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Article

Relation Between Lex Sportiva and Lex Mercatoria

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Abstract: This paper delves into the connection between Lex Sportiva and Lex Mercatoria, two influential legal frameworks that extend across national boundaries. Lex Sportiva addresses legal standards and dispute resolution within the world of international sports, whereas Lex Mercatoria applies to commercial law governing global trade. Though they operate in distinct realms, both systems exhibit common features, such as arbitration-based dispute resolution, worldwide applicability, and shared fairness principles. This paper explores how each framework evolves alongside international law and considers the impact of European efforts toward unifying sports and commercial law standards. Additionally, the study examines where Lex Sportiva and Lex Mercatoria converge, especially as sports increasingly integrate commercial interests. The analysis presents cases where these frameworks overlap, suggesting that a unified legal approach may better address the complexities of a globalized economy and sports industry. This research offers insights into the evolution of international law, advocating for closer integration of these frameworks to promote fair competition, regulatory alignment, and clearer legal standards in global sports and trade.

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Relation Between Lex Sportiva and Lex Mercatoria

Globally, laws borrow from each other in addressing crucial matters such as sports and commerce activities in the contemporary world. Two frameworks are particularly significant due to their cross-jurisdictional nature and ability to connect various legal cultures: Lex Sportiva, which deals with legal competence and decision-making on sports-related events, and Lex Mercatoria, which deals with international trade laws. Lex Sportiva and Lex Mercatoria serve as practical resources for the fields of sports and trade. However, the system has benefited Europe because it has led to the standardization of laws in the European legal system. Europe has recognized the trend of merging private and commercial law in recent decades, primarily to create legal provisions regulating international commercial law. In this context, it is crucial to understand the relationship between Lex Sportiva and Lex Mercatoria, how they adapt to the ongoing legal evolution, and whether it is possible to resolve the coherence issue while maintaining collaboration. Therefore, this paper shall state that understanding Lex Sportiva and Lex Mercatoria is crucial in analyzing the formation and evolution of international law and regulation.

Lex Sportiva: An Overview

The term Lex sportiva refers to the legal framework that governs the realm of international sports. It is a legal framework that has come to fill the vacuum that accompanies a need for rules and regulations in the ever-expanding world of international sporting activities. Lex Sportiva includes international agreements, such as governing bodies' statutes and customary sports rules. The term "lex sportiva" gained prominence during the later part of the 20th century, especially after the creation of the Court of Arbitration for Sport (CAS) in 1984 (Riyanto, 2024). CAS established a distinct and impartial means of arbitration for sports-related issues, which made a meaningful contribution to the formation of Lex Sportiva as a coherent legal system. Lex Sportiva functions through various rudimentary principles that help regulate sports worldwide. These principles apply to handling disputes and embody the distinct features of sports law in contrast to national law traditions. The following are some of the fundamental principles of lex sportiva:

Autonomy and Independence

Sports organizations have an aspect of self-governance and self-regulation that defines Lex Sportiva. Sports organizations like the International Olympic Committee (IOC), the International Federation of Association Football (FIFA), and the International Tennis Federation (ITF) work as self-governing bodies that set their standards for rules. Sports organizations often develop these rules without referencing national laws, thereby retaining some sovereignty over their respective disciplines (Lindholm, 2024). This independence allows these organizations to establish rules that can be standard and enforced internationally, regardless of the domestic laws.

For instance, the legal system of a particular country does not govern FIFA, an international organization that oversees football worldwide and sets rules for competitions like the FIFA World Cup (Riyanto, 2024). This independence also applies to issues such as the qualification and registration of players, sanctions, punishments, and other related matters, as well as the management of disputes. Sports organizations' autonomy guarantees the maintenance and upholding of consistency, fairness, and integrity in international competitions, facilitating the functioning of athletes, officials, and stakeholders within a clearly defined legal structure.

