

# Lex Ludica: Soccer Rules Revisited



# **Lex Ludica: Soccer Rules Revisited**

A critical analysis of  
the laws of the game  
of association football:  
past and present

Robert C.R. Siekmann

**2010**  
Publishers

© 2017 Robert Siekmann & 2010 Publishers

*Typesetting: Coco Bookmedia, Amersfoort, The Netherlands*

*Cover design: Studio Klaster, Rotterdam, The Netherlands*

*Cover illustration: Inspired by the cover of Sir Stanley Rous C.B.E. and Donald Ford M.A., A History of The Laws of Association Football, Published by FIFA, Zurich (Switzerland), 1974*

2010 Publishers, based in Rotterdam, The Netherlands, develops professional and educational information products for professionals and students in health care and the sport, movement and health sector.

info@2010uitgevers.nl | www.2010uitgevers.nl

Although the greatest care has been taken in producing this publication, the author(s), editors and publishers decline all liability for any incomplete or inaccurate information that it may contain, and welcome any suggested improvements.

Except where otherwise specified by or in pursuance of the Dutch 1912 Copyright Act (*Auteurswet van 1912*), nothing in this publication may be reproduced, stored in an automated data file or published in any form or manner, whether electronically, mechanically, by photocopy, recording or in any other manner, without the publisher's prior written consent. Where reprographic reproduction of excerpts from this publication is authorized under Section 16(h) of the 1912 Copyright Act, the required statutory fees shall be paid to Stichting Reprorecht (PO Box 3051, 2130 KB Hoofddorp, Netherlands, <http://www.reprorecht.nl>). For reproduction of any part or parts of this publication in anthologies, readers or other compiled works (Section 16 of the 1912 Copyright Act), please contact Stichting PRO (PO Box 3060, 2130 KB Hoofddorp, Netherlands, <http://www.stichting-pro.nl>). For reproduction of any part or parts of this publication for commercial purposes, please contact the publisher.

ISBN 978-94-90951-43-6

# Contents

Foreword	7
Preface	10
Chapter 1 Introduction: research purpose and method	11
1.1 Sports law, <i>lex sportiva</i> , <i>lex ludica</i>	11
1.2 The study's purpose	12
1.3 Method of research: how to interpret the soccer rules?	15
1.4 Caveats	19
1.5 The book's content	21
Chapter 2 The law-making body: The International Football Association Board (IFAB)	23
2.1 Introduction	23
2.2 Uniform application and interpretation of the Laws of the Game	32
2.3 IFAB policy of amendment	33
2.4 The legal status of IFAB	35
2.5 The composition of IFAB to be renewed?	37
2.6 Summary and conclusion	39
Chapter 3 A history of the Laws of the Game	43
3.1 Cu-ju: ancient Chinese football	43
3.2 The modern game	43
3.2.1 From mob football to school football	44
3.2.2 From the Cambridge Rules to the Laws of the Game in 1878	61
3.2.3 The International Board revision of 1891	101
3.2.4 Continental soccer and the Laws of the Game	130
3.2.5 The <i>Interbellum</i>	136
3.2.6 After the Second World War (until 1974)	151
3.2.7 Modern times (as from 1974)	233
3.3 Summary and conclusion	323

Chapter 4	The spirit of the game	347
4.1	Introduction	347
4.2	Basic principles of the spirit of the game	350
4.3	'Law 18': common sense	353
4.4	Law groups	353
4.5	The spirit of the game in the law	356
4.6	Summary and conclusion	380
Chapter 5	A comment on the present Laws of the Game	385
5.1	Introduction	385
5.2	Text and comment	386
5.3	Summary and conclusion	663
Chapter 6	Summary and conclusion	671

## Foreword

The concept of *lex sportiva* has been extensively debated in the international academic community dealing with sports law. It is a concept which has been characterised in different manners, at one end of the spectrum confining it to CAS jurisprudence and, at the other end, stretching it to the point of including the whole of sports law. My personal view is that *lex sportiva* is constituted by a set of unwritten legal principles of sports law, deriving from the interaction between sports rules and general principles of law and developed and consolidated along the years through the arbitral settlement of sports disputes, both at the CAS and at other dispute settlement institutions specialized in sports.

In this lively debate about the concept and meaning of *lex sportiva*, Robert Siekmann has always been one of the leading scholars. Just to mention one of his publications, the T.M.C. Asser Press' book *Lex Sportiva: What is Sports Law?*, which Robert Siekmann edited with Janwillem Soek, has certainly been a prominent contribution to the study of an intriguing legal concept. I must add that the relevance of Robert Siekmann's scholarly contribution lies in the fact that the concept of *lex sportiva* is not only an important topic for academic debates but also a useful tool for the settlement of sports disputes.

Indeed, in my more than twenty years of experience as a CAS arbitrator, I have made concrete use of the notion of *lex sportiva* in the adjudication of several cases. Witnesses to that are several arbitral awards issued by CAS panels I chaired, among which I can mention, in particular, CAS 2014/A/3776 Gibraltar Football Association v. FIFA, CAS 2008/A/1545 Anderson et al. v. IOC, and CAS 98/200 AEK Athens and Slavia Prague v. UEFA.

