

A STUDY OF THE LAWS PROVIDING FOR THE
PROTECTION OF SPORTSPERSONS' RIGHTS IN
MALAYSIA

BY

JADY @ ZAIDI BIN HASSIM

A DISSERTATION SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE
DEGREE OF MASTER OF COMPARATIVE LAWS

AHMAD IBRAHIM KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

AUGUST 2002

ABSTRACT

The development of sports within the Malaysian sporting arena must be sustained in order to promote further growth and to achieve world-class status. In order to sustain the development in sports, there are various aspects that need to be taken into consideration besides introducing various mechanisms to improve the quality of performance of the athletes. At present the principal concern among the sporting community is that there are insufficient legal provisions providing for the protection of the rights of sportsperson. The Sports Development Act 1997 (Act 576) (referred as “SDA 1997”) was passed in order to promote and facilitate the development and administration of sports in Malaysia.

Development of sporting activities is dependant very much on the sportspersons themselves and if the welfare of the sportspersons is not taken care of , it may stultify development of sports in Malaysia. Thus, this dissertation seek to examine the problems faced by the sportspersons and to propose the necessary changes to improve the existing system in order to deliver better protection for the sporting community.

The aims and objectives of this dissertation are to improve the existing legal measures promoting the protection of a sportspersons rights. Chapter one deals with the historical development of sports in Malaysia. Chapter two examines the contractual rights of a sportsperson and the shortcomings of the Malaysian system in providing the necessary protection for a sportsperson. Chapter three examines the extent of the tortious liability of a sports organisation in the event a sportsperson suffers injury in the course of representing the organisation in sporting events. Chapter Four examines the criminal liability of a sportsperson. Chapter Five examines the rights of a sportsperson guaranteed in the Federal Constitution. And chapter 6 is the concluding chapter where proposals for reforming the existing legislative measures are made.

ملخص البحث

يجب الدعم والتشجيع في المجال الرياضي الماليزي لتطوره مستقبلا ورفعته إلى المستوى العالمي. هناك عدة جوانب يجب الأخذ بها في تطور ورفع مستوى الأداء والتقديم عند الرياضيين. إن ما يشغل المجتمع الرياضي الآن هو عدم وجود نظرة قانونية كافية لحماية الحقوق الرياضية. وقانون التطوير الرياضي لعام ١٩٩٧م (قانون رقم ٥٧٦ "المشار إليه ١٩٩٧ SDA") أجاز لتسهيل ودفع تطور وإدارة الرياضة في ماليزيا.

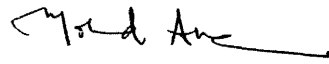
إن تطور الأنشطة الرياضية يعتمد كلية على الرياضيين أنفسهم وإذا لم يتم هذا الاهتمام يرفصعية الرياضيين فان هذا قد يعيق تطور الرياضة في ماليزيا ، لذلك فإن هذا البحث يحاول دراسة مشكلات الرياضيين وإقتراح التغييرات الضرورية لتطوير النظام الحالي لأجل حماية أفضل المجتمع الرياضي.

إن أهداف ومرامي هذا الدراسة هي تطوير الإجراءات القانونية الحالية لحماية حقوق الرياضيين ، يتناول الفصل الأول عرضا تاريخيا لتطور الرياضة في ماليزيا، والباب الثاني حقوق النفقات بالنسبة للرياضيين وقصور النظام الماليزي في تقديم الحماية الكافية للرياضيين.

وأما الباب الثالث يدرس مدى بطئ الإجراءات القانونية لدى منظمة رياضية في حالة إصابة رياضي كان يمثلها في حدث رياضي، والباب الرابع يختبر الإجراءات القانونية الجنائية بالنسبة للرياضي، والباب الخامس يختبر حقوق الرياضي المكفولة في الدستور الفدرالي، والباب السادس هو الخاتمة حيث تم تقديم مقترحات لإصلاح الإجراءات القانونية الحالية.

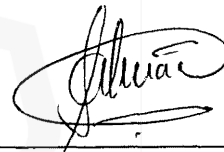
APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.



Mohd Akram Shair Bin Mohamad
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.



Syed Ahmad Al Sagoff
Examiner

This dissertation was submitted to the Ahmad Ibrahim Kulliyah of Laws and is accepted as partial fulfillment of the requirements for the degree of Master of Comparative Laws.



