

Sports Law Wypadki 2010



Sports Law
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Spring 2010 Sports Law Wypadki

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Casebook Problems We've Covered in Class

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- **3-8:**
 - Does BCS violate antitrust laws
 - Rule of reason argument
 - Not per se
 - It all depends on how you define the market
- 3-9
- 4-2
- 4-3
- 4-4
- 7-4
- 8-1
- 8-2
- **9-5**
 - Claims against Cheatham
 - Breach of fiduciary duties
 - Didn't fully represent client b/c trying to get better deal for other client—breach of fiduciary duty.
 - Fraud—said he would get him the best deal possible—constructive fraud
 - Conflict of interest—leads to a malpractice claim
 - Not a registered agent—so is K enforceable by Jammer
 - Not enforceable—he doesn't have the certificate and any agent K without a certificate is VOID. (§4)
 - UAAA §10(d) makes it voidable at the athletes option b/c no date of execution b/c §10(b)(6) states the K must contain a date of execution
 - UW's claims against Cheatham
 - Civil damages §16(c) & 16(a) action cause by a violation of this act—can get damages and Atty fees
 - Whether Cheatham has violated the UAAA
 - **Review from Agents**
 - Educational institution (problem 9-5) can get an amount certain for cost of tournament play for an agent's actions
 - Rules
 - Lawyers are not to solicit their employment
 - PR rules
 - Barrier for agents to get clients
 - Atty will take into their work a certain level of care b/c they want to preserve their license where a non-Atty wouldn't care as much b/c they don't have the higher std to live up to.
 - Created a system that seems to be more advantageous those who are not licensed Attys
 - Is negotiating a K the practice of law?
 - NO; people do it everyday

- Hard to know when it becomes the practice of law
 - Advising someone
- **Practice of law**
 - Things that are the practice of law for a Lawyer are not things that are the practice of law for a non-lawyer
- **9-6:**
 - Successful getting disbarment set aside
 - No; he is holding out to be an Atty
 - You are an Atty 24/7
 - Set aside disbarment
 - He is still held to the std of Atty when he is licensed
 - Commingling funds—always a against the ethics laws for Attys
 - Unauthorized practice of law
 - If on business card he is an Atty then closer to a claim
 - But if not on card, then not a good claim b/c people negotiate K's everyday who aren't lawyers

I am missing some of the recent ones...

REGULATING INTERCOLLEGIATE ATHLETICS

NCAA Purpose To maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation b/w intercollegiate athletics & professional sports.

Defining the Student-Athlete and University Relationship

- A. Contractual and Related Aspects
 - 1. Which Kind of K is it?
 - a. Express Contract – arises out of the Letter of Intent, the Statement of Financial Assistance, and university publications such as bulletins and catalogs.
 - i. Documents contain promises that provide consideration
 - ii. Financial assistance – attend a particular college and play sport; contingent on eligibility to play at that institution
 - iii. Students also comply with the rules and regulations of their particular institution, athletic conference, and athletic association

To be eligible students must do so physically (including attending practice, so long as they are not injured FROM the sport and regardless of their playing ability) and scholastically.

Taylor v. Wake Forest Facts: Taylor went to play football at Wake. He received terrible grades and told his coach he would miss practice so he could study. His scholarship was terminated. Taylor sued for recovery of education expenses after his scholarship was terminated. *Rules/App:* Taylor knew his scholarship was awarded for academic and athletic achievement. In consideration of this scholarship, Taylor agreed to maintain his athletic eligibility, and this meant both physically and scholastically. As long as his grades equaled or exceeded the requirements, he was maintaining his scholastic eligibility. Participation in and attendance at practices were required to maintain his physical eligibility. When Taylor refused to practice in the absence of any injury or excuse other than to devote more time to studies, he was not complying with his contractual obligations

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- - b. Implied K – not as recognized – Courts generally find that if the institution has fulfilled its side of the contract if providing what is written in the K—if it’s written and unambiguous.
 - c. Does the Statute of Frauds...preclude the action?
 - d. Parol evidence rule
 - e. Oral promises – in order to be legally operative and create a power of acceptance it is necessary that the offer shall contain all the terms of the K to be made. It is not enough for one party to promise to do something
- 2. Breach of K claims: the basic legal relation between a student and a private university or college is contractual in nature BUT a decision of the school authorities relating to the academic qualification of the students will not be reviewed...Courts aren’t qualified to pass an opinion as to the attainment of a student and courts won’t review a decision of the school authorities relating to academic qualifications of the students.
 - a. To state a claim the plaintiff must do more than simply **allege** that the education was not good enough. Instead, they must point to an identifiable contractual promise that the defendant failed to honor.
 - b. Furthermore the things that happen before the K formation don’t really matter. It’s what happens **within** that contractual relationship.
 - i. BUT courts shouldn’t take on the job of supervising the relationship between colleges and student-athletes or creating, in effect, a new relationship between them
 - ii. AND recognizes that the general nature and terms of the agreement are usually implied, with specific terms to be found in the university bulletin and other publications; custom and usages can also become specific terms by implication

ROSS V. CREIGHTON UNIVERSITY *Facts:* Ross, a poor high school student took a basketball scholarship to Creighton. The school promised he would receive a “meaningful education.” Ross had a D average at the school, while taking many meaningless courses. He alleges the Athletic Department advised him to take these courses, and his work was done for him. Ross asserts the school failed to provide him with sufficient and competent tutoring, as it had promised. When he graduated he had skills equivalent to a child.

He is suing the school for, educational malpractice, negligence, and breach of contract in failing to educate him.

- 1. Breach of Contract in failing to educate him:
 - a. **General Rule:** The basic relation between a student and a university is contractual in nature.
 - i. The catalogues, bulletins, circulars, and regulations of the institution made available to the student become a part of the K.
 - b. To assert this claim, he must point to an identifiable contractual promise that the school failed to honor.
 - c. The appeals court disagreed with the trial court, and held the allegations of the complaint are sufficient to warrant further proceedings.
 - i. The court recognized that courts should not take on the job of supervising the relationships between colleges and student athletes. Further, the court noted that a formal university contract is rarely employed, and the terms of the agreement are usually implied with specific terms to be found in the university bulletin &

other publications; custom & usages can also become specific terms by implication.

- d. But the court believed Ross' specific and narrow claims that he was barred from ANY participation in and benefit from the University's academic program could be decided by the district court without second-guessing the professional judgment of the school

Educational Malpractice: Only one state allows this claim to go forward. There is no standard of care that the university holds. There are causation problems in this claim and this would open the flood gates for a lot of litigation if courts allowed this type of claim.

- - - - iii. Premised on the notion that a student and private university or college have a contractual relationship.
 - c. Financial aid agreements don't implicitly contain a right to play basketball.

Scope of Constitutionally Protected Property or Liberty Interests

HYSAW v WASHBURN Facts: Π's are African American football players at Washburn University complaining they were being treated in a racially-discriminatory manner by the coaching staff and administration. Π's boycotted practices b/c of dissatisfaction with the Administration and then were removed from the team by the Administration. Δ moved for SJ

- §1981 Claim
 - Civil rights claim provides private right of action for things in 14th Amendment rights
 - All persons have the right to make and enforce contracts
- §1983 Claim
 - Civil Rights—private right of action against someone under color of state law violates your rights
 - Does NOT apply to the federal Gov't (but have Bivens laws)
 - The Ct looked to **Board of Regents v. Roth**
 - In that case, the Sup Ct set out the standard for determining whether an alleged deprivation of a property right violated due process.
 - Only after a protectable property interest has been established do we then determine whether DP was afforded.
 - Standard Applied:
 - The Ct must determine whether π's possessed a property right protected under the Constitution.
 - Property Rights are created & dimensions are defined by existing rules or understandings that stem from independent source such as state law.
 - To have a property interest in a benefit a person clearly must have more than an abstract need or desire for it.
 - In this case, π's argue the scholarship agreements; the Ct held the only interests they have are interests in receiving scholarship funds, which is nothing more than a unilateral expectation.

- Liberty Interests
 - The right has to be a protected liberty right under law in order for π 's to make out a claim for a §1983 violation.
 - Here the claim is the Emporia State Football coach did not recruit π 's after he spoke with the Washbrun coach.
 - From *Roth*: Defamatory comments made by a Gov't employer which cast a cloud over an employee's future employment prospects could constitute a deprivation of liberty.
 - π wants Ct to extend Roth but the Ct is unwilling to equate Gov't employment with a football scholarship.

Student Athletes and Worker's Compensation

- An injured party is considered an employee if two elements are present
 - An express or implied K to hire AND
 - Employee status
- A K to hire binds an employer to pay compensation to an employee who performs services, sets forth the place to perform such services and work.
- Courts often look to the right of the control the details of the work test or the relative nature of the work test to determine an employment relationship
 - Right of control test—examines whether the employer possessed the right to control the manner, means, and details of the work's performance.
 - Factors to consider include terms of the employment agreement, the actual exercise of control, the method of payment, furnishing of equipment, and the right to terminate the worker
 - Alternative standard Relative Nature of the Work –pursuant to this test employees are those who as matter of economic reality are dependent upon the business of to which they render service.
 - Relevant considerations include the relationship between the services provided and the regular business of the alleged employer.
 - This test is likely to be satisfied where a worker performs tasks integral to the employer's regular business & does not provide an independent business or professional service vis-a-vis employer.
- Courts are divided, but the modern trend is to not grant students employee status.
- *Waldrep v. TX Employers Insurance Association*
 - FACTS: Waldrep, a football player at TCU, was awarded worker's comp after being paralyzed during a football game, as he was considered an employee of the university.
 - ISSUE: Should Waldrep be considered an employee of TCU? NO
 - RULE: To determine whether an individual is an employee, the court will look to the terms of the contract.
 - HOLDING: Conduct of the parties demonstrated Waldrep was not an employee, as there was no salary for Waldrep, TCU didn't have the ability to fire him, Waldrep's academics came before football, and the NCAA mandates student-athletes as amateurs, not professionals.

NCAA Regulatory Authority & Legal Limits Thereon

NCAA V. TARKANIAN *Facts:* UNLV was to fire D as the head coach. VP said there wasn't a lot of evidence to support the NCAA and didn't believe D violated any regulation. VP was given 3 options: reject sanction requiring UNLV to disassociate D from the program, Recognize UNLV's delegation to the NCAA of the power to act as ultimate arbiter, or pull out of the NCAA. VP chose option 2 and fired D. D sued on the bases that UNLV was not able to do this under the constitution (state action). If the state tries to censor or shut you up then there is a 1st amendment issue.

- Coach is challenging his suspension by UNLV which is a state actor, who must comply with DP clause when they impose serious disciplinary sanctions upon one of their tenured employees.
- **Issue:**
 - Whether UNLV's actions in compliance with the NCAA rules & recommendations turned the NCAA's conduct into state action.
- UNLV & NCAA Relationship
 - Neither UNLV's decision to adopt the NCAA's standards nor its minor role in their formulation are sufficient reasons for concluding that the NCAA was acting under color of Nevada law when it promulgated standards governing athlete recruitment, eligibility & academic performance.
 - A State may delegated authority to a private party and thereby make that party a state actor; BUT UNLV delegated no power to the NCAA to take specific action against any University employee.

Court holding: NCAA is not considered a state actor, therefore, they do not violate D's 1st amendment right

- - 3 theories the NCAA should be considered a state actor
 - Composition - they are made up of a bunch of public entities
 - Entanglement/partnership--Ex: If Grand Forks tried to employ public security people to take care of state laws, they will be considered state actors.
 - So darn big - they act like a sovereign government (Take on the character of a public authority), they have their own president and chain of command

NCAA Rules Enforcement Process

- Infractions Process NCAA regulatory area with reported trial-like decisions rendered by the Committee on Infractions (COI) and appellate decisions made by the Infractions Appeals Committee (IAC).
- A holding of the COI is set aside by the IAC only if its findings are clearly contrary to the evidence, the facts do not constitute a violation, or a procedural error affected the reliability of the information.

