## **Contents**

Prefac Ackno		ments		xxv xxix
Chap	ter	An Introduction to t	the Study of Sports Law	1
Α.	Wh	at Is Sports Law?	-	1
	1.	*	Sports Law" Does Not Exist	1
	2.		"Sports Law" May Develop into a	L
		Field of Law	, .	1
	3.	"Sports Law": A Separate	e Field of Law	2
В.	Is t	ne Study of Sports Law M	arginalized?	4
C.	Th	Significance of Sport an	d Sports Law	5
	1.	The Role of Sport in Soc	ciety	5
		a. Positive Values Asso	ciated with Sport	7
		b. Negative Values Asse	ociated with Sport	9
	2.	Sport and Its Various In	tersections	11
		a. Sport, Culture, and	Metaphors	12
		i. Metaphors		12
		ii. Shaping Gende	r Identity	13
		iii. Sport and Relig	ion: The Ultimate Metaphor or	
		Something Mor	e?	14
		b. Sport and Economic	cs	15
		c. Sport and Politics		16
	3.	The Study of Sports Law	r	20
Chap	oter	Regulating Intersch	olastic and Youth Athletics	23
A.	Or	gin, Evolution, and Inter	nal Governance of Interscholastic	С
	and	Youth Athletics		23
	1.	Interscholastic Sports		23
	2.	Youth Sports		24
В.	Jud	icial Regulation of Inters	cholastic Athletics	25
	1	State Action		95

xii Contents

		Brentwood Academy v. Tennessee Secondary School Athletic Assn.	
		$(Brentwood\ I)$	26
	2.	Constitutional Rights Issues	31
		a. Member Schools	31
		Tennessee Secondary School Athletic Association v. Brentwood	
		$Academy\ (Brentwood\ II)$	31
		b. Student Athletes	36
		i. First Amendment Freedom of Speech and	
		Association	36
		Wildman v. Marshalltown School District	36
		Problem 2-1	42
		ii. First Amendment Freedom of Religion Rights	
		and Establishment Clause Limits	42
		Problem 2-2	46
		iii. Fourth Amendment Protection Against	
		Unreasonable Search and Seizure	47
		Vernonia School District 47J v. Acton	47
	3.	Athlete Eligibility Issues	55
		a. Transfer Rules	56
		Problem 2-3	57
		Indiana High School Athletic Association v. Carlberg	58
		b. "Outside Competition" Rules	66
		Letendre v. Missouri State High School Activities Assn.	66
		c. Age Rules	70
		Tiffany v. Arizona Interscholastic Assn., Inc.	71
		Problem 2-4	76
		d. Academic Eligibility Requirements	76
		Problem 2-5	77
		e. Exclusion of Homeschooled Students from Athletic	
		Participation	78
		f. Good Conduct Rules	80
		Problem 2-6	81
		Brands v. Sheldon Community School	82
		g. Personal Appearance and Grooming Cases	90
		Davenport v. Randolph County Board of Education	91
		Hayden v. Greensburg Community School Corporation	92
		Problem 2-7	99
C.	Re	view of Game Results	100
Chap	ter	3 Regulating Intercollegiate Athletics	103
A.	Int	roduction	103
В.	Bri	ief History of the NCAA	104
C.	De	fining the Student-Athlete and University Relationship	109

