PRACTICUM ON SPORTS LAW SYLLABUS

Fall 2019

Professor Joe Goldhammer

I. Course Description & Overview

This course will expose students to contemporary sports law practice from a labor and employment perspective. Students will learn relevant doctrine regarding such matters as collective bargaining, individual contract rights, administrative law, interest and grievance arbitration and the impact of the antitrust laws on labor and employment relations at the professional and collegiate levels. They also will have some exposure to how intellectual property law affects players and employers. They will have the opportunity to develop practical skills by drafting an unfair labor practice charge to the National Labor Relations Board, acting as an advocate in a mock baseball arbitration, and engaging in simulated National Football League salary negotiations by drafting bargaining proposals and arguing for those proposals in a bargaining session.

. Since sports law is undergoing rapid development, the class will keep abreast of those current events through intensive study of recent and relevant cases.

I have extensive experience in union, individual worker and management-side representation. The course is designed to offer learning opportunities through engagement in experiential activities, simulating the actual practice of law. While learning labor and employment law doctrine and the relationship, students will gain some experience and competence in the following critical lawyering skills:

* Drafting Unfair Labor Practice Charges to the NLRB
* Formulating briefs
* Advocacy in arbitration in interest disputes
* Negotiations including the drafting of proposals and the conduct of face to face bargaining
* Oral Presentation and Argument

II. Student Meetings & Email

I am always available by email, and you should not hesitate to contact me to schedule a meeting in person if that would help. My email address is ([jgoldhammer@law.du.edu](mailto:jgoldhammer@law.du.edu).). You may also send me a text message at 303-263-5557.

III. Class Participation

* Attendance and Engagement: Your contributions to simulated exercises and class discussions, and your absorption and reflection during the interactive components of the course add to your overall learning as well as to others in the class. Thus, attendance and engagement are mandatory. Any missed class without good reason communicated to me will result in a lower participation grade. The ABA standards generally require your attendance at 80% of the class meetings, I require you to attend unless you have a good reason to be absent and you communicate that reason to me.
* Preparation: Your level of preparedness directly influences the course dynamics; therefore, readings and other assignments should be completed prior to the class meeting.
* Opportunity and Openness: The classroom should be a safe place to express ideas, opinions, and beliefs. Indeed, academic criticisms and discussions are critical elements of the course; however, behavior that obstructs traditional norms of academic freedom and mutual respect is not acceptable. Thoughtful, consistent class participation is encouraged and should be balanced by consideration and respect for others. In other words, please provide opportunities for others to join the discussion.
* Devices and Disruptions: Please silence cell phones and similar gadgets during class meetings. If you are on-call or you receive an emergency signal, please quietly step outside of the classroom to address the matter. Laptops are for academic use only. Please limit your use to word processing programs and course-related websites.
* Academic Integrity: The Sturm College of Law fully endorses the University of Denver’s Honor Code and the procedures put forth by the Office of Citizenship and Community Standards. Academic dishonesty—including plagiarism, cheating, and falsification of data and research—is in violation of the code and will result in a failing grade for the assignment or for the course. Moreover, the Law School’s Honor Code applies to all work done for this course. All students should be familiar with the full provisions of that Code available at the following: <http://www.law.du.edu/stuaffs/policies/appendix-a.html>

IV. Grading and Course Requirements

Various drafting assignments throughout the course – 10%

Baseball Arbitration with Written Submission to Arbitrator and oral presentation—20%

Written Negotiating Proposals and conduct of negotiations—20%

Take home final examination—40%

Overall Class Participation not including specifically graded simulations— 10%

For all written work, I consider grammatical and other errors-- in addition to “content” – because even the most brilliant content does not come across to the decision maker if obscured by sloppy writing.

V. Readings and Texts

* + 1. The primary source of reading assignments for the course is Weiler, Roberts, Abrams & Ross, *Sports and the Law, Text, Cases and Problems* (6th ed. 2019). All page references in the list of reading assignments below refer to the text. Most separately listed materials are easily accessible materials that are not in the book and which, for copyright reasons, we ask you to obtain on your own. However, I will post those readings that are more difficult to find to the “course materials” section of the course website site, which is hosted by Westlaw TWEN. Please sign up for TWEN as soon as possible.

Also, in lieu of supplemental printed materials, the authors of the textbook have established a website containing useful materials located at http://pennstatelaw.psu.edu/academics/research-centers/institute-sports-law-policy-and-research/resources-teaching-sports-law.

