Chapter 1: An Introduction to the Study of Sports Law 1

What Is Sports Law? 1
A. The Traditional View: “Sports Law” Does Not Exist 1
B. The Moderate Position: “Sports Law” May Develop into a Field of Law 1
C. “Sports Law”: A Separate Field of Law 2

Fundamentals of the Legal System 3

Jurisdiction and the Federal and State Court Systems 4
A. Federal Courts 5
B. State Courts 5
C. Tax and Other Specialized Courts 6

Civil Procedure 6

Using the Case Method to Study Law 8
A. Common Law 8
   1. Precedent 8
   2. How to Brief a Case 9
      Savino v. Robertson 10
      Questions 14

Chapter 2: Regulating Interscholastic (High School) and Youth Athletics 15

Introduction: The Rise of the Regulation of Interscholastic and Youth Athletics at the State, National, and International Levels 15
A. Historical Overview 15
B. Interscholastic and Youth Athletics Regulatory Structure, Governance, and Administrative Processes 16
Judicial Regulation of Interscholastic and Youth Athletics  17

A. State Action  17

_Brentwood Academy v. Tennessee Secondary School Athletic Association_  19

Questions  21

Notes  21

_Tennessee Secondary School Athletic Association v. Brentwood Academy (Brentwood II)_  22

Questions  23

B. Eligibility Issues  24

1. Transfer Rules  25

_Indiana High School Athletic Association v. Carlberg_  26

Notes  29

_Problem 2-1_  29

2. Outside Competition Rules  30

Questions  30

3. Good Conduct Rules  31

_Brands v. Sheldon Community School_  31

Questions  33

Notes  34

4. Age Rules  35

_Cruz v. Pennsylvania Interscholastic Athletic Association, Inc._  35

Questions  38

_Problem 2-2_  38

5. Grooming Rules  38

6. No-Pass, No-Play Rules  39

Questions  40

7. Exclusion of Homeschooled Students from Athletic Participation  40

Questions  42

Notes  42

C. First and Fourth Amendment Issues  42

1. Drug Testing  42

_Vernonia School District 47J v. Acton_  43

Questions  47

Notes  47

_Problem 2-3_  48

2. Freedom of Speech and Association  48

_Wildman v. Marshalltown School District_  49

Questions  50

3. Freedom of Religion  51

   a. Free Exercise Issues  52

      Questions  53

      _Problem 2-4_  53
Chapter 3: NCAA Internal Governance of Intercollegiate Athletics and Legal Limits  61

Introduction  61
A Brief History: NCAA Governance of Intercollegiate Athletics  61
Questions  65

NCAA Regulatory Authority and Processes  65
A. NCAA: History of Regulation and the Rules Infractions Process  65
B. Institutional Violations of NCAA Rules and Sanctions  67
  University of Southern California Infractions Appeals Committee Report No. 323  67
Questions  71

The Penn State University Case  73
Questions  75

The University of Miami Case  76
Questions  77

The University of North Carolina Case  78
Questions  79
C. Individual Responsibility for NCAA Rules Violations and Sanctions  79
  Former Head Men's Basketball Coach University of Minnesota, Twin Cities Public
  Infractions Appeals Committee Report  80
Questions  83

Other Cases Involving Coaches  83
Questions  85
Notes  85
Problem 3-1  85

Legal Limits on NCAA Regulatory Authority  86
A. Federal and State Civil Rights Law  86
  NCAA v. Smith  86
  Question  88
B. Drug Testing and Privacy  88
  Questions  89
C. Contract and Private Association Laws 89

