

NEW YORK LAW SCHOOL  
FALL 2009

**SPORTS LAW**

**Room** **Wednesdays 6:00-7:40 P.M.** **2 credits**

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**Instructor:** Mark Conrad, J.D.

**Full-time Affiliation:** Associate Professor, Fordham University, Undergraduate and Graduate School of Business Administration

**Other Affiliations:** Lecturer, Columbia University, Sports Management Program

**E-mail:** Sportslaw@aol.com

**Required Texts:** Weiler, P. and Roberts, G. Sports and the Law: Text, Cases, Problems (Third Edition); Documentary Supplement to Weiler & Roberts

**Additional Reading/Supplementary Materials:** Found on Blackboard

**Suggested Reading:** Champion, W., Sports Law (Nutshell Series); Street and Smith's Sports Business Journal (available at a discounted subscription rate); Sports Litigation Alert (available at a discounted subscription rate)

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**COURSE OVERVIEW:**

Professional and amateur sports have attained great importance both in the United States and abroad. Concomitant with this growth is the greater sophistication of the legal issues that affect the operation and regulation of this industry. This class will provide an overview of the legal principles and business models and rules governing the sports industry and the legal controversies and policy considerations surrounding those rules.

Five major themes are explored: (1) the law and internal regulations applicable to professional and (to a lesser extent) amateur sports bodies. This involves a focus on the structure and powers of sports leagues, athletic federations, and the Olympic movement; (2) contractual issues, including sponsorship, endorsement, licensing and stadium leases; (3) the importance of and inherent tension between antitrust and labor law; (4) legal issues involving personal injury and risk management; and (5) intellectual property and broadcast/Internet. Note that important subjects such as Title IX, NCAA rules and disability rights are *not* covered. There is simply not enough time to discuss and analyze these subjects appropriately.

As you will no doubt conclude after leafing through the textbook, antitrust law plays an important part of sports law governance. Because of the uniqueness of the sports league structure, many have argued that sports leagues have engaged in anti-competitive conduct with regard to franchise relocation, labor relations and, more recently, technology control.

The courts, to put it diplomatically, have not spoken with a clear voice on antitrust considerations. We certainly plan to discuss antitrust in considerable detail. I am assuming that most of you have not taken an antitrust class, but if I am wrong, please let me know.

We also will discuss areas which I think are fertile for sports law practice, such as personal injury and risk management. The latter is crucial in the functioning of a sports event and improper preparation resulting in greater risk often results in litigation. Expertise in areas involving risk and tort liability may be in short supply, so a good working knowledge can enhance one's ability to practice sports law.

Given that sports law is a dynamic area, important legal events may occur during the semester. I may start each class with a "current events" discussion of an important court decision, statute (proposed or passed) regulation (internal or external) or an economic event that impacts the business. This discussion, not to exceed 10 minutes in length, is designed to keep everyone abreast of the latest developments. Also note that the syllabus is subject to change if and when important cases are decided.

#### **GRADING PROCEDURES:**

I hope that you will find the class stimulating and thought-provoking. But it is important, even imperative to complete the readings and summarize the assigned cases. Briefing the cases aids in preparation for discussion and debate.

Your preliminary grade in this course will be based on the following: (1) a closed book final exam (67%); and (2) a 10-12 page research paper (33%).

- The final exam will be graded using Anonymous Grading, and it will consist of multiple choice questions, and at least one fact pattern question.
- The research paper will be graded using Traditional Grading. Students may choose to write on any area of their interest. Papers should include proper footnotes and/or citations using proper Bluebook style.

Pursuant to law school regulations, I reserve the right to revise your preliminary grade upwards or downwards by one-third of a letter grade based upon my evaluation of your class participation. However, grades of D and F will be revised neither upwards nor downwards.

## ASSIGNMENTS

The assigned readings are as follows. Please read each assignment thoroughly prior to class. Your ability to discuss the material in the readings will impact your ability to participate in classroom discussion.

