

SPORTS LAW – SPRING 2019

NYU School of Law

Tuesdays and Thursdays, 9-10:15 a.m. (3 credits), VH214

Faculty: Professor Jodi S. Balsam, jodi.balsam@brooklaw.edu, 718-780-0379

I plan to arrive at our classroom by 8:45 a.m. before every class to answer questions, discuss course materials, or chat about sports current events. I am also available for private appointments—please email me to set that up.

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 which legal constructs and doctrines are implicated in a given sports setting.
- ✓ 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 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* (6th ed. West 2019) (“Casebook”).
- Online Documents: <https://pennstatelaw.psu.edu/online-documentary-supplement>
- Additional readings to be posted on NYU Classes.
- General current awareness of news and events in sports, by regularly reading at least one daily local newspaper and accessing sports web resources, or follow me on Twitter @jodibalsam (optional).

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.

No laptops, tablets, or other personal electronic devices may be used during class.

“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>

Reading Assignments.

“If you don’t have time to do it right, when will you have time to do it over?”—John Wooden
Expect to read 50-60 pages each week—but it’s about sports as much as it is about law, so it goes fast. Complete all assigned reading before the week for which it is assigned, including readings assigned for the first class. 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, especially because of the next rule. . . .

Cold-Calling.

“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 (but expect to be first up in the next class).

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 the second week of classes, 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 information will be provided in our first class session.

Out-of-Class Communications.

“First master the fundamentals.”—Larry Bird
Check email and NYU Classes 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. Your grade is based on the following:

- **90% Final Exam:** *“It is not what the coach knows; it is what the players have learned.”*—Anonymous
 - Open-book final exam, consisting of essay and short answer questions based on hypothetical fact patterns. You may bring the casebook, documentary supplements, NYU Classes documents, and any additional material including class notes and outlines.
- **10% Class Preparation and Participation:** *“It is better to look ahead and prepare than to look back and regret.”*—Jackie Joyner-Kersey
 - The course method depends on students engaging fully in the classroom, including by being prepared, and contributing to teamwork and class discussions.
- Note: in accordance with NYU attendance policy, missing more than 1/5 of classes (6 classes) will result in a lower grade or withdrawal from the course.

Class sequence, readings, and assignments are subject to change

Date	Topic	Readings
Week 1 Thurs, Jan 17	Introduction to the course Sports Law: overview and conceptual framework	NYU Classes <ul style="list-style-type: none"> ▪ Syllabus/Class Playbook ▪ Timothy Davis, <i>What is Sports Law?</i>, 11 Marq. Sports L. Rev. (2001)
Week 2 Tues, Jan 22 Thurs, Jan 24 Governance	Structure and Governance of Professional Sports Leagues Role & Powers of the Commissioner “Best Interests” of the Sport: Anti-Social Activity, Gambling Due in Tuesday’s class: Student Questionnaire (available on NYU Classes) Due in Thursday’s class: Team roster/statement (instructions to be provided)	Casebook, pp. 1-38, 49-69 <ul style="list-style-type: none"> ▪ Rose v. Giamatti ▪ Milwaukee American Ass’n v. Landis ▪ Finley v. Kuhn; Turner v. Kuhn; Chicago Cubs v. Vincent ▪ NBA v. Donald Sterling ▪ Molinas v. NBA Online Documents: <i>League Constitutions</i> <ul style="list-style-type: none"> ▪ MLB Constitution Art. II—The Commissioner ▪ NFL Constitution & Bylaws Art. VIII—Commissioner ▪ NBA Constitution & Bylaws—Authority and Duties of the Commissioner
Week 3 Tues, Jan 29 Thurs, Jan 31 Labor	Introduction to Labor Law and its application to sports Collective bargaining rules: exclusivity, good faith, fair representation Economic conflict—strikes and lockouts Labor arbitration in professional sports—intro	Casebook, pp. 71-74, 91-123, 127-41 <ul style="list-style-type: none"> ▪ Morio v. NASL ▪ Silverman v. MLB Player Relations Committee ▪ NFL Management Council and NFLPA ▪ Peterson v. Kennedy & NFLPA ▪ In re Latrell Sprewell Online Documents: <i>Collective Bargaining Agreements</i> <ul style="list-style-type: none"> ▪ NFL-NFLPA CBA: 2011-2020, Articles 43, 44, 46 ▪ NHL-NHLPA CBA: 2012-2022, Articles 18, 18-A <i>Relevant Statutes</i> <ul style="list-style-type: none"> ▪ Norris-LaGuardia Act 1932 ▪ National Labor Relations Act