Dispute Resolution

Lex Sportiva primarily conducts dispute resolution through arbitration, which differs from legal arbitration. The Court of Arbitration facilitates this for Sport (CAS) and is multifaceted, depending on the case. Independent of all parties involved, CAS was founded to address conflicts that solely stem from the sports industry. Lex Sportiva structures its arbitration to provide timely, efficient, and independent decisions, essential in an industry characterized by time-sensitive events like player transfers, eligibility inquiries, or disciplinary cases (Duval, 2020). When it comes to complaints related to sports, CAS typically serves as the final option, with its decisions considered final. The option for arbitration rather than litigation means that it is always possible to sort out problems or disagreements without going through trial after trial. Notably, CAS arbitration is also efficient, impartial, and professional, offering those involved an opportunity to have their cases dealt with by experts who correctly understand sports law. This fosters an equal opportunity environment, ensuring no party receives preferential treatment, primarily due to their country or political influence.

Global Applicability

Another significant characteristic of Lex Sportiva is its universality. Note that national legislation can only function within specific territorial boundaries and does not limit Lex Sportiva. States standardize international sports rules, and global sports bodies recognize these legal norms to regulate the numerous and complex events that cross international borders. The global presence assists in homogenizing the laws internationally, meaning athletes and sporting bodies, regardless of where they are, all have to follow the same basic guidelines. For instance, the International Olympic Committee established the Olympic Charter, which governs the Olympic Games regardless of the participating country (Duval, 2020). However, the domestic legal structures may differ.

Similarly, all member countries and clubs accept FIFA's regulations regarding international football competitions. This helps extend fair competition across the globe. It reduces the chances of athletes, coaches, and administrators circumventing the set rules since the standard adopted here is well understood across many territories.

Promotion of Fair Competition

Notably, Lex Sportiva takes pride in creating equal opportunities for fair competition. Lex Sportiva also strives to treat all athletes equally, regardless of nationality. Several aspects of the regulation, such as anti-doping standards, qualification requirements, and competition rules and regulations, reflect this objective. In this respect, Lex Sportiva aims to protect the purity of sports and ensure no cheating or circumventing the rules to gain an extra edge. Anti-doping measures are Lex

Sportiva's most recognized aspect, stemming from the desire for fair competition. Most sports bodies accept WADA's international anti-doping code (Duval, 2020). They also aim to protect athletes from abusing substances that may give them an unfair competitive advantage in sporting events (Adams, 2024).

Similarly, Lex Sportiva establishes admissibility conditions to ensure adherence to criteria, thereby facilitating athlete participation and resolving issues related to age, nationality, and other qualifying requirements for elite competitions. In addition, Lex Sportiva seeks to establish humane principles that govern the behavior of competitions and participants in sports activities. Because of this, Lex Sportiva supports sports culture by acknowledging and following the rules of punishments, cheating, and match-fixing. This focus on fair play sustains the honor of the competition. It serves the best interests of athletes, sponsors, enthusiasts, and fans, as many athletes refrain from using unfair methods to achieve victory, all in the spirit of fair play.

Lex Mercatoria: An Overview

The notion of lex mercatoria, or the "law of merchants," dates back to the earlier practices of medieval traders in international trade. It has evolved over several centuries and is now a rather complex system of legal rules and regulations that define relationships between foreign businesses. Therefore, Lex Mercatoria needs to stay up-to-date with global economic trends and provide legal analyses of the goals and operations that will sustain and grow trade and other forms of economic activity beyond the scope of national law.

Customary Practices

Another concept that is closely associated with Lex Mercatoria is customs and traditions. On the other hand, the Lex mercatoria has yet to develop similarly to the national legal systems, which have evolved through codification. However, its roots are traceable to the conduct of traders in cross-border business transactions. Other courts and, in some cases, arbitral tribunals adopt them, acknowledging and, at times, applying them as more flexible, less stringent, and more practical rules regarding advancements in business relations and circumstances (Mahmoodi et al., 2020). Hence, based on the situation, its versatility, and growth, Lex Mercatoria is relevant in today's business environment.