Judicial Deference; NCAA Rules Infractions Process

I. NCAA Responsibilities, Generally

- A. Rules
 - 1. NCAA Rules limit recruiting
 - a. Number of visits by coaches, the number of visits to campuses by athletes, number and types of contacts made by coaches, the times of year that contacts may be made
 - b. Restrict the participation of alumni in recruiting
 - 2. NCAA restrictions once athlete enrolled at institution
 - a. Number of hours for practice, times of year for competition, number of contests
 - 3. Notes: NCAA defines an amateur student athlete as one who engages in a particular sport for the education, physical, mental and social benefits derived there from and to whom participation in that sport is an avocation
 - a. K b/w school and athlete is generally limited to providing financial aid for one year at a time
 - i. Scholarship, in some instances, can create a one year property right
 - ii. NCAA provides hearing system if scholarship is revoked
- B. Amateur concepts--All NCAA student athletes are to be amateurs and the association's regulations set out explicit definitions of amateurism and specific prohibitions on the acceptance of extra benefits
 - 1. Getting "paid" involves more than just the obvious salary or stipend
 - a. It is a violation of the rules for benefits to be provided to parents or close relatives of student athletes
 - 2. Amateur status is forfeited when an athlete retains an agent or declares himself eligible for a professional sports draft (Note: NBA Draft)
 - a. There are also restrictions on promotional activities that benefit athletes because of their athletic abilities
 - b. There are restrictions on employment for athletes on full scholarship
 - 3. The importance of education
 - a. The associations establishes standards for initial eligibility of athletes entering the institutions, including specific thresholds for standardized tests and satisfactory completion of a minimum number of core courses in high school
 - b. NCAA also sets forth specific requirements for "satisfactory progress towards a degree" that athletes must maintain
 - c. Furthermore, in Taylor v. Wake Forest, the question was what "reasonable academic progress" constituted
 - i. Student athletes typically have four years of eligibility, and must complete them in five years

Title IX and Gender Equality Issues

Exclusion and Participation Opportunities

- Historical Perspective
 - Title IX of the Education Amendments “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
 - Civil Rights Restoration Act 1987 – Title IX applies to the entire institution even if only one of the programs is acting in violation
 - Franklin –can recover monetary damages
 - Equity in Athletics Disclosure Act 20 U.S.C. §1092

All federally funded institutions must disclose information about their athletics programs

- NCAA is not subject to Title IX -- *NCAA v. Smith* = dues payments from recipients of federal funds (universities) do not suffice to render dues recipient (NCAA) subject to Title IX.
 - - OCR (Office for Civil Rights in the U.S. Department of Education) 3 part test -- *Cohen v. Brown University*
 - (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrolments; or
 - (2) Where the members of one sex have been and are under-represented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
 - (3) Where the members of one sex are under-represented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Gender Based Exclusion from a particular sport

- Equal Protection
 - Person not protecting you has to be a State action and it involves a fundamental right or a suspect class
 - Triggers strict scrutiny
 - Playing sports—CT says NOT a fundamental right
 - Gender—NOT a suspect class
 - Race, origin, religion
 - Quasi Suspect Class—Intermediate Scrutiny
 - Gender

- General Rules
 - Client is a woman, and there is no women's team in what the woman wants to play, generally the woman can try out for that men's only sport; Like football
 - Mostly in High Schools
 - Client is Woman and wants to try out for boys team and a girls team is available, then generally the cases say the School District can bar the girl from trying out for the boys team.
 - Ex: I couldn't have tried out for the Boys Soccer team
 - "separate but equal"--this seems to apply to athletics
 - Possibility the state Const can grant more protections to citizens
 - Ex: California—free speech right to go onto private property and have demonstrations & hand out literature
 - Penn—EP provision in state Const—fed Const does not require a school district to allow girl to try out for boys b-ball where there is a girls b-ball team, in Penn State Const, the Const gives this girl a right to try out for the boys team.
 - Boy who wants to play on girls team
 - Boys team available—he wont have a chance
 - No boys team available (i.e. Volleyball)—mixed results—some say Yes he can try out and others so No.
 - Some argue justifications baring boys from playing girls sports that don't go the other way around
 - Justified as a way of addressing past discrimination against girls in sports
 - Rhone Island Case—only way to bar boy from trying out for girls volleyball—if there has been historically limited opportunity for girls in that sport
 - Ct found there had not been historically limited opportunity for girls in that sport.

Force v. Pierce City R-VI School District Facts: Girl sued to play eighth grade football. Court enjoined team from preventing her from trying out (not that she gets on the team, just a shot)

- School District argument is that men will outperform women due to physical characteristics
 - Only super women athletes will play football
 - The women's sports will be stripped of their best athletes (who are off playing football) esp. in middle school
 - Also, if we let women try out for football, have to let men try out for volleyball and men will take over volleyball and eliminate opportunities for women
- Court basicly says this is ridiculous as this is one student so it wont destroy the sport, and you don't necessarily have to let men try out for volleyball (different set of interests under EPC)
- Also, court says if enough women want it, then have separate football team for them (same as volleyball for men)
 - As far as safety issue, the Ct says there is no evidence showing the girl would get hurt more than a weak boy. (Ron Stoppable example by Johnson).
 - Ct says the arguments of complying with Title 9 and the MSHSAA are bad arguments.
 - Can't do something wrong bc all high schools have agreed to do it wrong, must comply with constitution above all else.

- Precedent
 - Show important Gov't objectives and that the discriminatory means employed are substantially relate to the achievement of those objectives.
 - Objectives and means of achieving them can NOT rest on a foundation of stereotypes
 - Ex: Girls are not as interested in sports as boys are.
- **Title IX violation**
- Title IX takes neutral stance: schools are allowed to decide whether to allow co-ed contact sports
- Does not mandate school to allow women to try out for contact sports
- Does not prohibit it either

MERCER V. DUKE

- **FACTS:** Mercer [girl] was a football kicker in high school and as allowed to join Duke's football team in 1995, but she was not given the opportunity to play and was dropped from the team in 1996.
- **ISSUE:** Is Duke's football program subject to Title IX?
- **RULE:** Subsection (b) provides that in non-contact sports, but not in contact sports, covered institutions must allow members of an excluded sex to try out for single-sex teams. Once an institution has allowed a member of one sex to try out for a team operated by the institution for the other sex in a contact sports, subsection (b) is simply no longer applicable, and the institution is subject to the general anti-discrimination provision of subsection (a).
- **HOLDING:** Mercer was allowed to try out for contact sport, so Title IX is applicable and discrimination is not allowed.

EQUAL BENEFITS AND TREATMENT

- *McCormick v. School District of Mamaroneck*
 - **FACTS:** Mamaroneck offered girls' soccer in the spring and boys' soccer in the fall, which precluded girls' soccer from participating in the regional and state championships.
 - **ISSUE:** Whether equal opportunities existed for the teams. NO.
 - **RULE:** When determining whether equal opportunities exist, consider factors:
 - Whether selection of sports and levels of competition effectively accommodate interests and abilities of both sexes' members;
 - Provision of equipment and supplies;
 - Scheduling of games and practice time;
 - Travel and per diem allowance;
 - Opportunity to receive coaching and academic tutoring;
 - Assignment and compensation of coaches and tutors;
 - Provision of locker rooms, practice and competitive facilities;
 - Provision of medical and training facilities;
 - Provision of housing and dining facilities; and
 - Publicity.
 - **HOLDING:** A Title IX violation exists because the school district has not adequately justified the unequal provision of competitive opportunities to girls and boys.

Regulating Olympic Sports and International Athletics

Olympic Structure International Federation (IF) --> National Olympic Committees (NOC, each nation has one) --> Committee for the Organization Games (COG)

Entities involved in Olympics

IOC (international Olympic committee) – final, binding decisions! IOC Membership: self-selected, not elected by the membership. It's an oligarchy, they select their own members who are going to be the new members (like a private club). IOC is not a democracy and is a very powerful body. The IOC then for the US gets a seat on the USOC.

- - The Olympics has the same type of quasi-sovereignty that the NCAA has
 - Supreme authority of the Olympic movement and binds all involved parties to its provisions and the IOC's decisions.
 - Forms the Organizing Committee for the Olympic Games which carry out the necessary responsibilities for hosting the Olympic Games. Financial responsibility is jointly and severally by the host city and OCOG
 - International non-governmental non profit organization domiciled in Switzerland
 - 93 elected officials serve as reps (individuals aren't representatives of their own countries)
 - IOC president, 4 vice presidents and 10 other members
 - Can accept gifts and bequests as well as seek other necessary resources to carry out its responsibilities

CAS—Court of arbitration for sport – some cases are submitted to this court for final resolution

- **ISF** (International Sports Federation) – nongovernmental organizations; world wide governing body for a particular sport or group of sports and encompasses the NGBs that serve as affiliates
 - Establish and enforce rules for respective sports, establish eligibility criteria, select refs, judges or umpres, provide an internal dispute resolution process and assume responsibility for the technical control and direction of their sports during the Olympics
 - Example – international amateur athletic federation
 - **NGB** (National Governing Body)
 - **NOC** (National Olympic Committee)
 - IOC rules provide the NOC as the sole authorities responsible for the representation of the respective countries at the Olympic Games, so long as the NOC's rules and regulations are approved by the IOC.
 - Example: USOC – sole authorities responsible for the representation of the respective countries at the Olympic Games so long as the NOC's rules and regulations are approved by the IOC.
 - USOC has the power under the IOC Rules to decide not to enter an American Team in Olympics competition; Act gives them broad powers
 - Ct has said that if Congress wanted to narrow its powers it would have, but it hasn't.
 - Can not send a team for reasons not directly related to sport
 - Bound by K to follow IOC's charter, rules and regulations in addition to having to comply with Ted Stevens Act because of the federal charter.

- The routine procedure is that the hosting city Olympic organization extends an invitation to the USOC and this committee accepts an offer to compete in the Olympic Games.
- Must treat every sport equally, abide by its rules for competition, ensure that no political demonstrations during games, construct necessary venues.
 - **Amateur Sports Act of 1978, revised in 1998 – The Ted Stevens Olympic and AMA of 1998** –empowered USOC to serve as the coordinating body within the United States for international amateur athletic competition.
 - USOC must follow as a federally chartered corporation revised Charter in 1978 – under this statute USOC has exclusive jurisdiction and authority over participation and representation of the United States in the Olympic Games. The act was established to coordinate amateur activity, to recognize certain rights that belong to amateur athletes, and to provide for the resolution of disputes involving national provisions that relate to the USOC; Act also established that the USOC is authorized to recognize as a NGB any amateur sport group which files and app and is eligible for recognition;
 - Part of being recognized as NGB includes agreeing to submit to binding arbitration, governed by board of directors, provides procedures for prompt equitable resolution of grievances
 - ALSO provides that any amateur sports eligible to belong to NGB can seek to require the NGB to comply with its responsibilities under the act, by filing a written complaint with the USOC but only AFTER exhausting all remedies within the appropriate NGB for correcting the problem unless it can be proven that those remedies would have had an unnecessary delay.
 - Arbitration by American Arbitration Association, or other special tribunal as the final resolve for disputes regarding which org is entitled to act as the national governing body for a sport & the USOC is bound to accept a judicially confirmed arbitration award.
 - **The STEVENS ACT** gives certain rights to the USOC that might conflict with the IOC’s rights established by the Olympic Charter. For example the USOC has the exclusive right to control the commercial use and licensing of the Olympic marks of the US.
 - **No private right of action for an individual under the act.**
 - USOC is a private entity rather than a state actor.