   Bloom v. NCAA 89
   Questions 92

D. Federal Antitrust Law 93

1. Nature and Scope of Antitrust Limits on NCAA Regulatory Authority 95
2. Case Law 96

   NCAA v. Board of Regents of the University of Oklahoma 96
   Questions 102

   Smith v. NCAA 105
   Notes 106

   O’Bannon v. NCAA 107
   Questions 113

Chapter 4: Legal Relationships Between the University and Student-Athletes 115

Contractual and NCAA Regulatory Dimensions 115

A. Introduction 115

1. Contract Formation and Consideration 115
   a. Mutual Assent 115
   b. Consideration and Promissory Estoppel 117

2. Modification 117

3. Express and Implied Contracts 118

4. Performance, Breach, and Remedies 118
   a. Breach 118
   b. Excuses for Nonperformance 119

5. Damages 119

B. Contractual Aspects of the Student-Athlete and University Relationship 119

1. Statement of Financial Assistance 120

2. National Letter of Intent 120
   Questions 122

C. Student-Athlete Financial Aid and Other Benefits 122

1. NCAA Regulations Governing Contracts and Scholarships 122
   Questions 124
   Note 124

D. Defining the Scope of Institutional Obligations to Student-Athletes 124

   Taylor v. Wake Forest University 125
   Questions 126
Ross v. Creighton University 126
Questions 128
Notes 128

E. NCAA Academic Reform Initiatives 130
1. NCAA Academic Reform Legislation 130
2. Academic Progress Rate 132
   Questions 133

F. Limited Scope of Constitutional Protections 134
2. A Property Interest in Athletic Participation? 135
   Hysaw v. Washburn University of Topeka 135
   Question 137
   Notes 137
   Problem 4-1 139

G. Student-Athletes as Employees: Workers’ Compensation 139
1. Workers’ Compensation: General Principles 139
2. Student-Athletes and Workers’ Compensation: Waldrep v. Texas Employers Insurance Association 140
   Questions 142
   Notes 142
3. Student-Athlete Unionization 144
   Questions 145

First Amendment Rights in Intercollegiate Athletics 145
A. Introduction 145
B. The First Amendment and the Media 146
   Questions 147
C. Religious Liberty Issues 148
   Questions 148
   Problem 4-2 149

Chapter 5: Gender Equity Issues in Athletics 151

Introduction 151
Historical Perspective 151
Gender-Based Exclusion from a Particular Sport 156
Force v. Pierce City R-VI School District 156
Questions 161
Problem 5-1 162
Equal Athletic Participation Opportunities, Benefits, and Treatment 163

A. Accommodation 163

Cohen v. Brown University 163
Questions 169
Problem 5-2 170

B. Equal Benefits and Treatment 171
Questions 174

Reverse Discrimination Claims and Title IX 175

Neal v. Board of Trustees of the California State Universities 175
Questions 177

Title IX and Sexual Harassment 178

A. Coach-Athlete Sexual Harassment 179
B. Peer Sexual Harassment 180
Questions 182

Transgender Participation in School-Based Sport 182
Questions 184

Gender-Based Employment Discrimination in Athletics 185

A. Employment Discrimination 185

Deli v. University of Minnesota 187
Questions 189
B. Retaliatory Discharge or Punitive Action 190

Chapter 6: Racial Equity Issues in Athletics 193

Introduction 193
Historical Perspective 193

A. Racial Segregation: Intercollegiate Athletics 194
   1. Formal Rules of Exclusion 194
   2. Informal Rules of Discrimination 195
B. Racial Segregation: Professional Sports 197
C. The Reintegration of Professional and Amateur Sports 198

Race and Racial Equity in Modern Sports: An Evolving Debate 198

A. College Sports Coaching and Administrative Opportunities 199
   1. Coaching 199
   2. Athletic Administration 200
B. Professional Sports  200
   Questions  201
C. Intersections  202
   1. Race and Gender  202
   2. Race and Socioeconomic Stratification  203
   3. Race and Globalization  205