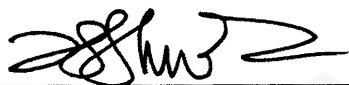
Nik Ahmad Kamal Nik Mahmud
Dean,
Ahmad Ibrahim Kulliyah of Laws

DECLARATION

I hereby declare that this dissertation is the result of my investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

Name: Jady @ Zaidi Bin Hassim

Signature: _____



Date: _____

10/8/2002



INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF FAIR USE OF
UNPUBLISHED RESEARCH**

Copyright © 2002 by Jady @ Zaidi Bin Hassim All rights reserved

**A STUDY OF THE LAWS PROVIDING FOR THE PROTECTION OF
SPORTSPERSONS' RIGHTS IN MALAYSIA**

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronics, mechanical, photocopying, recording or otherwise without the prior written permission of the copyright holder except as provided below:

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purposes.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of the unpublished research if requested by other universities and research libraries.

Affirmed by Jady @ Zaidi bin Hassim

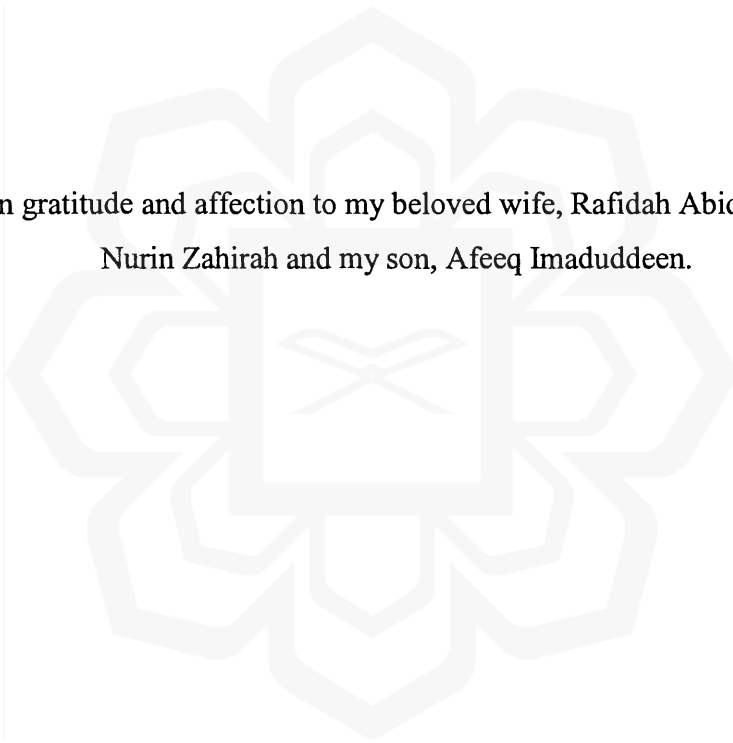


Signature

10/8/2002

Date

Dedicated in gratitude and affection to my beloved wife, Rafidah Abidin, my daughter
Nurin Zahirah and my son, Afeeq Imaduddeen.



ACKNOWLEDGEMENTS

Bismilahirrahmannirahim

To Allah I offer praise and to Him I address my prayer, who by His grace and mercy gave me the strength to complete this dissertation. I am indebted to a number of people who have helped me not just in completion of this dissertation but also providing me with the valuable opportunity to pursue my master degree at this prestigious university.

My deepest and sincere gratitude to my learned supervisor Prof. Dr. Hj. Mohd Akram Shair Mohamad for his patience, guidance and constant encouragement in the process of completing this dissertation.

I owe very special thanks to Madam Ainul Jaria for her editorial assistance as well as language refinement. I am also grateful to all my colleagues for their support and assistance especially Kak Wardah (Sports Science, U.M), Yasmin (IIUMC), Zulkarnain, Azizi and Nassru for their critical reviewing of this dissertation.

Special thanks to all academician and administrative staffs of Ahmad Ibrahim Kulliyah of laws, IIUM especially Kak Bashiran, Kak Azian, Kak Juriah and Kak Rohaya for their valuable assistance. And thanks to Kak Mariyam and Abang Nik Hzman for their technical advice.

Finally, this dissertation is dedicated to my beloved wife, Rafidah Abidin and my children for their valuable encouragement and support. May Allah give you all the best rewards.

