

A New Thought of Sports Law Based on Comparative Analysis

FENG Fajin^{[a],*}; CHEN Enlun^[a]

^[a]Faculty of Education, Southwest University, Chongqing, China.
 * Corresponding author.

Received 14 June 2014; accepted 15 September 2014
 Published online 26 November 2014

Abstract

In order to determine the reasonableness of the various theories of Sports law, to clarify the various relationships as for Sports Law and to form a more complete theoretical framework of Sports Law, this paper ventures to analyze the different points of view from different schools of theory, concept, nature and characteristics of Sports Law applying Comparative Analysis so as to redefine the concept of Sports law, and re-understand the nature and characteristics of Sports law.

Key words: Comparative analysis; Sports law; Concept; Nature; Characteristics

Feng, F. J., & Chen, E. L. (2014). A New Thought of Sports Law Based on Comparative Analysis. *Higher Education of Social Science*, 7(3), 71-75. Available from: URL: <http://www.cscanada.net/index.php/hess/article/view/5727>
 DOI: <http://dx.doi.org/10.3968/5727>

INTRODUCTION

More than 15,860 articles on Sports Law in CNKI show that, in recent years, domestic and foreign academic circles have a sharp disparity in understanding the concept, nature and characteristics of Sports law. Therefore, the author applies Comparative analysis to analyze the points of view from both domestic and foreign schools of theory and re-define the concept of Sports Law, analyze its nature and characteristics with the hope of explaining clearly Sports Law, clarifying the various relationships so as to help the confused people systematically understand Sports Law and provide a theoretical basis for the improvement and implementation of it.

1. ANALYSIS OF THE VIEWPOINTS FROM DIFFERENT SCHOOLS OF THEORY

Table 1
Comparison of Viewpoints of the Various Theoretic Schools

Theoretic schools	Foreign representatives	Domestic representatives	Main viewpoints
Conservatives	Woodhouse	Tang Weidong, Gao Shen	Sports law does not exist
Centrists	John Wei-start	Jurisprudential circle	Sports law is the application of law in the field of sports
Liberals	Sym-Lowell	Tang Yong etc.	Sports law is an independent law

As we all know, the development of a discipline is inseparable from construction of theoretic schools, and the process is to promote academic innovation. Obviously, discussion about the viewpoints from different theoretic schools is just promoting the development and innovation of theoretical knowledge of Sports Law. Therefore, it is very necessary for us to find out the theoretical schools of Sports Law, the focus of their arguments, and to investigate the value of Sports Law's independent existence and the reflects of its value. Table 1 shows, schools of Sports Law are divided into three, namely Conservatives, Centrists, Liberals. Woodhouse (1996) from Britain and Tang (2000), Gao (2009) from China and so on, they hold that there is no Sports Law; American John Weistart advocates the use of sports and law; British Gardiner (2006) proposes that Sports Law is an independent department law. The focus

of the three theoretical schools' ideas is : First, whether Sports Law exists or not; Second, whether there is legal basis for Sports Law or not, or whether Sports Law is only the direct application of law in the field of sports. So, does Sports Law exist on earth? First we need to know the status of Sports Law both in China and abroad: Britain passed *Law of physical exercises and leisure activities* in as early as 1937, Canada passed *Law of physical exercises* in 1942, United States passed *Amateur Sports Act* in 1978, Switzerland passed *Sports Law* in 1972, Finland passed *Sports Law* in 1980, Italy passed *Sports Law* in 1984, Spain first enacted *Sports Law* (Han, 2006). In 1988. Until the completion of this article, search results from CNKI alone of relevant journal articles is up to more than 15,860 ones; Sports Law books like *European Sports Law* and other domestic and international ones total 21; and more than 80 Sports Law cases are collected, for example, a shooting team member Chen's wrongful shooting; also the International Association of Sports Law, Asian Academy of Sports Law, China Academy of Sports Law and the same are set up specially; Wuhan University, South China Normal University, Tianjin Physical Institute etc. also opened Sports Law courses specially; Law Journal and other periodical agencies also opened special sections for Sports Law. The above information fully shows: Sports Law already has a theoretical basis and a unique system of its own. Conservatives' point of view (there is no Sports Law) and centrists' view (law's direct application in sports) cannot be weighed, Sports Law is an objective

reality. So, how is Sports Law defined both domestically and abroad now?

