Preface

Fourth Edition

Our fourth edition has the same general organization and 12 chapters as our third edition and provides a comprehensive and timely discussion of high school, college, Olympic, and professional sports legal issues, including gender and racial equity, health, safety, and risk management, and intellectual property law issues. Significant additions include: materials on youth sports; discussion of NCAA and conference efforts to enhance student-athlete benefits and welfare; several cases illustrating developments in the NCAA infractions and compliance realm; a description of how NCAA student-athlete eligibility issues are resolved; O’Bannon v. NCAA; charts illustrating the American Arbitration Association and Court of Arbitration for Sport arbitration and judicial review processes for resolving Olympic sports disputes; new and revised problems requiring application of the 2015 World Anti-doping Code; discussion of the Russian doping scandal; a new problem addressing the validity of a liquidated damages clause in a coaching contract; new problems regarding pro sports commissioner disciplinary authority and league internal governance; excerpts from the revised Uniform Athlete Agents Act (2015); NFL Management Council v. NFLPA (a/k/a Tom Brady “deflategate” case); new problems concerning health and safety; new problems to facilitate discussion of legal and practical issues related to sexual violence as well as equal benefits and treatment issues for both sexes; an overview and update of concussion litigation in professional and collegiate sports; and In re Student-Athlete Name & Likeness Litigation. Like past editions, the 4th edition has an accompanying extensive Teacher’s Manual with sample syllabi, explanations and suggestions for effectively teaching the materials in each chapter, and detailed discussion of all problems. There also are Power Point slides for each chapter. As always, you are welcome to contact any of us with your comments and suggestions for improving our book: Matt (matt.mitten@marquette.edu), Tim (davistx@wfu.edu), Rod (Rodney.K.Smith@asu.edu), or Jeremi (duru@wcl.american.edu).

Matthew J. Mitten
Timothy Davis
Rodney K. Smith
N. Jeremi Duru

November 2016
Third Edition

To provide users of our book with the most current and comprehensive sports law text available, we have revised and updated the third edition of our book to include a discussion of the most significant legal developments affecting high school, college, Olympic, and professional sports that have occurred since our second edition was published in April 2009. Our third edition provides new landmark judicial decisions (e.g., American Needle v. NFL) as well as significant NCAA infractions cases and Olympic sports arbitration awards. It also provides revised text, updated notes, and some new questions and problems to facilitate understanding, analysis, and discussion of legal issues arising out of the dynamic evolution and development of the amateur and professional sports industries. To provide a more streamlined and unified presentation of the complex issues raised by the application of antitrust, labor, and intellectual property law to sports, the principal materials concerning legal regulation of the professional sports industries have been reorganized and consolidated into two chapters, Chapter 6 (“Professional Sports League Governance and Legal Regulation”) and Chapter 7 (“Labor Relations in Professional Sports”), and parts of Chapter 12 (“Intellectual Property Issues in Sports”) have been reorganized. We miss the friendship, insights, and wisdom of Bob Berry, who passed away in November 2011. Although Bob is irreplaceable, we are happy to welcome Jeremi Duru to our team. We trust that you will find our third edition to be an excellent text for the study of sports law, which will satisfy the objectives of your course. Please feel free to contact any of us with your comments and suggestions for improving our book: Matt (matt.mitten@marquette.edu), Tim (davistx@wfu.edu), Rod (rsmith@tjls.edu), or Jeremi (duru@wcl.american.edu).

Matthew J. Mitten
Timothy Davis
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March 2013

Second Edition

Since the first edition of this book was published in 2005, the amateur and professional sports industries have continued to evolve, and new legal issues have arisen. The second edition of the book has been revised and updated to include a discussion of the most significant legal developments affecting interscholastic athletics, intercollegiate athletics, Olympic and international sports, and professional sports. Throughout the second edition there is revised text, new principal cases, updated notes, and new problems to facilitate analysis and discussion of the key legal topics and issues covered in each chapter. Because sports is becoming more international and global in scope, materials have been added in several chapters to provide a comparative law perspective and to discuss the key differences between the European and North American models of professional sports as well as how European Union law regulates professional sports labor markets.
Several chapters in the second edition have been reorganized to provide a more unified and streamlined discussion of the topics covered therein. In particular, Chapters 3 ("Regulating Intercollegiate Athletics") and 4 ("Regulating Olympic and International Athletics") have been reorganized and revised significantly to provide better coverage of these topics. The principal materials concerning legal regulation of the professional sports industries have been reorganized into three chapters: Chapter 6 ("Regulating Professional Athletics"), Chapter 7 ("Labor Law and Relations"), and Chapter 8 ("League Governance, Rival Leagues, and Developing Global Issues").