* + 1. Because this is a course that contains many readings and assignments based on current developments in the law, all of the reading assignments are tentative. From time to time, we may adjust the reading assignments, including posting additional materials to those on the syllabus. You are responsible for subscribing to the course website, checking it frequently for updates, and preparing any new materials. Also, I will recruit guest lecturers on the various topics covered in the course, and scheduling may depend on their availability. That may also produce changes in timing and the order of presentation in the course (not unlike the out of order scheduling of witnesses in an actual adversarial hearing.)
    2. Additionally, because I am a practicing lawyer, my schedule at times may require the rescheduling of some classes. We will discuss alternatives when and if that arises.
    3. Given the wide availability of material from online sources, you should bring your laptop computer to class so that we can review online materials together.

1. VI. Accommodations
2. 1. If you have a disability/medical issue protected under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act and need to request accommodations, please visit the Disability Services Program website at [www.du.edu/disability/dsp](http://www.du.edu/disability/dsp). You may also call 303.871.2372, or visit in person on the 4th floor of Ruffato Hall, 1999 E. Evans Ave.<http://www.du.edu/studentlife/disability-services/faculty-staff/index.html>

**WEEK 1 (August 20 & 22)**

I. The National Labor Relations Act and the Selection of a Bargaining Representative

1. **The Meaning of Exclusive Collective Representation and the Selection of a Bargaining Representative.**

Textbook pp. 71-79 and 87-96. We will review in class various provisions of the NLRA which will apply throughout the course including §§7 through 9.

1. **National Labor Policy and the General Concepts Embodied in the National Labor Relations Act.**

Read the decision of the National Labor Relations Board dated August 17, 2015 in *Northwestern University and College Athletes Players Association,* Case 13-RC-121359

**WEEK 2 (August 27 & 29)**

1. **Guest Speaker**

I will be out of town on August 27, and baseball player agent, Alex Hinz will make a presentation to the class.

**B. Unfair Labor Practices – (1) The Duty Not to Restrain, Coerce or Interfere with Union Activity; (2) The Obligation Not to Discriminate on Basis of Union Activity; and (3) The Duty to Bargain in Good Faith**

Unfair Labor Practices: Violations of NLRA §§8(a)(1), (3) and (5). Regarding §8(a)(1) read online the *Variety* article dated August 13, 2019, regarding Barstool Sports that I will post on TWEN. The reading regarding discrimination on the basis of Union Activity is at text pp. 79 - 84. Reading on Duty to Bargain in Good Faith is at text pp. 96 - 115

We will also discuss potential for protected concerted activities at private universities such as DU and Northwestern University given the 2015 *Northwestern University* case.

Review NLRB Form for filing ULPs on NLRB Website. Assignment for ULPs based upon activities of Barstool Sports is due September 10, 2019. Draft ULP Charge Against Barstool Sports and cover letter to NLRB based upon fact scenario in *Variety* article.

**WEEK 3 (September 3 and 5)**

A. **Strikes and Lockouts**

Text pp. 106 -115. The *Tom Brady* 8th Circuit case, text pp. 400-413.

B. **Contract Interpretation** **Arbitration**

Contract Interpretation Arbitration including the collusion cases. Text: pp. 121 –127. On collusion cases read supplement from 4th edition of text pp. 264-272 posted on TWEN. After the collusion cases, look to see if the MLB and NFL CBAs still contain anti collusion provisions and if so read them and be ready to point them out in class. Then read the Arbitrator Seitz’s Award in the Messersmith and McNally Grievances, text pp. 213-220

**WEEK 4 (September 10 and 12)**

1. **Disciplinary Arbitration**

Text pp. 127-155 including the *Latrell Sprewell* and *Alex Rodriguez* and  *Williams v. NFL* arbitrations.

1. **Judicial Review of Arbitration Disputes (Both Disciplinary and Contract Interpretation**

Text, pp. 165-184 and revisit the *Messersmith and McNally* case on appeal text pp. 220 – 228 *Kansas City Royals v. Major League Baseball Players Association*

**WEEK 5 (September 17-19)**

1. **The Duty of Fair Representation and Union Security.** Text: 115-120 and *Marquez v. Screen Actors Guild* 525 U.S. 33 (1998) See Union Security Clauses in NFL and NBA CBAs. Also, read *Terry Orr v. NFLPA* (Circuit Court of Virginia, 1993) on TWEN.
2. **Contractual Constraints on Labor Mobility in Professional Sports**

Text pp. 185-213 and 228 to 247, including *Lajoie, Bergy, Shaw, Chase,* and *Flood.* The *Flood* case should be read for overall understanding and not detail*.* Understand the relationship between it and its predecessor, *Federal Baseball Club of Baltimore v. National League* and be ready for a discussion on the meaning and application of the Commerce Clause.