2. CONCEPT OF SPORTS LAW

Some overseas scholars believe that Sports Law is created by the Parliament or the Court which is adapted directly to the field of sports, some scholars believe that it is involved in the various rules, principles, procedures and organizations governing cross-border sports activities, some scholars believe that it is a system of rules adjusting sports practice and resolving sports disputes, and also some scholars believe that it is regulations of autonomy for some civil sports organizations, etc.. However, some domestic scholars believe that Sports Law is a generic term including legal regulations which the nation applies to regulate sports and regulations which people taking part in sports activities apply to adjust the sports relationships between them. Some scholars believe that it is a sum of behavioral regulations which is formulated or identified by certain national organizations according to procedures to adjust certain sports social relationships; its aim is protection of civil sports rights, maintenance of normal sports order and development of the sports cause. Some scholars believe that it is regulatory sports relationships with various subjects, contents and properties involved. And there are other scholars who believe that Sports Law regulates various social relationships in the field of sports.

Table 2
Comparison of the Various Concepts

Representatives	Main body of the creation	Purpose	Relationships regulated	Target
Casini	Parliament or court	Management	Field of sports	The world
Mark James	Sports organizations	Resolution of disputes	Sports relationships	The world
Franck Latty	Sports organizations	Regulation	Inner behaviors of sports	People taking part in sports
Guo Shuli	State and people taking part in sports	Control of sports	Sports relationships	Sportsmen
Zhang Houfu	Certain organs of state	Development of the sports cause	Sports social relationships	Citizens
Zhou Qingshan	State and people taking part in sports	Control and adjustment	Sports relationships	Sportsmen

The above concepts these scholars give all have their own unique perspective and standpoints. In fact, with a comparison of these concepts, it is not hard to find that main bodies of the creation of Sports Law include the Parliament, the Court, sports organizations, the nation and some other social organizations, the aim is to develop the sports cause and protect people's sports rights, to administrate and regulate sports activities, to resolve and mediate sports disputes, the relationships adjusted are specific sports social relationships, including sports administrative relationships, sports

inner relationships, sports athletic relationships. And the target is people involved in or related to sports activities. In summary, Sports Law is a sum of behavioral regulations which are created or identified by the nation, social organizations, sports organizations, the court according to certain procedures to adjust certain sports social relationships between people taking part in or related to sports activities, aiming at development of the sports cause, protection of sports rights, regulation of sports activities and resolution of sports disputes. For a more in-depth understanding of Sports Law, we need

to further analyze the nature and characteristics of Sports Law.

3. NATURE AND CHARACTERISTICS OF SPORTS LAW

Analysis of the nature of Sports Law is at core of discussion about it. And its characteristics then are reflections of its essence. Therefore, to grasp the nature and characteristics of Sports Law is very essential to understand it.

3.1 Nature of Sports Law

Nature is a fundamental attribute which distinguishes one thing from another. The nature of Sports Law undoubtedly should be a reflection of this attribute which distinguishes it from other laws. There are great amounts of discussion about it both domestically and abroad. But they differ from one another and yet there is no accepted final conclusion until now. Below are several understandings of it: First, Sports Law is an independent department law. Second, Sports Law is a compositive law. Third, Sports Law is a public law or private law or both. Forth, Sports Law is a law of rights. Fifth, Sports Law is a law of society, so on and so forth. Indeed, it is not easy to give a conclusion of the fundamental attribute of it and make it generally accepted. And this then makes it very meaningful to conduct researches into it. What kind of law then is Sports Law on earth? With a comprehensive survey of ways of defining the nature of a law, currently there are three which we will discuss: First, defining according to certain human behaviors or themes; Second, defining according to the inherent nature of rules and regulations; Third, the 11 Norms (Robert & Sideman, 2012), obvious examples are marriage law, tort law, trust law. Furthermore, Robert C.R. Sideman, Timothy Davis, Yu Shanxu, Guo Shuli, Huang Shixi, Tang Yong, Tian Yu, Zhou Qingshan, Zhang Jiayi and other scholars made a detailed empirical research into the nature and characteristics of Sports Law according to the above three criteria and showed that it is an independent department law. In addition, on the basis of summarizing ideas about the nature of Sports Law and by comparison and synthesis of them (see Table 3).

