

**SPORTS LAW – FALL 2023**

**Brooklyn Law School**

Tuesdays and Thursdays, 8:50-10:30 a.m.

3 credits | Room 501

**PROFESSOR JODI S. BALSAM**

OFFICE LOCATION	250 Joralemon, Room 829
OFFICE PHONE	718-780-0379
EMAIL	<a href="mailto:jodi.balsam@brooklaw.edu">jodi.balsam@brooklaw.edu</a>
OFFICE HOURS	Mondays, 4:00-6:00 p.m. or just drop by—I enjoy visitors. You are also welcome to make an appointment.
FACULTY ASSISTANT	Alisa Adolph, Clinic Office, 718-780-0336, <a href="mailto:alisa.adolph@brooklaw.edu">alisa.adolph@brooklaw.edu</a>

**Course Description:** This course explores how various bodies of substantive law are applied in the context of the sports industry—primarily U.S. professional sports leagues, with some attention to individual and college sports. The course examines the legal relationships among athletes, teams, leagues, governing bodies, sports facilities, licensees, broadcasters, and fans, as threaded together through contract, antitrust, labor, intellectual property, constitutional, and tort law. We will also study the financial and business structures that define the sports industry.

**Learning Outcomes:** At the conclusion of the course, students should be able to:

- ✓ Understand the unique relationships among participants in the sports industry.
- ✓ Understand and apply legal constructs and doctrines implicated in a given sports setting.
- ✓ Describe and analyze the legal issues that affect the operation of professional sports teams and leagues, and the rights of athletes.
- ✓ Explore legal issues involving amateurism and the nature of the “student-athlete.”
- ✓ Understand and work with documents common to sports law settings, including league constitutions, collective bargaining agreements, player contracts, governing body by-laws, league and tour rulebooks, player-agent representation agreements.
- ✓ Understand and explain the professional role and responsibilities of attorneys in serving sports industry clients, including the ability to engage in multi-disciplinary collaboration.

**Required Texts and Current Awareness:**

- Weiler, Roberts, Abrams, Ross, Harper, Balsam, & Berry, *Sports and the Law* (7<sup>th</sup> ed. West 2023) (“Casebook”) (**discount available – see Canvas for more information**).
- Online Documents: <https://sports-entertainment.brooklaw.edu/key-industry-documents/> or <https://pennstatelaw.psu.edu/online-documentary-supplement>
- Additional readings to be posted on Canvas.
- General current awareness of news and events in sports, by regularly reading at least one daily local newspaper and accessing sports web resources (e.g., Law360/Sports & Betting, Sports Agent Blog, LawInSport, [Brooklyn Sports & Entertainment Law Blog](#)), or

follow Prof. Balsam on Twitter @jodibalsam (optional). A discounted subscription to *Sports Business Daily* is available at [sbjcollege.com/subscribe](http://sbjcollege.com/subscribe).

## **THE PLAYBOOK**

### **Experiential Course Method.**

*“Sports are a microcosm of society.”*—Billie Jean King

An aspiring athlete must do more than watch film clips, memorize the playbook, and talk about what makes an elite competitor. The athlete must get out on the field and play the sport. Accordingly, in addition to lecture and Socratic dialogue, class time will be spent on exercises and activities that demonstrate the practical applications of the knowledge you have acquired from the readings and class discussions. You will function in role as sports lawyers to solve problems and develop your analytical skills.

### **Attendance**

*“If you don’t have time to do it right, when will you have time to do it over?”*—John Wooden  
Show up to class, on time—it is essential to mastering the materials and establishing your reputation as a professional. In accordance with the BLS attendance policy, missing more than 25% of classes (7 classes) will result in a lower grade or withdrawal from the course.

### **Participation**

*“In baseball and in business, there are three types of people. Those who make it happen, those who watch it happen, and those who wonder what happened.”*—Tommy Lasorda  
Everybody plays in this class. There are no bench warmers. So be prepared to be called on at any time to contribute to classroom learning. Let me know in advance if you have a good reason not to be called on during a particular class.