General Principles: Good Faith and Equity

Arguably, moral faith and the principles of fairness play a crucial role in establishing a connection between Lex Mercatoria and its origins. These virtues can effectively handle the implementation of contracts and other legal issues that may arise during business operations. Additionally, to make more relevant contributions, Lex mercatoria enhances the efficiency, non-bias, legalism, and ethicality of the parties or subjects involved in the international business transaction process (Mahmoodi-Kordi et al., 2020). This eliminates fraud in all business activities and allows for reasonable and rational ordering and governance of business processes in the country to benefit all nationals and inhabitants, irrespective of nationality.

Dispute Resolution and Arbitration

Arbitration can resolve disputes under Lex Mercatoria and Lex Sportiva. They endorse arbitration due to its speed, reduced formalities compared to courts, and the impartiality of the arbitrators. Commercial law parties can effectively resolve their disputes without resorting to domestic laws by appointing arbitrators for certain commercial law matters, thereby fostering the development of an institutional system (Caravaca & Gonzalez, 2020). One of the essential benefits of arbitration is its rapidity and effectiveness in settling disputes, particularly those arising out of international business, as it is faster than the judicial procedure.

Harmonization of Commercial Law

One needs to explore how Lex Mercatoria contributes to legalizing laws governing commerce and trade in different countries. International organization conventions like the United Nations Convention on Contracts for the International Sale of Goods (CISG) seek to standardize international contract sales' legal requirements (Caravaca & Gonzalez, 2020). Such actions also help promote trade by decreasing the legal system risks and guaranteeing the uniformity of market standards.

The Unification of Law in Europe

People have discussed the convergence of private and commercial law, especially in Europe, for several years. These include the European Union's (EU) attempt to formulate a single legal system governing commercial interests within Member State jurisdictions, as evidenced by the European Sales Law (ESL). However, the unification process faces numerous challenges, including (a) Diverse legal traditions: European countries have various legal systems, from common law to civil ones. This diversity becomes an issue of contention when seeking to establish a standardized legal system since factors such as contract law, dispute resolution, and regulatory practices may vary significantly (Duval et al., 2024). (b) National sovereignty: Member states tend to protect and adhere to their domestic legal systems and may not embrace supranational legal standards. The conflict of interest between national sovereignty and the establishment of a standard legal system is among the factors that may slow the progress of the unification of law (Adams, 2024). (c) Practical implementation: Although unified legal principles have been achieved, their practical application can still pose specific challenges (Duval et al., 2024). Practitioners, businesses, and occasionally courts may require assistance adapting to and adhering to the new trend, particularly when it significantly diverges from previous practices. (d) Judicial interpretation: The adjudication process of national courts, which involves applying legal norms, may include variations and inconsistencies. Variations in judicial interpretations can hamper the goal of standardizing legal policies across the European Union.

At the same time, the prospect of a single European law opens up opportunities to improve laws that counterbalance these problems. For this reason, the ambiguous link between Lex Sportiva and Lex Mercatoria continues to be a matter of debate (Meskic & Gagula, 2020). They both contain unification agendas and employ related concepts, including neutrality, efficiency, and fairness.

Comparative Analysis of Lex Sportiva and Lex Mercatoria

Similarities

Lex Sportiva and Lex Mercatoria share certain characteristics that are essential for using these sources in legal integration. Their first similarity is their global universality, which denotes their belonging to a world other than the registered states. They contain rules regulating the interactions between nations (Onyejekwe & Ekhatior, 2021). This characteristic fosters consistent legal norms that regulate relations between different legal systems.

Moreover, both systems consider arbitration the most suitable approach to settling disputes. Arbitration does not involve extensive and sometimes inconsequential legal formalities, which can be unhelpful during sports events and other rapid commerce activities. Over the years, understanding that arbitration is a better way to solve business disputes, especially in different subbranches, has manifested this positive attitude. In addition, the Lex Sportiva and the Lex Mercatoria embrace principles of equity. Sports activities, where rules are in place to reduce cheating and enhance the activity's image, embody this. Likewise, the revelation of honest intent and purpose of the parties in trading transactions actualizes these principles in commerce.

