

(SP) “LOSS OF ENJOYMENT” COMPENSATION FOR SPORT SPECTATORS

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Introduction

Generally courts have refused to award compensation for mental distress, disappointment and loss of enjoyment for breaches of contractual promises. However, over time courts have created an exception to this rule awarding compensation (damages) in situations where the very object of the contract is to provide enjoyment, entertainment, relaxation or pleasure. It is argued that a person who pays to be a spectator at a sport event is entering such a contract.

Whilst there is extensive case law arising from tourism based situations, only a few cases have looked into the availability of loss of enjoyment damages for spectators entering contracts to attend events. This paper examines why this is the case by looking at three questions.

Firstly, is the contractual arrangement created when purchasing tickets to sporting events an example of a contract where the exception to the rule against loss of enjoyment damages should apply? Arguably they are, when consumers enter contracts to attend sporting events, they are expecting to have an enjoyable experience.

Secondly, in what sets of factual circumstances can an award for loss of enjoyment damages arise? For example, where a drunk and rowdy spectator disrupts your ability to see and enjoy the game or alternatively take the 2005 US Formula One as an example, where spectators expect an event with 20 competitors, but instead, view an event with only 6 competitors.

Thirdly, if the courts find one and two, will they impose liability on sport event organisers?

Methods

An extensive review of cases where damages have been awarded for loss of enjoyment in sport contexts – especially in Britain where such damages are well recognised and entrenched - will be undertaken. A thorough review of the literature has been completed and will be summarized.

Results

The literature has not yet explored the issue in the sport context. The focus to date has been on the tourism context, that is, ruined holidays. However, there are a number of cases outside the tourism context, including sport spectators, where the courts have awarded loss of enjoyment compensation. Another issue is the absence of any formula for measuring the compensation payable. This issue will also be addressed and a method for measurement suggested.

Discussion

The issue of significance to the sport management field is two fold. Given that these damages will be awarded by the courts (as they are in England, Europe and

Australia for breaches of contracts for entertainment, enjoyment, pleasure and relaxation) (Jonson, 2002) then it is firstly, imperative for sport event organisers to ensure that they fulfill all express contractual promises made to the paying spectator. Secondly, what of “implied” promises? When a spectator enters a sport event venue, they will not expect to have their experience ruined by drunken spectators, nor will they want to have a diminished contest, which is so inferior as to make it not nearly as attractive as it was advertised it was going to be.

Protection of the consumer is very much the public policy underlying contract law. The failure by a sport event organizer to live up to the expectations created by advertising, contractual promise as well as by custom in connection with an event is, it will be argued, reason to expect that the law will continue to extend the award of loss of enjoyment compensation to spectators at sport events whose expectations based on expressed and implied contractual promises are not fulfilled.

References

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