TABLE OF CONTENTS

Abstract.....	ii
Abstract (Arabic)	iii
Approval Page.....	iv
Declaration.....	v
Acknowledgements.....	viii
List of Cases.....	xii
List of Statutes.....	xvi
List of Abbreviations.....	xvii
CHAPTER 1 : INTRODUCTION.....	1
1.1. Introduction.....	1
1.2. Historical Development of Sports in Malaysia.....	2
1.3. Development of Sports Law in Malaysia.....	3
1.4. Hypothesis.....	9
1.5. Objectives of Study.....	14
1.6. Research Methodology.....	14
1.7. Scope and Limitations of Research.....	14
CHAPTER 2 : CONTRACTUAL RIGHTS OF SPORTSPERSONS	16
2.1 Introduction.....	16
2.2 Player’s Contract.....	16
2.2.1. An Amateur Player’s Contract.....	17
2.2.2 Professional Player’s Contract.....	19
2.3 Standard Player’s Contract.....	19
2.3.1. A Proposed Standard-Form of Player’s Contract.....	20
2.3.2. A Collective Bargaining Agreement.....	23
2.3.3. The Additional Contracts Amendment.....	25
2.4. Professional Contract of Employment	27
2.4.1. Employment Act 1957.....	29
2.4.2. Duties of a Sportsperson as an Employee	31
2.4.3. Duties of an Employer in the Sporting Arena	32
2.4.4. Termination of the Contract.....	36

2.4.5: Unfair Dismissal and Wrongful Dismissal.....	38
2.5. Conclusion.....	39
CHAPTER 3 : TORTIOUS LIABILITY OF SPORTSPERSONS	40
3.1. Introduction.....	40
3.2. Factors that Influence Tort Liability in Sports.....	41
3.3. Protection of Sportsperson From Physical Injury.....	43
3.3.1. Assault and Battery.....	44
3.3.2. Negligence.....	46
3.3.3. Reckless Misconduct.....	51
3.3.4. Nuisance.....	51
3.4. Reputation of a Sportsperson.....	52
3.5. Protection Against Other Civil Liabilities.....	54
3.5.1. Liability Against Defective Products	54
3.5.2. Liability Against Facility Owners and Possessors.....	55
3.5.3. Medical Liability.....	56
3.5.4. Vicarious Liability.....	57
3.5.5. Liability for Sportspersons' Belongings.....	57
3.6. Conclusion.....	58
CHAPTER 4 : CRIMINAL LIABILITY OF SPORTSPERSONS	59
4.1. Introduction.....	59
4.2. Definition of Violence.....	59
4.3. Violence in Sports Construed as a Criminal Act.....	60
4.4. Mechanism for Dispute Resolution in Sports	60
4.4.1. Internal Procedure for Dispute Resolution in Sports ...	61
4.4.2. Malaysian Sports Advisory Panel.....	62
4.5. Criminal Liability in Sports.....	63
4.5.1. Homicide.....	63
4.5.2. Assault and Battery.....	64
4.5.3. Public Order Offence.....	67
4.5.4. Drug Abuse.....	68
4.6. Conclusion.....	69

CHAPTER 5 : RIGHTS OF SPORTSPERSONS UNDER THE FEDERAL CONSTITUTION OF MALAYSIA.....	71
5.1. Introduction.....	71
5.2. Jurisdiction for Enacting Sports Law.....	72
5.3. Constitutionality of Sports Bodies established under the Sports Development Act 1997.....	72
5.4. Constitutional Rights of Sportspersons.....	74
5.4.1. Substantive Rights – Personal Freedom.....	74
5.4.2. Procedural Rights.....	76
5.4.3. Judicial Review.....	78
5.4.4. Legality of Drug Testing.....	79
5.4.5. Restraint of trade.....	81
5.5. Conclusion.....	85
 CHAPTER 6 : CONCLUSION AND FUTURE DIRECTIONS	 86
6.1. Introduction.....	86
6.2. Rights of Sportspersons in Malaysia.....	86
6.2.1. Contract of Employment.....	87
6.2.2. Claim in Torts	87
6.3. Recommendations for Reduction of Risks.....	90
6.4. Proposed Legislation for Controlling Violence.....	94
6.5. Conclusion.....	94
 BIBLIOGRAPHY.....	 96
 APPENDIX I FIRST SCHEDULE (LIST OF SPORTS).....	 99
APPENDIX II NATIONAL SPORTS ASSOCIATIONS.....	101
APPENDIX II SPORTS DEVELOPMENT ACT 1997	117