Lastly, it is pertinent to highlight that the legal systems under consideration are overly flexible and individualistic (Onyejekwe & Ekhatior, 2021). Lex Sportiva represents these changes by documenting newer amendments and the evolving standards of the sports industry. Likewise, Lex Mercatoria is dynamic and continues to evolve over time and across the generations to be relevant and functional in the present and modernized global environment. This suggests potential compatibility between the two frameworks for addressing modern legal issues.

Differences

Contrasting the importance of Lex Sportiva and Lex Mercatoria in the legal system is essential. The first difference lies in applying neural networks to socially significant problems. In more detail, Lex Sportiva's goal is to control and govern sporting activities, including competition rules and relations, participation in competitions, and fighting against doping. On the other hand, Lex mercatoria, with the exception of Rizky and Setiono (2023), is a more comprehensive set of regulations that encompasses almost all sectors in the commerce and operations of international trade and commerce, excluding sports.

The second significant difference is found in the legal sources from which each framework derives its legitimacy. The lex sportive draws from the statutes of the sports organizations, international conventions, and other conventional practices about the sports field. Thus, relying on such specific regulatory bodies enables establishing certain rules and reference points for athletic events. On the other hand, lex mercatoria relies on established and commonly accepted legal customs that merchants and traders have acquired and incorporated into their businesses over time. Changes in trade relations may modify its more liberal legal foundation.

The internal framework needs to be more balanced regarding various actors and contributors' participation within the organization and its system. In contrast, the external framework encompasses a wide range of participants in the system, some of whom may be relatively diverse and challenging to define. Significant participants in Lex Sportiva include players, sporting associations, and other entities responsible for event management. Such entities are primarily concerned with the management of sports and the fight against cheating. Subjects of Lex Mercatoria include a vast array of individuals ranging from entrepreneurs and traders to all types of organizations and other actors that participate in economic activities, particularly in buying and selling goods and services (Rizky & Setiono, 2023).

The extent and nature of regulation and regulatory frameworks vary across areas. While Lex Sportiva addresses specific cheerleading regulations within the context of anti-doping or competition rules, Lex Mercatoria focuses on general mercantile laws and other legal principles that govern business activities in various sectors (Onyejekwe & Ekhatior, 2021). This distinction underscores that Lex Sportiva specializes in dealing with sports-related matters more than Lex, unlike Lex, which caters to international trade affairs.

The Nexus Between Lex Sportiva and Lex Mercatoria

The observations made when analyzing Lex Sportiva and Lex Mercatoria make it possible to observe the relations between the legal system statutes. Of these, perhaps the most apparent is the rising involvement of commerce as a constituent of the realm of sports, resulting in the fusion of sports laws and commercial laws. Today's business foundation expects to merge the Lex Sportiva and Lex Mercatoria rules, with sponsorship provisions, channel licensing, and advertising playing significant roles (Onyejekwe & Ekhatior, 2021). For instance, general principles of commercial law govern the contracts between athletes and sponsorship firms, provided they meet the requirements of the sporting bodies. Furthermore, international sports events involve acquiring goods and services internationally, whereby principles of contract law apply. However, when it comes to matters of global trade or even violation thereof about a mass event like the FIFA World Cup or Olympic Games, matters of sponsorship, merchandise, and other commercial aspects come into play. These cross-border dynamics show that it is possible to understand the laws of both countries and navigate the complex web of international sports trade.

The application of Lex Sportiva and Lex Mercatoria is evident when settling disputes. A significant area that can apply the principles and practices of lex mercatoria is the Court of Arbitration for Sport under lex sportiva. Where any form of disagreement arises from business transactions concerning sports, the parties may benefit from the application of Lex Mercatoria. Such a combined approach allows for a more effective resolution of conflict situations involving sport regulation and commercial law. One of the cases in point is CAS 2010/A/2186 FIFA v. FC S.L. (Club et al.), which stemmed from a dispute or dispute regarding the transfer of a player and the process of applying a

sporting regulation and sanction that included a contract with aspects of sports and general commercial law (Adams, 2024). Thus, this case clarifies the relationship between Lex Sportiva and Lex Mercatoria, a significant step in addressing complex legal sports issues. Many of these intersections show that sports law is constantly evolving and multifaceted. Therefore, lawyers play a crucial role in understanding both legal frameworks and addressing the various challenges in contemporary sports commercialization.