Regulation of Olympic Sports Within the United States

Basis of Governing Body Authority and Legal Limits Thereon

DeFRANTZ v US OLYMPIC COMMITTEE *Facts*: Action brought by 25 athletes trying to enjoin (injunction) the United States Olympic Committee (USOC) from carrying out a resolution not to send a team to compete in the Olympics being held in Moscow.

- Found Plaintiff failed to state a claim upon which relief can be granted (¶ tried to argue that Δ exceeded statutory provisions and abridged ¶ rights)
- The decision was adopted after both Presidential and Congressional urging (and threat of legal action, perhaps under the Presidential power of invoking sanction under the International Emergency Economic Powers Act) a boycott in light of the Soviet invasion of Afghanistan. On March 21, 1980
 - President Carter told members of the Athletes Advisory Council, a division of the USOC that American athletes wouldn't be participating in the Moscow summer games. The President was concerned that participating in the games would be seen as tacit approval of the invasion. The USOC then passed the resolution. "Plaintiffs urged that defendant USOC had violated the Amateur Sports Act of 1978.
- The court ruled in favor of the USOC, holding that the athletes had not asserted a claim upon which relief could be granted because there is no private right of action (the right to compete) under the Amateur Sports Act. The court observed that the USOC is authorized by the IOC to represent the United States in all matters relating to participation in the Olympic Games.
- **Constitutional Claims**
 - Federally chartered but the USOC is a private organization; independent body and nothing in its chartering statute gives the federal government the right to control that body or its officers
 - All Congress had was power of persuasion – not control.
- Is this the law shaping sports, or is it the law refusing to shape sports? It is argued that this case involved the law refusing to shape sports, and just giving more power to the USOC.

The Olympic Charter Governs the Olympics

- The IOC is the Supreme Authority under the charter and all parties are bound to their provisions. Their decisions are FINAL.
- Elected officials represent their countries
- All disputes relating to the application or interpretation of the Charter are to be resolved by the IOC executive board, although some disputes are submitted to binding arbitration before the Court of Arbitration for Sports for final resolution. Despite its plenary governing power, the IOC relies on National Olympics Committee and governments to enforce its decisions.
 - CAS—Court of Arbitration for Sports. Mandatory, Binding Arbitration
 - (Aftermath of Reynolds Case—IOC instituted this policy).
- To participate a person must be a national of the country of the IOC recognized organization, IOC executive board can withdraw accreditation from any person who infringes the Olympic charter and disqualify an Olympic competitor

Regulation of Olympic Sports within the United States

- THE USOC has the authority to not send a team to Moscow. Nothing in the IOC charter, Rules or by-laws requires a NOC to accept an invitation to participate in any particular Olympic Contest and the President of the IOC has said that the participation in Olympics is entirely voluntary. The Amateur Sports act doesn't deny the USOC the power to decline an invitation.
- Olympic Athletes don't have a statutory right to compete in the Olympics.
 - USOC shall provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition.

- Olympic Athletes don't have a statutory private cause of action under the Amateur Sports Act of 1978.
- To prove so, they would have to prove they have a right & the capability of enforcing the right by private cause of action.
- No private right of action exists and Courts don't recognize claims under the USOC or NBGS seeking injunctive relief or damages
- USOC isn't a state actor
 - USOC is an independent body, and nothing in its chartering statute gives the federal government the right to control that body or its officers. The fed. Gov't may have the power to prevent participation in Olympics even if USOC voted to go, but it doesn't have the power to MAKE the USOC vote in a certain way

Legal Framework for Resolving Disputes Regarding Athlete Eligibility to Participate

- Intervention is appropriate
 - when the association has clearly breached its own rules, AND
 - that breach will imminently result in serious and irreparable harm to the plaintiff, AND
 - the plaintiff has exhausted all internal remedies.
- USOC grants the recognized NGB for each sport the exclusive right to determine an athlete's eligibility to participate in competition.
- The Stevens Act says that the USO "shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, etc. It also requires the USOC to hire an ombudsman who will provide independent advice to athletes at no cost to them in disputes regarding their eligibility to participate in Olympic and international athletic competition
 - If an athlete alleges denial of this right by the United States governing body for the sport, the USOC must investigate the complaint and take steps to settle the controversy without delay. If not settled to the athlete's satisfaction, the Stevens Act provides that the athlete may submit the dispute to the American Arbitration Association for binding arbitration. The USOC's chief executive officer is empowered, in appropriate circumstances to authorize legal action by the USOC in support of the athlete or to finance legal action taken by the athlete (including arbitration) to enforce his or her participation rights.
 - USOC has exclusive jurisdiction over eligibility.
- **Courts aren't involved until after athlete has exhausted all internal avenues of relief provide by the NGB.**
- Courts can intervene because athletes have an underlying right that the USOC follow its own rules and provide appropriate due process.
 - For instance, if they come to a ruling that's arbitrary and capricious without a meaningful hearing and in the absence of substantial evidence
- Courts should not intervene in the merits of the underlying dispute.
 - Courts simply make sure the rules are followed and applied in a consistent matter.
- ***Harding v. US Figure Skating Association***
 - **FACTS:** Harding injured Kerrigan and was set for a planned disciplinary hearing by USFSA, which according to its bylaws, must give a member 30 days to respond to charges and then decided together for a hearing date. USFSA, instead, set the date and

- time for the hearing unilaterally. (violating its own bylaws, thus making this an exception case where judicial intervention is appropriate)
- RULE: Bylaws established by an organization are to be followed. If not, court intervention is appropriate.
 - The short time frame would not have allowed D to prepare an adequate defense (the irreparable harm element). Therefore, the harm to P greatly outweighed the harm to D from postponing the hearing
 - The discretion of USOC must be exercised in good faith
 - HOLDING: Although bylaws were violated, the circumstances now make the issue moot.
- ***Slaney v. International Amateur Athletic Federation***
 - FACTS: Slaney tested positive during a track and field event and the IAAF determined that she had committed a doping offense.
 - United states track and field association hearing board determined that no doping violation had occurred, as they were not convinced by the IAAF's findings. IAAF was unhappy with this result and invoked arbitration of the decision. The IAAF arbitration tribunal determined that once it was found that she had a testosterone/estrogen ratio greater than 6 to 1, Slaney had to show by clear and convincing evidence that the ratio was due to a physiological condition. Since she did not do this, the tribunal ruled she committed a doping offense.
 - RULE: Courts will only intervene to make sure USOC is following own guidelines, not for eligibility reasons. (USOC has specific jurisdiction for determining eligibility, therefore there was no jurisdiction for the state law claims against USOC)
 - HOLDING: Slaney's claims lacked merit, as the Amateur Sports Act (which granted exclusive jurisdiction to the USOC for eligibility determinations) precludes the court from examining state law claims.
 - AMA created no private right of action.
 - She cannot even challenge the methods by which USOC determines eligibility, as it would require the court to examine the validity of the T/E test, something the court will not do
 - ***Lindland v. US Wrestling Association, Inc.***
 - FACTS: Lindland and Sieracki wrestled for an Olympic spot and Sieracki won. Lindland contested the bout, properly exhausted and and appealed the decision to an arbitrator, who ordered a rematch, which Lindland won. Sieracki then found another arbitrator to tell the USOC to ignore the rematch and send Sieracki's name as the Olympic participant.
 - RULE: Arbitration can only be conducted under the Stevens Act for an actual issue, not just to challenge another arbitrator's decisions.
 - Second arbitrator had exceeded his powers. Additionally, an arbitrator is not empowered to redetermine the merits of any claim already decided
 - HOLDING: Under the USOC's own rules, therefore, Lindland is entitled to the position on the Olympic Team.
 - Courts provide only limited review of arbitration awards, will only refuse to confirm when award is the result of corruption, fraud, partiality, etc.
 - Lesson from this case is that if you feel you are wrongfully excluded from an Olympic team, the odds of you getting relief are not good, but they are not non-existent.

Limits on Use of National Law to Regulate Olympic and International Athletic Competition

- ***Reynolds v. International Amateur Athletic Federation***
 - PROCEDURAL HISTORY - Defendant athletic federation appealed judgment from the United States District Court for the Southern District of Ohio, which denied its motion to quash garnishment proceedings and vacate a default judgment and permanent injunction.
 - FACTS - Plaintiff athlete, a resident of Ohio, tested positive for a prohibited steroid after participating in an international marathon event. The urine sample was taken and the testing was performed outside of the United States. Defendant athletic association issued a press release regarding the positive test and barred plaintiff from international competitions.
 - A default judgment was entered against defendant in plaintiff's action to overturn an arbitration in defendant's favor, plaintiff was awarded damages, and an injunction was entered against defendant. Defendant IAAF appealed the denial of its motions to vacate the default judgment and challenged the Ohio district court's personal and subject matter jurisdiction pursuant to Fed. R. Civ. P. 60(b)(4). Denial of defendant's motions was reversed. The court found that Reynolds failed to establish that the IAAF had sufficient contacts within the state. The court reasoned that the competition, the drawing of the sample, and the testing all took place outside the jurisdiction and that contacts between the parties prior to that testing were minimal. Thus, the court found that the trial court lacked personal jurisdiction.
 - HOLDING- Judgment denying defendant athletic association's motion to vacate a default judgment and the cause was reversed with directions that the case be dismissed. The court found the trial court lacked personal jurisdiction over the sole defendant because there was a lack of substantial contacts within the forum state and the suspect actions occurred outside the country.
 - Court seems to buy that the TAC may be an agent of the IAAF, but still finds that the contacts with Reynolds in Ohio are superficial and not enough to create sufficient contacts
 - IAAF, based in England, could not reasonably anticipate being sued in Ohio
 - This case illustrated that the IOC is conducted under the terms of an international agreement, and courts are loathe to apply the law of a state statute to alter the content of the Olympic games, as they are concerned with athletes getting a "home field advantage"
- ***Slaney v. International Amateur Athletic Federation***
 - OVERVIEW: An arbitration panel of the IAAF found that appellant had committed a doping offense. The district court dismissed state law claims against appellee IAAF because of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards(New York Convention), against USOC because of the Amateur Sports Act,. On appeal, she argued that (1) the Convention did not bar adjudication of her claims against appellee IAAF (2) the Amateur Sports Act, did not preempt all state-law claims against appellee USOC. The court held that she participated in a valid arbitration which it was obligated to recognize. Likewise, the district court correctly determined that state law claims against appellee USOC were preempted by Congress' grant of exclusive authority to it to determine eligibility of American athletes.

- Her state law claims were breach of K, negligence, breach of fiduciary duty of good faith and fair dealing, fraud, constructive fraud, and negligent misrepresentation
- Slaney tries to claim that she did not agree to arbitrate with IAAF. However, Slaney participated in the arbitration and didn't raise the issue then. Therefore, the court does not allow her to bring up that point now, as it would essentially allow her a second bite at the apple.
- Slaney also tries to argue that the burden shifting approach of the tribunal was against public policy, the court disagrees, as without the rebuttable presumption it would be nearly impossible for the IAAF to determine that anyone had ingested testosterone.
- HOLDING- since Slaney participated in the IAAF arbitration, her state law complaints seek to relitigate issues decided by the IAAF tribunal, the New York Convention mandates enforcement of the arbitration's decision, and there is no defense that should bar enforcement of the arbitration decision, the court finds that the district court was correct in dismissing Slaney's state law claims against the IAAF.