Case Law  206
A. Academic Racism and Marginalization: NCAA Initial-Eligibility Rules  207
   Questions  209
   Problem 6-1  209
B. Employment Discrimination  210
   Jackson v. University of New Haven  211
   Questions  217
   Problem 6-2  219
C. Stereotypes: Racially Stereotyped Mascots—Racism or Pride?  220
   1. The NCAA’s Approach  221
   2. The Professional Context  221
      Questions  223
      Problem 6-3  223
D. Racially Hostile Environments and Conduct  224
   Problem 6-4  224
   Questions  224

Chapter 7: Health, Safety, and Risk
Management Issues in Sports  227

Introduction  227

Liability for Athletics-Related Injuries  228
A. Injury to Athletes  228
   1. Co-Participant Tort Liability  228
      Shin v. Ahn  228
      Questions  230
      Note  231
      Problem 7-1  231
   2. Co-Participant Criminal Liability  232
      People v. Schacker  232
      Regina v. McSorley  234
      People v. Hall  236
      Questions  236
Liability of Educational Institutions (and Organizations)  239
A. High School  239
   Kahn v. East Side Union High School District  240
   Questions  242
   Notes  242
B. Colleges and Universities  245
   Orr v. Brigham Young University  246
   Questions  248
   Notes  248
   Problem 7-3  251
C. Injury to Spectators  251
   Thurmond v. Prince William Professional Baseball Club, Inc.  254
   Questions  255
   Notes  256
   Problem 7-4  257
Tort Immunities  258

Problem 7-5  261
Problem 7-6  262

Validity of Liability Waivers  262
Wagenblast v. Odessa School District No. 105-157-166J  263
Sharon v. City of Newton  265
Notes  267
Questions  268

Chapter 8: Sports Medicine, Concussions, Compensation, and Impairment in Sports  271

Introduction  271
Sports Medicine Malpractice Liability  271
A. Team Physicians  271
B. Athletic Trainers  273
C. Athlete’s Contributory Negligence  274
Injury Compensation for Professional Athletes  275
Pro-Football, Inc. v. Uhlenhake  277
Question  279
Note  279
DePiano v. Montreal Baseball Club, Ltd.  280

Note  281

Comment: Concussions  281

Participation Rights of Athletes with Physical or Mental Impairments  283
A. Rehabilitation Act of 1973  284
B. Americans with Disabilities Act of 1990  287

Questions  290
Notes  290
Problem 8-1  294


Introduction  295

Trademarks, Logos, and Other Identifying Sports Insignia  296
A. Trademark Infringement and Unfair Competition  297
  1. Name of Sports Team or Event  298
  2. Unauthorized Affixation of Sports Team Mark to Merchandise  299

  National Football League Properties, Inc. v. New Jersey Giants, Inc.  301
  Question  303
  Notes  303
B. Trademark Dilution  304
C. Anticybersquatting Consumer Protection Act of 1999  305
D. Olympic Marks  306
  Problem 9-1  308

Ambush Marketing  308
  Problem 9-2  310

Real-Time Game Accounts and Broadcasting Rights  310
A. Historical Background  310
B. Nature and Scope of Copyright Law Protection  311
C. Copyright Infringement of a Sports Broadcast  313

  NFL v. TVRadioNow Corp.  314
  Question  315
  Note  316
D. Misappropriation of Real-Time Game Accounts and Scores  317
  Problem 9-3  318
Athletes’ Lanham Act and State Law Privacy, Reputation, and Publicity Rights 318

A. Lanham Act 318
B. State Laws 320
   1. Defamation 320
   2. Right of Privacy 321
   3. Right of Publicity 321
      a. Nature and Scope of the Right of Publicity 323
      b. First Amendment Limitations 324
      Problem 9-4 328

Chapter 10: Coaches’ Contracts and Related Issues 329

Introduction 329

Is There a Property Interest in Athletic Employment? 330

Questions 331
Problem 10-1 331
A. Termination 332
   1. What Constitutes Termination for “Cause”? 332
      Questions 333
   2. Termination for Rules Violations and Non-Sports-Related Indiscretions 333
      Questions 337
      Problem 10-2 337
   3. Termination for Abusive Conduct 338
      Questions 339
      Problem 10-3 340
   4. Free Speech and Retaliation Issues 341
B. Compensation and Other Financial Matters 342
   Question 344
   Questions 346