LIST OF CASES

A

Adamson v New South Wales Rugby League Ltd (1991) 103 ALR 319
ASBL Union Royale Belge des Societes de Football Association and others v Jean-Marc Bosman [1996] 1 CMLR 645

B

Bayless v Philadelphia National League club, 472 F.Supp.625 (E.D Pa. 1979)
Berman v Philadelphia Board of Education 456 A.2d 545 (Pa.Super.Ct. 1983)
Bidwell v Parks (1982) Lewes Crown Court
British Judo Association v Petty [1981] ICR 660
British Leyland (UK) Ltd v Swift [1981] IRLR 91 CA
Buckley v Tutty (1971) 125 CLR 353 at 371

C

Calandra v State College Area School District 512A.2d, 809 (pa.1986)
Castle v St. Augustine's Links Ltd [1922] 39 TLR 615
Chapman v Lord Ellesmere And Others [1932] KB 431
Ching Suan Tze v PP [1989] 1 MLJ 69
Chuy v Philadelphia Eagles Football Club 431 F.Supp.254 (E.D.Pa.1977)
Clarke v Bethnal Borough Council (1939) 55 TLR 519
Clarke v Dunraven [1954] 1 WLR 55
Clary v Alexander Country Board of Education, 199 S.E. 2d 738 (N.C.1973)
Condon v Basi [1985] 1 WLR 866

D

Depiero v Canadian Amatuer Diving Association (1985) 32 A.C.W.S (2d) 331
(Ont H.C)
Donoghue v Stevenson [1932] AC 567

E

Eastham v Newcastle United Football Club Ltd [1963] 3 All ER 139 Ch D

F

Ford v AUEW [1969] 2 QB 303

Friedman v State 282 N.Y.S. 2d 858 (Ct. Claims 1967)

Fulham Football Club v George Best. The Times, 21 June 1978.

G

Gerrity v Beatty, 373 N.E.2d 1323 (1978)

Gray v Grimsby Town Football Club (1979) ICR 364

Grobblelaar v Sun newspaper, Tuesday 29 July 1999

Grundy v Gilbert (1977) Sunday Telegraph, 31 July 1977

H

Haw Tua Tau v PP [1981] 2 MLJ 49

Hewish v Smailes (1983) Epsom Country Court

Hunt v Scotia-Glenville School District, 460 N.Y.App 1983)

I

Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT

J

Jackson v Joyceville Penitentiary (1990) 3 FC 55, 75 CR (3d) 174

Jones v Vermors pools Ltd [1938] 2 All ER 626

K

Kaiser v State 55 Misc 2d 576 N.Y.S. (1967)

Krueger v Bert Bell NFL Retirement Plan, 234 Cal.Rptr. 579 (Cal.App. 1 Dist. 1987)

L

Larson v Independent School District No. 314, 289 N.W.2d 112 (1980)

Laws v London Chronicle Ltd [1959] 2 All ER 285 CA

Lewis v Brooksha (1968) 120 NLJ 413

M

Mitchell v De Lima (The Times, 5 July 1990)

N

Nabozny v Barnhill 334 N.E 2d 258 (Ill.App 1975)

Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd [1894] AC

O

Ong Ah Chuan v PP [1981] 1 MLJ 64, PC

P

Poland v Parr & Sons [1927] 1 KB 236

Praetorius v shell Oil Co., 207 So 2d 872 (La.Ct.App.1968)

R

R v Billinghamurst [1978] Crim LR 553

R v Billinghamurst [1978] Crim LR553

R v Birkin [1988] Crim LR 854

R v Gingell [1980] Crim LR 661

R v Goodwin (1995) 16 Cr App R (S) 885,

R v Lincoln (1990) 12 Cr App R(S) 250

R v Moore (1980) 2 Cr.App R(S) 198,

Ready mix Concrete Ltd v Minister of Pensions and National Insurance [1968] 1

All ER 433

Rutledge v Arizona Board of Regents, 660 F.2d 1345 (1981)

R v Chapman 11 Cr App R(S) 93

S

Saunders v Richmond Borough Council (1977) IRLR 326

State v Forbes No 63280 (Minn Dist Ct)

Stehn v Bernarr McFadden Foundation, Inc, 434 F.2d 811 (1970)

Strong v Curators of University of Missouri, 575 S.W.2d.812 (Mo.1979)

Sunday v Stratton Corp 390 A.2d 398 (Vt. 1978)

T

Tavernier v Maes, 242 Cal.App. 2d 532, 51 Cal.Rptr.575 (1966)

