

SPORTS LAW
Professor Ross
FALL 2019

GENERAL INFORMATION ABOUT THE CLASS

This class reflects a new edition of my casebook with new co-authors, and also a deliberate approach to add additional focus on public policy to permit non-law graduate students to benefit.

There is no comprehensive final (the last assignment only concerns the last 5 lectures, although builds upon general concepts covered earlier.) Lectures will feature a significant amount of class discussion, and class participation will be a factor in determining your final grade.¹ The small enrollment this term allows me to devote time to assessments involving feedback. In addition to your enlightened, prepared participation in class (10% of grade), the required assignments for the course include

- (1) A 5-page memorandum on the power of the Commissioner; the assignment will be distributed after class for Session 5 (Sept 5th), and due by email to me (sfr10@psu.edu) no later than 11:59 p.m. on Sunday, Sept 16th (10%)
- (2) A 5-7 page counseling memorandum on a labor law issue jointly written with an assigned team; the assignment will be distributed prior to Session 10 (Sept 24th) and due prior to class for Session 13 (Oct 10th) (20%)
- (3) A powerpoint presentation to the class for Session 21 (Nov 5th) jointly prepared with a team, and then a 10-page strategy memorandum individually written following Session 21 and due no by email to me no later than 11:59 p.m. on Sunday, November 10th. The assignment will be distributed approximately two weeks in advance (roughly 15% for powerpoint and 20% for memorandum)
- (4) A 7-10 page draft of a judicial opinion on a college sports issue; the assignment will be distributed after the last class, and will be due at 4:00 p.m. on Dec 19th. (25%)
- (5) In addition, students can choose to write an optional 15-20 page research paper, on a sports law topic covered in the required text but not covered in class, due prior to the first day of class in January. You can discuss this with me in advance, but only complete the assignment if you are dissatisfied with your final grade. I will count this for 1/3 of your grade if it improves your overall grade but will not lower your grade if it doesn't.

As to any of these assignments, early notice that the deadline imposes a hardship will be considered in determining extensions. In addition, please note that attendance is **mandatory** for a day-long Intercollegiate Athletics Conference on Friday, October 18. Please see me immediately if you believe you are unable to attend.²

¹ Penn State Law policy requires me to set forth an attendance policy in writing, so here goes: I reserve the right to modestly adjust your grade for anything less than regular attendance, and to cancel registration for anyone who misses 8 class sessions or more this term. Please don't hesitate to contact me if special circumstances will prevent your regular attendance.

² As with all classes, serious illness and family emergencies constitute an excused absence. For

For the past several years, to facilitate class discussion, I prohibited the use of laptop computers during class. I prefer to permit laptops for the convenience of notetaking and the permit you to look up names or sporting references about which you are unfamiliar. However, prior classes were routinely disrupted by students giggling over funny items found on the website, my need to repeat a question because the student call on was not paying attention, among other challenges to effective class discussion. The use of electronic modes for purposes other than note taking or research 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. I reserve the right to ban laptops if violations of this policy are widespread.

LEARNING OUTCOMES

The faculty has adopted a policy that, in relevant parts, requires that Sports Law students “understand the fundamental principles” of Sports Law through “legal analysis, reasoning, and problem solving” and to “communicate effectively orally and in writing regarding legal matters.” In addition, we agreed to teach students to “be able to recognize and resolve ethical issues and discharge professional responsibilities.”

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

- 1) A basic understanding of three 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 of basic principles of labor law related to collective bargaining, and its application to sports.**
- 3) Understanding of basic principles of antitrust law, and its application to sports.**
- 4) Appreciation of core legal principles that govern intercollegiate sports.**
- 5) Through the use of exercises and various topics to illustrate the key principles, develop the ability to apply abstract legal principles to solve complex problems, including dealing with those adversely affected by current or proposed policies.**
- 6) Appreciate how high-profile sports issues illustrate ethical challenges for professionals.**

this conference, if a fellow professor will not excuse you from their class, please see me. Job interviews and job commitments are excused only if you inform me in writing that, having regard for the Honor System, you have specifically requested that the prospective or current employer accommodate your professor and the employer has refused.

NOTE ON CLASS DISCUSSIONS

My teaching method is a highly interactive Socratic method. This not only is, in my judgment, the best way to facilitate understanding of complex issues, but 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 and interrupt the conversation. 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 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. [Consistent with this policy, I will do my best to refer to you as "they" if you prefer, but I often have difficulty distinguishing a reference to a single person who prefers a non-binary pronoun and multiple people, so while I will honor your request would ask you to consider trying out ze or another non-binary pronoun.]