Table 3
Comparison of the Nature of Sports Law

Representatives	Nature
Lord Woolf MR	Sports Law is a private law
Matthew J. Mitten	Sports Law is both public and private
Timothy Davis	Sports Law is an independent solid law of rights
Kong Yunlong	Sports Law is a compound of administrative, civil and criminal laws
Wang Yaifang	Sports Law is a social law
Wu Yihua	Sports Law is both public and private

The author holds that Sports Law is an independent department law for both public and private law in existence, it surpasses traditional legal boundaries, regulates sports activities, mediates sports disputes, protects civil rights. Since it is as such, Sports Law should have its own unique characteristics.

3.2 Characteristics of Sports Law

Characteristics, namely, are the unique attributes that one particular thing has, they are fundamental signs to differentiate one from another. Characteristics of Sports Law then are fundamental signs to differentiate it from other laws. Foreign scholars commonly hold that Sports Law has these features: Internationalism, no-government, independence and so on (see Table 4). Domestically, some scholars propose that Sports Law has these three features: internationalism, pluralism and technicality. Some scholars think that the fundamental purpose is to protect civil sports rights, social and public adjustment of function is involved, the legal relationships are complex and diverse and the means of implementation are comprehensive and compositive. Some scholars think that Sports Law is regulatory, social, technique-oriented, national and compositive. Based on this, some scholars think that Sports Law is regulatory, state will –oriented, nationally compulsory, common restraint-oriented, procedural. And also there are some scholars who believe that it is social, regulatory, authoritative, universally-applicable, restraint-oriented, volitional, national, compulsory and decisive. When comparing the above ideas scholars have the characteristics of Sports Law, we could find that, different scholars have different understandings of it, and repetition and overlap could be seen in these types of characteristics they give (see Table 4) and some characteristics even could not truthfully reflect the essence of Sports Law. Therefore, for a better understanding of them, we had better start from these inherent attributes: uniqueness of the regulatory targets, professionalism of the law entries, internationalism and non-government, soft law, co-existence of actionability and inactionability and so on.

Table 4
Comparison of the Characteristics of Sports Law

Representatives	Characteristics
Ken Foster	International, national, uniqueness of the rules, no-government
Zhou Qingshan	International, plural, technical
Yu Shanxu	Purposive, public, complexity of the relationships, diversity of the means
Dong Xiaolong	Regulatory, social, technical, national, competitive
Zhang Yang	Regulatory, volitional, compulsory, restricted, procedural
Zhou Aiguang	Social, regulatory, authoritative, commonly applicable, restricted, volitional, national, compulsory, decisive

3.2.1 Uniqueness of the Regulatory Targets

Only when we have independent regulatory targets could laws be classified into comparatively independent department laws, obvious examples are Education Law, Aviation Law. Regulatory targets of Sports Law are specific sports social relationships, they are specific social relationships taking place when organs of state, organizations of sports administration and management, enterprises and institutions, social groups and citizens take part in sports activities or activities related to sports. Main forms of these sports activities include athletic competitions, athletic training, sports education, physical exercises, sports researches, sports foreign exchange and cooperation, etc. And specific social relationships include relationships of sports management, sports civil and commercial matters, sports labor and social security. We could conclude from the specific social relationships that Sports Law regulates and the forms of activities that, there is an obvious difference between Sports Law and other laws in terms of the regulatory targets.

3.2.2 Professionalism of the Legal Entries

Anti-Doping Convention, which was adopted in 1978 states that, *set up doping laboratories in the member states, and launch training programs of controlling measures, set up attached observation groups, supervise use of doping substance, especially anabolic steroids*. Another example: Article ninth of *PRC Sports Law* states that, *schools are obliged to implement national criteria for sports activities*. Judging from the above domestic and foreign sports laws, we could see that the regulations and entries of Sports Law are unique to it and reveal obvious professionalism; professionalism is an important characteristic for this independent department law.