Date	Topic	Readings
Week 4 Tues, Feb 5 Thurs, Feb 7 Labor	Labor arbitration in professional sports—§ 301 preemption Judicial review of arbitration awards Contractual restraints on player mobility in professional sports Baseball’s player reserve system Salary caps and taxes Guest Speakers: David Prouty, MLBPA (former) and Kasey Sanossian	Casebook, pp. 148-55, 165-199, 205-20, 228-31 <ul style="list-style-type: none"> ▪ Williams v. NFL ▪ MLBPA v. Garvey ▪ NFLPA v. NFL (Peterson) ▪ Philadelphia Ball Club v. Lajoie ▪ Cincinnati Bengals v. Bergey ▪ American League Baseball Club v. Chase ▪ Nat’l & Amer. League Prof. Baseball Clubs v. MLBPA/Messersmith
Week 5 Tues, Feb 12 Thurs, Feb 14 Agents	Role of the Player Agent Agent standard of performance and fiduciary duty Representation of unionized athletes Regulation of agents	Casebook, pp. 649-72, 677-83, 688-96, 699-714 <ul style="list-style-type: none"> ▪ Zinn v. Parrish ▪ Williams v. CWI ▪ Brown v. Woolf ▪ Detroit Lions & Sims v. Argovitz ▪ Collins v. NBPA & Grantham ▪ Walters & Bloom v. Fullwood; U.S. v. Walters Online Documents: <i>Agent-Related Regulations and Statutes</i> <ul style="list-style-type: none"> ▪ Uniform Athlete Agents Act
Week 6 Tues, Feb 19 Antitrust	Intro to Antitrust (AT) as applied to sports Baseball’s AT exemption and the Curt Flood Act AT Conspiracy and the Rule of Reason	Casebook, pp. 231-73 <ul style="list-style-type: none"> ▪ Flood v. Kuhn ▪ NCAA v. Board of Regents Online Documents: <i>Relevant Statutes</i> <ul style="list-style-type: none"> ▪ Sherman Act (1890) ▪ Clayton Act (1914)
Week 7 Tues, Feb 26 Thurs, Feb 28 Antitrust	AT Conspiracy and the special nature of sports leagues: the single entity defense AT Monopoly and sports league market power AT and sports labor markets Player market restraints: rookie draft, veteran free agency	Casebook, pp. 274-89, 296-98 (MLS structure), 299-323, 331-67 <ul style="list-style-type: none"> ▪ American Needle v. NFL (see pp. 527-29 for aftermath) ▪ AFL v. NFL ▪ Philadelphia World Hockey Club v. Philadelphia Hockey Club ▪ Hecht v. Pro-Football ▪ USFL v. NFL ▪ Smith v. Pro Football, Inc. ▪ Mackey v. NFL ▪ Fraser v. MLS