**WEEK 6 (September 24 & 26)**

1. **Salary Arbitration.** Text: pp. 155-165. *New Jersey Devils and Scott Gomez;* MLB CBA Art. VI (F) and NHL CBA Art. 12. Review rules for Tulane University Baseball Arbitration Competition from website. Review methods for research on players becoming arbitration eligible. Go over assignment for baseball arbitration, the schedule for selection of players and the tactics and strategies for representing players and clubs. Divide into groups for presentation of MLB salary Arbitration in accordance with the MLB CBA and select players for each arbitration.
2. **Antitrust Laws and Sports**

Text: pp. 249 to 273 including *NCAA v. Board of Regents and* 274 to 294 including *American Needle*

**WEEK 7 (October 1 and 3)**

1. **Antitrust Regulation and Business Strategy in Sports Labor Markets** *Smith, Mackey (Part I)*; *Fraser* (331-367);

B. **Labor exemption from Antitrust:** Text pp. (367-400) *Brown* and *Clarett*;

**WEEK 8 (October 8 - 10)**

1. **Agent Representation of Athletes**. Text: pp. 649 to 677.

B. **Agent regulation by Unions.** Text: 677 –718. Also review agency regulations issued by the Players Associations for MLB, NFL, and NBA.

**WEEK 9 (October 15-17)**

A. Students will make oral presentations on Salary Arbitrations for three major league baseball players including both written submissions and oral arguments to the arbitrator. Half of the students will represent management and half the player. The mock arbitrations will be modeled after the competition at Tulane University. We will start with the first player on the 15th.

1. Continuation of Baseball Arbitration oral presentations. The second player will be on October 17, 2019

**WEEK 10 (October 22-24)**

1. Continuation of Baseball Arbitration oral presentations. The third player will be on October 22, 2019
2. On October 24, 2019, we will have a guest speaker, Mike Sullivan, Director of Football Administration from the Denver Broncos, who negotiates all individual player salary agreements. He will discuss his experiences both as a player agent and team representative.

**WEEK 11 (October 29, 31)**

1. No Class- Snow Day
2. On October 31, Natalie Willis and John Gronka will appear to prepare you for the football negotiating exercise. They will assign players to each negotiating group and will instruct you on how to prepare for negotiations regarding the elements of compensation under the NFL/NFLPA CBA and research techniques.

**WEEK 12 (November 5, 7)**

1. Sports Broadcasting, Merchandising and Intellectual Property

Leigh Augustine of Augustine Sports will be the guest speaker on the above topic on November 5 & 7. Please read Chapter 8 of the text so that you are familiar with the principles contained therein. It is a lot of material, but Leigh has indicated that you can skim the material for principles.

1. Continuation of Mr. Augustine’s presentation.

**WEEK 13 (November 12 & 14**)

1. Exercise in Negotiations involving written proposals and counter proposals modeled on the Football Negotiating competition at Tulane University. Those who represented management in the mock baseball arbitration will represent labor and vice versa
2. Continuation of Negotiations Exercises

**WEEK 14 (Nov. 19-21)**

1. Continuation of Negotiations Exercises.
2. **College Athletics**. Pages 719-734, *Tarkanian,* and then skip to recent NCAA case law from pages 880 to 911 in the text. Also, please read the “attached note” from the Penn State Website at <https://pennstatelaw.psu.edu/academics/research-centers/institute-sports-law-policy-and-research/resources-teaching-sports-law> under the heading “**Updates and post-text supplemental material.”**

**Final Examination**

Written Assignment due in lieu of final examination on last day of final examination period, December 18, 2019. I have arranged for final examinations to be submitted anonymously through the registrar. Additionally, I would hold a review session on Tuesday November 26, 2019, at the regular class time (4:15 to 5:30 p.m.) if the members of the class express substantial demand for such a session. I would then distribute the final exam after that session. If we hold such a session, I will have it video recorded, to provide access to those who cannot attend.