In CAS 2014/A/3776 Gibraltar Football Association v. FIFA, the CAS panel so stated at paras. 264-269: 'In addition to Swiss law, the Panel holds that general principles of law are also applicable as 'rules of law [whose application] the Panel deems appropriate' (Article R58 of the CAS Code). As previously mentioned, the special power that FIFA holds as the supreme regulatory authority within its sport is accompanied by special responsibility. Albeit being a private body, FIFA must thus respect general principles of law and, in particular, those that generally bind legislators and public administrations. [...] Among such principles of law, the non-retroactivity of laws and rules, procedural fairness, and good faith figure prominently. [...] Indeed, the Panel considers procedural fairness in the relationships between sports institutions and those subject to their authority – particularly in the realm of eligibility for and access to competitions – to be one of the most important principles of *lex sportiva*, if not the most important one. [...] As observed in the already quoted CAS case no. 98/200, due to the transnational character of international sporting competitions and the global effects of the actions and omissions of international federations, general principles of law (and in particular those general principles that have become part of the so-called *lex sportiva*) must be respected at all times by international federations even if they are not reflected in specific enactments of the applicable national law'.

In CAS 2008/A/1545 *Anderson et al. v. IOC*, the CAS panel stated as follows at paras. 128-137: ‘the Panel does not discard the theoretical possibility that an established principle of *lex sportiva* might serve as legal basis to impose a sanction on an athlete or a team. Needless to say, the existence of such principle must be convincingly demonstrated and must also pass the mentioned predictability test. However, no evidence has been submitted to the Panel that could support the notion that *lex sportiva* would invariably require disqualifying not only the individual athlete but also the team to which the doped athlete belongs. [...] the Panel sees no definite pattern in international sports law that could support the argument that a general principle of *lex sportiva* has nowadays – let alone in 2000 – emerged and crystallized to the effect that a team should inevitably be disqualified because one of its members was doped during a competition. The matter is still subject to the multifarious rules that can be found in the regulations of the various International Federations’.

The award CAS 98/200 *AEK Athens and Slavia Prague v. UEFA* includes the following oft-quoted passage at para. 188:

‘the substantive and procedural rules to be respected by international federations cannot be reduced only to its own statutes and regulations and to the laws of the country where the federation is incorporated or of the country where its headquarters are. Sports law has developed and consolidated along the years, particularly through the arbitral settlement of disputes, a set of unwritten legal principles a sort of *lex mercatoria* for sports or, so to speak, a *lex ludica* to which national and international sports federations must conform, regardless of the presence of such principles within their own statutes and regulations or within any applicable national law, provided that they do not conflict with any national ‘public policy’ (‘*ordre public*’) provision applicable to a given case. Certainly, general principles of law drawn from a comparative or common denominator reading of various domestic legal systems and, in particular, the prohibition of arbitrary or unreasonable rules and measures can be deemed to be part of such *lex ludica*’.

In my opinion, the above CAS awards prove that *lex sportiva* sets forth legal principles that have a fundamental function in the adjudication of sports disputes, in particular serving as parameter of legality for the actions or omissions of sports governing bodies.

In addition, from a terminology standpoint, it is interesting to see how the oldest (and most famous) of those CAS awards (*CAS 98/200 AEK Athens and Slavia Prague v. UEFA*) used the expression *lex ludica* instead of *lex sportiva*. I can publicly acknowledge that the term *lex ludica* was used in that award exactly as a synonymous of *lex sportiva*. Given that the expression *lex sportiva* is an odd mixture of a Latin word (*lex*) and an Italian one (*sportiva*), this was just an attempt to substitute *lex sportiva* with a more accurate Latin expression. Indeed, *ludi* were the ‘games’ which were held in ancient Rome on various occasions and which included equestrian competitions, wrestling competitions, human races and the like, as well as musical and poetry contests (there were also *ludi* with gladiators, but they were only a small portion, mostly in the imperial age). That attempt to change the prevailing terminology failed and the expression *lex ludica* was never used again in a CAS award.



It is now fascinating to see that the expression *lex ludica* has been recycled and put at good use by some eminent sports law scholars. In fact, in 2006, the T.M.C. Asser Institute and T.M.C. Asser Press published the book *The Court of Arbitration for Sport 1984-2004*, including Ken Foster's contribution on '*Lex Sportiva* and *Lex Ludica: The Court of Arbitration for Sport's Jurisprudence*'. Foster argued that a further set of principles that can be distinguished, and separated from the concept of *lex sportiva*, are what can be termed the sporting law, or rules of the game: 'I propose to call these principles *lex ludica*'. He then employed it to cover both the technical rules of a sport and the equitable spirit of the sport.

With the present book, Robert Siekmann picks up the challenge of analysing such concept of *lex ludica*. It is easy to establish the fact that, so far, there has been no academic study of *lex ludica* in the just mentioned sense. Traditionally, the sports law community has not undertaken any substantial research on this branch of sports law. The present Robert Siekmann's study of the soccer rules (Laws of the Game of 'association football') actually is the first one. The book includes a detailed investigation into the development of the rules of football as from ancient times. It is interesting to note the historical role that was played by *harpastum* and *calcio*. In medieval Europe, there are references to the game in Britain and in Italy. In Florence and Siena a game called '*calcio*' had developed – possibly with the same common ancestry as the game in Britain, namely the Roman game of '*harpastum*'.

In a distinct chapter, attention is paid to the 'spirit of the game', what might be called an unwritten Law of the Game. In fact, it can be said that, by covering the evolution of soccer rules and by referring to the spirit of the game, what Robert Siekmann truly examines is Europe's century-long love affair with football. In keeping with his reputation for publishing insightful studies, he really writes about the meaning of football, a sort of European counterpart to the seminal American book *The Meaning of Sports*, published in 2004 by Michael Mandelbaum.

