

## SPORTS LAW – FALL 2018

### Brooklyn Law School

Tuesdays, 6:00-7:55 p.m. (2 credits), Room 503

#### PROFESSOR JODI S. BALSAM

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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—both professional and amateur. 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 the 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:** Weiler, Roberts, Abrams & Ross, *Sports and the Law* (5th ed. 2015)
- **Weiler Online:** free documentary supplement (e.g., statutes, League constitutions, CBAs), available at <https://pennstatelaw.psu.edu/online-documentary-supplement>
- **TWEN readings:** posted on **Westlaw TWEN/Required Readings**. We will be using TWEN, and not BLSConnect/Classes, for class communications, quizzes, materials, etc.
- **Current awareness:** Regularly read at least one daily local newspaper, and access sports web resources (required). You can also follow me on Twitter @jodibalsam where I post about breaking sports law news (optional).
- Note: discounted subscription to Street and Smith’s *Sports Business Daily* is available at [sbcollege.com/subscribe](http://sbcollege.com/subscribe) or with student membership in Sports Lawyers Association.

## 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. S/he must get out on the field and play the sport.

Accordingly, in addition to lecture and Socratic dialogue about court cases, 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.

### **Team Work.**

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

Students will often work in teams in class. By Class 2, you will form teams of 4-5 students who will sit and work together throughout the semester. Team work will not be graded, although the contributions of an active and well-functioning team may influence assessment of individual students’ class participation. More explanation will be provided in Class 1.

### **Reading Assignments.**

*“If you don’t have time to do it right, when will you have time to do it over?”—John Wooden*

The course method requires you to complete all assigned reading before the week for which it is assigned, including readings assigned for Class 1. 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.

### **Reading Guidance Quizzes.**

*“Ninety percent of all mental errors are in your head.”—Yogi Berra*

During the semester, you will take 8 graded open-book quizzes, available on TWEN/Quizzes. Each quiz will pose 10 multiple choice, true/false, and fill-in-the-blank questions for which answers can be found in the assigned readings for the coming week’s classes. The questions are designed to be straightforward and solvable from the readings. Taking these quizzes will help you follow and understand the readings, promote the common understanding of course materials, and facilitate broader participation in classroom discussion and activities.

The syllabus lists 8 tentative quiz dates, subject to our guest speaker schedule. For each week that features a quiz, it will be available on TWEN from Thursday through **Monday, 1:00 p.m.** During that period, you must take the quiz *individually* and submit your responses on TWEN by the deadline. By Tuesday’s class, you will be able to access your quiz grade. All but the lowest grade you receive on “Reading Guidance Quizzes” will count toward 25% of your final grade. So, out of 8 quizzes, the top 7 scores will count.

## RULES OF THE GAME

**No laptops, tablets, or other personal electronic devices.**

*“The research is unequivocal: Laptops distract from learning, both for users and for those around them.”*— <https://www.nytimes.com/2017/11/22/business/laptops-not-during-lecture-or-meeting.html>

**Class Attendance, Preparation, and Participation.**

*“It is better to look ahead and prepare than to look back and regret.”*—Jackie Joyner-Kersey  
Students are expected to attend every class, on time and familiar with assigned materials. In accordance with the BLS Attendance Policy, unexcused absences and tardiness will lower your final grade, and excessive absences may result in being dropped from the course.

**Out-of-Class Communications.**

*“First master the fundamentals.”*—Larry Bird  
Check email and TWEN 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 me questions and set up appointments.

**Course Grading.**

*“It is not what the coach knows; it is what the players have learned.”*—Anonymous  
Your grade is based on the following:

- **Reading Guidance Quizzes: 25%**
  - Top 7 scores of 8 quizzes count toward this grade component.
- **Final Exam: 75%**
  - Open-book final exam, consisting of essay and short answer questions based on hypothetical fact patterns. You may bring the casebook, documentary supplements, TWEN documents, and any additional material including class notes and outlines.
- Grades may be adjusted upwards or downwards based on class attendance, preparation, and participation.