Contents	xiii
Lontents	XIII

	1.	Contractual and Related Aspects	109				
		The National Letter of Intent	110				
		Problem 3-1	112				
		Taylor v. Wake Forest University	113				
		NCAA Bylaw, Article 15	114				
		Comment: Expanding Student-Athlete Benefits	117				
		Ross v. Creighton University	120				
		Problem 3-2	125				
	2.	NCAA Academic Reform Legislation	130				
		a. Academic Reform—Generally	130				
		b. Academic Reform—Academic Progress Rate	131				
		NCAA Bylaw, Article 14	132				
		Problem 3-3	133				
	3.	Federal Constitutional Rights Issues	134				
		Problem 3-4	135				
		Problem 3-5	135				
		Hysaw v. Washburn University of Topeka	135				
		Problem 3-6	145				
	4.	Are Student-Athletes University Employees?	145				
		a. Eligibility to Receive Workers' Compensation					
		Benefits	146				
		Waldrep v. Texas Employers Insurance Assn.	146				
		b. Student-Athlete Unionization and Related Issues	155				
		Northwestern University and College Athletes Players Association	100				
		(CAPA), Petitioner	155				
D.	NC	CAA Rules Enforcement Processes and Legal					
	Lin	nits Thereon	161				
	NC	NCAA Constitution and Division I Bylaws, 2019-20 NCAA					
	Division I Manual						
	1.	Application of Federal Constitutional Law to NCAA Rules					
		Enforcement Processes	163				
		NCAA v. Tarkanian	163				
	2.	The NCAA Infractions Process, Institutional and					
		Personnel Rules Violations, and Sanctions	171				
		NCAA Constitution and Division I, Bylaws, 2019-20 NCAA					
		Division I Manual	171				
		a. Institutions and the Infractions Process	176				
		The University of Southern California Public Infractions Appeals					
		Committee Report	176				
		Materials Regarding the Binding Consent Decree Imposed by					
		the National Collegiate Athletic Association and Accepted by the					
		Pennsylvania State University	183				
		Materials Related to the University of North Carolina Infractions					
		Cases and Academic Scandal	187				
		b. Coaches, Other Institutional Personnel, and the					
		Infractions Process	190				

xiv Contents

	University of Southern Mississippi Public Infractions Deca	ision 190
	Problem 3-7	194
	Problem 3-8	197
	3. Student-Athlete Eligibility Issues	198
	a. Amateurism, Academic, and Ethics Rules	198
	Bloom v. NCAA	201
	b. NCAA Drug Testing Program	211
	Brennan v. Board of Trustees for University of Louisiana	Systems 212
E.	Antitrust Law	215
	1. Introduction	215
	2. Antitrust Law Limits on NCAA Governance and Ru	ıles 217
	a. Output Market Restraints	218
	NCAA v. Board of Regents of the University of Oklahoma	218
	b. Input Market Restraints	228
	i. Coaches' Salaries	228
	Law v. NCAA	228
	ii. Student-Athlete Eligibility Rules and Schol	arship
	Restrictions	235
	Problem 3-9	235
	O'Bannon v. National Collegiate Athletic Associatio	
	Problem 3-10	249
Class		
Chap	pter 4 Regulating Olympic and International Athletics	251
Λ		251
A.		
	1. Origin, History, and Objectives of the Olympic Gar	nes 232
	2. Organization, Governance, and Structure of	019
D	the Olympic Movement	253
В.	7 1 1	
	Basis of Governing Body Authority and Legal Limit  To the state of the state o	
	Thereon	257
	DeFrantz v. U.S. Olympic Committee	257
	2. Legal Framework for Resolving Domestic Athlete	966
	Participation Disputes	266 269
	Lindland v. U.S. Wrestling Association, Inc. Problem 4-1	209 273
C.		
C.	International Athletic Competition	u 274
	Slaney v. International Amateur Athletic Federation	274
	Problem 4-2	282
D.		283
ν,	1. Overview	283
	2. Governing Body Disciplinary Action	288
	Samoa NOC and Sports Federation, Inc. v. International Weig	
	Federation (IWF)	288