Robert Siekmann's book, indeed, is an open invitation to be followed up by similar in-depth research into the rules of the game and the spirit of other team sports. The results thereof, eventually, could lead to the undertaking of comparative studies. What lessons can be learned when comparing different game rules? What are the best practices, in particular with regard to 'crime and punishment', the disciplinary aspect of sports? It is to be expected that the academic study of game rules, also including their application and enforcement in practice, might contribute to their improvement and, by the enactment of better rules of the game, to the enhancement of the true spirit of each team sport.

*Massimo Coccia*

*Professor of Law*

*Rome, January 2017*

# Preface

*'Referees commit fewer errors than players,  
and who commits the least errors in soccer is the best.'*

(Johan Cruyff<sup>1</sup>)

The first time this author seriously looked into the text of the Laws of the Game of association football was when writing a Dutch soccer dictionary in the seventies of the last century. The exclusively 'binding' definition of many terms can be found in the Laws. Then, a few years later, he published an introduction to the game (technics, tactics, strategy) and, when drafting a format of how to tackle the subject it became very clear to me that the 'freedom of play' is the essence of soccer. 'Ball in play' is the core concept of the game. The Laws do not prescribe what to do when the ball is in play. They merely set a limited number of restrictions to the game (the offside law, bans on fouls and misconduct).

*Lex ludica* (game rules) is the branch of law of sports law which in fact is not studied in the academic community, nor beyond it. There are no learned writings on the subject. Therefore, there is a considerable gap in science. Several years ago, this author decided to undertake a pilot study into the Laws of the Game of association football, which is world sport no.1. A logical next step would be to undertake similar studies into other team sports from a comparative perspective.

I finished this study when the International Football Association Board, the game's law-making body, published a new text of the Laws of the Game in May 2016. The new version is presented as a comprehensive revision of the Laws of the Game and was adopted in order 'to increase the universality of the Laws by making them easily understood so football throughout the world benefits from consistent interpretation and application'.

After the experience of street and beach football living near the North Sea, I played soccer at an amateur level for fifty years in organised competition, being a member of a number of football clubs in my home country the Netherlands.

*Dr Robert C.R. Siekmann*

*Former Director of the ASSER International Sports Law Centre, The Hague*

*Professor Emeritus in International and European Sports Law, Erasmus University Rotterdam,  
The Netherlands*

*June 2017*

---

1 Johan Cruyff, *Ik houd van voetbal* [I Love Soccer], The Hague 2002, p. 89

# Chapter 1 Introduction: research purpose and method

## 1.1 Sports law, *lex sportiva*, *lex ludica*

In this study, the author will focus on a very specific part of sports law that is the rules of the game and in particular the Laws of the Game of association football (soccer rules). Where, from a general perspective for this branch of law internationally the term *lex sportiva* is used, the rules of the game are the so-called *lex ludica* ('game rules sports law'). In this author's opinion, theoretically the *lex ludica* is a 'hard core' of sports law. Without rules of the game there is no organised, competitive sport. From a different perspective, there is another argument to be made that the laws of the game (the term is here used in a generic sense) or game rules are the 'hard core' of sports law. They are surrounded by the regulations of the sport's governing bodies at the national, regional, and global levels. In this circular model, the private part of sports law is surrounded by its public part at various levels. Sports Law consists of a public part (legislation, treaties) and a private (non-governmental, self-regulatory, autonomous) part (sport and game rules).

This 'hard core' view is an unusual one amongst sports law academics and practitioners. Most of them consider the rules of the game as 'marginal', because regular courts could not put them to the test. The rules of the game are considered as being 'static', and the dynamics of the testing of sporting rules by public law are missing. In this author's opinion, those result in another, second 'hard core' of Sports Law: to what extent specific sporting rules may stand the critical test of the law in the society at large? Are, for example, the transfer rules which regard the movement of players between clubs in professional football acceptable or are they contrary to labour (employment) law? Why would it be justifiable that professional football players are not allowed to change clubs constantly, since in the European Union the freedom of movement of workers is one of the fundamental economic freedoms? The transfer windows rule (the restriction of the freedom of movement of players to particular periods of time) is a clear example of a sport-specific rule without which fair competition might be threatened. Since the European Court of Justice's *Meca Medina* ruling there are no purely sporting rules anymore which by their very character fall outside the scope of EU Law. (Case C-519/04, ECR 2006 I-699.) In principle, any rule can be tested, even game rules like the Laws of the Game of association football.

So, the 'hard cores' of Sports Law are the rules of the game as well as those sport rules that have been respected by regular courts (in the European Union that is including the European Court of Justice), even if they are not in conformity with the law of the society at large, nationally and internationally.

One may argue that, generally speaking, the Laws of the Game of association football are worldwide the best disseminated legally binding document of all – public and private. Game rules (*lex ludica*) are the 'sport specificest' (most sport specific) of all sport rules. The Laws of the Game are of a unique universal, worldwide validity. No piece of public, national

or international legislation or regulation exists that is accepted so widely and undisputedly as the Laws of the Game of association football.

According to Foster, the rules of the game can be distinguished as an independent set of norms and standards, separate from the concept of *lex sportiva*. He proposes to call these principles *lex ludica*. They encompass two types of rules that are unique because of the context of sport in which they occur and are applied. One type covers the actual rules of the game and their application or enforcement, by referees and other match officials. The second type is what can be termed the 'sporting spirit' and covers the ethical standards that should be respected by sportsmen and women. So, in his view the concept of *lex ludica* includes both the official rules of the game and the principle of fair play in sport. (Ken Foster, *Lex Sportiva* and *Lex Ludica: the Court of Arbitration for Sport's Jurisprudence*, in: Ian S. Blackshaw, Robert C.R. Siekmann and Janwillem Soek (eds), *The Court of Arbitration for Sport 1984-2004*, T.M.C. Asser Press, The Hague 2006, p. 421; also in: Robert Siekmann and Janwillem Soek (Eds), *Lex Sportiva: What is Sports Law?*, T.M.C. Asser Press, The Hague 2012, p. 126.)