3.2.3 Internationalism and Non-Government

Some scholars think that like other laws, Sports Law is also in the name of the nation, and created by the nation, its implementation is ensured by force. Obviously, this kind of discussion about characteristics of Sports Law is from the perspective of national law, namely, it is national, compulsory and volitional. This is right by any means, but when we consider the definition of “characteristics”, “fundamental signs to differentiate Sports Law from other laws”, we could find that the above characteristics are no more than common ones which are shared by Sports Law and other laws, they could not truthfully reveal the essence of Sports Law. It is different from other departments of law, it is developed under its own impetus and there is not any legislative support— at least in the United Kingdom it is true (Zeng, 1990). Main support for it not derived from sovereignty states’ conventions, but from international protocols between sports organizations. For example, the *Olympic Charter*, rules of various international federations, ENGSO, FIFA and so on, these sports organizations and rules jointly promote and ensure the development of sports policies, they even have a solid

impact on court decisions. Obviously, internationalism and non-government, these are remarkable characteristics which Sports Law different from other laws.

3.2.4 Co-Existence of Public and Private Laws

As to the question of whether Sports Law is public or private, Ulpianus thought that public laws are rules about the nation, while private laws are rules about personal interests. The Interest Doctrine holds that laws which aim at protection of national interests and public interests are public, while those which aim at protection of personal interests are private. Some scholars then on the basis of definitions of public and private laws and arguments about the rules and regulations made by International court of arbitration for sports, Sport Accord etc. think that rules and organizations like *Olympic Charter*, *Global Sports Law*, *FIFA*, *CAS* belong to the category of private laws, and also there are other scholars who argue that *America Amateur Sports Law*, *PRC Sports Law* belong to the category of public laws based on the definition of public laws. Therefore, with a comparison of domestic and foreign scholars’ ideas, we could see that Sports Law is both public and private, so discussions about it from the sole perspective of the national law, namely, *PRC Sports Law* is incomplete and somehow biased.

3.2.5 Soft Law

Soft law refers to documents which do not have legally binding force to itself from a strict sense, but have certain legal effect, and its implementation does not depend on judicial enforcement. Soft laws could always be seen in judgment of international sports disputes, especially in arbitration of disputes by Arbitration of Appeal, International Court of Arbitration for Sports and the Olympic Games special arbitral branch. Rules, regulations, resolutions, manifestos, principles, declarations, norms, contest rules, technical standards etc. which are applied by international sports organizations to regulate its own organization and activities and its members’ behaviors are such laws. For example, International Anti-doping Regulation, International Manifesto of Anti-racial segregation, the Olympic Charter, International Sports Charter, etc, these soft laws have a great impact on driving the sports cause, and also they are the most evident character which exists only in Sports Law.

3.2.6 Co-Existence of Actionability and Inactionability

Sports law could be divided into actionable and inactionable ones according to ways of judicial relief. For example, Article 46, Section 1 of *PRC Sports Law* states that: Public sports facilities should be open to citizens and brings convenience to people taking part in sports activities. Carry out preferential policies for students, the elder and the disabled. Improve the availability of sports facilities, these are in actionable. While Article 3, Section 22 of *PRC Sports Law* states that: Schools have to configure sports grounds and facilities according to the standards stipulated by administrative departments of education. The sports

grounds have to be used for sports activities rather than for other purposes. Article 3, Section 18 states that: Schools have to open PE classes, and make it an assessment of students' academic achievements, these are actionable.

CONCLUSION

Sports Law is a sum of behavioral regulations which are created or identified by the nation, social organizations, sports organizations, the court according to certain procedures to adjust certain sports social relationships between people taking part in or related to sports activities, aiming at development of the sports cause, protection of sports rights, regulation of sports activities and resolution of sports disputes. It has the following features: uniqueness of the regulatory targets, professionalism of the law entries, co-existence of public and private laws, soft law, co-existence of actionability and inactionability and so on.

REFERENCES

- Gao, S. H. (2009). The disputes within China sports association legal relief. *Journal of China Sport Science*, (8), 39.
- Gardiner, S. (2006). *Sports law* (p.9). Oregon: Cavendish Publishing.
- Han, Y. (2006). *Study on sports discipline*. Beijing Sport University.
- Michael, J., & Kerr, B. T. (1999). Marie demetrius. *Sports Law*, 3-7.
- Robert, S. C., & Sideman, R. S. (2012). What is sports law: A reassessment of content and terminology. *ASSER International Sports Law Series*, (10), 18.
- Tang, W. D. (2000). *Sports law*. China: Nanjing Normal University Press.
- Woodhouse. (1996). *Some reflections: Sport and the law* (pp.13-16). Carolina Academic Press.
- Zeng, Q. M. (1990). *Dictionary of law* (p.541). China: Shanghai Dictionary Press.