	3. Disputed Competition Results	292
	Yang Tae Young v. International Gymnastics Federation	293
	Problem 4-3	297
	4. Doping Violations and Sanctions	297
	a. Strict Liability Standard, Clear Notice Requirement,	
	and Proportionate and Authorized Sanctions	297
	b. World Anti-Doping Code	300
	Nado Italia v. Errani and ITF	303
	Problem 4-4	319
Chap	eter 5 Coaches' Contracts and Related Issues	321
A.	Introduction	321
В.	Is There a Property Interest in a Coaching Position?	322
	Kish v. Iowa Central Community College	322
	Problem 5-1	326
C.	Compensation Issues	326
	1. What Constitutes Compensation?	327
	Rodgers v. Georgia Tech Athletic Assn.	327
	2. Termination and Breach	335
	Leach v. Texas Tech University	335
	3. Liquidated Damages	347
	Problem 5-2	347
	Vanderbilt University v. DiNardo	348
	Problem 5-3	354
	4. Sexual Harassment of Student-Athletes by Coaches	355
D.	Contract Negotiation Exercise	359
	1. Summaries of Coaches' Contracts	359
	2. Helpful Resource Materials	363
	3. Sample Contract	364
Chap	eter 6 Professional Sports League Governance	
	and Legal Regulation	371
A.	Introduction	371
В.	Origin and Evolution of Modern Professional Sports	
	Industries	372
	1. Evolution of Sports into a Business and Profession	372
	2. Unique Features of Professional Team Sports	374
	3. The Principal "Players" in the Professional Sports	
	Industries	376
	a. Leagues	376
	b. Clubs or Teams	376
	c. Commissioners	377
	d. Players	377
	e. Players Associations/Unions	377
	,	

xvi Contents

		f.	Agents	377
		g.	Other Industries Integral to Modern	
			Professional Sports	378
C.	Int	erna	al League Governance and Commissioner Authority	378
	1.		ope of Judicial Review of Internal League Governance	379
	2.		ague Commissioner "Best Interests" Power	380
			arles O. Finley & Co., Inc. v. Kuhn	382
			kland Raiders v. National Football League	389
		Pro	oblem 6-1	393
		Pro	oblem 6-2	393
D.	An	titru	st Law Limits on League Governance and Rules	394
	1.	Na	ture and Purposes of Antitrust Law	394
	2.	MI	LB's Antitrust Law Immunity and Other Exemptions	396
		Floa	od v. Kuhn	397
	3.	Ap	plication of Sherman Act §1	404
		a.	Concerted Action Requirement	404
			American Needle, Inc. v. National Football League	407
		b.	Unreasonable Restraint of Trade	414
			i. Acquisition, Ownership, and Sale of a Franchise	415
			Levin v. NBA	415
			Mid-South Grizzlies v. NFL	416
			ii. Franchise Relocation	423
			Los Angeles Memorial Coliseum Commission v. NFL (Raiders I)	424
			Problem 6-3	432
			iii. Restrictions on Intellectual Property Rights	
			Licensing and Sales	432
			Major League Baseball Properties, Inc. v. Salvino, Inc.	434
			Laumann v. National Hockey League	439
	4.	Sho	erman Act §2 Limits on Dominant Sports Leagues	
			sponses to the Formation of Rival Leagues	445
			iladelphia World Hockey Club, Inc. v. Philadelphia Hockey	
			ub, Inc.	447
			ited States Football League v. NFL	453
		Pro	oblem 6-4	461
Chap	ter	7 ]	Labor Relations in Professional Sports	463
Α.	Int	rodı	uction	463
В.			ct Law	464
Δ.	1.		te Early Cases	464
			iladelphia Ball Club, Ltd. v. Lajoie	465
	2.		odern Judicial View	468
	٠,	a.	Imminent and Irreparable Harm	469
		b.	Duration and Scope of the Injunction	470
		υ.	Lewis v. Rahman	471
			Problem 7-1	474

Contents			xvii
C.	C. Labor Law		
C.			474
	1.	Historical Overview  The American League of Professional Baseball Clubs and Assn. of National Baseball League Umpires	474 476
	2.	Collective Bargaining in the Professional Sports	1.0
	٦.	Industries	481
		a. Salary Caps and Competitive Balance Taxes	482
		b. Collective Bargaining Provisions on Player Mobility	483
		c. Key Provisions of the NBA, NFL, MLB, and	103
		NHL CBAs as of August 2016	485
		i. NBA Collective Bargaining Agreement,	
		2017-2024	485
		ii. NFL Collective Bargaining Agreement,	
		2011-2020	486
		iii. MLB Collective Bargaining Agreement,	
		2017-2021	487
		iv. NHL Collective Bargaining Agreement,	
		2013-2022	488
		d. Uniform Player Contracts	490
		e. Individual Player Contracts	490
		Problem 7-2	490
		NBA Uniform Player Contract	492
		Problem 7-3	504
	3.	Professional Team Sports Drug Testing Programs	505
		a. NBA Drug Policy	506
		b. WNBA Drug Policy	507
		c. NFL Drug Policy	507
		d. MLB Drug Policy	508
		e. NHL Drug Policy	509
		Problem 7-4	512
	4.	Unfair Labor Practices	513
		a. League Interference with Players' Rights to	
		Unionize	513
		b. League Refusal to Recognize Players Union as	
		Exclusive Bargaining Representative	514
		c. Retaliation Against Union Activists	516
		d. Discrimination Against Striking Workers	518
		NFL Management Council and NFLPA	518