In this author's view, however, *lex ludica* is part of *lex sportiva*, the term used to name the separate area of law which sports law is at large. The game rules are directly connected with disciplinary regulations which are sporting rules 'beyond' game rules, and generally speaking, by most authors are considered to be part of sports law. For example, cautions (yellow card), dismissals and sendings-off (red card) in association football have their consequences in the disciplinary law of soccer. (See for this author's view on what sports law is, Robert C.R. Siekmann, *What is Sports Law? Lex Sportiva and Lex Ludica: A Reassessment of Content and Terminology*, in: Robert C.R. Siekmann, *Introduction to International and European Sports Law – Capita Selecta*, T.M.C. Asser Press, The Hague 2012, pp. 1-27; see for an etymology of the termini technici *lex sportiva* and *lex ludica*, at pp. 28-31; also in: Siekmann and Soek (2012), pp. 359-391.)

## 1.2 The study's purpose

This study is not a comparative study of the game rules of (all) sports. Legal comparison, next to having a purely academic, scientific or theoretical purpose, is a research method for practical purposes too, that is, for example, the improvement of the law. (See, Robert C.R. Siekmann, *Towards a Typology of (International) Comparative Sports Law (Research)*, in: Siekmann (2012), pp. 37-38.) Such a study might be very useful to position the game rules of each and every sport in relation to those of others, and to possibly use the results of the study for improving the game rules of each individual sport by learning from others. Comparative research could focus first on Olympic sports as relatively the most widespread ones in the world and, logically speaking, would concern research into team sports, when soccer is the starting and reference point for comparison. Possibly, a further narrowing down of options would be the study of merely team ball sports. Of course, in principle, it is not to be excluded in advance that soccer could learn from non-team, so-called individual sports in some respect. The method of research could consist of, first, textual analysis of game rules per sport (cf., regarding possible symmetry: field of play, duration, goalscoring, refereeing, fouls and misconduct, restarts, etc.), then at a separate, later stage

the practical application of the rules would be studied. Generally speaking, the purpose of a comparative study would be to determine similarities and disparities between game rules per sport. What would be the result of a generalisation of what game rules essentially have in common, what is their joint hard core? Apart from that, the member sports of a singular 'sport family' could be studied in comparison. For example, the comparison of futsal (five-a-side indoor soccer) with outdoor soccer (association football) could be useful. Such 'introspection' logically should possibly be even the first step in systematic comparative research.

This book focuses on the single (team) sport of association football or soccer, which certainly is the largest sport in the world and most popular all over the globe. Special branches of soccer, like for example futsal are not included in this study, nor is the worldwide fast-growing branch of women's soccer (however, where applicable in this study, references to the male gender in respect of players, referees and officials are for simplification and apply to both men and women).

What does the name of soccer mean? Officially, the game is association football, being the description adopted in 1863 when a handful of clubs met in London in the Freemason's Tavern on London's Great Queen Street, Lincoln's Inn Fields to agree on a common set of rules of play. They differed greatly from the rugby rules. An essential factor was that from that moment on only the ball could be kicked with the feet (football: 'dribbling') and not the opponent any longer (rugby: 'hacking'). And as far as the use of the hands was concerned, neither the ball could be touched (with the exception of the 'fair catch') nor the opponent detained. Modern football was born. From this meeting The Football Association was founded. The main object consisted of implementing standardized rules over a territory as large as possible as well as to gain supervision over the game.

The rules of football were codified in England by The Football Association (as the world's first football association, it does not use the national name 'English' in its title: The FA) in 1863 and the name association football was coined to distinguish the game from the other forms of football played at the time, specifically rugby football. The term soccer originated in England, first appearing in the 1880s as an Oxford '-er' abbreviation of the word 'association'. Within the English-speaking world, association football is usually called football (colloquially footy) or sometimes soccer in the United Kingdom, and mainly soccer in Australia, Canada, New Zealand, and the United States. Other countries may use either or both terms, and may also have local names for the sport.

'Soccer' is a word attributed to Charles Wreford-Brown, one of the game's early amateur gentlemen players. Known by friends as 'Reefer' he was an outstanding sportsman. An England soccer international in the late 1890s, 'Reefer' Brown also played top-class rugby and cricket. When seasons overlapped, he would play whichever sport pleased him. One day a friend asked, 'Are you playing ruggier today?' (ruggier was, and still is, another word for rugby football). In reply 'Reefer' Brown said, 'No, I'm playing soccer', a play word of 'association'. He could have said 'footer', another popular description, but 'soccer' has become established particularly in countries where other forms of football are played such as Rugby Union, Rugby League, American and Australian Rules Football. (Stanley Lover, *Soccer Rules Explained*, The Lyons Press, Guilford, Connecticut 2005, p. 1.) So, the origin

of the word soccer is English, and not (North-)American (USA) as is often thought in Europe.