Conclusion

There is a nexus between Lex Sportiva and Lex Mercatoria, and this interconnectedness demonstrates some characteristics typical of legalization in Europe and other countries. Both laws act on an international level and promote such values as reasonableness, temperance, and balance in the context of international law. But they are similar in their functions and the rules that govern them. Despite efforts to progress toward legal assimilation, enhancing the relationship between Lex Sportiva and Lex Mercatoria could clarify the global law's homogeneity. Therefore, the discovery of these dynamics can contribute to solving contemporary issues and improving the legal climate. Therefore, we recommend that future research and policy prioritize the roles and interfaces of both frameworks to enhance our understanding of athlete welfare, diverse sporting bodies, and separate commerce in sport and globalization. Consider both frameworks' roles and interfaces.

References

- Adams, F. (2024). A critique of the Lex Mercatoria as the governing law of a contract. *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg*, 2024(2), 292-305. https://hdl.handle.net/10520/ejc-jlc_tsar_v2024_n2_a6
- Boisgontier, A., Duval, A., Krüger, A., & Lindholm, J. (2024). Is the Lex Sportiva on track for intersex people's rights? *The European Roots of the Lex Sportiva: How Europe Rules Global Sport*, 18(1), 257-282. <http://dx.doi.org/10.5040/9781509971473>
- Caravaca, A. L. C., & Gonzalez, J. C. (2020). Lex mercatoria and private international arbitration. *Cuadernos Derecho Transnacional*, 12, 66. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cudetns12&div=5&id=&page=>
- Duval, A. (2020). Transnational sports law: the living Lex Sportiva. *TMC Asser Institute for International & European Law-Asser Research Paper*, 6. <https://ssrn.com/abstract=3688344>
- Duval, A., Krüger, A., & Lindholm, J. (2024). *The European Roots of the Lex Sportiva: How Europe Rules Global Sport* (p. 400). Bloomsbury Academic. <https://library.oapen.org/handle/20.500.12657/88177>
- Lindholm, J. (2024). Putting the Lex into Lex Sportiva: The Principle of Legality in Sports. <https://orcid.org/0000-0001-6009-7412>
- Mahmoodi Kordi, Z., Zahedi, M., & Ghadirinezhad, S. A. (2020). From Lex Mercatoria to Transnational Commercial Law in Proper Sense. *Private Law Research*, 8(31), 65-85. <https://doi.org/10.22054/jplr.2019.36593.2024>
- Meskic, Z., & Gagula, A. (2020). Lex Mercatoria and its limits in international arbitration. *Nederlands Internationaal Privaatrecht*. <https://dx.doi.org/10.2139/ssrn.3991311>
- Onyejekwe, C., & Ekhatior, E. (2021). AfCFTA and Lex mercatoria: reconceptualizing international trade law in Africa. *Commonwealth Law Bulletin*, 47(1), 93-112. <https://doi.org/10.1080/03050718.2020.1812097>
- Riyanto, S. (2024, March). Transformation of Lex Sportiva into the Legal System Indonesian Sports. In *Proceeding International Conference on Law, Economy, Social, and Sharia (ICLESS)* (Vol. 2, pp. 475-496). <https://proceeding.icless.net/index.php/icless22/article/view/101>
- Rizky, A., & Setiono, J. (2023). Lex Mercatoria as Substantive Applicable Law of International Sale and Purchase Contracts. *International Journal of Law and Politics Studies*, 5(2), 80-86. <https://doi.org/10.32996/ijlps.2023.5.2.8>

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