### **Week 1 –**

#### **A) Introduction to Sports Law & the Sports Business**

##### Key Topics:

- What is Sports Law?
- What makes sports a unique business?
- The structure of league sports in the United States
- The structure of individual sports in the United States
- The Olympics and International Governing Bodies

##### Reading:

Weiler & Roberts, pp. 1-4; 978-980

Shropshire, “Introduction: Sports Law,” 35 Am. Bus. L. J. 181 (1998) (available on Blackboard)

#### **B) The Governance of Professional Sports – The Commissioner**

##### Key Topics:

- Creation and Power of the League Commissioner
- Utilizing the “best interests” power
- How much discretion does the commissioner have?

##### Readings:

Weiler & Roberts, pp. 5-34

Featured cases: *Milwaukee American Assn. v. Landis*; *Finley v. Kuhn*

### **Week 2 – Internal Regulation of Professional League Sports**

#### **A) The Governance of Professional Sports (continued)**

##### Key Topics:

- Determining off-the-field rules
- Banning gambling in sports
- Limitations on the Commissioner’s powers
- Hypothetical cases

##### Reading:

Weiler & Roberts, pp. 36-48

Featured case; *Molinas v. NBA*

#### **B) Internal Regulation of Professional Individual Sports**

##### Key Topics:

- The Structure of Individual Sports Organizations
- Centralized v. autonomous authority

- The Nature of the Business
- What goes right: NASCAR
- What went wrong: LPGA

Reading:

Weiler & Roberts, pp. 980-994; 1016-1019; 10-24-1032

Featured cases: *Crouch v. NASCAR*; *Weser v. PGA*; *Toscano v. PGA Tour*; *Gilder v. PGA Tour*, 996 F. 2d 417 (9<sup>th</sup> Cir. 1991) (Available on Blackboard)

**Week 3**

**A) Internal Regulation of International Sports Organizations**

Key Topics:

- Powers of International Governing Bodies and Domestic Affiliates
- Control of Performance-Enhancing Drugs

Reading:

Weiler & Roberts, pp. 1044-1056

Featured case: *DeFranz v. USOC*

Additional reading: Nafziger, "The Future of International Sports Law," 42 Willamette L. Rev. 861 (2006) (available on Blackboard)

**B) Sports Contracts (Introduction)**

Key Topics:

- Provisions in player contracts.
- Provisions of coaches' contracts.
- Provisions of endorsement contracts.
- Enforcement -- Positive and negative injunctions/Can damages be calculated?/Use of liquidated damages clauses?

Reading:

*O'Brien v. Ohio State University* (available on Blackboard)

**Week 4 -- Sports Contracts (Continued)**

Key Topics

- Continuation of Week 3

Reading:

Weiler & Roberts, pp. 101-145

Featured Cases: *Philadelphia Ball Club v. LaJoie*; *Central NY Basketball v. Barnett*; *Celtics v. Shaw*; *Houston Oilers v. Neely*; *Cincinnati Bengals v. Bergey*; *American League v. Chase*

**Week 5 – Applying Antitrust Law in the Professional Sports Context**

Key Topics:

- Sherman Antitrust Act: Sections 1 and 2
- What Constitutes Anticompetitive Conduct

- What is a Relevant Market? -- Product market, Labor market

Reading:

Weiler & Roberts, pp. 175-221

Featured cases: *Smith v. Pro Football*, *Brown v. Pro Football*, *Mackey v. NFL (Part I)*; *Fraser v. MLS*; *Molinas v. NBA* (revisited)

**Week 6 – Baseball’s Antitrust Exemption**

Key Topics:

- How did baseball's antitrust exemption develop?
- Did the Court in *Flood v. Kuhn* uphold a questionable concept?
- Why did the court fail to extend the exemption to other sports? How did the Court treat other sports?
- What is the impact of the *Curt Flood Act*?
- Is there any justification for continuing the exemption?