Modern association football emerged out of ancient forms of ball games because the confusion of different interpretations spelt out the need for a common formula. The original laws, adopted in 1863 by the Football Association, comprised just fourteen short paragraphs and nine definitions. In 1883, the four British Associations agreed on a uniform Code and formed the International Football Association Board (IFAB). In 1937, the International Board, the game's rule-making body, decided to revise the then 17 Laws of the Game and to put them in a useful order. The present Laws were framed in a new system of codification but based on the Laws previously in force. The revision of the basic text of modern association football law was made by Sir Stanley Rous, Secretary-General of the (English) Football Association at that time, Member of IFAB and a former international referee. In 1938, the revision was adopted by The Football Association (FA) and the new form which was shorter and clearer was accepted by the International Board for universal use. The Laws of the Game were completely re-modelled. They were still numbered from 1 to 17, but they followed a different sequence which is still valid. For nearly 60 years, the fundamentals remained intact but amendments and additions, mostly in the form of explanations and instructions to cover practical situations, made the law book into a forbidding document. A new approach was overdue when in 1997; IFAB adopted a much-reduced text. It dispensed with some of the superfluous and repetitive wordage and put basic law into a more presentable format. However, the revised text (to a minor extent the revision was repeated in 2008) still includes unnecessary repetition and leaves much to be read between the lines. For long-time students of association football this is no big problem but for future generations of association football players, coaches, match officials and other participants, separate edicts are needed to answer questions of practical interpretation, as Stanley Lover, a top FIFA lecturer for referees, observes. (Lover (2005), pp. 22, 26.) Now, in 2015 another updated 'technical', editorial revision, also including all subsequent amendments of and additions to the Laws of the Game is even more necessary, as will be demonstrated in this study.

A revision of substantial content is one part of what will be undertaken in this book on the basis of a critical analysis of the current, valid text of the Laws of the Game. The first large undertaking of IFAB after its recent reform was to come to an integrated text of the Laws of the Game. *The new text was published in 2016. The official aim of the revision was to make the Laws of the Game more accessible and more easily understood by everyone in football and increase consistency of understanding, interpretation and application.*

Of course, this author will not repeat that effort but it will be considered in this study where relevant. On the other hand, it is this author's purpose to analyse what practical problems of application of the game rules do exist and how they possibly might be solved. This means that the book's focus also is on what might be called the 'abstract' provisions of the Laws of the Game of association football. These 'open norms' are the provisions that need additional interpretation before they may unequivocally be applied in practice. Of course, the IFAB Decisions and the 'Interpretation' of the Laws of the Game annexed to the 17 game rules are to help clarify those rules. A good example of an 'abstract' provision



or 'open norm' is the offence of 'deliberate' handling of the ball by outfield players and the goalkeepers outside their own penalty area (Law 12). What does 'deliberately' handling precisely mean in practice? In the 'Interpretation' part of the game rules an explanation for 'deliberateness' is provided for. Handling the ball involves a deliberate act of a player making contact with the ball with his hand or arm; the referee then must take the following into consideration: the movement of the hand towards the ball (not the ball towards the hand), and the distance between the opponent and the ball (unexpected ball). Most Laws of the Game of association football obviously have a 'factual', concrete character such as those concerning the field of play, the ball, the number of players and their equipment, the duration of the match, the start and restart of play, the ball in and out of play, the method of scoring, free kicks, the penalty, goal and corner kicks and the throw-in (see Laws 1-10 and 13-17). The 'open norm' rules are in particular Laws 11 (offside) and 12 (fouls and misconduct). Laws 5 and 6 regard the referee and his assistants (formerly, linesmen).

Generally speaking, for the proper understanding of the game rules and their background, it might be useful to have a look into their history. (Cf., Sir Stanley Rous C.B.E. and Donald Ford M.A., *A History of The Laws of Association Football*, Published by FIFA, Zurich (Switzerland) 1974; see also the Archives of the International Football Association Board.) According to Rous and Ford, the interruption of the Second World War marked a term in the history of the development of the game. The drive had always been for uniformity of the Laws, but now increasing emphasis had to be placed on their interpretation. Although the Decisions of the IFAB were incorporated in the Laws, it was often stressed that there was no change in the 'sense' of the Laws. Differences which had always been apparent over interpretation of the Laws had been allowed to grow more pronounced owing to the hiatus of the war years. (Rous and Ford (1974), p. 63.)

### 1.3 Method of research: how to interpret the soccer rules?

First and foremost, it should be observed that part of the Laws of the Game of association football is the official and binding 'Interpretation of the Laws of the Game and Guidelines for Referees'. This (formal) Interpretation itself is an object of (informal) interpretation. The analytical method used for this study then is 'close reading' which describes, in literary criticism, the careful, sustained interpretation of a brief passage of text. Such a reading places great emphasis on the particular over the general, paying close attention to individual words, syntax, and the order in which sentences and ideas unfold as they are read. It is now a fundamental method of modern criticism. 'Close reading' is sometimes called *explication de texte*, which is the name for the similar tradition of textual interpretation in French literary study.

Next to the method of 'close reading' as a general instrument of textual interpretation, specific traditional methods of legal interpretation will be used to analyse the Laws of the Game of association football or soccer rules. The Laws of the Game being an international private (non-governmental, self-regulatory) legally binding document, it is a logical option to use by analogy and *mutatis mutandis* the public international general legal methods of treaty interpretation (the soccer rules being in fact kind of an international contract concluded in the football sector to enable the game to be played nationally, intra-state and

transnationally, inter-state and cross-border). Next to this ‘contractual’ perspective, one may also look at generally recognised sources of law under public international law, such as custom and general principles of law – custom in this context resulting from the practice on the field of play, and general principles of law reflecting the philosophy, ethics and spirit of the game. The football law then is considered a legal order containing material rules (Laws of the Game) which are enforced by the referee and his assistants as the judiciary. Within this legal order as in any legal order, fundamental principles of law may develop and the practice of playing the game may lead to the formation of customary law.