Court of Arbitration for Sport

- Created in Switzerland and subject to Swiss law as a true impartial forum
- CAS is different from other arbitral tribunals, as it publishes opinions like a court and has its own appeals process
- Courts enforce an agreement to arbitrate before the CAS
- IOC and all Olympic IFs have agreed to CAS jurisdiction, and IFs require their member NGBs and athletes to submit all disputes with the IF to the CAS.
- We dealt mainly with the appeals arbitration procedure, used to resolve appeals from the final decisions of sports federations after all internal administrative remedies have been exhausted- these are the published decisions
- International Council of Arbitration and Sport (ICAS) oversees CAS and appoints members, as opposed to the IOC doing it.

Governing Body Disciplinary Action

- *D'Arcy v. Australian Olympic Committee*
 - FACTS: D'Arcy was selected as a member of the Australian swimming team, and agreed to follow the provisions of the Australian Olympic Committee (AOC) ethical behavior rules, which included a rule against conduct that would be likely to engage a member into disrepute. D'Arcy then got into a bar fight and was criminally charged. The AOC then removed him from the Olympic team because he breached the ethical rules. He appeals this decision to the CAS.
 - The real issue here is the proper scope of review for the CAS.
 - RULE: The CAS has full power to review the facts and law, can draw its own conclusions and conduct investigations (the review is de novo). The jurisdiction of the Appeal Panel is not error-based.
 - HOLDING: The panel affirms, as it would have reached the same conclusion that the exercise of discretion of the AOC in taking D'Arcy off the team was not disproportionate or irrational.

- ***Samoa NOC and Sports Federation, Inc. v. International Weightlifting Federation***
 - FACTS: Ofisa was suspended from the Samoan weightlifting team after allegations (no charge or arrest) that Ofisa had sex with a minor female. The Samoan Weightlifting Federation suspended him as a member of SWF, a decision that the International Weightlifting Federation (IWF) adopted. Ofisa then appealed the suspension from SWF to the Supreme Court and won, and SWF was enjoined from continuing to suspend him. The NOC then appealed to the CAS the IWF decision to adopt the SWF decision.
 - RULE: Since the IWF conducted no investigations or made no findings of its own and simply adopted the SWF decision, Ofisa's suspension must be lifted, as the SWF decision no longer has any effect due to its being lifted by the supreme court.
 - Holding- as IWF decision is not supported on any independent grounds, it is no longer effective and Ofisa is allowed to participate.

Disputed Competition Results

- ***Yang Tae Young v. International Gymnastics Federation***
 - FACTS: An error was made in calculating the starting value of Yang's routine, costing him the gold medal and allowing it to go to Paul Hamm (USA! USA! USA!). Video analysis confirmed the error.
 - RULE: Any appeal must be dealt with during, not after a competition. Additionally, the CAS will not review the determinations of ref or umps or other officials, unless the rules have been applied in bad faith
 - We want to know who the winner is when the match is finished, we desire that element of finality that will not be overturned later.
 - HOLDING: mistakes can be made by officials, and the CAS will stay out of it, and Yang's appeal is denied.
 - If Yang had been ahead, he may have choked on the final routine, we don't know for sure that he would have won, therefore we should accept the results

Doping Violations and Sanctions

- ***USA Shooting & Q. v. International Shooting Union (UIT)***
 - FACTS: Q. got sick while at a match in Cairo, the doctor gave him the medication, the writing on the bottle being Arabic and not understandable to Q. The doctor who gave him the medication was shown a list of drugs that were not to be given to Q, and told Q. and his coach that the medicine was not banned. Q. then won the gold medal the next day but failed the drug test, vacating his medal and costing the USA an olympic spot. Q. requests to the CAS that he be allowed to keep the medal and the USA retain its olympic spot.
 - RULE: strict liability does not apply, as the applicable rules state that the offense must be done with the intent to increase performance. The UIT cannot create strict liability rules where they do not exist, and can only punish Q based on the rules in force.
 - HOLDING: Sanctions reversed, as the UIT must follow its own rules.
 - Balance unfairness of athlete getting sick to the unfairness to the rest of the field by allowing him to take the drugs.
 - Case illustrates that the CAS is not like a normal arbitration panel, as they write dicta and telegraph positions to future parties.

- ***C. v. Federation Internationale De Natation Amateur (FINA)***
 - FACTS: C. won a swimming race, but then tested positive for a banned substance. She was then given a two year suspension. Her coach admitted that he had accidentally given her a capsule which contained the banned substance.
 - C. claims substance was unlikely to boost performance, says sanction is likely to destroy her career, attacks the system of liability without fault.
 - FINA says liability without fault is needed to effectively fight doping
 - RULE: Strict liability rule is upheld by the CAS. However, CAS holds FINA to be consistent in its punishments and finds that the penalty imposed on C. is not in proportion to the circumstances of the case
 - FINA had earlier given another swimmer only a strong warning when she had a violation, imposing a penalty in proportion to the fault committed
 - CAS also believes C has not presented formal evidence rebutting the presumption of fault- she must present evidence which allows it to be established with near certainty that she has not committed a fault.
 - HOLDING: Length of suspension reduced, says what she has served so far is enough (about 15 months)
- World anti-doping Code- seeks to harmonize regulations regarding anti-doping violations around the world
 - sanctions for violations may be reduced in exceptional circumstances if the athlete bears no fault or no negligence, or no significant fault or no significant negligence
 - Gives the CAS more flexibility.
- ***Guillermo Canas v. ATP Tour'***
 - FACTS: Canas tested positive for a banned substance, he claims that he got a prescription filled with a tournament doctor, but the medicines got mixed up and he received the medicine with the banned substance meant for a coach of another player, and claims he therefore has no fault or negligence.
 - Once you have tested positive, burden shifts to athlete to show that he bears no fault or no significant fault or negligence.
 - Canas did not review the contents of the box whatsoever, and knew the medicine has changed hands a few times. It was negligent for him to blindly rely on on the system and ingest the medicine, he has a duty of utmost caution.
 - However, he had the expectation that the tour doctor would take care of him, the ingestion was purely for medical reasons, therefore the CAS says this is substantially different than the typical doping case.
 - RULE: Even though player was negligent, he was entitled to rely on the expert medical personnel. He had no significant fault or negligence
 - No Fault defined- player establishing that he did not know or suspect, and could not have reasonably known or suspected even with the exercise of utmost caution, that he had used or been administered the prohibited substance.
 - No significant fault defined- player establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for no fault or negligence, was not significant in relationship to the doping offense.
 - HOLDING: since he had no significant fault, his ineligibility will be reduced from two years to nine months.

Health, Safety, and Risk Issues

THURMOND v PRINCE WILLIAM BASEBALL CLUB - injury to spectator

Facts: In 8th inning, P was struck in the right side of the face by a foul ball. She suffered fractures of her facial bones, damage to her right eye socket and extensive nerve damage.

- Is there an **Assumption of Risk**--person's voluntary assumption of the risk of injury from a known danger operates as a complete bar to recovery for a Δ's alleged negligence in causing that injury
 - If so it is a **Subjective Standard**
 - Addresses whether a particular π fully understood the nature and extent of a known danger and voluntarily exposed herself to that danger (Jury Question)
- Ct states lights immaterial b/c she said she could see the ball
 - But, defective lighting could cause you to be less able to judge the speed and she maybe couldn't see it until it was right in front of her
- Either way still about negligence and whether she should have a case against them
- Ct held that when a particular adult spectator of ordinary intelligence is familiar with the game of baseball, that spectator assumes the normal risks of watching a baseball game, including the danger of being hit by a ball batted into an unscreened seating area of the stadium
 - Look at injury and the party that is best able to remedy the injury
 - also who could avoid the injury at the cheapest cost
- Cost Avoiders
 - Perhaps put a net around the entire baseball stadium...

Legal Duties of Sport Facility Operators

- No legal duty to ensure its patron's safety.
 - Liability is imposed for spectator injury only if there is a breach of a legal duty of care.
 - Cts have rejected attempts to hold facility operators strictly liable for spectator injuries by refusing to characterize a sporting event as an ultrahazardous activity.
- Some Cts adopt a No-Duty Rule
 - No legal duty to protect or warn spectators about the common, frequent, and expected inherent risks of observing a sporting event
 - Ex: Being struck by flying objects that go into the stands.
- But there is potential liability for negligent medical care rendered to an injured spectator
 - *Fish*—Ct held a club may be liable for negligently failing to ascertain the nature and extent of a spectator's symptoms after being struck by a foul ball and consequent need for immediate hospitalization.
- There is a legal duty NOT to increase the inherent risks of injury from watching a game or athletic event.
 - *Lowe* (dinosaur mascot)—Ct held the presence of the team's mascot is NOT an integral part of the game of baseball.
 - The mascot's antics in hitting π with his tail, while the game was being played, created a triable issue of fact whether the club increased the inherent risks of watching a baseball game by distracting π and preventing him from seeing and protecting himself from injury by a batted ball.

- But, a π can NOT sue the drunk guy behind you that you turned around to look at & was then hit by a ball.
- Sports event spectators characterized as **invitees**
 - They are invited to enter a venue to view a game; thus, the facility operator must maintain the premises in a reasonably safe condition to prevent spectator injury from normal use of the facility.
 - Facility operator may be liable for failing to use reasonable care in regulating crowd control and fan conduct during the game.

HACKBART - injury to athletes, co-participant liability *Facts*: P played against Bengals. P attempted to block Clark but missed and fell to the ground. P was on his knee when Clark came by and out of anger and frustration struck a blow with his arm to the back of P's head which caused both players to fall. No foul was caused and P did not seek medical attention. P still felt pain but continued to play in subsequent games. P lost employment and sought medical attention and discovered he had a neck injury. P claimed that his injury was at least the result of a negligent act by Clark's team, the Bengals. *Court holding*: The level of violence and the frequency of emotional outbursts in NFL football games are such that P must have recognized and accepted the risk that he would be injured by such an act as that committed by Clark.

MARK v MOSER

Facts: Plaintiff Rebecca Mark suffered serious injuries that required hospitalization as a result of Kyle Moser cutting in front of her during the bike leg of a triathlon.

- Court must define the standard of care one competitor owes another in a sporting event.
 - Court says: Liability will not lie where the injury causing action amounts to a tactical move that is an inherent or reasonably foreseeable part of the game and is undertaken to secure a competitive edge.
 - In contrast, if a co-participant vents his anger at another player by means of a physical attack, such conduct would be actionable.
- **Negligence Standard**
 - Requires that a person exercise ordinary care under the circumstances.
 - Whether the Δ participated in a reasonable manner and within the rules of the game or in accordance with the ordinary scope of the activity.
- Ct follows **Reckless or Intentional Conduct Standard**
 - Tort action when players step out outside their roles as fellow competitors and recklessly or intentionally inflict harm on another.
 - Intentional Act—when he desires to cause the consequences of his act, or when he believes that the consequences are substantially certain to result from it.
 - Reckless Act—act is intended by an actor, but the actor does not intend the harm that results from the act.
 - No liability
 - Injury causing action is a tactical move that is inherent or reasonably foreseeable part of the game and is undertaken to secure a competitive edge.
 - Liability for conduct
 - Physical attack on co-participant out of players anger
 - Ex: Boxer bites opponents ear during match, football player punches another player after a tackle.

- Court concludes that Kyle's action was an inherent risk in the event that Rebecca assumed as a matter of law, thereby precluding recovery
- Note: Most jurisdictions permit recovery in sports injury cases b/w co-participants only for intentional or reckless conduct regardless of the level of competition, age or experience of the participants, or organizational structure of the sport.

PEOPLE v SCHACKER

Facts: Schacker (a hockey player) hit Morenberg after the play. Morenberg was near the net and hit his head on the crossbar, receiving a concussion from the blow. Schacker is charged with Assault.

