

SPORTS LAW
Professor Ross
FALL 2020

GENERAL INFORMATION ABOUT THE CLASS

This class is atypical; it focuses a new book I have just completed on Global Sports Law and of course takes place during a global pandemic. Typically, a syllabus informs students as to the basis of assessment. Other than a promise not to have a comprehensive, in-class final exam, assessments will be announced no later than August 27th, depending on the class enrollment. (The smaller the number, the more individual papers.)

Laptops help you take notes and permit you to look up names or sporting references about which you are unfamiliar. However, prior classes were disrupted by students giggling over items found on the web, my need to repeat a question because the student called on was not paying attention, among other challenges to effective class discussion. **Therefore, the use of electronics for purposes other than note taking or matters directly relevant to the class discussion is strictly prohibited: it constitutes a violation of the honor system and you have an ethical obligation to not only refrain from doing so but to report to me classmates who violate these rules. This ALSO applies to those who are learning remotely. You must keep your video on unless you are temporarily leaving the discussion (as you would if you needed to leave a live class to use the restroom, take an emergency call, etc.) (If you have a legitimate reason to participate without video, please contact me by email in advance.)**

LEARNING OUTCOMES

I am required to provide you in this syllabus with a specific statement of course learning objectives. These are:

- 1) A basic understanding of fundamental traits of the globalized sports industry:** the market is very dynamic, almost all significant business responses to market dynamics require cooperation and approval of others, and the competitive dynamics of sport means that virtually all innovations feature winners and losers.
- 2) Understanding the key legal principles affecting how professional sports raise revenue around the world.**
- 3) The contours by which federations and leagues seek to maintain sporting integrity and the use of law to achieve these objectives**
- 4) Understanding how basic principles of antitrust and human rights law constrain decisions of federations and leagues**
- 5) Introducing basic concepts of arbitration and legal challenges to arbitral awards**
- 6) Appreciate how high-profile sports issues illustrate ethical challenges for professionals.**

NOTE ON CLASS DISCUSSIONS

My teaching method is a highly interactive Socratic method. This is, in my judgment, the best way to facilitate understanding of complex issues. It is also a good way to develop essential lawyering skills: the ability to handle pressing questions (from a judge, a supervisor, or a client) and the ability to ask questions when you don't understand the discussion. As to the latter, particularly when discussing a sport about which you may be unfamiliar, I strongly encourage you to raise your hand to interrupt the conversation, or to ask the question in the Chat function for zoom. That is what your client would want you to do in real life.

To promote an atmosphere of serious intellectual inquiry, I will use formal names in calling on you. Many people (e.g. international students, performers/writers, trans & non-binary people, and others) might go by a name in daily life that is different from their legal name. In this classroom, I seek to refer to people by the formal names that they go by. Likewise, I seek to use prefixes and pronouns that students prefer when calling on or referring to them. You are invited to share your preferred prefix and pronoun (e.g. Mr., Miss, Ms., Mrs., Mx./ he, she, ze). I recognize that choice of prefixes and pronouns may be a way to affirm someone's gender identity, but they can also be unrelated to a person's identity.

This term is obviously unusual, so I want to spell out specific expectations for “zoom protocols.” This is a professional encounter. You can dress casually, but you should be presentable, and your video should remain on when participating in the class discussion. If you are feeling unwell but just want to listen in, please send an email in advance of class to let me know. (No verification needed; we have an Honor Code.) *This class will feature fast-moving and substance-heavy content and requires your undivided attention.*