Cf., in this context Articles 31-33 of the Vienna Convention on the Law of Treaties. Article 31 contains the general rule of interpretation. Paragraph 1 of Article 31 provides that the text shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context (literal or grammatical as well as systematic interpretation; cf., ‘close reading’) and in the light of its object and purpose (teleological or sociological interpretation). Paragraph 3 (b) contains a statement which is also relevant in the present context of game rules, that is, there shall be taken into account, together with the context, any subsequent practice in the application of the text. This is an important aspect since to put it simply, referees apply the rules on the field of play, then a common practice of some kind may result, and as long as this practice is not contradicted off the pitch by the official, universally recognised football-lawmakers of the International Football Association Board, it must be presumed that the application concerned is valid. Paragraph 4: a special meaning shall be given to a term if it is established that it is so intended.

The question, of course is how to study and analyse the practice. It is impossible to monitor all past, present and future soccer games played on the globe. However, the professional game is leading; it sets examples for the ‘amateur’ game. Which competitions are leading in the world, being televised everywhere? At the national level, in Europe the premier leagues of England, France, Germany, Italy and Spain (‘Big Five’) plus nowadays also Russia are most prominent, in South America those of Argentina and Brazil. In any case, the English Premier League should be taken into account. The League is the one with the greatest number of viewers worldwide (hundreds of channels transmit its matches). The 1863 rules were adopted by the Football Association (‘The FA’) in times when there was not yet an IFAB; England is the birthplace of modern football – the English were the founding fathers of the game; England is genuinely regarded as the motherland, where football is also referred to as ‘our game’. The home countries – England, Ireland, Scotland and Wales – founded IFAB in 1886, were its initial members up to the accession of FIFA in 1903 and still have their separate representation in IFAB next to FIFA (and – apart from that – were, until 2013, uniquely represented as a group of individual members in the FIFA Executive Committee). At the international club level, it would be logical to study and analyse at least the UEFA Champions League, and the South-American *Copa Libertadores*. At the international representative team level, the FIFA World Cup (the FIFA world club championship is a very small and young tournament) and possibly the European Championship and the Copa America (South America) would be an object for study. At the very least, a systematic study and analysis of all World Cup final rounds matches is recommended here to compare ‘the law in action’ with ‘the law in the books’.



Article 32 of the Vienna Convention contains supplementary means of interpretation; recourse may be had to the preparatory work (*travaux préparatoires*; cf., historical interpretation) of the text and the circumstances of the treaty's drafting, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

When studying the historical development of the Laws of the Game, it becomes clear that there are two possible directions of understanding and interpreting texts. Not only, from present to past (historical interpretation), in order to understand and interpret the present and possibly even to improve the law (rules) for the future in a teleological perspective (sociological) perspective, but also the other way round, from past to present. Looking back and looking forward. Because we know the present, we can better understand the past. We have foreknowledge about what followed after the past, since we live in the present. According to this approach, the researcher operates as if he lives in the past and looks forward to the present, which, from that perspective at that moment is his already known future. This will become clear in the book's Chapter 3, on the history of the Laws of the Game. It might be called the 'prospective' method of content analysis and interpretation. Another 'unusual' method of content analysis interpretation would be the 'reversal' or 'retrospective' method of content analysis. That makes it possible to assess the relative impact on and contribution to the development of the Laws of the Game which the consecutive texts and versions of the soccer rules have had from the early days up till now. (A statistical application of this method was presented by this author in the chapter on 'Sports Betting in the Jurisprudence of the European Court of Justice: A Study into the Application of the *Stare Decisis* Principle, or: The Application of the "Reversal Method" of Content Analysis and the Essence of the ECJ Case Law on Sports Betting', in: Siekmann (2012), pp. 131-189.)

The preparatory work of the Laws of the Game goes back as far as 1863 and even further. In this connection, the publicly available minutes of IFAB (official Minute Books) are important to understand when and why amendments to the rules were introduced. In 1999, FIFA reported to the Board that they were in the process of producing on CD-ROMs all the past minutes of the Board. FIFA undertook to make copies available to the other members of the Board. A very useful additional source for reconstruction of the development of the Laws of the Game, in particular in the early days of the Game is the official FIFA publication 'A History of the Laws of Association Football' by Sir Stanley Rous and Donald Ford (1974). This book needs updating regarding the period from 1974 onwards, which in fact is done by this author in Chapter 3. Not later than the annual general meeting of 1981, Sir Stanley Rous had offered to bring the book up to date.

When IFAB are in the process of amending the Laws, as any professional legislators they should be in a position to consult systematically the history of the Laws, in order not to repeat the work of their predecessors. In particular, they have to be informed about the initial *ratio* of the Law they wish to modify.

In this context, it is an interesting question to what extent the development of the Laws of the Game was influenced by common law concepts from the British home nations which had a monopoly in IFAB in the past and still have a strong position next to FIFA in IFAB.

Article 33 concerns the interpretation of texts in two or more languages. Paragraph 1: When a text has been authenticated in two or more languages, the text is equally authoritative in each language, unless the text provides that, in case of divergence, a particular text shall prevail. And paragraph 3: The terms of the text are presumed to have the same meaning in each authentic text. The official Laws of the Game's languages regime is that, on behalf of IFAB FIFA publishes the Laws of the Game in English, French, German and Spanish. If there is any divergence in the wording, the English text is authoritative (cf., the prominent position of the home nations including England in the history of the Laws of the Game, and also in particular in IFAB).

According to Article 38, paragraph 1 (b) of the Statute of the International Court of Justice (the 'World Court'), international custom, as evidence of a general practice accepted as law, is a source of law. Are there rules-related practices in professional football that can be considered as customary law, because there is an *opinio juris sive necessitatis* for the validity of these practices? Is there acquiescence on the part of IFAB 'off the pitch' and referees on the field of play to not intervene in these practices, for example because they are in conformity with the spirit of the law and of the game?