- Court says: The idea that a hockey player should be prosecuted runs afoul of the policy to encourage free and fierce competition in athletic events.
- And: If cross checking, tripping and punching were criminal acts, the game of hockey could not continue in its present form.
- Held: The interests of justice requires a dismissal of this charge...

Contract Law

Coaches' Contracts and Related Issues

- A. Those who represent coaches have to address issues such as:
 - 1. Scope of a coach's responsibilities
 - 2. Duration of a contract
 - 3. Reassignment to non-coaching positions
 - 4. Termination of relationship for cause and without cause
 - 5. Entitlement to perquisites and fringe benefits
 - 6. Buyout provisions
- B. Property interest in coaching positions
 - 1. **KISH V. IOWA CENTRAL COMMUNITY COLLEGE** - *Facts*: contract stated that employment may be terminated at any time if there is a need to reduce staff because of the uncertainties of funding, reduction in enrollment, discontinuance of programs or services, or for other just cause. P filed suit against D for due process and property interests. P's due process claim failed as matter of law because his asserted interest was not protected by due process. The contract was not continuing in nature and may be terminated at the pleasure of the board. P received all the process he was due with regard to his termination from his retention coordinator position because he was promptly reinstated with full pay and benefits. Take home lesson - don't have at-risk employment, make it for-cause employment.
- C. Compensation issues
 - 1. Assuming the termination is unjustified, the coach is entitled to compensation for the duration of the contract term of employment
 - 2. **RODGERS v. GEORGIA TECH ATHLETIC ASSN.** - *Facts*: P brought breach of K action to recover the value of certain perquisites which had been made available to him as the head football coach. P was removed from his coaching position by vote. P's only claim was for the value of the perquisites to which he claims entitlement under his employment K. D argues P is unable to recover because the particular perquisites were expense account items or tools to enable P to more effectively execute his duties as coach.

- Rodgers will only be entitled to recovery compensatory damages that he suffered by reason of the breach of his K—the proper measure of damages arising from the breach of the K of employment was actual loss sustained by the breach, and not the gross amount of his wages and expenses under the K.
 - To form the basis for recovery the damages must be such as can be traced solely to the breach, must be capable of exact computation, must have arisen naturally and according to the usual course of things from such breach, and must be such as the parties contemplated as a probable result of the breach

Lesson from the case: better define the scope of the benefits.

- D. Termination, Breach, and Liquidated Damages
 - 1. Options available to an institution when a coach quits
 - a. Seek negative injunctive relief
 - b. Sue for damages
 - c. Cancel K and allow coach to leave
 - 2. Most likely, an institution will seek compensation under a buyout or liquidated damages provision
 - 3. **VANDERBILT UNIVERSITY v. DINARDO** - Facts: Dinardo resigned as Vanderbilt's head FB coach to become the head FB coach for LSU. Vanderbilt was awarded \$281,886 pursuant to a damage provision in Dinardo's K. Dinardo argued that Section 8 of the K is an unenforceable penalty under TN law (cts will not enforce such a provision if the stipulated amount constitutes a penalty because it is to coerce performance by punishing default).
 - **Liquidated Damages**
 - Refers to an amount determined by the parties to be just compensation for damage should a breach occur.
 - Cts will NOT enforce this provision if the stipulated amount constitutes a penalty.
 - Factors for Ct that provision is for liquidated damages and not a penalty:
 - Reasonable in relation to the anticipated damages for breach, measured prospectively at the time the K was entered into, and not grossly disproportionate to the actual damages.
 - Any doubt will be resolved in favor of a penalty.
 - 4. Black letter law - you are allowed to agree what you want in a K, except:
 - a. You cannot agree to prospectively pay a penalty for non-performance (this is usually unenforceable)
 - b. How can you get around a penalty - you agree in advance that the damages are going to be X number of dollars...it's not a penalty, you are just agreeing in advance if you are not done by X date then that's what you pay because that's what it's worth
 - c. Courts will look at liquidated damages clauses to make sure they are not a penalty in disguise
 - d. Courts will allow liquidated damages if they have a good reason to have them included.

Renegotiation of Contracts

- A. Whether there is a binding agreement in renegotiating a contract, there are some jurisdictions that say this is ridiculous and we are not going to recognize this binding agreement to renegotiate
 - 1. You can actually have some legally valuable right in negotiating something if it is for something like specified terms
 - 2. Good faith duty of negotiation for an extension of a contract
- **B. ARBITRATION BETWEEN NFL MANAGEMENT COUNCIL AND JOHN HANNAH AND LEON GRAY**
 - 1. Classic example of splitting the baby
 - 2. You are not entitled to take back anything you have given, but you also don't have to give back anything you were given
 - 3. This kind of thing can be appealed de novo to the arbitrator after a cooling off period so that things could get smoothed over so the players could get back to their job
- **C. ARBITRATION BETWEEN NBA AND NATIONAL BASKETBALL PLAYERS ASSOC.**
 - 1. Facts: Love's agent alleged that Bulls' general manager promised to renegotiate Love's K at the end of the season. GM denied any promises to the agent. Arbitrator failed to find that GM promised to reopen Love's K
 - 2. Issue: whether the Bulls had an oral understanding to renegotiate its K with Love
 - 3. If so, the issue is whether Love became a free agent because of the Bulls' failure to renegotiate in good faith
 - 4. Arbitrator stated there was a great danger in holding that William's agreement to meet was an agreement to renegotiate. It would mean that any time a club representative sat down with a player's agent to discuss an existing K, the club would run the risk of being charged with an agreement "in good faith" to modify the K or substitute a new one.
 - This would severely inhibit any discussions b/w the clubs & players.
 - 5. Should you ever agree to renegotiation clauses? If young, probably advantageous to you and you may not have much leverage at the beginning

Mitigating Damages

- A. Many player K's are guaranteed, especially MLB and NBA K's
 - 1. Even if the player is released and his K is terminated, he will be paid certain amounts not yet earned under the K
- B. In almost all instances the player is entitled to receive the money regardless of his future performance or other events
- **C. ARBITRATION BETWEEN NFL PLAYERS ASSN. (PASTORINI) & RAIDERS**
 - *Facts:* Pastorini was under K to the Raiders for the 1980-1983 seasons. Raiders place him on waivers and released him in the final cut in accordance the provision in his K that his skill or performance was unsatisfactory as compared with that of other players competing for a position on the Raiders roster in 1981. Demand was made that the Raiders then pay Pastorini his salary for the seasons under the K. He later signs with the Rams and then Eagles. Raiders contend they are entitled to an offset of Pastorini's earnings when he played with the Rams & Eagles.

- *Issue:* Whether the Raiders are entitled to offset against its guaranteed salary obligations to Pastorini the amounts he received from other NFL teams after his release by the Raiders.
- *Arbitrator Decision:* No; Raiders have to pay
 - *Reasoning:*
 - Arbitrator finds the general rule regarding the measure of recovery by a wrongfully discharged employee (amount of salary for the period of service less the amount the employee has earned or might have earned) is not applicable in this case.
 - No claim Pastorini was wrongfully discharged; instead he was waived which was authorized by the K.
 - Raiders had a right to waive Pastorini but they also had an obligation to pay the salaries provided for in the K.
- **D. IN RE WORLDCOM, INC**
 - *Facts:* Michael Jordan entered an endorsement agreement with MCI. Agreement gave MCI a 10 year license to use Jordan's name and likeness. Jordan's only obligation was to make himself available 4 days a year for no more than 4 hours per day. MCI went bankrupt, in which Jordan sued for payment on the remaining years of the K.
 - 1. Is this an employment K or an independent contractor K? It's an independent contractor relationship because he only works 4 days a year for 4 hours, therefore Jordan's claim is not capped by the bankruptcy code because he is NOT an employee.

Bonus Provision Arbitrations

CLEVELAND INDIANS V. JAMES BIBBY

- *Facts:* Bibby and Cleveland enter into 2 yr K consisting of the Uniform Player Contract & certain Special Covenants. Covenant of bonuses stated all payments earned pursuant to the provisions will be paid at the end of the respective seasons. Bibby did not get his bonus at the end of the season.

**Arbitrator Decision:* No dispute the season ended when Cleveland played their last game. Not paying the bonus is a material breach of the K.

- Note: Because of the breach Bibby is a free agent. If it's a material breach, rescission of the K is a remedy you can seek. It didn't matter the date of the last game...when the season is over, it's over by the last game played.

Contract and Private Association Law

- **A. BLOOM V. NCAA**
 - 1. **FACTS:** Bloom was an Olympic skier and had endorsements and modeling deals from such, but when he started playing college football, the NCAA forced him to end his endorsements.
 - 2. **RULE:** Bylaws prohibit student-athletes from accepting any remuneration for or permitting use of name or picture.
 - 3. **HOLDING:** Bylaws will be interpreted in accordance with the NCAA's and its member institutions' construction of those bylaws.

Antitrust

ANTI-TRUST LAW

- A. Constitution to the government is like anti-trust law is to the market
- B. Anti-trust law is important to business, the economy and trade
 - 1. How the economic dimension of our society operates
- C. Goal to this law is **COMPETITION**
- D. Prices are to come down to cost of production and distribution
 - 1. What about profit?
 - 2. Even that part of the profit is part of production and distribution
- E. If competition is perfectly free (with free competition, companies may "set you on fire" with their products) and hands off in terms of the market, then there would be price fixing
- F. Sherman Anti-Trust Act
 - 1. Federal policy wanting to bring down prices to help consumers
 - a. This is to increase productivity and efficiency
- G. Nature and scope of Anti-trust limits
 - 1. 15 U.S.C. 1 is Anti-trust law and section 2 is monopolizing
 - 2. Monopolies are when there is only one business doing one certain type of business and holding all the market and money setting for it
 - 3. Anti-trust act is more like competition act where it's purpose is to oppose the combination of entities that could potentially harm competition, such as monopolies or cartels

Price Fixing

- Vertical Combination = IE: someone who produces steel, different person who assembles cars, then a dealership who sells the cars and people who buy the cars and in a supply chain you want to tie all these pieces together
- Horizontal Combination = IE: steel producers such as U.S. Steel, Pittsburgh Steel, etc, and they get all together and form a monopoly
- Output limitation = just as bad as price fixing
 - IE: we agree we are going to only produce so much
 - Why is this bad? Because if you restrict output then you are going to raise the prices of the product
- Price fixing vertically is fine. Why? Because that happens all the time, but horizontal price fixing is per se illegal because we are going to assume it is anti-competitive

Antitrust & NCAA

NCAA V. UNIVERSITY OF OKLAHOMA Facts: involves an industry in which horizontal restraints on competition are essential if the product is to be available at all. Market power - you as the producer of a product are dominate enough in the market that you can choose a price that is higher than the competitive price because of your power in the market. The bigger you are, the more market power you have and have some ability to push the price up above the initial price.

- **Per Se Rule**
 - This rule is applied when the practice facially appears to be one that would always or almost always tend to restrict competition & decrease output.

- Horizontal price fixing & output limitation are as a matter of law illegal per se b/c the probability that these practices are anticompetitive is so high.
- *Courts Holding*
 - Ct holds inappropriate to apply the per se rule here b/c the case involves an industry in which horizontal restraints on competition are essential if the product is to be available at all.

Agreeing to not pay athletes, what should the anti-trust analysis be?

- Does it reduce output? Arguably no
- Does it fix prices? Arguably yes

LAW v NCAA Facts: NCAA promulgates a rule limiting annual compensation of certain D-1 entry level coaches to \$16,000. Basketball coaches effected by the rule filed a class action challenging the restriction under §1 of the Sherman Antitrust Act.