Thomas v Maguire and Queen's Park Rangers [1989] Daily Mirror, High Court
London

Tolley v J.S Fry And Sons Ltd [1937] 1 KB 818

V

Van Oppen v Trustees of Bedford Charity [1989] 3 All ER 389

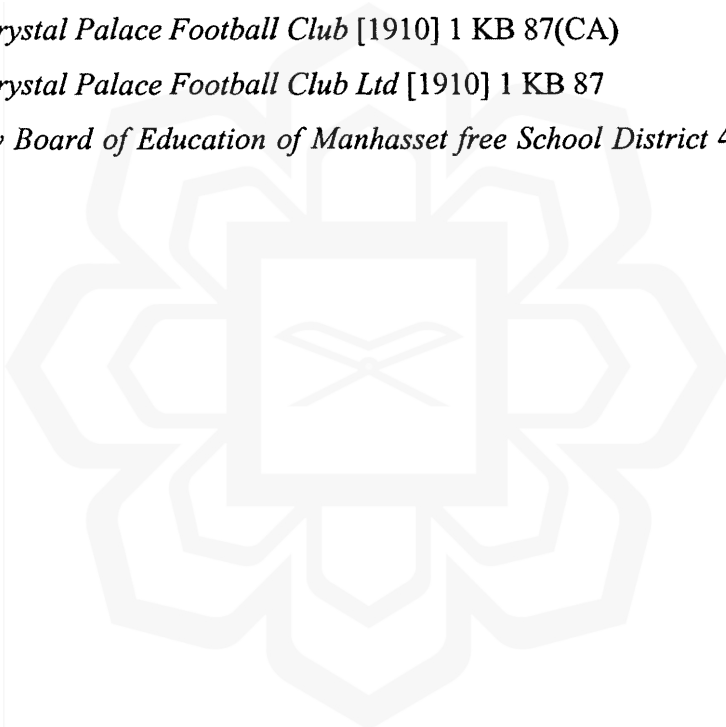
Vermont v Green (1989) Basingstoke Country Court

W

Walker v Crystal Palace Football Club [1910] 1 KB 87(CA)

Walker v Crystal Palace Football Club Ltd [1910] 1 KB 87

Woodring v Board of Education of Manhasset free School District 435 N.Y.S.2d
52 (1981)



LIST OF STATUTES

Act Respecting Safety in Sports RSQ (Quebec)
Amateur Sports Act 1978 (UK)
Canadian Charter of Rights & Freedom 1982
Consumer Protection Act 1999
Contract Acts 1950
Dangerous Drugs Act 1952
Dangerous Drugs (Forfeiture of Property) Act 1988
Dangerous Drugs (Special Preventive Measures) Act 1985
Defamation Act 1957
Employees Provident Fund Act 1991
Employees' Social Security Act 1969
Employment Act 1955
Fitness and Amateur Sport Act 1961 (Canada)
Football (Offences & Disorder) Act 1999 (UK)
Football Offences Act 1991(UK)
Football Spectators Act 1989 (Britain)
Industrial Relations Act 1967
Malaysia Police Act 1967 (Act 344)
Medicines Act 1971
Occupational Safety and Health Act 1994 (Act 514)
Occupiers' Liability Act 1957
Penal Code (F.M.S. Cap 45)
Physical Training and Recreational Act 1937 (UK)
Safety and Sports Ground Act 1937 (UK)
Societies Act 1966 (Act 335)
Sports Development Act SDA (Act 576) 1997
Sporting Injuries Insurance Act 1978 (UK)
Sports Violence Act 1980 (UK)
Sports Violence Arbitration Act 1983 (UK)
The Federal Constitution Malaysia 1957
The Workmen's Compensation Act 1952
Trade Union Act 1959