### **Readings/Assignments**

*“It is better to look ahead and prepare than to look back and regret.”*—Jackie Joyner-Kersey  
The course method requires you to complete all reading and other assignments before the week for which it is assigned, including for Class 1. On average, expect to read 70-80 pages each week, but keep in mind that many of those pages comprise an easy-to-digest chronicle of the history of the sports industry. The Schedule of Classes and Assignments identifies the most significant cases in the readings, but the narrative text and notes and questions are equally important. Although we may not explicitly discuss all assigned readings in class, you need to be familiar with the terms and concepts the weekly readings explore to participate fully in class.

### **Out-of-Class Communications.**

*“First master the fundamentals.”*—Larry Bird

Check email and Canvas regularly for communications about the course, including updated schedules and assignments. Coach wouldn’t excuse you if you missed the bus because you didn’t read the email. Email is the fastest and most efficient way for you to ask questions and set up appointments.

## Teamwork

*“Individual commitment to a group effort—that’s what makes a team work, a company work, a society work, a civilization work.”—Vince Lombardi*

At the start of the semester, students will form themselves into teams of 6 students who will sit and work together throughout the semester. Teamwork will not be graded, although the contributions of an active and well-functioning team may influence assessment of individual students’ class participation. As a team, you will:

- Collaborate on in-class activities and exercises.
- Serve as “expert” discussants for 1-2 weeks of the semester. Everyone is still expected to prepare for every class, and is more than welcome to chime in. The week’s expert team is akin to the members of a game broadcast’s studio panel: offer analysis, debate the fine points, answer questions from the fans.
- Post on the Canvas Discussions page a “Sports Law in the News” item by the Monday of the week in which your team is the expert.

## Course Grading.

*“It is not what the coach knows; it is what the players have learned.”—Anonymous*

Your grade is based on the following:

- **70% Final Exam:**
  - Closed book on-campus final exam, consisting of essay and short answer questions based on hypothetical fact patterns.
- **30% Quizzes (3 quizzes, each worth 10% of your final grade):**
  - Each quiz has 10 multiple choice questions, administered online on days specified in syllabus, with a 30-minute time limit (so studying is essential!)
- Students may have their grade raised or lowered by one step based on participation, including attending class on time, being prepared, contributing to teamwork, and engaging with in-class and Canvas discussions.

**SCHEDULE OF CLASSES AND ASSIGNMENTS***(Note: subject to change)*

<b>Date</b>	<b>Topics</b>	<b>Readings</b>
<b>Week 1</b> Tues, Aug 29 Thurs, Aug 31  <b>Sports Integrity</b>	Introduction to the course <ul style="list-style-type: none"> <li>• What is (a) Sport?</li> <li>• What is the public interest in sports?</li> <li>• What is Sports Law?</li> </ul> Sports Integrity: fixing, cheating, PEDs  <b>Due by Monday, Sept 4:</b> ✓ <i>Student Questionnaire</i> ✓ Brush w/Sports Greatness + Sports Show & Tell ✓ Team Formation/Roster	<b>Casebook 1-63, 1064-76 (also available on Canvas)</b> <ul style="list-style-type: none"> <li>▪ PGA Tour v. Martin</li> <li>▪ Molinas v. NBA</li> <li>▪ Murphy v. NCAA</li> <li>▪ Deflategate</li> <li>▪ Houston Astros Sign-Stealing</li> <li>▪ Mitchell Report on MLB steroids use</li> </ul> <b>Canvas Additional Readings</b> <ul style="list-style-type: none"> <li>▪ Syllabus/Playbook</li> <li>▪ Hypo: Sports Integrity—America’s Cup Yacht Race</li> <li>▪ Instructions for assignments due Sept 4 (see at left)</li> </ul>
<b>Week 2</b> Tues, Sept 5 Thurs, Sept 7  <b>League Governance, Commissioner Powers</b>   <b>Labor</b>	Structure and Governance of Professional Sports Leagues Role & Powers of the Commissioner “Best Interests” of the Sport   Introduction to Labor Law	<b>Casebook 65-70, 78 (the “6 questions”), 81-126</b> <ul style="list-style-type: none"> <li>▪ Milwaukee American Ass’n v. Landis</li> <li>▪ Finley v. Kuhn</li> <li>▪ Turner v. Kuhn; Chicago Cubs v. Vincent</li> <li>▪ New Orleans Saints Pay-for-Performance (“Bountygate”)</li> <li>▪ NBA v. Donald Sterling</li> </ul> <b>Canvas Additional Readings</b> <ul style="list-style-type: none"> <li>▪ White Report on Investigation Regarding Daniel Snyder and the Washington Commanders (OPTIONAL)</li> </ul> <b>Online Documents: <i>League Constitutions</i></b> <ul style="list-style-type: none"> <li>▪ MLB Constitution Art. II—The Commissioner</li> <li>▪ NFL Constitution &amp; Bylaws Art. VIII—Commissioner</li> <li>▪ NBA Constitution &amp; Bylaws Arts. 24, 35A—Authority and Duties of the Commissioner, Misconduct</li> </ul>