e. Breach of Duty to Bargain in Good Faith and to

Subjects of Collective Bargaining

 $Inc.\ (Silverman\ I)$ 

Provide Relevant Information Concerning Mandatory

Silverman v. Major League Baseball Player Relations Committee,

521

522

xviii Contents

		Silverman v. Major League Baseball Player Relations Committee,	
		Inc. (Silverman II)	528
	5.	Union's Duty of Fair Representation	534
		Peterson v. Kennedy	535
	6.	Labor Arbitration	540
		a. Wide-Impact Arbitration	541
		National & American League Professional Baseball Clubs	
		v. Major League Baseball Players Assn.	541
		b. Defining the Scope of Judicial Review	545
		Major League Baseball Players Assn. v. Garvey	546
		c. Salary Arbitration	550
		d. Contract Dispute Arbitration	551
		i. Failure to Honor Contract and Remedies for	
		Enforcement	552
		Boston Celtics Limited Partnership v. Brian Shaw	552
		ii. Club and League Power to Discipline	557
		National Football League Management Council v. National	
		Football League Players Ass'n	557
		iii. Side Deals and Undisclosed Agreements	570
D.	Th	e Intersection of Antitrust and Labor Law	571
	1.	Judicial Application of the Nonstatutory Labor	
		Exemption to Terms of an Existing Collective Bargaining	
		Agreement	574
		Mackey v. NFL	574
		Clarett v. NFL	578
	2.	Judicial Extension of the Scope of the Nonstatutory Labor	
		Exemption Beyond the Terms of an Existing Collective	
		Bargaining Agreement and Limitation of Antitrust	
		Remedies	584
		Brown v. Pro Football, Inc.	587
		Brady v. National Football League	595
	3.	Antitrust Litigation in Player-Management Conflicts	604
		Mackey v. NFL	605
		Problem 7-5	609
E.	De	veloping International Labor Issues	610
		Union Royale Belge des Sociétés de Football Association, Royal Club	
		Liégois, and Union des Associations Européennes de Football (UEFA)	010
		v. Jean-Marc Bosman (Bosman)	610
Chap	ter :	8 Regulating Agents	619
А <b>па</b> р А.		roduction	619
В.			620
D.	_	e Nature of the Relationship  Basic Duties	620
	1.		620
	2.	The Legal Basis of the Relationship The Standard of Care	622
	۷.	Zinn v. Parrish	622
		Linn v. Futtish	044

Contents	xix
ontents	XIX

		Villiams v. CWI, Inc.	626
		roblem 8-1	634
		onflicts of Interest	634
		roblem 8-2	634
		the Detroit Lions, Inc. v. Argovitz	635
		roblem 8-3	642
		ompetition for Clients: Conflicts Between Agents	643
		FLPA Standard Representation Agreement	644
~	-	beakers of Sport, Inc. v. ProServ, Inc.	644
C.	_	ations and Legislation	652
	1. Fe	ederal Regulation	653
	a.	1 8 1 /	653
	b.	0 1	654
		tate Regulation: The Uniform Athlete Agents Act	656
		roblem 8-4	658
		evised Uniform Athlete Agents Act (2015)	658
		roblem 8-5	671
	3. P	layers Associations	672
	a.	, 6	672
	b.		680
		Brown v. Woolf	680
		NFLPA Regulations Governing Contract Advisors	683
		NBPA Regulations Governing Player Agents	689
		NCAA Bylaw, Article 12	690
ъ		Problem 8-6	692
D.		al Issues	693
	•	Management Network v. Busch	694
		Opinion	695 696
	Proble	Advisory Opinion on Professional Conduct	697
	FIODIE	111 0-7	097
Chap	ter 9	Racial Equity Issues in Athletics	699
A.		luction	699
В.		rical Perspective	699
D.		acial Segregation: Intercollegiate Athletics	700
	1. K		700
	a. b.		700
			701
		acial Segregation: Professional Sports	
$\mathbf{C}$		he Reintegration of Professional and Amateur Sports	703
C.		and Racial Equity in Modern Sports: An Evolving Debate	704
	1. C	oaching and Administrative Opportunities	705