LIST OF ABBREVIATIONS

SDA 1997	-	Sport Development Act			Pendidikan Sultan Idris
MOM	-	Malaysian Olympic Council	UNIMAS	-	Universiti Malaysia Sarawak
IOC	-	International Olympic Council	UMS	-	Universiti Malaysia Sabah
1988 POLICY-		National Sports Policy 1988	U.S	-	United States
NCAA	-	National Collegiate Athletic Association	ATM	-	Arm Forces
			PDRM	-	Police
			SEA	-	South East Asian Games
UM	-	Malaya University	NSC	-	National Sports Council
UK	-	United Kingdom	FIFA	-	International Football Federation
MASUM	-	Malaysian Universities Sports Council	MTA	-	Malaysian Taekwondo Association
FISU	-	World Universities Championship	WTF	-	World Taekwondo Federation
FAM	-	Football Association of Malaysia	NBA	-	National Basketball Association
BAM	-	Badminton Association of Malaysia	EPF	-	Employment Provident Association
SUKMAS	-	Intervarsity Games	Etc	-	(et cetera) ; and so forth
IIUM	-	International Islamic University Malaysia	SOCSO	-	Social Security Organisation
UPM	-	Universiti Putra Malaysia	Para	-	Paragraph
UiTM	-	Universiti Teknologi Mara	PFA	-	Perak Football Association
UTM	-	Universiti Teknologi Malaysia	YNS	-	Yayasan Negeri Sembilan
USM	-	Universiti Sains Malaysia	SRK	-	Sekolah Rendah Kebangsaan
UKM	-	Universiti Kebangsaan Malaysia	SMK	-	Sekolah Menengah Kebangsaan
UUM	-	Universiti Utara Malaysia	Chap	-	Chapter
			edit	-	editor
UPSI	-	Universiti	ibid	-	(ibidem) in the same place

CHAPTER 1

INTRODUCTION

1.1. Introduction

Sports has assumed a vital role in man's social and cultural development since time immemorial. The simple reason is that every nation envisions sports as an activity capable of promoting a healthy mind, which is the most essential criteria in developing a nation. Sporting activities have developed from simple friendly games to highly competitive matches. The development of sports is not limited to developed nations only, it has been a part of the developing and under-developed nations as well. In Malaysia, despite shouldering the heavy task of developing the country's economy after achieving independence, however, development in the sporting arena was not neglected. In fact Malaysia has been actively promoting its citizens to participate in sporting events within the national and international arena. Progress in the sporting arena in Malaysia is evident when our sportspersons succeeds in various national and international sporting events. The country has benefited immensely from this development and is trying it's best to ensure that sports will be developed further since a healthy body can promote a healthy mind that is essential for nation building.

This development within the Malaysian sporting arena must be sustained in order to promote further growth and achieve world-class status. In order to sustain development in sports, there are various aspects that need to be taken into consideration, besides introducing various mechanisms to improve the quality of performance of the athletes. At present the principal concern among the sporting community is that there are insufficient legal provisions providing for the protection of the rights of sportspersons. The Sports Development Act 1997 (Act 576) (referred as

“SDA 1997”) was passed in order to promote and facilitate the development and administration of sports in Malaysia. Development of sporting activities is dependant very much on the sportspersons themselves and if the welfare of the sportspersons is not taken care of, it may stultify development of sports in Malaysia. Thus, this dissertation seeks to examine the problems faced by sportspersons and seeks to propose the necessary changes to improve the existing system in order to deliver better protection for the sporting community. Some explanation as to the choice of subject matter and the methodology chosen to write this dissertation will be set out in this chapter.

1.2. Historical Development of Sports in Malaysia

Sports have been a part of Malaysia’s traditional heritage. There was a variety of Malay traditional games played from as early as the 15th century, for instance the game of *sepak takraw* was recorded as being played in Malacca in 1477.¹ The colonial rulers² also assumed a role in the development of Malaysian sports. They introduced organised sports such as football, tennis and badminton. Influx of immigrants during the colonial period especially the Chinese and Indian communities brought about the introduction of games such as table tennis, basketball and hockey. This further enriched Malaysian sports. It has been reported that an athletic tournament was held in Penang in 1887. Football has been played in Penang from 1889, while hockey was introduced in 1898. In 1906, the First Malaya Athletic Tournament was held in Ipoh under the patronage of a British resident officer. Badminton gained popularity in the

¹ Adam, Abd Wahab, *Social Issues in Sports Development: The Malaysian Perspective*, Ministry of Youth and Sports, Kuala Lumpur, 1991, cited in Nadratul Wardah, *Sports and Women in Malaysia*, Unpublished thesis, 1989, p.24.

² The Portuguese from 1511; followed by the Dutch from 1641 until 1786 and the British from 1786 until 1957.