Date	Topic	Readings
Week 8 Tues, Mar 5 Thurs, Mar 7 Antitrust	Labor exemptions from AT AT and internal league governance Ownership rules Franchise admission, relocation	Casebook, pp. 367-73, 377-413, 419-26, 439-56 <ul style="list-style-type: none"> ▪ Brown v. Pro Football, Inc. ▪ Clarett v. NFL ▪ Brady v. NFL ▪ NASL v. NFL ▪ LA Memorial Coliseum v. NFL (Raiders I and II) ▪ NBA v. San Diego Clippers ▪ Mid-South Grizzlies v. NFL Online Documents: League Constitutions <ul style="list-style-type: none"> ▪ NFL Constitution & Bylaws Art. IV—Territorial Rights
Week 9 Tues, Mar 12 Thurs, Mar 14 Antitrust	League expansion, contraction TV contracts Guest Speaker: Brad Ruskin, Proskauer	Casebook, pp. 457-62, 469-502 <ul style="list-style-type: none"> ▪ United States v. NFL ▪ Chicago Pro Sports & WGN v. NBA (Bulls I and II) ▪ Laumann v. NHL
Mar 18-22	SPRING BREAK	
Week 10 Tues, Mar 26 Thurs, Mar 28 IP—Game Accounts & Copyright	Intellectual Property Overview Rights in Game Accounts Copyright and Game Broadcasts Fair Use/First Amendment Public Performance	Casebook, pp. 539-74 <ul style="list-style-type: none"> ▪ Pittsburgh Athletic Co. v. KQV Broadcasting ▪ NBA v. STATS & Motorola ▪ Morris Communications v. PGA Tour ▪ New Boston TV v. ESPN ▪ ABC Cos. v. Aereo Online Documents: Relevant Statutes <ul style="list-style-type: none"> ▪ Copyright Act
Week 11 Tues, Apr 2 Thurs, Apr 4 IP—Rights of Publicity	Player Rights of Publicity Work for Hire First Amendment Issues	Casebook, pp. 575-608 <ul style="list-style-type: none"> ▪ Zacchini v. Scripps-Howard Broadcasting ▪ ETW Corp. v. Jireh Publishing (Tiger Woods) ▪ Baltimore Orioles v. MLBPA ▪ Dryer v. NFL ▪ C.B.C. Distribution and Marketing v. MLB Advanced Media ▪ In re NCAA Student-Athlete Name & Likeness Litigation (Keller)

Date	Topic	Readings
Week 12 Tues, Apr 9 Thurs, Apr 11 IP— Trademark	Trademark Likelihood of Confusion Dilution Immoral/Offensive TM Ambush Marketing Guest Speaker: Mike Potenza, VP and Intellectual Property Counsel, NBA	Casebook, pp. 608-48 <ul style="list-style-type: none"> ▪ Indianapolis Colts v. CFL Baltimore Colts ▪ Boston Pro Hockey Ass’n v. Dallas Cap and Emblem ▪ WCVB-TV v. Boston Athletic Ass’n ▪ Matal v. Tam Online Documents: <i>Relevant Statutes</i> <ul style="list-style-type: none"> ▪ Lanham Act (Trademark)
Week 13 Tues, Apr 16 Thurs, Apr 18 College Sports	Collegiate Sports and the NCAA Antitrust limits on NCAA regulation Commercialism and Amateurism Eligibility Rules Challenging the Student-Athlete Model	Casebook, pp. 719-22, 837-46, 859-905 (updated) <ul style="list-style-type: none"> ▪ NCAA v. Board of Regents of Univ. of Oklahoma (refresh) ▪ Deppe v. NCAA ▪ Shelton v. NCAA ▪ Oliver v. NCAA ▪ Banks v. NCAA ▪ Berger v. NCAA ▪ O’Bannon v. NCAA NYU Classes <ul style="list-style-type: none"> ▪ In re: NCAA Ath. Grant-in-Aid Cap Antitrust Litig. (N.D. Cal. 2019) ▪ Epstein & Anderson, <i>The Relationship Between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective</i>, 26 Marq. Sports L. Rev. 287 (2016)
Week 14 Tues, Apr 23 Thurs, Apr 25 Gender Equity Olympic/ International	Gender equity in sports Olympic and International Sport Guest Speaker: Cameron Myler, former Olympian, Court of Arbitration for Sport, NYU	Casebook, pp. 913-22, 926-39, 948-62, 981-90 <ul style="list-style-type: none"> ▪ Cohen v. Brown University ▪ Neal v. Board of Trustees of California State Univ. ▪ Biediger v. Quinnipiac Univ.
Week 15 Tues, April 30 Thurs, May 2 Sports and Social Policy	Sports and Social Policy Player health and safety Disability and “fundamental character of the game” Review session	Casebook, 1049-68, 1082-89, 1096-97, 1112-24 <ul style="list-style-type: none"> ▪ Hackbart v. Cincinnati Bengals (I and II) ▪ Canadian criminal cases: Green, Maki, McSorley ▪ Player concussion litigation ▪ PGA Tour v. Martin