Date	Topics	Readings
<p><b>Week 3</b> Tues, Sept 12 Thurs, Sept 14</p> <p><b>Labor</b></p>	<p>Application of Labor Law to sports Collective bargaining rules:     exclusivity, good faith, fair     representation Economic conflict—strikes and     lockouts CBA administration; intro to labor     arbitration and § 301     preemption</p>	<p><b>Casebook 131-37, 143-76, 202-09</b></p> <ul style="list-style-type: none"> <li>▪ Seattle Seahawks v. NFLPA &amp; McCullum</li> <li>▪ Morio v. NASL</li> <li>▪ Silverman v. MLB Player Relations Committee</li> <li>▪ NFL Management Council and NFLPA</li> <li>▪ Peterson v. Kennedy &amp; NFLPA</li> <li>▪ Williams v. NFL</li> </ul> <p><b>Canvas</b></p> <ul style="list-style-type: none"> <li>▪ NFL-NFLPA CBA: 2020-2030, Articles 43, 44, 46</li> </ul> <p><b>Online Documents:</b> <i>Collective Bargaining Agreements</i></p> <ul style="list-style-type: none"> <li>▪ NHL-NHLPA CBA: 2012-2022, Articles 18, 18-A</li> </ul> <p><i>Relevant Statutes</i></p> <ul style="list-style-type: none"> <li>▪ Norris-LaGuardia Act 1932</li> <li>▪ National Labor Relations Act</li> </ul>
<p><b>Week 4</b> Tues, Sept 19 Thurs, Sept 21</p> <p><b>Labor</b></p>	<p>Arbitration of player disciplinary     disputes Judicial review of arbitration     awards Baseball’s player reserve system     and its demise Free agency, salary caps, and taxes Baseball’s Antitrust Exemption</p>	<p><b>Casebook 181-96, 219-37, 251-70, 275-97</b></p> <ul style="list-style-type: none"> <li>▪ In re Latrell Sprewell</li> <li>▪ MLBPA v. Garvey</li> <li>▪ NFLPA v. NFL (Peterson)</li> <li>▪ Boston Celtics v. Brian Shaw</li> <li>▪ American League Baseball Club of Chicago v. Chase</li> <li>▪ Nat’l &amp; Amer. League Prof. Baseball Clubs v. MLBPA/Messersmith</li> <li>▪ Flood v. Kuhn</li> </ul>
<p><b>Week 5</b> <i>(no class Tues, Sept 26—Mon classes held)</i> Thurs, Sept 28</p> <p><b>Agents</b></p>	<p>Role of the Player Agent Agent standard of performance     and fiduciary duty Representation of unionized     athletes Regulation of agents</p>	<p><b>Casebook 685-711, 716-23, 727-42, 748-53</b></p> <ul style="list-style-type: none"> <li>▪ Zinn v. Parrish</li> <li>▪ Williams v. CWI</li> <li>▪ Brown v. Woolf</li> <li>▪ Detroit Lions &amp; Sims v. Argovitz</li> <li>▪ Collins v. NBPA &amp; Grantham</li> <li>▪ Walters &amp; Bloom v. Fullwood</li> </ul> <p><b>Online Documents: <i>Agent-Related Regulations/Statutes</i></b></p> <ul style="list-style-type: none"> <li>▪ Uniform Athlete Agents Act</li> </ul>