- **Rule of Reason Analysis**
 - Π has the initial burden of showing that an agreement had a substantially adverse effect on competition.
 - Can be established indirectly by proving that the Δ possessed the requisite market power within a defined market or directly by showing actual anticompetitive effects, such as control over output or price.
 - If that is met, then the burden shifts to the Δ to show evidence of the procompetitive benefits of the restraint of trade.
 - If this is met, then the π must prove that the challenged conduct is reasonably necessary to achieve the legitimate objectives or that those objective can be achieved in a substantially less restrictive manner.
- Ct looked at the anticompetitive effects and held where a practice has obvious anticompetitive effects, i.e. Price Fixing, there is no need to prove that the Δ possesses market power.
 - The Ct is justified in proceeding directly to the question of whether the procompetitive justifications advanced for the restraint outweigh the anticompetitive effects under a quick look rule of reason
 - Analysis—anticompetitive effect is established even without a determination of the relevant market, where the π shows that a horizontal agreement to fix prices exists, that the agreement is effective, and that the price set by such an agreement is more favorable to the Δ than otherwise would have resulted from the operation of market forces.
- *Courts Holding:* The NCAA did not establish evidence of sufficient procompetitive benefits; there is not enough to withstand a motion for summary judgment.

Smith v. NCAA

- **FACTS:** Smith finished her BA at St. Bonaventure where she played volleyball and then did her postgraduate study at Hofstra and U of Pittsburgh. She wanted to continue playing volleyball at U of Pittsburgh but was denied because of the post-baccalaureate bylaw of the NCAA, which only allows athletes to participate in athletics during postgraduate study at their undergrad university. Smith is arguing antitrust violation because bylaw unreasonably restrains trade and has an adverse effect on competition.

- **RULE:** Sherman Act does not apply to the NCAA's promulgation of eligibility rules.
- **HOLDING:** Smith cannot bring an antitrust suit against NCAA's eligibility rules, as they primarily seek to ensure fair competition in intercollegiate activities and are not related to the NCAA's commercial or business activities.

Antitrust Limits on Internal Governance

Acquisition, Ownership, and Sale of a Franchise

- ***Mid-South Grizzlies v. NFL***
 - **FACTS:** Grizzlies applied for entrance into the NFL, but their application was denied. They are now suing the NFL for a possible antitrust violation because of a coalition between NFL members, the NFL, and the Commissioner to reject them from the league.
 - **ISSUE:** Whether an antitrust violation was committed. NO.
 - **RULE:** In order to have a Sherman Act violation, there must be some actual or potential injury to competition.
 - **HOLDING:** Grizzlies have shown no actual or potential injury to competition resulting from the rejection of their application for an NFL franchise and cannot succeed on their Sherman Act claims.
- ***Levin v. NBA***
 - **FACTS:** Levin was denied the opportunity to purchase the Boston Celtics and is now bringing a suit for an antitrust violation.
 - **ISSUE:** Was this an antitrust violation? NO.
 - **RULE:** In order to survive defendant's motion for summary judgment, plaintiffs must demonstrate that the conduct complained of is a violation of the antitrust laws.
 - **HOLDING:** Since there was no exclusion of petitioners from competition with the alleged excluders, nor anti-competitive acts by them and no public injury occasioned thereby, the defendant's acts did not constitute a violation of the antitrust laws and defendant's motion for summary judgment is appropriate.

Antitrust Disputes Between Rival Sports Leagues & Organizations

NORTH AMERICAN SOCCER LEAGUE v NFL

- ***Facts:*** NFL prohibits its members from having a capital investment in the NASL. The leagues compete for fans and revenues from gate receipts and broadcast rights.
- ***Issue:*** Whether an agreement between members of one league of professional sports teams (NFL) to prohibit its members from making or retaining any capital investment in any member of another league of professional sports teams (NASL) violates §1 of Sherman Act.
- ***Holding:*** Procompetitive effects are not substantial and are outweighed by the anticompetitive effects; violation of the rule of reason.
- ***Analysis***
 - Although the ban is anticompetitive it does not meet the stringent conditions to find it to be a per se violation of the Sherman Act.
 - NFL Procompetitive arguments
 - The ban is necessary for NFL owners to compete efficiently in the professional sports league market.
 - Ct disagrees; Here there is evidence of the financial success of the NFL despite long-existing cross-ownership by some members of NASL

teams—there is no market necessity or threat of disloyalty by cross-owners which would justify the ban.

- NFL argues ban is necessary to prevent disclosure by NFL cross-owners of confidential information to NASL competitors.
- Ct disagrees; No evidence of this type of information is supplied; no evidence showing the NFL could not be protected by less restrictive means.

AFL v NFL

- *Facts*: AFL argues the NFL's expansion of adding teams in Dallas and Minneapolis is an illegal effort to monopolize professional football.
- *Analysis*:
 - DC determined the relevant market had to be determined for each separate aspect of the competition.
 - Market for recruiting—nationwide
 - Market for TV coverage—nationwide
 - Market for spectators—31 metropolitan areas in the US having a population large enough to be expected to support a major league professional football team
 - Ct holds the relevant market is nationwide and is not the desirable sites for a football team
 - DC found the NFL did not have the power to monopolize the relevant market
 - Ct agrees; the fact that the AFL was successfully launched, could have a full schedule of games in 1960, had competed very successfully for players, and has obtained advantageous K's for national TC coverage strongly supports the DC's finding that the NFL did NOT have the power to prevent, or impede, formation of the new league.
 - *Holding*: DC properly held that the NFL has shown no monopolization by the NFL or its owners of the relevant market, and no attempt or conspiracy by them, or any of them, to monopolize it or any part of it.

Proving Monopoly Power

- Determining whether a professional sports league has monopoly power for §2 of Sherman Act purposes is similar to process for measuring a league's market power for purposes of §1.
 - Evaluate the actual or potential anticompetitive effects of the challenged league rules or conduct.
 - Necessary to define both the product and geographical components of the relevant market, and then determine the league's market share or control of it.
 - Courts generally require 70% market share to justify a finding of monopoly power but no approach is used in §2 sports antitrust cases.
 - Instead the dispositive issue is how the relevant market is defined which usually determines whether the league has monopoly power and the corresponding ability to exclude rivals and prevent economic competition.

Internal League Governance, Commissioner Authority

- Generally
 - League Commissioner
 - selected by and answerable to the league owners and their governing body, a sports league commissioner traditionally has been accorded certain powers and attendant enforcement rights that create a special role. But no unfettered independence and authority. –contractual in nature and derived from the league’s constitution, bylaws, and operating rules.
- Role consists of:
 - Fair and impartial internal authority
 - Take action when necessary to restrain the unwarranted exercise of power
 - Centralized admin authority
 - Skillful mediator when owners don’t agree
 - Lead negotiator for league
 - Labor disputes
- Commissioner has broad power (and probably can be wrong or right – Court says it can’t determine this – but if you make too many “wrong decision” either get kicked out or alter document to alter power) to determine what is in best interest of sport

FINLEY (Oakland A’s owner) V. BOWIE KUHN FACTS: Finley sells Joe Rudi and Rollie Fingers to Boston and Vida Blue to New York before their option years expired. Kuhn voids the deals under his “broad authority to prevent any act, transaction or practice. . . inconsistent with the best interests of baseball.” Finley challenges Kuhn’s authority to do so.

- Issues
 - Whether the commissioner of baseball is contractually authorized to disapprove player assignments which he finds to be not in the best interest of baseball where neither moral turpitude nor violation of a ML rule is involved,
 - and whether the provision of the ML agreement whereby the parties agree to waive recourse to the courts is valid and enforceable.
- Commissioner’s concerns
 - The debilitation of the club
 - The lessening of the competitive balance of professional baseball through the buying success
 - The present unsettled circumstances of baseball’s reserve system.
 - Why is it a problem for two teams to be the best, if they have the most money?
 - Smaller market teams, essentially would be pushed out of existence because less money.
 - In the best interest of baseball, in an equity argument, selling the best players to two teams isn’t right.
- **Held:** The Commissioner has the broad authority under the MLB agreement (which all teams have signed) to determine which actions are not in the best interest of baseball; however, this isn’t unbridled power
 - cannot break the law, make arbitrary or internally inconsistent decisions, or fail to follow basic due process.
- Evidence supports the district court’s findings that the Commissioner Acted in Good Faith after investigation, consultation, and deliberation, in a manner in which he determined to be in the

best interest of baseball, and that whether he was right or wrong is beyond the competence and the jurisdiction of the court to decide.

- Even in the absence of a waiver of recourse provision in an association charter it is generally held that courts **will not intervene** in questions involving the enforcement of bylaws and matters of discipline in voluntary associations, i.e. **substantive issues**

League Provisions for Commissioner

- - Make decision in the best interest of baseball (after investigation) the preventative or remedial – can't be arbitrary or capricious (not limited to player assignment, franchises, etc.) parties agree to be bound by his decisions and waive recourse to the court (and won't sue). However, can get court to review
 - when ILLEGAL (external law/statute) and
 - When it doesn't provide due process (basic – not constitution – no state actors—failure to warn is the closest thing they have to due process ;).
 - Violating own rules in bylaws.
 - **BUT** whether it's good decision, what they would do, etc. is out of their purview so long as it doesn't fit into one of the exceptions above.
 - Although a court will not second guess a league commissioner's exercise of discretionary judgement it will require that the commissioner have valid authority to take any challenged action
 - A party is entitled to notice of the alleged misconduct and a fair opportunity to be heard. The league's constitution generally established procedural safeguards or enables the commissioner to formulate rules necessary to satisfy the minimum requirements of due process in connection with a disciplinary proceeding.

Fiduciary Relationship

- Is there a Fiduciary Relationship?
 - The difference between NFL and a cooperation--the NFL is an unincorporated association
 - Do unincorporated associations have a fiduciary duty?
- Joint Venture: A joint venture, of necessity, requires an agreement where the parties have (1) a joint interest in a common business, (2) an understanding that profits and losses will be shared, and (3) a right to joint control
 - The NFL teams are not engaged in a joint venture.
 - A joint venture is a joint business undertaking of two or more parties who share the risks as well as the profits of the business. However, the NFL teams share revenues, they do not share profits or losses.

OAKLAND RAIDERS V. NFL - fiduciary duty

Facts: The Raiders alleged that the NFL and Tagliabue took various actions that were discriminatory towards the Raiders, placing it at a competitive disadvantage vis-à-vis other member clubs. One legal theory that the Raiders advanced was breach of fiduciary duty

- HELD no fiduciary duty (no joint venture/ not a corporation)
- The Commissioner is not always acting in the best interest of any team.

- Best interest is the best interest of football in general and this may, at times, be adverse to a team's best interest.

Internal League Governance and Commissioner Authority

- A. Individual player K is only superseded by the league agreement if the K says that within, there is nothing in the law that says that the player K supersedes the league K.
- B. If you make K's that are inconsistent with K's that you have with other people, good luck because it's going to take an activist judge to say that it takes precedence over any other agreement.
- C. There's nothing in the law that makes one K superior than another.

RULES OF NONREVIEWABILITY - Black Letter Law

- A. If a league makes its own decision about something, the courts are suppose to give deference to private associations, the exceptions are:
 - 1. Where the rules, regulations, or judgments of the association are in contravention to the laws of the land or in disregard of the charter or bylaws of the association, and
 - 2. Where the association has failed to follow the basic rudiments of due process of law.

Franchise Relocation; Interactions with Municipalities

Generally:

- Courts have imposed implied covenants of good faith and fair dealing in Ks governing the internal affairs of professional sports leagues
 - **Relocation:**
 - Oakland raiders move to LA—concerning franchise relocation the Court held that each league member must exercise its contractual right of approval or disapproval or its discretionary power over the interests of the other in good faith.
 - Clippers – wanted to move to LA laterally and court remanded it for factual determination as to who had breached the mutual covenant (if anyone).