1930's especially among the Malaysian students who studied at Cambridge University.³

At present, through global education and participation in international sporting events, various other events such as mountain climbing and trekking, parachuting, go-cart, roller blade is now an essential part of Malaysian sports. Malaysian athletes began to participate in international level sporting events. Malaysia won the prestigious Thomas Cup for badminton in 1950 and its first gold medal in the 1950 Commonwealth Games through weight lifting event. Malaysia Olympic Council (referred as "MOM") was established in 1953 and was affiliated with International Olympic Council in 1954. At the same time, many national associations were formed to assist in the preparation for the Olympics Games. Malaya Lawn Tennis Association and Malaya Rugby Association were the first two associations registered and affiliated to MOM and participated in the 2nd Asian Games for the first time in Manila in 1954. Many national sports organisations were established after achieving independence.⁴ The government also established the Ministry of Culture, Youth and Sports (referred as "Ministry of Sports") in 1962 and National Sports Council in 1972 in order to promote effective development in the sporting arena.

1.3. Development of Sports Law in Malaysia

Any social aspect of society needs to be governed by certain rules and regulations and the same goes for sporting activities as well where it is necessary to be regulated by

³ Khoo, K.K., *Sejarah Pembangunan Sukan di Malaysia*, University of Malaya. Unpublished lecture notes, 1996 pp.1-11.

⁴ Malaya Table Tennis Association (1958), Malaya Basketball Association (1958), Malaya Sepak Raga Association (1960), Malaya Judo Association (1961), Malaya Women Hockey Association (1961), Malaysia Amateur Boxing Association (1964), Malaysia Body Building Association (1969), Malaysia Softball Association (1972), Malaysia Taekwondo Association (1974), Malaysia Volleyball Association and Malaysia Gymnastic Association (1978).

rules and regulations. Sports law is an amalgam of laws that apply to athletes and the sports they play. It is not a singular legal topic with generally applicable principles. Sports law touches on a variety of matters, including contract, tort, agency, antitrust, constitutional, labour, trademark, sex discrimination, criminal and tax issues.⁵ Some laws depend on the status of the athletes, some laws differ according to the sport, and some laws vary for other reasons.⁶ It is necessary to define what activities can be included within the term sports and who is a sports person in order to determine who is entitled to be protected by sports legislation.

Sports may be defined as an organised play with a distinct code of ethics, rules and regulations.⁷ Its spectrum ranges from simple friendly events to highly competitive and organised championships. The *Oxford Advanced Learner's Dictionary*⁸ defines sports as follows:

- (i) physical activity for exercise or amusement, usually played in a special area and according to fixed rules;
- (ii) meeting for athletic competitions for example *sports day*; and
- (iii) particular game or pastime examples are hockey, football and tennis.

Coakley defines sports as:

“an institutionalised competitive activity that involves vigorous physical exertion or the use of relatively complex physical skills by individuals whose participation is motivated by a combination of intrinsic and extrinsic factors.”⁹

Sir Ludwig Guttman defines sports as:

“any physical activity, which has the character of play and involves a struggle with oneself or others, or a confrontation with natural

⁵ “Sports Law,” excerpt from *West's Encyclopedia of American Law*, Internet Edition <http://www.wld.com/conbus/weal/wsports.htm>.

⁶ *Ibid.*

⁷ Teoh, T.L., *A Conceptual Approach Towards a Policy of Sports for All*, presented at the Asean Universities Sports Seminar, 8-9 Nov 1984, Universiti Putra Malaysia, Serdang, Selangor.

⁸ *Oxford Advanced Learner's Dictionary*, Oxford University Press, 1996, p.1237.

⁹ Coakley, J.J., *Sports in Society: Issues and Controversies*, St. Louis: Times Minor, 1986.

elements. If this activity involves competition it must be performed with a spirit of sportsmanship.”¹⁰

The European Sports Charter defines sports as a term that includes

“all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mutual well being, forming social relationships or obtaining results in competition at all levels.”¹¹

The definition of sports as provided in Section 2 of the Sports Development Act 1997

(referred as “SDA 1997”) is simply:

“Sports means any of the activities listed in the First Schedule.”¹²

It is also important to define precisely as to who is a sportsperson for the purposes of this dissertation as only those persons recognised as sportspersons are entitled to protection under the law. A ‘sportsperson’ has been defined as the participant of a sport, including an athlete.¹³ Therefore, it seems that all Malaysian citizens who are directly or indirectly involved in a sporting activity are entitled to protection since the National Sports Policy 1988 (referred as “1988 Policy”) embraces both high performance sports¹⁴ and mass sports¹⁵ notwithstanding the differences between the two. This dissertation, however will only focus on the rights of amateur and professional sportspersons who are directly involved in the development of sports.