xx Contents

		a. College Sports	705
		i. Coaching Opportunities	705
		ii. Administrative Opportunities	707
		b. Professional Sports	708
	2.	Intersections	710
		a. Race and Gender	710
		b. Race and Socioeconomic Stratification	711
		c. Race and Globalization	712
D.	Cas	se Law	716
	1.	Academic Racism and Marginalization: NCAA Initial	
		Eligibility Rules	716
		Problem 9-1	716
		Pryor v. NCAA	716
	2.	Employment Discrimination: Title VII and Section 1981	726
		Jackson v. University of New Haven	727
		Problem 9-2	737
	3.	Stereotypes: Racially Stereotyped Mascots—Racism	
		or Pride?	738
		Blackhorse v. Pro-Football, Inc.	738
		Problem 9-3	748
	4.	Racially Hostile Environments and Conduct	749
		Problem 9-4	749
		Priester v. Lowndes County	751
Chap	ter	10 Gender Equity Issues in Athletics	<b>761</b>
A.	Int	roduction	761
В.	His	storical Perspective	761
C.	Tit	le IX of the Education Amendments of 1972	764
	1.	Equal Athletic Participation Opportunities	766
		Cohen v. Brown University	766
		Boucher v. Syracuse University	774
		Pederson v. Louisiana State University	778
		Biediger v. Quinnipiac University	783
	2.	The Contact Sport Exemption	791
		Force v. Pierce City R-VI Sch. Dist.	791
		Williams v. Sch. Dist. of Bethlehem, PA	796
		Mercer v. Duke University	802
		Problem 10-1	806
	3.	Equal Benefits and Treatment	807
		McCormick v. Sch. Dist. of Mamaroneck	807
		Daniels v. Sch. Bd. of Brevard County, Florida (Daniels I)	812
		Daniels v. Sch. Bd. of Brevard County, Florida (Daniels II)	814
	,	Problem 10-2	819
	4.	Reverse Discrimination Claims	820
		Neal v Board of Trustees of the California State Universities	820

	•
Contents	XX1

	Problem 10-3	827
	5. Pregnancy and Title IX	827
D.	Sport, Sexual Harassment, and Sexual Violence	831
	1. Youth, High School, and Intercollegiate Sport	831
	a. Title IX	832
	Problem 10-4	838
	b. Safe Sport	839
	Protecting Young Victims from Sexual Abuse and Safe Sport	
	Authorization Act of 2017	840
	Problem 10-5	841
	2. Professional Sport	841
E.	Sex-Related Discrimination: Sexual Orientation, Transgender	er,
	and Intersex Participation	844
	1. Sexual Orientation and the Issue of Gender	
	Discrimination	844
	2. Transgender Athletes' Participation Rights	847
	3. Intersex Athletes/Disorders of Sex Differentiation	850
	Court of Arbitration for Sport Executive	
	Summary: Semenya v. IAAF	851
F.	Gender-Based Employment Discrimination in Athletics	858
	1. Wage Discrimination	859
	Deli v. University of Minnesota	859
	Problem 10-6	863
	2. Wage Discrimination in Women's Professional Sport	864
	3. Retaliatory Discharge or Punitive Action	868
	Lowrey v. Texas A&M University System	868
Char	oter 11 Health, Safety, and Risk Management	
Carach	Issues in Sports	877
A.	Introduction	877
В.	Tort and Criminal Liability for Athletics-Related Injuries	877
В.	,	877
	1. Injury to Spectators  Edward C. v. City of Albagagarage et al.	877
	Edward C. v. City of Albuquerque et al. Problem 11-1	886
	2. Injury to Athletes	887
	, , , , , , , , , , , , , , , , , , ,	887
	,	887
	i. Tort Liability  Hackbart v. Cincinnati Bengals, Inc. (Hackbart I)	887
	Hackbart v. Cincinnati Bengals, Inc. (Hackbart II)	891
	Shin v. Ahn	893
	Problem 11-2	900
	Problem 11-3	901
	ii. Criminal Liability	901
	People v. Schacker	901
	Regina v McSorley	903

