Public Order) Act, 1994

Section 21 of the *Criminal Justice (Public Order) Act, 1994* (the “**CJA 1994**”) empowers An Garda Síochána (the Irish police force) (the “Gardaí”) to erect barriers

¹ For example the definition of premises covers any mode of transport, i.e. a Formula 1 Car (Section 1).

² Neville Cox & Alex Schuster, *Sport and the Law*, First Law: Dublin, 2004 at [6.1.1]

within a mile from any large public event including sporting events for the purpose of diverting crowds. More particularly, where an event is a “ticket only” event, the Gardaí can prohibit any persons not in possession of a ticket from passing the barriers and gaining access to the event. Under Section 22 of the Act, Gardaí may seize alcohol, disposable containers or any article which may be used to cause injury.

Fire Services Act, 1981 & Licensing of Indoor Events Act, 2003

The *Fire Services Act, 1981* (the “**1981 Act**”) places an obligation on the occupier to guard against the outbreak of fire and to ensure, in so far as is reasonable, the safety of entrants on the premises in the event of a fire. Where an occupier plans to hold a sporting event at their premises, they must apply to the local fire authority for a license to hold the event under the *Licensing of Indoor Events Act, 2003* (the “**2003 Act**”).³ One leading textbook notes the question of whether the 2003 Act applies to sporting events at all in light of the fact that the Act defines an “indoor event” as “a performance which takes place wholly or mainly in a building and comprises music, singing, dancing, displays of entertainment or any similar activity and in respect of which members of the public may or may not attend”.⁴ However the authors go on to note that, under Section 4(2) of the 2003 Act, the Minister for the Environment may designate any activity which occurs indoors to be an event to which the Act will apply.

Public Health Acts Amendment Act, 1890, Safety, Health and Welfare at Work Act, 1989 & Building Control Act, 1990.

The *Public Health Acts (Amendment) Act, 1980* requires that any temporary structure erected for the purpose of, inter alia, a sporting event where people are likely to assemble, must be safely constructed to the satisfaction of the local authority. Similarly, the *Safety, Health and Welfare at Work Act 1989* requires that, for example a stadium where professional footballers “work”, should be safe. Finally, the *Building Control Act, 1990* together with the *Building Control Regulations, 1991-1994*, set out the technical standards for any structures (new or old ones which have been altered) which must be complied with.

Code of Practice for Safety at Sports Grounds, 1999

The Code of Practice, which is a voluntary Code, will apply to all grounds with a holding capacity of 20,000 spectators or more. The Code provides detailed guidance to ground management, technical specialists such as architects and engineers and all

³ Section 5(4) of the 1981 Act as amended by the *Licensing of Indoor Events Act, 2003*

⁴ Cox & Schuster at [6.1.3.1]

relevant authorities to assist them assess how many spectators can be safely accommodated within a sports ground. The Code is currently followed by many of Ireland's largest sporting venues, including Croke Park (home of the Irish Gaelic Athletic Association ("GAA")) and the Aviva Stadium (home of the Irish Rugby Football Union ("IRFU")) and the Football Association of Ireland ("FAI").

2. *Are there any legal regulations applicable to specific sports or events?*

Greyhound Industry Act, 1958

The *Greyhound Industry Act, 1958* (the "**1958 Act**") as amended, regulates and controls greyhound and hare-coursing events in Ireland. The 1958 Act established the Irish Greyhound Board (Bord na gCon), a semi-state body with wide ranging powers to license tracks, issue permits and enforce industry rules. Every greyhound race run in Ireland must comply with the provisions in the Greyhound Industry (Racing) Regulations, 2007.

Irish Horse Industry Act 1994 & Horse and Greyhound Racing Act, 2001

Thoroughbred horse racing in Ireland (north and south) is governed by Horse Racing Ireland ("HRI") and the Racing Regulatory Body ("RRB"). Their functions are established by the *Irish Horse Industry Act 1994* and the *Horse and Greyhound Racing Act 2001*. HRI regulates and controls the financial and business aspects of racing. RRB is charged with administering the rules of racing, upholding the integrity of the sport, and safeguarding the health and welfare of participants. In particular, the RRB is concerned with horse and rider safety at each race, the safety of all gates, fences and other obstacles and any other matter which may impact on the safe running of a horse race.

Wildlife Act, 1976

The *Wildlife Act, 1976* as amended, controls and regulates the sport of hunting in Ireland.

3. *Who is responsible for the enforcement of the relevant legal provisions during the event (owner of the facilities, promoter, organizer, police ...)?*

As already indicated, under the *Criminal Justice (Public Order) Act, 1994*, the Gardaí are responsible for the enforcement of the legislative provisions under the Act at large public sporting events. Moreover, the Gardaí have also indicated that the playing field itself comes within their jurisdiction and that they have a duty to step in, if required in the interests of safety.⁵

⁵ Cox & Schuster at [4.4]

In the field of horseracing, the Racing Regulatory Body is charged with ensuring adherence to the legal provisions of the *Irish Horse Industry Act 1994* and *Horse and Greyhound Racing Act, 2001* and the rules and regulations enacted under their auspices.

4. *What are the competent authorities as regards the enforcement of the relevant legal provisions?*

2. Insurance Coverage

1. *Are there specific legal provisions applicable to the insurance coverage of big sports events in your country?*

Interestingly, Irish law, unlike its English counterpart, does not mandate insurance coverage for organisers of large sporting events, or indeed any other type of public event, i.e. public liability insurance. Equally, Irish law does not require employers to take out insurance to protect against injuries sustained by employees while at work.