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

<b>Date</b>	<b>Topic</b>	<b>Readings</b>	<b>Assignments</b>
<b>Class 1</b> Aug. 28	Introduction to Course Sports Law conceptual framework Structure of league sports Powers of the Commissioner “Best Interests” of the sport	<p><b>Weiler, pp. 1-43</b></p> <ul style="list-style-type: none"> <li>▪ Rose v. Giamatti</li> <li>▪ Milwaukee American Ass’n v. Landis</li> <li>▪ Finley v. Kuhn; Turner v. Kuhn; Chicago Cubs v. Vincent</li> </ul> <p><b>Weiler Online, League Constitutions</b></p> <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—Authority and Duties of the Commissioner</li> </ul> <p><b>TWEN Required Readings</b></p> <ul style="list-style-type: none"> <li>▪ Timothy Davis, <i>What is Sports Law?</i>, Marq. Sports L. Rev. (2001)</li> <li>▪ NBA v. Donald Sterling Termination Charge</li> </ul>	<p><b>Due in class:</b> Complete <i>Student Questionnaire</i> (available on TWEN/Course Materials), and bring hard copy to class to submit to professor</p>
<b>Class 2</b> Sept. 4	Sports Labor Markets Contract formation/enforcement Player reserve system Labor law application to sports	<p><b>Weiler, pp. 153-68; 175-88; 97-102; 105-11</b></p> <ul style="list-style-type: none"> <li>▪ Philadelphia Ball Club v. Lajoie</li> <li>▪ Central NY Basketball v. Barnett</li> <li>▪ Cincinnati Bengals v. Bergey</li> <li>▪ Boston Celtics v. Brian Shaw</li> <li>▪ American League Baseball Club v. Chase</li> <li>▪ Morio v. NASL</li> </ul> <p><b>Weiler Online, Relevant Statutes</b></p> <ul style="list-style-type: none"> <li>▪ Norris-LaGuardia Act 1932</li> <li>▪ National Labor Relations Act</li> </ul>	<p><b>By Sept. 3, 1pm:</b> Take and submit <b>TWEN Quiz #1</b></p> <p><b>Due in class:</b> Team roster/mission statement (instructions to be provided)</p>
Sept. 11	<i>No Class—Religious Holiday</i>		

Date	Topic	Readings	Assignments
Sept. 18	<i>No Class—Religious Holiday</i>		
<b>Class 3</b> <i>Thursday,</i> Sept. 20	Sports Labor Markets and Collective Bargaining Duty to bargain in good faith Duty of fair representation Administration of the CBA and the role of the Arbitrator Player misconduct and legal scope of Commissioner Discipline	<p><b>Weiler, pp. 122-46; 215-43</b></p> <ul style="list-style-type: none"> <li>▪ Silverman v. MLB Player Relations Committee</li> <li>▪ NFL Management Council and NLFPA</li> <li>▪ Nat’l &amp; Amer. League Prof. Baseball Clubs v. MLBPA (Messersmith)</li> <li>▪ Kansas City Royals v. MLBPA</li> <li>▪ NFLPA and Philadelphia Eagles (Terrell Owens)</li> </ul> <p><b>Weiler Online, Collective Bargaining Agreements</b></p> <ul style="list-style-type: none"> <li>▪ NFL-NFLPA CBA: 2011-2020, Articles 42, 46</li> <li>▪ NHL-NHLPA CBA: 2012-2022, Articles 18, 18-A</li> </ul> <p><b>TWEN Required Readings:</b></p> <ul style="list-style-type: none"> <li>▪ NFL v. NFLPA/Adrian Peterson (8th Cir. 2016)</li> <li>▪ NFLMC v. NFLPA/Brady Deflategate (2d Cir. 2016)</li> </ul>	<b>By Sept. 17, 1pm:</b> Take and submit <b>TWEN Quiz #2</b>
<b>Class 4</b> Sept. 25	Sports Labor Markets and the Role of the Agent Agent Standards of Performance and Fiduciary Duty Regulation of Agents	<p><b>Weiler, pp. 693-97, 702-04, 718-30, 740-54</b></p> <ul style="list-style-type: none"> <li>▪ Zinn v. Parrish</li> <li>▪ Brown v. Woolf</li> <li>▪ Detroit Lions and Bill Sims v. Argovitz</li> <li>▪ Collins v. NBPA &amp; Grantham</li> </ul> <p><b>Weiler Online, Agent-Related Regulations and Statutes</b></p> <ul style="list-style-type: none"> <li>▪ Uniform Athlete Agents Act (2000)</li> <li>▪ NFLPA Regulations Governing Contract Advisors, Sections 2, 3</li> </ul> <p><b>TWEN Required Readings:</b></p> <ul style="list-style-type: none"> <li>▪ NFL Standard Player Contract</li> </ul>	