Los Angeles Memorial Coliseum Commission v. NFL

Facts: In 1978, the Rams moved to Anaheim, so the empty coliseum tried to get an expansion franchise. When that failed, they tried to get an existing team. **BUT** NFL Rule 4.3: in order to move into another team's "home territory" (75 mile radius), you need unanimous league approval, and Anaheim was less than 75 miles from the coliseum.

- Coliseum said that Rule 4.3 was a Section 1 (Antitrust) violation, but the court said that there was no justifiable controversy because there was no "suitor" existing contract.
 - As a concession, the NFL amended Rule 4.3 to require only a 75% approval vote.
- Al Davis' lease with Oakland expired he wanted to move. The Coliseum revised tried again because now they had a suitor.
 - The Coliseum enjoined application of Rule 4.3
 - District Court overturned and enjoined the move
- The Raiders and the Coliseum signed a contract to move the team
 - The owners voted 22-0 against allowing the move.

- Judge ruled, as a matter of law, that the NFL was not a single entity
 - if they were single entity they would “share profits and losses.”
- **Held:** Jury verdict for Raiders and Coliseum

Unfair Labor Practices; Collective Bargaining

SILVERMAN I You have to bargain in good faith. This forces people to sit down and bargain and come to an agreement. Some things are mandatory and some are permissive when it comes to the bargaining agreement. If you give a reason for something in a negotiation you get discovery for the documents to back them up. In this case, the league is sending out messages that the don't have enough money but are not saying it in negotiation so they don't have to open their books to the other side.

- **Draft** - when you start in baseball as a player for a certain number of years, you are not a free agent therefore the employers can draft you and be the only team that picks you up and the baseball player cannot do a deal with another team. The team has the right to prevent any other team in the league from giving you an offer, it doesn't mean you have to play for them but the team has dibs on you
- **Free agent** - you can negotiate with any number of teams, but there is a time when you can't negotiate. The players can pick off one employer against the other to get the best deal possible.

SILVERMAN II The case the league wants to say that we should be able to come together as a block and not have one person picked off against the other. Ct said that the labor law protects employees that get picked off one against the group, but does not protect employers from being picked off.

Salary Arbitration

- A. Baseball
 - 1. Owner submits a number, plain number with just salary included
 - 2. Player submits a number
 - 3. Arbitrator has the two numbers and has to pick one number or the other and CANNOT pick a number in between
- B. Note: you better not aim too high or too low or you will just be handing it to someone

Union's Duty of Fair Representation

- *Peterson v. Kennedy*
 - **FACTS:** Peterson brought suit against the NFL Players Association, claiming it had provided him with inaccurate advice upon which he detrimentally relied in pursuing a grievance against his ex-team after he was injured.
 - **ISSUE:** Did the union act arbitrarily? NO.
 - **RULE:** A union breaches its duty of fair representation only when its conduct toward a member of the collective bargaining unit is "arbitrary, discriminatory, or in bad faith."
 - **HOLDING:** Union did not breach its duty of fair representation because the act of judgment was made in good faith, in a non-discriminatory manner.

Uniform Player Contracts; Labor Arbitration

Club & League Power to Discipline

TERRELL OWENS & NFLPA AND EAGLES ARBITRATION

Facts: Eagles suspend Owens for 4 weeks and then after his suspension they will not play him during the remaining games of the season after he made disruptive efforts to force the team to renegotiate his K or to release him.

Arbitrator's Holding: Eagles have met their burden of providing clear and convincing evidence of Owens' misconduct and the 4 week suspension was for just cause.

Reasoning:

- Given the evidence of a disturbed and distracted team, a media storm aided by Owens, and an inability or unwillingness of Owens to appreciate the destructive impact of his attitude and the jeopardy that surrounded him, the Eagles could reasonably take the actions they did.
- NFL CBA expressly references Conduct Detrimental to the Club as a basis for discipline
- The Coach has the discretion to decide who plays and who doesn't.

NBA v. NBPA

Facts: NBA files suit seeking declaratory judgment declaring that an Arbitrator had no jurisdiction to hear the dispute concerning the suspension imposed by the League Commissioner for misconduct by players at an NBA game. Pacers-Pistons game where players went into the stands and hit fans. 4 players were suspended by the Commissioner. NBPA files appeal of suspension to an Arbitrator under the CBA. NBA contests jurisdiction arguing any appeal is solely within the Commissioner's authority to review.

Substantive vs. Procedural Arbitrability

- Substantive
 - Substance of the dispute to be given to arbitration
 - Issue of law for the Court
 - Arbitrator has NO jurisdiction to decide whether parties agreed to arbitrate a particular type of dispute.
 - Ct holds that the case here is not over whether the parties agreed to arbitrate; instead the issue is through which process an appeal must be sought which is procedural.
- Procedural
 - Process by which something is to be arbitrated
 - Things you can stay within the 4 corners of the document to make determinations
 - Disputes that bring into question the procedures to be followed by parties when instituting grievances.

Drug Testing and Drug Usage

QUIGLEY

- *Facts:* Q (shooter for USA) competed in event in Cairo. He gets sick and gets diagnosed with bronchitis and chest infection.

- Dr gives him cough syrup and says the ingredients in it are not banned by the USOC, but in fact it contained ephedrine which is banned. Q wins and has to take drug test, he tells the testers he took cough syrup and lists the ingredients, he tests positive. Committee states the ratio of the drugs they found show he took no additional drugs except the cough syrup.
- Suspend Q and take away his title b/c ephedrine can have a positive stimulating effort on the quality of the shooting performance. As a result of Q's disqualification, USA Shooting automatically lost an Olympic country quota place.
- Slots for Olympics
 - Countries have to earn slots to be able to compete
- Each sovereign country is entitled to 1 athlete for the Olympics, but the rest of the slots have to be earned
- Unfairness
 - To him b/c didn't intent to take medicine to better his skills
 - To the other athletes, he had the stimulant which could have benefited him

CHAGNAUD

- Facts:
 - Changnaud wins long distance swimming event and then tests positive for epinephrine (prohibited stimulant). C's coach admits he accidentally gave her a capsule of effortil as part of food and drink he gave her 30 min before race.
 - Changnaud gets suspended from competition for 2 years.

Brennan v. Board of Trustees for U of LA Systems

- FACTS: Brennan tested positive during a drug test and was placed on suspension for one year, and he is now seeking to enjoin enforcement by USL of the suspension, arguing his constitutional rights to privacy and due process were violated.
- ISSUE: Whether the drug test was constitutional. YES.
- RULE: While a urine test may be an invasion of privacy, it is reasonable considering the diminished expectation of privacy in the context of intercollegiate sports and there being a significant interest by USL and the NCAA that outweighs the relatively small compromise of privacy under the circumstances.
- HOLDING: Brennan could not make a prima facie case showing that he would prevail on the merits of either constitutional claim.

Agent's Duties and Standard of Care; Conflicts of Interest; Competition for Clients

- *Basic Duties*
 - Agency Relationship = fiduciary relation (acting for the benefit of another) which results from the manifestation of consent by one person to another that the other shall act in his behalf and subject to his contract, and consent by the other to so act.
 - Principle authorizes agent to contract on his behalf with one or more third parties.
 - Standard of Care: agent has fulfilled his duty by acting with the care and skill employed by a reasonable person under the same circumstances.
 - *Zinn v. Parrish*

- **FACTS:** Zinn was Parrish's agent, and their agreement had Zinn negotiate contracts, seek business opportunities for Parrish, give tax advice, seek outside employment, etc. Zinn made efforts to accomplish all of these, but was unsuccessful with some, and as a result of this, Parrish fired Zinn and refused to pay him, claiming he had breached their contract.
- **ISSUE:** Did Zinn breach the contract by not successfully completing everything? NO.
- **RULE:** "Good faith" efforts must be made by agent to act in conformance with agreement.
- **HOLDING:** By operating in good faith in attempt to carry out all the mandates of the contract, Zinn completed his side of the agreement and did not breach the contract.

Federal and State Regulation of Agents

- A. Principal and agent relationship
 - 1. Principal is the person for whom the agent is acting
 - 2. Agent is acting for and on principal's behalf
- B. Fiduciary duty
 - 1. Between agent and principal
- C. Sports agents get up to 30% for endorsements, where Hollywood agents get a flat 10% across the board

SPEAKERS OF SPORT, INC. V. PROSERV

- **FACTS:** A player secured by Speakers of Sports, Inc. (SOS) left SOS after ProServ promised the player large amounts of potential endorsements. The player left ProServ after a year because no endorsement deals were gathered. SOS brought suit against ProServ because of a potentially fraudulent promise to induce the athlete away from SOS.
- **RULE:** There is generally nothing wrong with attempting to take a client from another if it can be done without precipitating a breach of contract. A pattern of promises is needed in order to be fraudulent behavior.
- **HOLDING:** Fraudulent behavior did not exist in this case because ProServ only made one promise.

Regulations and legislation

- A. Makes it unlawful for an athlete agent to enter into an agency K:
 - 1. Giving any false/misleading information or making false promises
 - 2. Providing anything of value to student athlete or family before student enters into agency K
 - 3. Post or predate any agency K
- B. Uniform Athlete Agents Act
 - 1. Common for state statutes to tell you that you have to do something very specific in order to do transactions
 - 2. Warning to student athletes: Bold face and all capital letters

- C. Abuses we discussed, do you think the Uniform Athlete Agents Act will clean up this sports agent business?
- D. Agents negotiate with the union on their rules
 - 1. Similar to a collective bargaining agreement

Equitable Estoppel

- A. 4 elements
 - 1. Party to be estopped must know the facts
 - 2. Party to be estopped must intend that his conduct will be acted upon or must so act that the party asserting the estoppel has the right to believe that it was so intended
 - 3. The party asserting the estoppel must be ignorant of the true facts
 - 4. Party asserting the estoppel must rely on the other party's conduct to his injury

COLLINS V. NBA P was Kareem Abdul-Jabbar's agent and he sued for breach of several fiduciary duties. P did not establish a genuine dispute over the 3rd element of equitable estoppel because no reasonable jury could conclude that the NBA intended to refrain from ever regulating agents P rightfully believed that the NBA so intended. Idea of equity is FAIRNESS. For the Court to apply equity in such a rigid way is contrary to the whole purpose of equity. Defense to equity is unclean hands.

1 AND 3 RULE

- A. An agent must negotiate 1 NFL contract every 3 years in order to stay enrolled as an NFL agent
- B. Disadvantages
 - 1. This could hurt agents who have few selective clients that have long term deals because they won't be renewing or renegotiating often
 - 2. Limits the familiarity of the clients as you may have the same clients over and over, but with this rule you are searching for new people on a whim or in a short amount of time just to meet the requirements of the rule
 - 3. Not good for a player that comes towards the 3 year deadline and the agent is really hitting them to get the deal done so it creates a wedge between client and agent

Schooling and Certification for Agents

- Before Agents can be agents or practice they must be certified
 - This creates uniformity
 - This creates reputable sources
 - This helps established agents by keeping the agent pool smaller

Intellectual Property Issues in Sports

Trademarks, Logos, and Other Identifying Insignia

- Trademark: an identifier of **source**
 - It is born through **USE** in commerce
 - Have trademarks to avoid consumers' confusion
 - Types of Confusion:

- Confusion as to Source
- Confusion as to Sponsorship
- Initial Interest Confusion
- Post-Sale Confusion
- Reverse Confusion
- Protect Trademark from **Dilution**
 - Two Types
 - Blurring: blurring the association between the trademark and a particular source
 - Tarnishment: associating bad work under one's trademark

BOSTON PROFESSIONAL HOCKEY ASSOCIATION, INC. V. DALLAS CAP & EMBLEM MFG., INC.