Date	Topics	Readings
<p><b>Week 6</b> Tues, Oct 3 Thurs, Oct 5</p> <p><b>Intro to Antitrust</b></p>	<p>Intro to Antitrust (AT) as applied to sports AT Conspiracy and the Rule of Reason Special nature of sports leagues: single entity defense AT Monopoly and sports league market power</p> <p><b>*Mon, Oct 2: Take QUIZ 1 on Canvas (10% of final grade)</b></p>	<p><b>Casebook 299-338 (thru note 4), 342-66, 561-63</b></p> <ul style="list-style-type: none"> <li>▪ NCAA v. Board of Regents</li> <li>▪ American Needle v. NFL</li> <li>▪ Fraser v. Major League Soccer</li> <li>▪ AFL v. NFL</li> <li>▪ Phila. World Hockey Club v. Phila. Hockey Club</li> <li>▪ USFL v. NFL Smith v. Pro Football, Inc.</li> </ul> <p><b>Online Documents: <i>Relevant Statutes</i></b></p> <ul style="list-style-type: none"> <li>▪ Sherman Act (1890)</li> <li>▪ Clayton Act (1914)</li> </ul>
<p><b>Week 7</b> Tues, Oct 10 Thurs, Oct 12</p> <p><b>Antitrust &amp; Labor</b></p>	<p>AT and sports labor markets Player market restraints: rookie draft, veteran free agency Labor exemptions from AT</p>	<p><b>Casebook 375-415, 419-54</b></p> <ul style="list-style-type: none"> <li>▪ Mackey v. NFL</li> <li>▪ Fraser v. MLS</li> <li>▪ Brown v. Pro Football, Inc.</li> <li>▪ Claret v. NFL</li> <li>▪ Brady v. NFL</li> </ul>
<p><b>Week 8</b> Tues, Oct 17 Thurs, Oct 19</p> <p><b>Antitrust &amp; Business Strategy</b></p>	<p>AT and internal league governance: ownership rules, franchise relocation League TV contracts and group licensing</p> <p><b>Guest Speaker: TBD</b></p>	<p><b>Casebook 459-62, 475-91, 497-519, 544-46, 552-61</b></p> <ul style="list-style-type: none"> <li>▪ LA Memorial Coliseum v. NFL (Raiders I and II)</li> <li>▪ NBA v. San Diego Clippers</li> <li>▪ United States v. NFL</li> <li>▪ Sports Broadcasting Act</li> <li>▪ In Re NFL Sunday Ticket Antitrust Litigation</li> <li>▪ MLB Properties, Inc. v. Salvino</li> </ul> <p><b>Online Documents: <i>League Constitutions</i></b></p> <ul style="list-style-type: none"> <li>▪ NFL Constitution &amp; Bylaws Art. IV—Territorial Rights</li> </ul>
<p><b>Week 9</b> Tues, Oct 24 Thurs, Oct 26</p> <p><b>College Sports; Challenges to Amateurism</b></p>	<p>Intro to College Sports and NCAA amateurism principle Labor challenges to the Student-Athlete Model Antitrust challenges to the Student-Athlete Model Student-Athlete NIL Rights and the Future of the NCAA</p> <p><b>*Fri, Oct 27: Required attendance at BESLS Sports Law Symposium</b></p>	<p><b>Casebook 759-63, 803-06, 815, 828-32, 838-47, 853-81</b></p> <ul style="list-style-type: none"> <li>▪ NCAA v. Board of Regents of Univ. of Oklahoma (refresh)</li> <li>▪ Dawson v. NCAA</li> <li>▪ Johnson v. NCAA (and see <b>Canvas</b> if Third Circuit rules)</li> <li>▪ O’Bannon v. NCAA</li> <li>▪ NCAA v. Alston</li> <li>▪ House v. NCAA</li> </ul>