Date	Topic	Readings	Assignments
<b>Class 5</b> Oct. 2	Antitrust Primer Baseball's AT Exemption AT Rule of Reason AT and the Special Nature of Sports Leagues Single Entity Defense to AT Conspiracy Claims	<b>Weiler, pp. 189-204, 261-84, 304-313</b> <ul style="list-style-type: none"> <li>▪ Flood v. Kuhn</li> <li>▪ NCAA v. Board of Regents</li> <li>▪ American Needle v. NFL</li> </ul> <b>Weiler Online, Relevant Statutes</b> <ul style="list-style-type: none"> <li>▪ Sherman Act (1890)</li> <li>▪ Clayton Act (1914)</li> <li>▪ Curt Flood Act of 1998</li> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ San Jose v. Office of the Commissioner of Baseball (9th Cir. 2015)</li> </ul>	<b>By Oct. 1, 1pm:</b> Take and submit <b>TWEN Quiz #3</b>
<b>Class 6</b> Oct. 9	Sports League Monopoly Power  <b>Guest Speaker: JEFF GEWIRTZ,</b> <b>Brooklyn Sports and</b> <b>Entertainment</b>	<b>Weiler, pp. 316-27, 335-43</b> <ul style="list-style-type: none"> <li>▪ AFL v. NFL</li> <li>▪ Hecht v. Pro-Football</li> <li>▪ USFL v. NFL</li> </ul>	Prepare a question to ask our guest speaker
<b>Class 7</b> Oct. 16	AT and Player Market Restraints: rookie draft, veteran free agency Labor Exemptions from AT	<b>Weiler, pp. 349-72, 376-80, 383-94, 402-36</b> <ul style="list-style-type: none"> <li>▪ Smith v. Pro Football, Inc.</li> <li>▪ Mackey v. NFL</li> <li>▪ Fraser v. MLS</li> <li>▪ Brown v. Pro Football, Inc.</li> <li>▪ Clarett v. NFL</li> <li>▪ Brady v. NFL</li> </ul>	<b>By Oct. 15, 1pm:</b> Take and submit <b>TWEN Quiz #4</b>

Date	Topic	Readings	Assignments
<b>Class 8</b> Oct. 23	AT and Internal League Governance Ownership rules Franchise admission, relocation, expansion TV contracts	<b>Weiler, pp. 447-56, 470-92, 515-535</b> <ul style="list-style-type: none"> <li>▪ NASL v. NFL</li> <li>▪ LA Memorial Coliseum v. NFL (Raiders I and II)</li> <li>▪ NBA v. San Diego Clippers</li> <li>▪ Mid-South Grizzlies v. NFL</li> <li>▪ Chicago Pro Sports &amp; WGN v. NBA (Bulls I and II)</li> </ul> <b>Weiler Online, League Constitutions</b> <ul style="list-style-type: none"> <li>▪ NFL Constitution &amp; Bylaws Art. IV—Territorial Rights</li> </ul>	<b>By Oct. 22, 1pm:</b> Take and submit <b>TWEN Quiz #5</b>
<b>Class 9</b> Oct. 30	Intellectual Property Overview Right to Game Information Copyright and Game Broadcasts Fair Use/First Amendment Public Performance	<b>Weiler, pp. 581-617</b> <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>▪ NFL v. McBee &amp; Bruno's</li> </ul> <b>Weiler Online, Relevant Statutes</b> <ul style="list-style-type: none"> <li>▪ Copyright Act</li> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ ABC v. Aereo (Sup. Ct. 2014)</li> </ul>	<b>By Oct. 29, 1pm:</b> Take and submit <b>TWEN Quiz #6</b>