For those attending in person, we know from existing data analyzed by experts including the Centers for Disease Control and Johns Hopkins Medical School that wearing a mask in public can help prevent the spread of COVID-19 in the community and protect those with whom you come in contact. Penn State has therefore required that everyone must wear a face mask in university buildings, including classrooms. You **MUST** wear a mask appropriately (i.e., covering both your mouth and nose) in the building if you are attending class in person. (We can provide you with masks if you need one.) Students may not attend class in person and are encouraged to contact a health care provider if you (1) are experiencing COVID-19 related symptoms, (2) have been exposed to someone experiencing COVID-related symptoms, or (3) are under quarantine. If you do not or cannot comply, you may participate in class remotely, but may not attend in person. I will **IMMEDIATELY** ask anyone attending class in person without a mask to put one on or leave, and university rules require me to end class if anyone present refuses to appropriately wear a mask and will not leave the classroom; such refusal will result in immediate reference to university officials for violation of Code of Conduct violations, and I will call the University Police. Students are required to sit at least six feet apart from each other while in the building. Students shall only sit in designated seating in the classrooms, which will be indicated by a dot sticker on the desktop, or one that is not otherwise taped off. Please do not move the chairs from their designated locations. You are not allowed to consume food and drink during class, or to lift you mask during class. If you need to do so, please go outside of the Katz building and then return to class.

Please do not underestimate the importance of adhering to these rules and the seriousness which we view violations. In addition to Code of Conduct sanctions and withdrawal of privileges to enter the Katz Building, I consider non-compliance or non-cooperation with pandemic related rules to be unprofessional conduct that reflects on your character and fitness, and violations may be reported to appropriate bar regulators.

READING ASSIGNMENTS

There are a variety of sources for assigned reading. Posted on Canvas is a confidential, copyrighted, not-to-be-distributed manuscript from ROSS, AN ADVANCED INTRODUCTION TO GLOBAL SPORTS LAW (EDWARD ELGAR FORTHCOMING 2021), and other specific documents as noted below. In addition, there will be two Course Packets. One consists of Supplemental Readings and is available exclusively from the Penn State Bookstore. The second consists of excerpts from WEILER ET AL., SPORTS AND THE LAW (6th ed.). If you prefer to purchase the casebook for ongoing professional reference, you do not need this second coursepack. Below, the 3 regularly assigned sources are referred to as “Ross”, “Weiler”, and “Supp”.

{DISCLAIMER: DAILY ASSIGNMENTS ARE TENTATIVE AND SUBJECT TO CHANGE: specifically, there may be updated material made available on Canvas}

PART I: BASIC MODELS OF SPORTS GOVERNANCE

Session 1: Integrated and Dis-integrated governance and fiduciary duty

Ross 1.1-1.3, 1.5, “Dealing with Private Losers” (Supp), *American Needle* (Weiler 276-95)

Session 2: The Law of Private Association and the power of US Commissioners

Ross 1.4, *Milwaukee v Landis*, *Finley v Kuhn*, *Atlanta NL Baseball Club v Kuhn* (Weiler 17-30), *Bradley v. Jockey Club* (SUPP)

Session 3: The power and missions of national governing boards

Ross 2 (entire chapter), *Grieg v. Insole* + notes, *Kemp v. NZ Rugby FL* (SUPP)

PART II: LEGAL ISSUES IN DEVELOPING REVENUE FOR SPORT

Session 4: Player contract issues

Ross 3.1, 3.3; *Lajoie* (Weiler 185-93); *Warren v Mendy*, *Webster*, *Matuzalem (CAS)* (SUPP)

Session 5: Basic principles of the National Labor Relations Act and their application to sports

Introductory notes (Weiler 71-74); union’s exclusive bargaining authority: *J.I. Case* + notes (Weiler 91, 93-96); determination of the appropriate bargaining unit: *NASL v NLRB* (Weiler 85-91); Duty to bargain in good faith: Notes + *Silverman* (Weiler 96-106)

Session 6: Regulation of Agents

Ross 3.4; Overview (Weiler 649-50); *Collins* (Weiler 677-83); Union regulations (Weiler 688-96)

Session 7: Legal issues in ticket resale

Ross 3.5; Schroeder et al, “A Brief Overview of Scalping Laws” (Canvas), *Stub Hub v Golden State Warriors*, *Rugby Football Union v Viagogo* (SUPP)

Session 8: Broadcast rights and copyright

Ross 3.6, 3.9; *Pittsburgh Athletic*, *NBA v Motorola* (Weiler 539-45, 547-53); Copyright overview (Weiler 558-59, 570-74)