READING ASSIGNMENTS

The assigned text is WEILER, ROBERTS, ABRAMS, ROSS, HARPER, BALSAM & BERRY, *SPORTS AND THE LAW* (6th ed.). *Note that this is a new edition, with new co-authors and substantial revisions. Since I often refer directly to the reading material in class discussions, you cannot rely on an earlier edition of the casebook to succeed in this course.* Additional assigned material will be posted on Canvas. **{DISCLAIMER: DAILY ASSIGNMENTS ARE TENTATIVE AND SUBJECT TO CHANGE: specifically, there may be updated material made available on Canvas}**

PART I: THE STRUCTURAL DYNAMICS OF SPORT

1. The U.S. Model of Sport, in comparative perspective
Introduction to the Commissioner-led North American model (1-9); Noll, *Sports Economics at Fifty* (Canvas); Ross, *Private Losers* (Canvas); Nafziger, *European and North American Models of Sports Organization* (Canvas)
2. The principal legal constraint on sports leagues: judicial review under the antitrust laws
Basic antitrust overview (249-56); *Board of Regents* application (256-74)
3. The nature of a sports league, and dynamics sports governance in the United States
American Needle and note on alternative structures (274-98)
4. The unique role of the sports league commissioner (9-36)
5. What constitutes the “Best Interests of Sports”? (36-69)

PART II: APPLICATION OF LABOR LAW TO PROFESSIONAL SPORTS

6. Basic principles of the National Labor Relations Act and their application to sports
 - (a) Introductory notes (71-74)
 - (b) Determination of the appropriate bargaining unit *NASL v NLRB* (85-91)
 - (c) The union’s exclusive bargaining authority *J.I. Case* (91), notes (93-96)
 - (d) Duty to bargain in good faith Notes and *Silverman* (96-106)
7. Arbitral interpretation and enforceability of the player contract
Messersmith/ KC Royals (213-28); *Peterson* (171-84)
8. Regulation of misbehavior
Sprewell, Rodriguez (127-48)
Please also review the following provisions of Collective Bargaining Agreements linked on Canvas: MLB CBA Arts. XI-XII; MLB Uniform Contract Cl. 7, Sample B Addendum; NBA CBA Arts. VI, XXXI; NBA Uniform Contract Cl. 16; NFL CBA Art XI
9. Individual contract issues
Lajoie (185-93); compare to College coaching contracts (744-54)

PART III: APPLICATION OF COMPETITION LAW TO LABOR MARKET ISSUES

10. Basic economics of player restraints and revenue sharing: (331-41)
11. Direct restraints and competition law
Mackey/ Fraser (355-67)
12. Labor exemption
Introductory notes (367-77); *Brown (377-90)*; *Brady (399-413)*
13. Role playing exercises re labor market dynamics (roles to be assigned in class): see (413-17)

PART IV: BUSINESS STRATEGY AND ANTITRUST SCRUTINY OF INTERNAL LEAGUE REGULATION

14. Antitrust regulation of franchise location
Raiders, Clippers (439-57); NFL Const. Art. IV; NHL Const. Art. 4; NHL By-Laws §36 (on Canvas)
15. Regulation of entry/ contraction
Mid-South Grizzlies, Notes (457-63), A Proposed NBA2 (SUPP)
16. Alternative non-antitrust approaches to stakeholder interests in franchise movement
Materials (463-69), Additional reading TBA (Canvas)

Assuming we are on schedule, between sessions 16 and 17 is the Intercollegiate Athletics Conference all day Friday. This should give you enough time to enjoy the victory over Michigan and prepare for reading for Session 17 the following Tuesday.

17. Sports Broadcasting and Competition Law
US v NFL, Bulls, Laumann (469-502)
18. Dynamics of marketing and sponsorship in club-run leagues
Group licensing of IP rights (510-18), *Salvino (518-32)*
19. Copyright and Rights of Publicity
Pittsburgh Athletic (539-46); Copyright in broadcasting (558-9), Superstations and Passive Carriers (570-74); Rights of Publicity (574-80, 592-95); *CBC Distribution/ NCAA NIL Litigation (596-608)*
20. Trademarks and licensing
Intro (608-09); *Boston Hockey (619-26)*, Ambush marketing (635-38)
21. Role playing exercises re business dynamics (roles to be assigned in class): see 532-38

PART V: ISSUES IN COLLEGIATE SPORTS

22. Judicial review of college sports decisions
Introduction (719-22); NCAA admissions regulations (787-804); Challenging NCAA decisions (846-59)
23. NCAA infractions process (760-86)
24. Application of antitrust law to big-time intercollegiate sports
Re-read *NCAA v. Okla Regents* and includ (White, J., dissent) (258-71); *O'Bannon* and progeny (889-911), *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litigation* (Canvas)
25. Alternatives to the application of antitrust law to intercollegiate sports policy
Additional materials to be assigned and posted on Canvas
26. Title IX (913-53)
27. Catch-up, final review
28. [One class will be cancelled in recognition of mandatory attendance at the Intercollegiate Athletics Conference on Friday, October 19, 2019.]