However, sporting bodies such as the IRFU and the GAA have made insurance coverage compulsory for all affiliate clubs operating under each governing body. For example the IRFU has set up a Mandatory Group Insurance Scheme (“MGIS”) whereby affiliate clubs are provided with fixed benefits for death or serious injury following accidents incurred whilst playing or officially training for rugby. The scheme does not extend to, nor require rugby clubs to obtain insurance for, spectators. Similarly, the GAA requires all affiliate clubs to take out public liability insurance, employers’ liability insurance, property insurance and to sign up to the GAA Insurance Scheme similar to the IRFU’s MGIS.

Finally, Motorsport Ireland, the national governing body for four-wheeled motorsport in Ireland (affiliated to the Federation Internationale de l'Automobile (“FIA”)) obligates affiliate clubs to collect personal accident insurance premiums from all competitors taking part in motorsports events. In addition all competitors at events must also be in possession of an Irish Rally Drivers Scheme Insurance Letter, a compulsory insurance policy that provides third party insurance cover during the course of the event.

2. *What is the mandatory insurance coverage to be contracted as regards the celebration of big sports events? What are the minimum risks to be covered according to law?*

As noted above, Irish law does not mandate that insurance coverage be taken out for sporting events. Additionally, whilst the IRFU's MGIS and the GAA's mandatory schemes provide coverage, no minimum amount of coverage is specified.

3. Who is legally bound to contract the relevant insurance policies in connection with big sports events?

3. Organizers: Potential Liabilities

3.1 What are the potential liabilities that might be faced in connection with big sports events (civil, administrative, criminal liabilities) and by whom?

As outlined above, spectators at large sporting events may be subjected to criminal sanctions (e.g. imprisonment for up to 10 years) pursuant to the *Criminal Justice (Public Order) Act 1994* (the “**1994 Act**”). The 1994 Act imposes criminal liability on spectators at, *inter alia*, sporting events, where they are found to be engaging in abusive, threatening or insulting behaviour (this could include racial abuse) as well as the more serious case of spectator violence and riots. The 1994 Act also lays down civil sanctions (e.g. fines) for spectators who fail to comply with the directions of Gardaí regarding access to ticketed sporting events.

Organisers of sporting events can face liability in common law negligence for injuries to participants and spectators arising out of activities on the field of play. Occupiers of stadia where sporting events take place may also incur liability for injuries arising out of the state of the premises (i.e. injuries resulting therefrom) under the *Occupiers Liability Act 1995*.

3.2 Distribution of liability: is it possible to distinguish liabilities arising from sports events to an extent where each of the involved parties is held liable only for damage resulting from some specific risks or situations?

As noted above, the *Occupier's Liability Act 1995* (“**1995 Act**”) imposes a duty on the occupier of a sports ground/stadium towards any visitor to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety) to ensure that a visitor does not suffer injury or damage by reason of any danger existing on the premises. However, because the 1995 Act imposes liability only for injury caused by the state of the premises, harm caused by acts of violence by spectators etc. will require an action in traditional tortious negligence and the common law (duty of care, causation etc.).

Irish case-law has made it clear that the extent of the common law duty owed by an organiser of a sporting event to any person present under its auspices will be measured by reference to a balance between the risks which it is deemed reasonable for the entrant to have assumed and the extent to which the organiser or occupier has taken reasonable steps to guard against serious and latent risks.⁶ The courts have highlighted that organisers of events are not bound to protect attendees against every danger however improbably, nor could they be seen as insurers of the safety of the spectators.⁷ Rather, the expectation is that they act reasonably in the circumstances, having regard to the nature of the sporting event being organised. In *Donaldson v Irish Motor Racing Club & Thompson* the court noted that fast moving sports events contain inherent elements of overspill and increased exposure to danger for spectators, which they themselves assume (where a racing car had swerved off the track into spectators, killing several).

3.3 On the contrary, might someone be held liable for any damage occurred during the celebration of some sports event (owner of the facilities, promoter, organizer, police)?

As above, an organiser or occupier of a sporting event will assume liability for damage only where same results from the actual state of the premises: wherein the condition of the premises significantly contributes to the injury sustained, e.g. inadequate protective barriers to prevent a race horse from leaping into the crowd during the race. Injury sustained from acts of violence by fellow spectators will generally fall outside the scope of the occupier's liability.

3.4 As an attendee, what legal action may I take in case of suffering damage on the game day? Against whom?

Where damage is suffered as a result of some deficiency in the venue itself, such as due to inadequate safety precautions, negligent stadium construction or insufficient security, then an attendee may bring an action against the occupier of the premises under the provisions of the *Occupier's Liability Act 1995*.

The Irish courts, unlike their English counterparts, have yet to have occasion to address cases of either spectator violence and injury or nervous shock such as those brought in the aftermath of Hillsborough Disaster.

⁶ Gardiner et al, *Sports Law*, 2nd edition, Cavendish: London, 2001 at p.752; *Callaghan v Killarney Race Company Ltd.* [1968] IR 366; *Coleman v Kelly* (1951) 85 ILTR 48; *Donaldson v Irish Motor Racing Club & Thompson* (Unreported, Supreme Court, 1 February 1957).

⁷ *Donaldson v Irish Motor Racing Club & Thompson* (Unreported, Supreme Court, 1 February 1957)