Facts: NHL sues Dallas Cap for making unauthorized patches of hockey teams' symbols to put on clothing. NHL says it violates right of the team to the exclusive use of the symbol.

- **Court held:** the team has an interest in its own individualized symbol entitled to legal protection against such unauthorized duplication. (seems more like a copyright argument but anyway...)
- likely to confuse due to sponsorship
- odd result because it is the symbol itself being sold, not affixed to any product-- therefore unlikely to cause confusion about a good or service, as the District Court pointed out.
- there is a first Amendment issue as well because the patch is not a source identifier, it's fandom/expression.

Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club Limited Partnership

- **FACTS:** Indianapolis Colts were originally formed in Baltimore, known as the Baltimore Colts, and eventually moved to Indianapolis very suddenly. CFL started a new team in Baltimore and wanted it to be named the "Baltimore CFL Colts." Indianapolis Colts brought suit to enjoin the use of the name under trademark infringement.
- **ISSUE:** Whether new CFL team could appropriate the name "Baltimore CFL Colts." NO.
- **RULE:** *Likelihood of Confusion Test*: deciding whether there is confusion regarding the source of the item.
- **HOLDING:** Mass confusion is being created by potentially allowing the CFL to use the name "Baltimore CFL Colts," which has been demonstrated through the conduction of a survey.

Board of Governors of the University of NC v. Helpingstine

- **FACTS:** UNC licensed its trademarks and had a system established to grant licenses to manufacturers, which allowed them to use the trademarks. Helpingstine set up a t-shirt shop in Chapel Hill and started selling UNC trademarked merchandise without a license, and he admitted doing such.
- **RULE:** Application of the *likelihood of confusion test*, trying to determine whether there is confusion as to the source, sponsor, or endorser of the apparel.
- **HOLDING:** Neither party has sufficiently produced enough evidence to either demonstrate that there is actual confusion or that there is not confusion. Case proceeded to trial for evidence presentation of these issues.

National Football League Properties, Inc. v. New Jersey Giants, Inc.

- **FACTS:** The New York Giants actually play their games in New Jersey, and because of this, there is some animosity about the name. As a result, New Jersey Giants, Inc. was formed and started selling New Jersey Giants merchandise in order to attack the New York Giants. The NFL Properties then brought suit against the New Jersey Giants, Inc. for trademark infringement.
- **ISSUE:** Whether New Jersey Giants, Inc. infringed upon the NFLP's trademark? YES.
- **RULE:** In a case for service mark or trademark infringement and unfair competition, a petitioner is entitled to a permanent injunction against a defendant by showing that the defendant's activities are likely to confuse consumers as to the source or sponsorship of the goods. In order to be confused, a consumer need not believe that a plaintiff actually produced a defendant's merchandise and placed it on the market. Rather, a consumer's belief that a plaintiff sponsored or otherwise approved the use of the mark satisfies the confusion requirement.
 - In a suit, as here, involving competing goods, the relevant factor to be considered in a determination as to whether a likelihood of confusion exists are:
 - The degree of similarity between the owner's mark and the alleged infringed mark;
 - The strength of the owner's mark;
 - The price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
 - The length of time the defendant has used the mark without evidence of actual confusion;
 - The intent of the defendant in adopting the mark; and
 - The evidence of actual confusion.
- **HOLDING:** Defendant's use of the Giants' mark is likely to cause confusion or mistake or deceive purchasers of such merchandise as to the source, sponsorship, or approval by the NFL or the Giants.

NHL v. Pepsi-Cola Canada, Ltd.

- **FACTS:** NHL granted Coke the status of the official soft drink of the league, but it disallowed Coke from advertising during games. The game advertisement was given to Molson, who in turn granted Pepsi the right to be the exclusive advertiser of soft drinks during the broadcast of all Hockey Night in Canada games. Pepsi then ran a promotion contest during that advertisements, but it included a specific disclaimer that it was neither associated nor affiliated with the NHL. NHL sued for "passing off," trademark infringement, and interference with economic relations and future business.
- **RULE:** "Passing off": where it is alleged that a defendant has promoted his product or business in such a way as to create the false impression that his product or business is in some way approved, authorized, or endorsed by the plaintiff or that there is some business connection between the defendant and the plaintiff.
- **HOLDING:** Pepsi did not "pass off" because it explicitly disclaimed being sponsored or affiliated with the NHL; it did not use the trademarks of the NHL; and it did not create a breach of contract between the NHL and Coke because Coke did not have the ability to advertise during the games.

Game Accounts, Statistics, and Broadcasting Rights

- *NBA v. Motorola, Inc.*
 - **FACTS:** Motorola, through the use of SportsTrax and STATS, was providing a live-feed of NBA games. SportTrax's operation relied on a "data feed" supplied by STATS reporters who watch the games on television or listen to them on the radio. The reporters would key into a personal computer changes in the score and other information such as successful and missed shots, fouls, and clock updates. The info was then relayed by modem to STAT's host computer, which compiled, analyzed, and formatted the data for retransmission to Motorola's pagers.
- **ISSUE:** Whether Motorola misused copyrighted material. **NO.**
- **RULE:** Copyright law does not protect ideas, procedures, systems, or methods of operation "regardless of the form in which it is described, explained, illustrated, or embodied." Therefore, sporting events are not copyrightable, but broadcasts are, but only to the extent the content is described as "expression." Facts cannot be copyrighted.
- **HOLDING:** Because SportTrax devices reproduce only factual information culled from the broadcasts and non of the copyrightable expressions of the games, Motorola did not infringe the copyright of the broadcasts.

Morris Communications Corp. v. PGA Tour, Inc.

- **FACTS:** PGA is able to gather golf scores from each individual hole during golf competitions and the information is transmitted via volunteers to a receiving truck to the Internet. PGA disallows the use of personal communications devices on the golf course, essentially precluding other media outlets immediate scores. Morris is suing to force the PGA to provide it with the compilation of scores for no fee.
- **RULE:** PGA has a property right in the scores compiled through their system and has a right to sell or license its product, championship golf, and its derivative product, golf scores.
- **HOLDING:** Court finds the PGA Tour is justified in its restrictions because (1) Morris free-rides on the PGA Tour's efforts; (2) the PGA Tour has a property right in the scores before they are in the public domain; and (3) the PGA Tour has the right to license or sell broadcasting rights of its products over the Internet.

Restrictions on Intellectual Property Rights Licensing & Sales

- Revenue sharing among member teams.
- Individual teams trademarks and logos are collectively licensed by a central league authority, with revenues distributed to league clubs on a pro rata basis.

NFL PROPERTIES v DALLAS COWBOYS

- *Facts:* NFL Trust agreement provides that each team will transfer to the NFL trust the exclusive right to use its Club Marks for commercial purposes. Teams also grant the trust the exclusive right to use NFL Marks. NFL Trust enters into License Agreement with NFL Properties given them the exclusive right to license the use of the Trust Property on all types of merchandise. It alleges the Cowboys through their stadium have granted sponsors the right to use the mark "Texas Stadium, Home of the Dallas Cowboys and that Δ has allowed NIKE brand apparel to be worn on the field and sidelines of televised games.
- *Lanham Act*

- Prohibits unauthorized use of another's trademarks in a manner that creates a likelihood of confusion.
 - Π claims Δ has used the marks π has exclusive right to commercially exploit in a way that confuses the public as to π 's sponsorship or approval of Dr. Pepper, Pepsi, & NIKE.
 - These allegations are sufficient to state a cause of action under the Lanham Act.

AMERICAN NEEDLE V. NFL Facts: Apparel maker American Needle had licensing contract with NFL Properties, a business which controls the NFL's licensing contracts. NFL Properties is equally owned by the 32 NFL teams, which share its revenue. Other apparel companies had similar licensing contracts with NFL. Then, NFL Properties signed an exclusive 10-year contract with Reebok for NFL apparel. Only Reebok could make NFL-licensed apparel, and American Needle argues this contract is illegal under federal antitrust law.

- The NFL teams are independently-owned
- they compete both on and off the field
 - looked at this way: should probably be considered competitors, per Section 1 of Anti Trust Act
- Although have to agree on some things like in game rules, draft eligibility, etc.
 - looked at this way: should probably be seen as single entity
- Which is it?
 - SCt hasn't ruled yet

Regulation of High School Athletics

- **Framework**
 - The National Federation of High Schools is made up of 50 individual state high school athletic and/or activities associations, with DC and a number of Canadian schools. Although local schools are given broad autonomy in determining what general policies should apply in their participation in interscholastic athletics, state associations play a significant role by providing a set of rules for the governance of interscholastic athletics within the state.
 - Rules of association: transfer from one to another, age, good conduct
 - Rules developed at institutional level: appearance, such rules are generally devised and applied by the institution
 - Devised and enforced by institution or a coach
 - Institutions sometimes can resolve an issue before its brought to the association, especially if it involves a rule it promulgated and is enforcing
 - Local schools are given broad autonomy in determining what general policies should apply in their participation in sports, state associations play a significant role by providing a set of rules for the governance of sports within the state.

State Actor

- Before a right can be asserted it must be established that the deprivation of the alleged right occurred as the result of state action.
 - Important factors to consider:
 - Who are the Association's rule-makers?
 - Who handles administration

- How many of the members are private/public
- Who pays the Association's staff
- Who votes on the members?
- Do they pay dues
- Also – allow kids to use sports as their phys ed.
- What does the board do
- Top-down and bottom-up analysis
- Other Implications Arising out of being a state actor
 - Antitrust immunity for regulation of interscholastic activities
 - Qualified tort immunity available to state government and officers BUT sometimes not.

Deference To the Association

- Could be because historically the courts have deferred educational institutions on matters of educational policy on the view that they are experts at making such judgments.
- perhaps because the power to make rules and regulations; don't want to be sanctioned for their own rules – might make them make less rules.
 - Example – Indiana rule: “as to voluntary associations is that the courts will not ordinarily interfere to control the administration of their constitutions or by-laws or to enforce rights springing there from.
- A student (almost always) has no constitutional right to participate in sports.
- Courts can review a right the private association gives

Ability to get to Court/what Court will review

- First, exhaust admin remedies before turning to the courts
- Administrative Hearings, expected to exhaust these remedies before going to courts
 - When the board has made a final finding the court may not look beyond those findings to question the integrity of decision makers or the decision making process without a strong showing of **bad faith** or **improper behavior**
- Court Issues
 - first looks at jurisdictional issues
 - Next examines the rules of school districts and athletic associations, state and federal statutes as well as the cases that help to determining the meaning and application of those rules

Standards of review

- Is it proper without first establishing a civil property right
 - students have no constitutional right to participate in interscholastic athletics, and thus the trial court may not have jurisdiction.
- Arbitrary and capricious standard
 - Court of Appeals won't judge the credibility of witnesses or weigh evidence that was before the HSAA (High School Athletic Association) on factual issues
 - Decisions of HSAA are judicially reviewable under **arbitrary and capricious standard**, even absent constitutional right.
 - Plaintiff can show that his right to substantive due process was denied if the board's decision was arbitrary or capricious OR if it violated one of the

substantive due process rights such as the right to privacy, which can't be deprived no matter how much procedural protection is used

Eligibility Issues

- Transfer rule: limits the ability of a student athletes immediately to participate in sports after moving from one school to another
 - Within the same school district without a corresponding address change
 - Deters switching for sports

Is There a Property or Liberty Interest?

- Usually no
 - BUT courts have recognized where "Plaintiff's interest was something more than a desire to participate in a single season of interscholastic athletics without the belief and desire to realizing any tangential benefits according to him in the future."
 - Also, "total exclusion from participation in that part of the educational process designated as extracurricular activities for a lengthy period of time could, depending on the particular circumstances, be a sufficient deprivation to implicate due process.