¹⁰ Guttman, L., *Textbook of Sport for the Disabled*, in Grayson E. *Sports and the Law*, 2nd Ed. Butterworth & Co., 1994, p. xlviii.

¹¹ European Sports Charter cited in *ibid.* p.49.

¹² Please refer to Appendix 1 where the First Schedule (Section 2) of the Sports Development Acts 1997 is attached. The SDA 1997 lists 39 types of activities recognised as sporting activities for the purposes of the SDA 1997.

¹³ Section 2 of the SDA 1997.

¹⁴ *High Performance Sports* refers to competitive sports organised in accordance with International Federation and Olympic Committee Rules at national and international level to determine the winner.

¹⁵ *Mass Sports* refers to sports and physical recreational activities, which may be spontaneous or organised, aimed at encouraging greater participation rather than for competition.

There are two main categories of participants in sports, the amateurs and professionals. Amateurs usually participate purely for the enjoyment derived from the sporting event, with no thought of personal gain.¹⁶ The United States (referred as “U.S.”) National Collegiate Athletic Association defines an amateur student-athlete as:

“one who engages in a particular sport for the education, physical, mental and social benefits derived therefrom and to whom participation in that sport is an avocation.”¹⁷

Moreover, an amateur is one who participates in sports as an avocation without receiving any remuneration for his participation.¹⁸ He is a person who engages in sports solely for the pleasure, physical, mental, or social benefits he derives therefrom and to whom sports is nothing more than an avocation.¹⁹

The term ‘professional’ is rarely defined as most of the countries leave this matter to the international governing sports bodies. Literally, it means “someone who is highly skilled and is being employed on a full time basis.” A professional sportsperson can also be defined as:

“one earning more than a fixed annual amount for the purpose of the legislation relating to employment law.”²⁰

Professional careers can be very lucrative for a sportsperson and their status can be of immense value. The status that a professional sportsperson enjoys inevitably propels the sportsperson to maintain a high level performance to avoid premature and an abrupt end to his professional career.²¹ A common misconception about

¹⁶ Valerie C., *Recreational and the Law*, 2nd Ed. E & F N Spon Publication, 1993, p.19.

¹⁷ 1987 –1988, NCAA Manual, Constitution 3-1, cited in Wong, G.M., *Essentials of Amateur Sports Law*, Auburn House Publishing Company, 1988, p.86.

¹⁸ Rule 26(III)(3), International Olympic Committee, cited in, *ibid.*, p.86.

¹⁹ Art. 1, sec.101.3 (1)(1675) of Amateur Athletic Union, cited in *ibid.*, p.86.

²⁰ Valerie C., *Recreational and the Law*, p.8.

²¹ Wong, G.M., *Essentials of Amateur Sports Law*, p.538.

amateurs and professionals is that professionals are paid to participate in sports whereas amateurs are not. Amateurs, despite not being paid to participate in sports, often receive payment in the form of token of appreciation for their efforts. In ancient Greece, for example, victorious athletes in the Olympics were handsomely rewarded for their efforts. At present many undergraduate athletes receive academic scholarships for playing in the university team, for example sports science students at University of Malaya (referred as “UM”). In the United Kingdom (referred as “UK”) remuneration for amateur athletes is even promoted by legislation.²²

A basic difference between amateur athletic events and professional events lie in the rewards they receive for their participation. Amateur events, by definition, do not reward victors with a prize of considerable value. Professional events, by contrast, reward participants and victors lucratively. An accomplished sportsperson may choose to compete as an amateur if his sporting event does not have a thriving professional organisation. Some sportspersons can make a living in amateur sports as their wins in high-profile amateur events entail them being hired by sporting equipment companies generally to endorse a sports product. Amateur sports can be divided into two categories, restricted and unrestricted competitions. Restricted competition includes elementary school and university athletics. Athletic clubs, associations or leagues connected to a university, control sports at these levels.

All public universities in Malaysia are affiliated to Malaysian University Sports Council (referred as “MASUM”).²³ Any sportsperson in restricted competition is

²² The Amateur Sports Act of 1978 created the Athletic Congress, a national governing body for amateur athletes, which administers a trust fund that allows amateur athletes to receive funds and sponsorship payments without losing their amateur status, in *ibid.*, pp.86-88.

²³ MASUM is presently headed by Dr.Sidek Baba, Deputy Rector for Student Affairs, International Islamic University Malaysia.