We hope you enjoy our second edition and that it provides a useful tool for understanding, and stimulating discussion of, legal regulation of amateur and professional sports within the United States and internationally. As always, your comments and suggestions for improving our book are welcome. Please feel free to contact any of us: Matt (matt.mitten@marquette.edu), Tim (davistx@wfu.edu), Rod (rodney.smith@svu.edu), or Bob (lawprofs@tampabay.rr.com).

Matthew J. Mitten
Timothy Davis
Rodney K. Smith
Robert C. Berry

February 2009

First Edition

This book facilitates study and analysis of the significant legal, historical, economic, and sociological issues affecting the development of both the amateur and professional sports industries in the twenty-first century. It provides sports law professors and students with a comprehensive, multipurpose text of cases, materials, and problems that gives a balanced perspective on how some of America’s largest and most popular industries are regulated by our legal system. The book takes an in-depth look at the legal regulation of interscholastic athletics, intercollegiate athletics, Olympic and international sports, and professional sports.

In our experience, law students most effectively learn about legal regulation of the sports industries by understanding the underlying historical, economic, and sociological factors influencing the developing nature of the various legal relationships that exist therein (e.g., athlete and team, university and NCAA, professional team and league, etc.). To accomplish this objective, this book initially covers the respective internal regulatory mechanisms for the different levels of athletic competition (e.g., high school, college, Olympic, and professional sports); then it considers the primary bodies of public law that shape and constrain them. Individual chapters of this book focus on racial and gender equity issues in sports and facilitate multidisciplinary consideration of these important, contemporary topics. The book considers economic policy and consumer welfare issues as part of its coverage of how courts have applied antitrust law to the sports industries. This interdisciplinary examination of sports and law also is intended to appeal to upper-division undergraduate and graduate students.
This book provides a vehicle for applying general principles typically covered in first-year courses, such as contracts, torts, constitutional law, criminal law, and civil procedure, to sports-related legal issues and problems. For example, it includes coverage of the following issues: the nature of a university’s contractual obligations to its student-athletes, tort liability of an athletic event participant to another participant, a state high school athletic association’s status as a state actor and high school students’ federal constitutional rights, criminal liability for on-field violence, and the implications of American courts’ lack of personal jurisdiction over international sports governing bodies.

A sports law course also provides a means of initially exposing students to specialized areas of law such as antitrust, labor, intellectual property, and workers compensation laws as well as relatively new legislation such as the Americans with Disabilities Act. Our book considers how each of these areas of law (and others) regulates the sports industries. It also provides introductory materials and hypothetical problems to facilitate students’ understanding of these legal principles and their application to the sports industries and society in general.

This book incorporates the strengths of existing casebooks while also providing broader coverage of contemporary sports law issues. It includes the leading historical and recent sports law cases and provides detailed explanatory material, notes, and questions to facilitate students’ understanding of complex legal doctrines. It also raises some of the deeper philosophical, sociological, psychological, and economic policy issues that arise in the sports context. This approach both mirrors the practice of law in the twenty-first century generally and heightens students’ understanding of sports-related legal issues. In addition, this book includes some negotiation exercises and problems designed to develop students’ client counseling and transactional skills. These unique features combine both theoretical and practical components to provide sports law students with a well-rounded learning experience.

The breadth and depth of this book provide the flexibility necessary to achieve a wide range of teaching and learning objectives. It is suitable for use as a primary text in either a two- or three-credit-hour general sports law course covering individually selected amateur and sports law topics as well as issues common to both industries. It also can be used in separate two-hour or three-hour courses focusing primarily on either amateur or professional sports law issues. Alternatively, it can be used for two separate one-semester courses designated Sports Law I and Sports Law II. In addition, this book provides a suitable text for use in sports management programs and other academic disciplines studying sports law.

A sports law course provides several important educational benefits in addition to providing students with an understanding of the legal framework governing the amateur and professional sports industries. Perhaps the most important one is that the study of sports law provides students with a package of readily transferable knowledge and skills applicable to a wide variety of legal and non-legal careers. It is one of the relatively few law school courses not limited to consideration of a single, discrete area of substantive law. This book enables thoughtful study of how several different bodies of law combine to regulate the amateur and professional sports industries. It also facilitates students’ ability to synthesize several different discrete bodies of law, to recognize how they combine to govern sports, and to understand how laws that conflict are harmonized.
In doing so, the book also encourages student examination of the role of sport in our culture and how law responds to serious cultural and moral questions.

In whatever form this book is used, we trust that students and faculty alike will enjoy their engagement with the material as much as we have. We have found that sports law deals with issues that merit deep study and reflection. We hope that this book encourages such study.

Matthew J. Mitten
Timothy Davis
Rodney K. Smith
Robert C. Berry

March 2005