Date	Topics	Readings
<p><b>Week 10</b> Tues, Oct 31 Thurs, Nov 2</p> <p><b>IP—Intro, Game Accounts, Copyright,</b></p>	<p>Intellectual Property Overview Rights in Game Accounts Copyright and Game Broadcasts Fair Use/First Amendment Public Performance</p> <p><b>*Mon, Oct 30: Take QUIZ 2 on Canvas (10% of final grade)</b></p>	<p><b>Casebook 573-611</b></p> <ul style="list-style-type: none"> <li>▪ Pittsburgh Athletic Co. v. KQV Broadcasting</li> <li>▪ NBA v. STATS &amp; Motorola</li> <li>▪ Morris Communications v. PGA Tour</li> <li>▪ New Boston TV v. ESPN</li> <li>▪ Zacchini v. Scripps-Howard Broadcasting</li> </ul> <p><b>Online Documents: <i>Relevant Statutes</i></b></p> <ul style="list-style-type: none"> <li>▪ Copyright Act</li> </ul>
<p><b>Week 11</b> Tues, Nov 7 Thurs, Nov 9</p> <p><b>IP—Rights of Publicity</b></p>	<p>Player Rights of Publicity First Amendment Issues Game Telecasts and Work for Hire Fantasy Sports and Video Games</p>	<p><b>Casebook 612-39</b></p> <ul style="list-style-type: none"> <li>▪ ETW Corp. v. Jireh Publishing (Tiger Woods)</li> <li>▪ Baltimore Orioles v. MLBPA</li> <li>▪ C.B.C. Distribution and Marketing v. MLB Advanced Media</li> <li>▪ In re NCAA Student-Athlete Name &amp; Likeness Litig. (Keller)</li> </ul>
<p><b>Week 12</b> Fri, Nov 17 (Make-up class; no class on Nov 14, 16) Tues, Nov 21</p> <p><b>IP—Trademark</b></p>	<p>Trademark Likelihood of Confusion Dilution Ambush Marketing Fair Use and First Amendment Considerations</p> <p><b>Guest Speaker: TBD</b></p>	<p><b>Casebook 639-83</b></p> <ul style="list-style-type: none"> <li>▪ Indianapolis Colts v. CFL Baltimore Colts</li> <li>▪ Boston Pro Hockey Ass’n v. Dallas Cap and Emblem</li> <li>▪ WCVB-TV v. Boston Athletic Ass’n</li> <li>▪ Matal v. Tam</li> </ul> <p><b>Online Documents: <i>Relevant Statutes</i></b></p> <ul style="list-style-type: none"> <li>▪ Lanham Act (Trademark)</li> </ul>
<p><b>Week 13</b> Tues, Nov 28 Thurs, Nov 30 (possibly on zoom)</p> <p><b>Sports and Social Policy</b></p>	<p>Title IX/gender equity in sports Transgender Participation in Sports Rules of play and risk of injury</p> <p>Review for Final Exam</p> <p><b>*Mon, Nov 27: Take QUIZ 3 on Canvas (10% of final grade)</b></p>	<p><b>Casebook 969-1007, 1014-31, 1129-48</b></p> <ul style="list-style-type: none"> <li>▪ Cohen v. Brown University</li> <li>▪ Biediger v. Quinnipiac Univ.</li> <li>▪ Semenya v. Int’l Ass’n of Athletics Fed’ns</li> <li>▪ Hackbart v. Cincinnati Bengals (I and II)</li> <li>▪ Canadian criminal cases: Green, Maki, McSorley</li> </ul>