Cf. in this context, as to 'custom': the FIFA Disciplinary Code is the off-the-field follow-up text to Law 12 of the Laws of the Game on Fouls and Misconduct with regard to FIFA-organised matches and competitions and national associations are obliged to adapt their own provisions for compliance with it for the purpose of harmonising disciplinary measures. According to its Article 144, this Code governs every subject to which the text or the meaning of its provisions refers; if there are any omissions in this Code, the judicial bodies of FIFA will decide in accordance with the association's custom or, in the absence of custom, in accordance with rules they would lay down if they were acting as legislators; during all their operations, the judicial bodies of FIFA draw on settlements already established by sports doctrine and jurisprudence.

IFAB is the legislator regarding the Laws of the Game, but the referee (and his team) is the sole judge *in loco*, on the field of play. If there is no custom, no established practice, he is urged to make a rule on the spot, to take a reasonable decision, even if this would mean that he abstains from decision-making under the circumstances.

According to Article 38 paragraph 1 (c), 'the general principles of law recognized by civilised nations' is another source of law. May, for example, fair play on the sporting field be considered such a principle of law in the football context?

According to Article 38, paragraph 1 (d), judicial decisions and the teachings of the most highly qualified publicists of the various nations, are subsidiary means for the determination of rules of law. As to the possible relevance of judicial decisions in relation to the interpretation of rules of the game, Beloff observes that some of the sinews of the *lex sportiva* are the constituent instruments of the sports themselves. These play various roles: rules regulating the allocation of powers within the sport's governing bodies; rules

regulating competitions; rules regulating the playing of the game itself. All of these are in principle justiciable, but judicial or arbitral self-restraint shows that in practice so-called game rules are not. One of the key objectives of the *lex sportiva* is to immunise sport from the reach of the law, to create in other words a field of autonomy within which even appellate sports tribunals should not trespass. The referee, umpire or other match or competition official must be allowed free play within his own jurisdiction. In addition, he must be free to err, subject only to any corrective mechanism contemplated by the rules themselves. (Michael J. Beloff Q.C., *Is there a Lex Sportiva?*, in: Sweet and Maxwell's International Sports Law Review, August 2005 – Issue 3/05, p. 53; also in: Siekmann and Soek (2012), p. 77.)

One might add that even the Court of Arbitration for Sport (CAS), the 'World Court for Sport', as the highest private appellate sports tribunal, would not trespass the autonomy of the rules of the game and respect their autonomy. The rules of the game are, by definition, by far the most sport-specific rules, which as such should be respected by public legislators and courts.

What about learned opinion? The late Stanley F. Lover, a top FIFA lecturer for referees, was a most highly qualified publicist, from England, the birth-place of modern football and its rules. His handbooks are officially approved and recommended by the Referees Committee of FIFA. In this study, I will heavily rely on his comment, also taking it as a starting point for critical analysis.

Finally, article 38. paragraph 2, of the Statute of the International Court of Justice provides that the list of sources in paragraph 1 (treaties, custom, general principles of law, etc.) 'shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto'. The *ex aequo et bono* concept might be connected with the so-called 'Law 18', an unofficial concept to be applied by referees if Laws 1-17 provide no clear answer to a situation on the field of play (the book's Chapter 4 deals with the spirit of the game).

#### 1.4 Caveats

Studying the official text of the Laws of the Game more thoroughly, it is striking that the student may get lost. If one learnt the rules in practice (first in broad outline when playing 'in the streets' as this author did in his early youth, then afterwards when becoming a club member and playing in an official competition on a 'real' field, more in detail), one would start doubting a lot of things when getting hold of the official text of the Laws of the Game for the first time and carefully reading them. In the past, one exactly knew what for example 'punishable' hands is or 'interfering' offside, but this conviction disappears to a large extent when reading the text of the Laws of the Game. Generally speaking, legislation is often not easy to understand when the societal context for the purpose of which the legislation was drafted, is not sufficiently clarified to the reader at the same time. The same applies to the Laws of the Game of association football, which at first glance seem to be a quite simple document.

Secondly, in this book the relationship between the Laws of the Game and match incidents are described and discussed using the written word. When this is the only available method

of giving the information, the cases concerned often do not register clearly in the mind of the reader. The written word is often inadequate to capture a frozen instant of a fast-moving game in such a way that the writer can transmit the mental picture to the readership. A solution to this problem is the use of illustrated match incidents which can only statically demonstrate a technical point within the context of a given match (cf. for example, the explanatory graphics on the application of the offside rule in the text of the Laws of the Game). In these days, a book like this should be accompanied by modern, dynamic visual material, such as a video recording showing match incidents in fast and slow motion. Of course, to produce such a publication is a time-consuming and expensive undertaking. On the other hand, from a legal perspective the wording of the Laws of the Game is binding and decisive – as is ‘the Law’ in the society at large. Only the graphics in the Laws which accompany the text at a few instances (for example, regarding the offside law, but not regarding fouls and misconduct which is the most complicated part of the Laws) are binding. In our minds, the wording is directly linked to pictures which are ‘abstract’: they are a generalisation which does never happen in practice in exactly the same way. We use these mental pictures to screen reality in order to determine whether it corresponds to them and fits into the wording. The wording of the Laws is an attempt to reflect the mental pictures, in a generalised way. Initially and finally, the wording, however, has full force, since it is binding law, whereas the accompanying mental picture is not.