Termination, Breach, and Liquidated Damages 346

Vanderbilt University v. DiNardo 347
Questions 350
Note 350

Exploring Other Contractual Relationships 351
A. Sponsorship Agreements 351
B. Venue Agreements 352
Chapter 11: Professional Sports League Governance and Legal Regulation  353

Introduction  353

A. Evolution of Sports into a Business and Profession  355
B. Unique Features of Professional Team Sports  357
C. The Principal “Players” in the Professional Sports Industries  358
   1. Leagues  358
   2. Clubs or Teams  358
   3. Commissioners  359
   4. Players  359
   5. Players Associations  360
   6. Player Agents  360
   7. Other Industries Integral to Modern Professional Sports  360

Internal League Governance and Commissioner Authority  360
A. Legal Limits on Internal League Governance  361
B. League Commissioner’s “Best Interests of the Game” Authority and Legal Limits  363
   Charles O. Finley & Co., Inc. v. Kuhn  365
   Note  367
   Problem 11-1  369

Federal Antitrust Law Limits on League Rules and Governance  369
A. Overview  369
B. Baseball’s Antitrust Exemption  371
   Flood v. Kuhn  372
   Question  373
   Note  374
C. Application of Sherman Act §1  374
   1. Concerted Action Requirement  374
   2. Unreasonable Restraint of Trade  376
      a. Acquisition, Ownership, and Sale of a Franchise  377
         Levin v. NBA  377
         Note  378
      b. Franchise Relocation  378
      c. Restrictions on Intellectual Property Rights Licensing and Sales  381
D. Application of Sherman Act §2  384
   Problem 11-2  388
Chapter 12: Professional Sports Labor Law and Labor Relations  389

Introduction  389
Contract Law  389
Questions  392
Problem 12-1  392

Labor Law  393
A. Collective Bargaining in the Professional Sports Industries  397
B. Professional Team Sports Drug-Testing Programs  399
  Questions  401
  Problem 12-2  402
C. Unfair Labor Practices  403
  1. League Interference with Players’ Rights to Unionize  403
  2. League Refusal to Recognize Union as Exclusive Bargaining Representative  404
  3. Retaliation Against Union Activists  405
    Silverman v. Major League Baseball Player Relations Committee, Inc. (Silverman I)  407
    Note  408
  5. Discrimination Against Striking Players  409
    Questions  410
D. Union’s Duty of Fair Representation  410
E. Labor Arbitration  412
  National & American League Professional Baseball Clubs v. Major League Baseball Players Association  413
  Notes  416

The Intersection of Antitrust and Labor Law  418
Questions  425

Chapter 13: Representing Players and Teams: The Athlete-Agent Industry  427

The Nature of the Athlete-Agent Relationship  428
A. The Agent’s Basic Duties  428
B. The Agent’s Standard of Care  429
  Zinn v. Parrish  430
  Questions  431
Chapter 14: Olympic and International Sports Issues  473

Introduction  473
A. Origin, History, and Objectives of the Olympic Games  473
B. Organization, Governance, and Structure of the Olympic Movement  475

Regulation of Olympic Sports Within the United States  478

Question  482

Limits on the Use of National Law to Regulate Olympic and International Athletic Competition  483

Question  484

Problem 14-1  484

Court of Arbitration for Sport  485
A. Overview  485
B. Disputed Competition Results  488

Yang Tae Young v. International Gymnastics Federation  489

Note  491

Problem 14-2  491

C. Doping Violations and Sanctions  491


Question  493

2. Interpretation and Application of the World Anti-Doping Code  493

Developing International Issues  497

Notes  499

Glossary  503
Table of Cases  523
Index  531