Session 9: Trademark rights and ambush marketing

Ross 3.7, 3.9; *Boston Hockey* (Weiler 619-26), *Univ of GA v Laite*, *Arsenal FC v Reed*; *NHL v Pepsi-Cola Canada* (SUPP)

Session 10: Player publicity rights (NIL rights)

Ross 3.8; Overview (Weiler 574-80); *Baltimore Orioles v MLBPA* (Weiler 592-93); *CBC Distribution v MLBAM* + notes (Weiler 596-600, 605-08)

PART III: SPORTING INTEGRITY

Session 11: Gambling, match-fixing, and cheating

Ross 4.1-2, 4.4; US Developments (Weiler 56-65); Pete Rose case (Weiler 10-14); *England Cricket Board v Kaneria & Westfield*, *Montcourt v ATP*, *West Indian CB v Samuels*, *Oriekhov v UEFA*, *Kollerer v ATP* (SUPP)

Session 12: Doping

Ross 4.3; *Union Cycliste Int’l (UCI) v Contador* (SUPP); Alex Rodriguez Arbitration (Weiler 141-48); *Williams v NFL* (Weiler 148-55)

Session 13: Athlete safety

Ross 4.6-8; Weiler 1082-89; *Chisholm v. St Mary’s City SD Bd of Ed* (SUPP)

Session 14: Inclusivity, particular with regard to women

Ross 4.9, Weiler (913-42)

Session 15: Outreach to underserved communities and offensive personal behavior

Ross 4.10-11, Weiler (49-54); Foster, “Freedom of Religion vs Freedom of Expression” (excerpt in SUPP, full text in Canvas)

PART IV: APPLICATION OF COMPETITION LAW

Session 16: Basic Principles of the Rule of Reason in sports

Ross 5.1-2, Weiler (249-50, 256-73); European judicial review of sporting decisions: *Bosman* (SUPP)

{As I will explain in class, I intend to provide all the background to antitrust law that you will need for this class during lectures. However, those with no antitrust background can review Weiler 250-56 to relieve your anxiety.}

Sessions 17-18: Restraining competition for players

Ross 5.3-4, 5.7, *Mackey/ Fraser* (Weiler 355-67); *Eastham/ DeMarco & Mills*, “An explanation of FIFPro’s challenge to the football transfer system” (SUPP)

Session 19: Labor exemption

Ross 5.5; Introductory notes (Weiler 367-72); *Brown* (Weiler 377-90); *Brady* (Weiler 400-13); Note on ECJ decision in *Albany* (SUPP)

Session 20: Antitrust regulation of competition design

Ross 5.6, *Seals, Raiders, Clippers* (Weiler 441-57); Notes (Weiler 460-62); *Stevenage Borough/ Notes on London Welsh/ Wimbledon FC* (SUPP)

Session 21: Sports Broadcasting and Competition Law

Ross 5.9; *US v NFL, Bulls* (Weiler 469-94); *Champions League, QC Leisure* (SUPP)

Session 22: Competition law and marketing

Ross 5.10; Notes (Weiler 510-12); *Salvino, American Needle* (Weiler 518-32); *Reebok* (SUPP)

Session 23: Monopolization by a dominant entity

Ross 5.11; *AFL v NFL* (Weiler 299-302, 307-11); *Superleague, Barmi, Hughes* (SUPP)

{As I will explain in class, I intend to provide all the background to antitrust law that you will need for this class during lectures. However, those with no antitrust background can review Weiler 302-07 to relieve your anxiety.}

PART V: HUMAN RIGHTS AND ARBITRATION

Session 24: International Human Rights

Ross chapter 6; *Semenya* (SUPP)

Session 25: Arbitration under the Federal Arbitration Act and NLRA

Ross 7.1, 7.5; *Garvey, KC Royals, Peterson* (Weiler 165-66, 220-24, 166-84); *Hewitt* (SUPP)

Session 26: Challenges to arbitral overview of sports decisions

Ross 7.2-7.4, 7.6 *Pechstein* (SUPP); *Lindland* (Weiler 1004-13); *Matuzalem* (Swiss Fed Tribunal) (SUPP)

[Note: two sessions will be reserved to catch-up or for special guest lectures.]