Reading:

Weiler & Roberts, pp. 146-174

Featured cases: *Flood v. Kuhn*; *Piazza v. Major League Baseball*  
Curt Flood Act of 1998, 15 U.S.C. § 26 (available on Westlaw)

**Week 7 – Non-Statutory Labor Exemption to Antitrust Law**

Key Topics:

- Background on the Statutory labor exemption
- Evolution of the Non-statutory labor exemption – How was it created?
- Applications of Non-statutory labor exemption – from *Mackey* to *Clarett*

Reading:

Weiler & Roberts, pp. 221-262

Featured cases: *Mackey v. NFL (Part II)*; *Brown v. Pro Football*;  
*Clarett v. NFL*, 369 F.3d 124 (2d Cir. 2004) (available on Westlaw)

**Week 8 – Product-Side Antitrust Issues & the Single-Entity Defense**

Key Topics:

- What is the relevant market?
- Courts’ standard of Review
- What kind of league constitutes a “single-entity?”
- Will the Supreme Court finally settle the issue?

Reading: Weiler & Roberts, pp.535-540, 544-547, 565-597; 616-634; 635-647;  
675-683

Featured cases: *Fraser v. MLS*; *Raiders I*, *City of Oakland v. Raiders (I)*,  
*City of Oakland v. Raiders (II)*; *U.S. v. NFL*

Additional Readings:

*American Needle Inc. v. NFL*, 538 F.3d 736 (7th Cir, 2008) (available on Westlaw); *Madison Square Garden L.P. v. National Hockey League*, ---F.3d --- (2d. Cir, 2008) (available on Blackboard)

## **Week 9 – Labor Law and Sports**

### Key Topics:

- National Labor Relations Act  
    Unfair Labor Practices and Duty to Bargain in Good Faith
- History of Unionization of professional athletes
- Strikes v. Lockouts – strategies
- The various collective bargaining agreements
- Future labor relations in the major leagues

### Reading:

Weiler & Roberts, pp. 275- 292; 310-313; 318-327; 336-342; 353-361  
Featured cases: *Nat'l and American League v. MLBPA*;  
*American League v. Assn. of Baseball Umpires*;  
*Silverman v. MLB Player Relations Cmte.*;  
*Kansas City Royals v. MLBPA*  
Summaries of the major leagues' collective bargaining agreements

## **Week 10 -- Agent Representation of Athletes**

### Key Topics:

Standard Players Contract

Arbitration

Statutory and Internal Regulations -- Ethical codes of conduct.

### Reading:

Weiler & Roberts, pp. 362-366; 370-383, 390-396; 413-422  
Featured Cases: *Bourque & Boston Bruins Arbitration*; *Lions v. Argovitz*;  
*Rona v. MLBPA*  
NFLPA Agent Regulations (available at  
<http://www.nflpa.com/RulesAndRegs/AgentRegulations.aspx>)

## **Week 11 – Personal Injury and Risk Management**

### Key Topics:

- Standards of Liability
- Who can be Liable?
- Assumption of Risk and Waivers and Participation Agreements
- Risk Management – Assessment and Actions
- Criminal Law and Sports
- Case Study

### Reading:

Weiler & Roberts, pp. 1083-1092; 1097-1106; 1131-1136; 1140-1143  
Featured Cases: *Hackbart v. Bengals (I)*; *Hackbart v. Bengals (II)*;  
*Bryant v. Chicago Bears*; *Byrns v. Riddell*; *Maddox v. City of New York*  
Baseball bat ban by NYC case (Available on Blackboard)

## **Week 12 – Intellectual Property and Sports – Copyright and Trademark**

### Key Topics:

- Broadcasting
- Copyright
- Trademark – Lanham Act and Anti-Dilution Act

### Reading:

Weiler & Roberts, pp. 431-472

Featured cases: *Pittsburgh Athletic Co. v. KQV*; *NBA v. Sports Team Analysis*; *Morris Communications v. PGA Tour*; *New Boston Television v. ESPN*; *NFL v. McBee*