Date	Topic	Readings	Assignments
<b>Class 10</b> Nov. 6	Player Rights of Publicity Work for Hire First Amendment Issues	<b>Weiler, pp. 628-61</b> <ul style="list-style-type: none"> <li>▪ Zacchini v. Scripps-Howard Broadcasting</li> <li>▪ Note cases: Mohammed Ali, Joe Montana, Tony Twist</li> <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> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ In re NCAA Name &amp; Likeness Licensing Litigation (9th Cir. 2013)</li> <li>▪ Dryer v. NFL Films (8th Cir. 2016)</li> <li>▪ New York “Right of Privacy” Statute</li> </ul>	<b>By Nov. 5, 1pm:</b> Take and submit <b>TWEN Quiz #7</b>
<b>Class 11</b> Nov. 13	Trademark Likelihood of Confusion Disparagement Immoral/Offensive TM Ambush Marketing	<b>Weiler, pp. 661-89</b> <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> </ul> <b>Weiler Online, Relevant Statutes</b> <ul style="list-style-type: none"> <li>▪ Lanham Act (Trademark)</li> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ Matal v. Tam (Sup. Ct. 2017)</li> </ul>	
Nov. 20	<i>No Class—Legislative Thursday</i>		



Date	Topic	Readings	Assignments
<b>Class 12</b> Nov. 27	NCAA: Amateurism vs. Professionalism Eligibility Rules Antitrust and Employment Law Challenges to the Student-Athlete Model	<b>Weiler, pp. 887-906, 915-24, 944-58</b> <ul style="list-style-type: none"> <li>▪ Eligibility: Colorado Seminary, Shelton, Oliver</li> <li>▪ NCAA v. Board of Regents of Univ. of Oklahoma</li> <li>▪ Banks v. NCAA</li> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ 6th edition of <i>Weiler, Roberts ... &amp; Balsam</i> (2019) (forthcoming); Chapter 11 excerpts:               <ul style="list-style-type: none"> <li>○ Berger v. NCAA (7th Cir. 2016)</li> <li>○ O'Bannon v. NCAA (9th Cir. 2015)</li> <li>○ In re NCAA Athletic Grant-in-Aid Cap Antitrust Litigation (N.D. Cal. 2018)</li> </ul> </li> </ul>	<b>By Nov. 26, 1pm:</b> Take and submit <b>TWEN Quiz #8</b>
<b>Class 13</b> Dec. 4	Social Policy and “fundamental character of the game” Sports Social Responsibility: Gambling Concussion Risk Athlete Activism  Semester Review: <i>Who Wants to be a Sports Law Millionaire?</i>	<b>Weiler, pp. 61-76</b> <ul style="list-style-type: none"> <li>▪ PGA Tour v. Martin</li> </ul> <b>TWEN Required Readings:</b> <ul style="list-style-type: none"> <li>▪ 6th edition of <i>Weiler, Roberts ... &amp; Balsam</i> (2019) (forthcoming)               <ul style="list-style-type: none"> <li>○ Chapter 1 excerpts: Molinas v. NBA, Murphy v. NCAA</li> <li>○ Chapter 14 excerpts: In re NFL Players Concussion Injury Litigation</li> </ul> </li> <li>▪ Marc Edelman, <i>Standing to Kneel</i>, Fordham Law Review (2018)</li> </ul>	<b>By Friday, Nov. 30:</b> Submit by email to professor your team’s 3 review questions (instructions to be provided)