Thirdly, it is remarked here that this study does not systematically deal with the disciplinary follow-up and possible consequences of offences (fouls and misconduct) that were sanctioned on the field of play. Where it is relevant, incidentally the connection between what happens on and off the field in this respect is discussed. In this context, the FIFA Disciplinary Code, although applying merely to matches and competitions organised by FIFA, is the most authoritative text in the world, not only because the Code is directly linked to the FIFA World Cup as being undisputedly the most important international football competition in the world. Article 146 of the Code provides that the national associations are obliged to adapt their own provisions to comply with this code for the purpose of harmonising disciplinary measures.

Fourthly, this study is not a referee’s handbook (manual) how to apply the Laws of the Game, it is not a Referees Chart. It is a scientific comment on and critical analysis of the soccer rules from a legal and sporting (football) perspective.

Fifthly, one should not forget that the content of this book as an analysis of and comment on the Laws of the Game as they stand today, by definition is a snapshot, an instantaneous photograph. There will occur new incidents on the field of play which have not yet been responded to legally; one can imagine in theory new incidents and put the question what the correct legal response would be. It is a never-ending story.

Sixth, this book is written from a comparative perspective. It is not thematically organised, but by Law. This means that in many spots associative ‘digressions’ in relation to other Laws are found when commenting on a particular rule or clause in the Laws of the Game. These explanations may be of a repetitive character to some extent, but for the most part, they differ because of the different perspective, whether historical or not. For example, the advantage clause may be commented upon as part of the history of the Laws of the Game

looking to the present, on the one hand, and in their present wording looking to the past, on the other hand. In the concluding chapter of the book all relevant findings of course are brought together also by theme.

A final *caveat* for the readers of this book: this author is born Dutch (with German roots). Therefore, his English is not the English of a native speaker. The author's practical background in soccer is having played for more than fifty years in the amateur game in his country. In the past, he has published a Dutch soccer dictionary and a general introduction to the theory of football (both in his native language). As for soccer language and parlance connected with the Laws of the Game, at some spots in the study the author also uses Dutch technical terms and expressions which are then translated for clarification. There does yet not exist a Dutch/English association football dictionary which he could have used.

### 1.5 The book's content

The book's content is as follows. First, in Chapter 2, the law-making body, the International Football Association Board (IFAB), will be dealt with. Then – after Chapter 3 on the history of the soccer rules up to and including this time – in Chapter 4 the question will be scrutinised whether there is a spirit of the law and/or the game of association football and what it exactly means (cf., Foster's second type of *lex ludica*: sporting spirit, ethical standards, fair play). The comment on the Laws of the Game in the historical chapter is delivered also with the present text of the soccer rules in mind. Finally, In Chapter 5 the Laws of the Game (Foster's first type of rules) will be studied and analysed, using 'close reading' and the several methods of interpretation including the instruments of analogy and *a contrario* reasoning. Where relevant, lines back into history are drawn. This analysis will be accompanied by practical examples from the international and in particular Dutch national professional football game's history, a so-called case-law.

The ultimate outcome of the study would have been the drafting of a new, revisited text of the Laws of the Game of association football. 'Revisited' means a subject considered/discussed again. In this book, the Laws of the Game are reappraised and re-assessed, analysed and commented upon in a hitherto unknown manner, using legal, academic and scientific tools and instruments. A new text should present a better, more logical arrangement of subjects and items (rules, clauses and provisions) in their mutual relationship as well as more consistent wording and standardised terminology. However, taking into account the effort that very recently has been made by IFAB to revise the text editorially and to make it more consistent, this author has restricted himself to a detailed content analysis of and comment on the Laws of the Game. *The text of this book was finalized in May 2016. The revised IFAB text of the Laws of the Game which was published at the same time, will be taken into consideration additionally. Wherever in Chapters 2-4 reference is made to the 'present' Laws of the Game, it is related to the text of the year before (which, from a historical perspective, in fact is a potential tool for the understanding and interpretation of the 2016/17 Laws of the Game text).*

Recommendations are made for substantial amendments to the Laws in Chapter 5. There are Laws and clauses which are constantly debated as to their amendment (offside law,

fouls and misconduct). However, on the basis of this research it turns out that particular, currently not-disputed provisions in the Laws of the Game could be improved as to their effectiveness.

Two final remarks should be made. First, the book is written mainly with the professional game in mind, since it is mainly the professional game which leads to law amendments because of tactical developments in the game, also in relation to fouls and misconduct. Second, the playing field of football presents kind of a microcosmos, a world in itself, with the players as citizens and the referees' team as a court of judges; the purpose of this world, where it lives from, is goalscoring. This microcosmos offers academic lawyers and law sociologists a special field of study of human behaviour, where they can see how rules (law) operate, how they are respected or not, how they are applied and enforced. Everything is visible on the field of play for us all, and transparent, as it seems at first glance. What is occurring in the minds of the players (and also of the members of the referees' team) we cannot see, we might derive it from the facts of the game. Still, soccer offers a laboratory situation where we can test new rules as to their operation and effectiveness many times more easily than in society at large. In a broader perspective, studying the Laws of the Game of soccer offers an excellent opportunity to philosophise about the relationship between the function of law in human society and what it can achieve and what it cannot achieve.

If one would add technical skills and tactics to this 'legal' world as well as the physical and mental aspects of the game of soccer itself, an even much more complete picture would arise. The teams and their players use their personal and collective skills to implement what they strive for (goalscoring, and thereby winning the match) like citizens do in regular life and society.

*A final note on spelling: the spelling of terms in the present Laws of the Game is used also where previous Rules and Laws, as well as publications are cited (for example, touchline instead of touch line, goal line instead of goal-line, goalkeeper instead of goal-keeper, offside instead of off-side, free kick instead of free-kick, etc.).*