Weiler & Roberts, pp. 497-507; 520-534

Featured cases: *Indianapolis Colts v. Metropolitan Baltimore Football Club*; *Topps Chewing Gum v. MLBPA*

## **Week 13 –**

### **(A) Intellectual Property and Sports -- The Right to Publicity**

#### Key Topics:

- Right of Privacy
- Conflict between Right to Publicity and the First Amendment

#### Reading:

Weiler & Roberts, pp. 472-496

Featured cases: *ETW Corp. v. Jireh Publishing*; *Baltimore Orioles v. MLBPA*

Additional Reading:

*C.B.C. Distribution & Marketing Inc. v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818 (8th Cir. 2007) (available on Blackboard); *CBS Interactive v. NFLPA* (D. MN 2009) (available on Blackboard)

### **(B) Application to New Technologies**

#### Key Topics:

- **The Internet**

Dissemination of content

***NOTE: ALL TERM PAPERS ARE DUE AT THE START OF CLASS***

## **Week 14 – Stadium Issues and Interactions with Government**

### Key Topics:

- Stadium deals
- Standard lease provisions
- Signage

Reading:  
To be determined

## **Final Thoughts**

### **GENERAL POLICIES**

**Attendance is expected.** If you need to miss a class, please make sure to find out what you missed. If you know in advance that you will need to be absent, please send me an e-mail informing about the fact and send me the copies of the briefed cases. I recommend that you either ask a student to take notes for you, or tape record the class.

**Please make every effort to arrive for class on time.**

**Deadlines for the paper are to be strictly enforced. Extensions will not be given, barring a compelling reason. If a student submits his/her paper after the deadline, a mandatory reduction in grade will result.**

**Same rule applies to the final exam.** Note the date of the final exam assigned by New York Law School. **No rescheduling** of the final will be granted, barring a compelling reason.

The professional appearance of your work is important. You should not turn anything in to me that you would not turn in to an employer.

I look forward to working with you this semester.

### **Instructor's biography:**

Mark Conrad is Associate Professor, Legal and Ethical Studies at Fordham University's Graduate and Undergraduate Schools of Business Administration. He teaches courses in Sports Law, Media Law, as well as required undergraduate and graduate business law classes. Professor Conrad has been teaching at Fordham since 1987. He served as chairman from 1995-2009. He also has served as an adjunct lecturer in Columbia University's Master's Degree program in Sport Management.

Professor Conrad has written on these subjects for legal and general circulation publications, including The New York Times, The Wall Street Journal, Sports Business Journal and the New York Law Journal. His latest book publication is "The Business of Sports - A Primer for Journalists" (Erlbaum, 2006). He is currently working on the second edition of the book.

In 1999, Professor Conrad launched Mark's Sportslaw News ([www.sportslawnews.com](http://www.sportslawnews.com)) a weekly web journal devoted to developments in the area of sports law. In 2007, he became a guest blogger for Sports Law Blog.

He has lectured at Bar Associations, law schools and in front of businesspersons and students from Switzerland, Finland, China and Japan. His presentations and papers have included issues involving broadcast regulations, advertising, and intellectual property issues involving sports organizations.

Professor Conrad has appeared on CNN, Fox Sports Net, CNBC, Bloomberg Information Radio and New York 1 News. He has been quoted in Long Island Newsday, Los Angeles Times, The Washington Times, Philadelphia Daily News, Houston Chronicle, Asahi Shimbun (Japan) and ESPN.com

Prior to coming to Fordham, Professor Conrad taught at Baruch College and served as an editor and columnist at the New York Law Journal. He received a bachelor's degree from City College of New York, J.D. from New York Law School (class of 1981) and a M.S. from Columbia University's Graduate School of Journalism. He is a member of the New York and District of Columbia bars. He currently resides in Manhattan.