xxii Contents

	People v. Hall	905
	Problem 11-4	909
C.	Liability of Educational Institutions	910
	1. High School	910
	a. Legal Duty of Care	910
	Kahn v. East Side Union High Sch. Dist.	910
	b. Sovereign and Qualified Immunities	919
	Prince v. Louisville Mun. Sch. Dist.	919
	Problem 11-5	925
	c. Validity of Liability Waivers	925
	Wagenblast v. Odessa Sch. Dist. No. 105-157-166J	926
	Sharon v. City of Newton	928
	Problem 11-6	931
	2. College or University	932
	Kleinknecht v. Gettysburg College	932
	Orr v. Brigham Young University	937
	Searles v. Trustees of St. Joseph's College	940
	Problem 11-7	945
D.	Sports Medicine Malpractice Liability	946
	Krueger v. S.F. Forty Niners	946
	Problem 11-8	952
	Comment: Liability for Concussion-Related Injuries	953
E.	Injury Compensation for Professional Athletes	960
	Pro-Football, Inc. v. Uhlenhake	962
	Lyons v. Workers' Comp. Appeal Bd.	
	(Pittsburgh Steelers Sports, Inc.)	966
F.	Participation Rights of Athletes with Physical or Mental	
	Impairments	971
	1. Enhanced Risk of Harm to Oneself	971
	Knapp v. Northwestern University	972
	2. Enhanced Risk of Harm to Others	979
	Montalvo v. Radcliffe	979
	Problem 11-9	985
	3. Modification of Rules of the Game	985
	PGA Tour, Inc. v. Martin	985
	Problem 11-10	996
	4. Modification of Eligibility Requirements	996
	Cruz v. Pennsylvania Interscholastic Athletic Assn., Inc.	997
Chap	oter 12 Intellectual Property Issues in Sports	1003
A.	Introduction	1003
В.	Trademarks, Logos, and Other Identifying Insignia	1005
	1. Trademark Infringement	1005
	a. As Name of Sports Team or Event	1006
	Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club	
	Limited Partnership	1006

Contents	xxiii

		b. Affixation of Sports-Related Mark to Merchandise	1010
		National Football League Properties, Inc. v.	1010
		New Jersey Giants, Inc.	1012
	2.	Trademark Dilution	1017
	3.	Ted Stevens Olympic and Amateur Sports Act:	
		Olympic Marks	1018
		Problem 12-1	1020
	4.	Ambush Marketing	1020
		Problem 12-2	1022
C.	Rea	al-Time Game Accounts and Broadcasting Rights	1023
	1.	Historical Background	1023
	2.	Nature and Scope of Copyright Law Protection	1024
		NBA v. Motorola, Inc.	1025
	3.	Infringement of a Sports Broadcast	1029
		NFL v. TVRadioNow Corp.	1030
	4.	Misappropriation of Real-Time Game Accounts and	
		Scores	1033
		Morris Communications Corp. v. PGA Tour, Inc.	1035
		Problem 12-3	1039
D.		nlete's Lanham Act and State Law Privacy, Reputation, and	
	Pu	blicity Rights	1040
	1.	Lanham Act	1040
	2.	State Laws	1041
		a. Defamation	1042
		b. Right of Privacy	1043
		c. Right of Publicity	1044
		i. Elements of a Right of Publicity Claim	1045
		Newcombe v. Adolf Coors Co.	1045
		ii. First Amendment Limitations	1050
		In Re NCAA Student-Athlete Name & Likeness Litigation	1053
		Problem 12-4	1060
Table	of Co	Ses .	1061
Index	.,a		1075