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**SPORTS LAW AND REGULATION**  
**Cases, Materials, and Problems**

*Third  
Edition*



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ASPEN CASEBOOK SERIES

# Sports Law and Regulation

## Cases, Materials, and Problems

**Third Edition**

**Matthew J. Mitten**

Professor of Law and Director  
National Sports Law Institute and  
L.L.M. in Sports Law Program for Foreign Lawyers  
Marquette University Law School

**Timothy Davis**

John W. & Ruth H. Turnage Professor of Law  
Wake Forest University School of Law

**Rodney K. Smith**

Distinguished Professor of Law  
Director, Center for Sports Law and Policy  
Thomas Jefferson School of Law

**N. Jeremi Duru**

Professor of Law  
Washington College of Law  
American University

**GLOBAL EDITION**

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Published by Wolters Kluwer Law & Business in New York.

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Wolters Kluwer Law & Business  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

ISBN 978-1-4548-6370-0

**Library of Congress Cataloging-in-Publication Data**

Mitten, Matthew J., 1959-

Sports law and regulation : cases, materials, and problems / Matthew J. Mitten, professor of law and director, National Sports Law Institute and L.L.M. in sports law for foreign lawyers, Marquette University Law School; Timothy Davis, John W. & Ruth H. Turnage professor of law, Wake Forest University School of Law; Rodney K. Smith, distinguished professor of law, director Center for Sports Law and Policy, Thomas Jefferson School of Law; N. Jeremi Duru, professor of law, American University Washington College of Law. — Third edition.

pages cm

Includes index.

ISBN 978-1-4548-6370-0

I. Sports—Law and legislation—United States—Cases. I. Davis, Timothy. II. Smith, Rodney K. III. Duru, N. Jeremi. IV. Title.

KF3989.S6775 2013

344.73'099—dc23

2013003812

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In memory of Robert C. Berry,  
our friend, colleague, and coauthor.

### **Second Edition**

To my wife, Brenda,  
who inspires me with her love and creativity.

—Matthew J. Mitten

To my wife, Ida,  
and my daughter, Adia,  
for their love and support  
and to my students, who inspire me.

—Timothy Davis

To my parents,  
who always emphasized the student  
in student-athlete; to Gus Klekas, a coach who always  
believed in me; and to my wife, Danielle, and my children,  
Will, Hyrum, Mary, Heber, Lacey, Rod, Georgi, and Charlie,  
all of whom have been very supportive.

—Rodney K. Smith

To Professor Carole Berry,  
as we two emeriti continue to share ideas in our  
latest writing endeavors, taking it one book at a time.

—Robert C. Berry

### **First Edition**

To my parents,  
Robert and Carol Mitten,  
for providing me with an excellent education; to  
Professors Ron Raitt and Bruce Burton for mentoring me  
as a law student, lawyer, and law professor; to my lifelong  
friends Mark Shiple, Tony Siravo, Doug Gerrick, Dan Streb,  
Joe Leonard, Greg Kelly, and Bob Leahy for encouraging  
my love of sports; and to Brenda Kurowski for her love and support.

—Matthew J. Mitten

To my mother and father  
for emphasizing the importance of education;  
to my wife, Ida, and my daughter, Adia, for their love  
and support; and to my friends Michael Poston, Keith Smith,  
Vincent James, and Carolyn Mayes for their encouragement  
and support through the years.

—Timothy Davis

To my parents,  
who always emphasized the student  
in student-athlete; to Gus Klekas, a coach who always  
believed in me; and to my wife, Danielle, and my children,  
Will, Hyrum, Mary, Heber, Lacey, Rod, Georgi, and Charlie,  
all of whom have been very supportive.

—Rodney K. Smith

To Carole, another Professor Berry, my life companion and  
collaborator. We continue to learn from each other.

—Robert C. Berry



# Preface

## Third Edition

To provide users of our book with the most current and comprehensive sports law text available, we have revised and updated the third edition of our book to include a discussion of the most significant legal developments affecting high school, college, Olympic, and professional sports that have occurred since our second edition was published in April 2009. Our third edition provides new landmark judicial decisions (e.g., *American Needle v. NFL*) as well as significant NCAA infractions cases and Olympic sports arbitration awards. It also provides revised text, updated notes, and some new questions and problems to facilitate understanding, analysis, and discussion of legal issues arising out of the dynamic evolution and development of the amateur and professional sports industries. To provide a more streamlined and unified presentation of the complex issues raised by the application of antitrust, labor, and intellectual property law to sports, the principal materials concerning legal regulation of the professional sports industries have been reorganized and consolidated into two chapters, Chapter 6 (“Professional Sports League Governance and Legal Regulation”) and Chapter 7 (“Labor Relations in Professional Sports”), and parts of Chapter 12 (“Intellectual Property Issues in Sports”) have been reorganized. We miss the friendship, insights, and wisdom of Bob Berry, who passed away in November 2011. Although Bob is irreplaceable, we are happy to welcome Jeremi Duru to our team. We trust that you will find our third edition to be an excellent text for the study of sports law, which will satisfy the objectives of your course. Please feel free to contact any of us with your comments and suggestions for improving our book: Matt (matt.mitten@marquette.edu), Tim (davistx@wfu.edu), Rod (rsmith@tjls.edu), or Jeremi (duru@wcl.american.edu).

*Matthew J. Mitten*  
*Timothy Davis*  
*Rodney K. Smith*  
*N. Jeremi Duru*

March 2013

## Second Edition

Since the first edition of this book was published in 2005, the amateur and professional sports industries have continued to evolve, and new legal issues have arisen. The second edition of the book has been revised and updated to include a discussion of the most significant legal developments affecting interscholastic athletics, intercollegiate athletics, Olympic and international sports, and professional sports. Throughout the second edition there is revised text, new principal cases, updated notes, and new problems to facilitate analysis and discussion of the key legal topics and issues covered in each chapter. Because sports is becoming more international and global in scope, materials have been added in several chapters to provide a comparative law perspective and to discuss the key differences between the European and North American models of professional sports as well as how European Union law regulates professional sports labor markets.

Several chapters in the second edition have been reorganized to provide a more unified and streamlined discussion of the topics covered therein. In particular, Chapters 3 (“Regulating Intercollegiate Athletics”) and 4 (“Regulating Olympic and International Athletics”) have been reorganized and revised significantly to provide better coverage of these topics. The principal materials concerning legal regulation of the professional sports industries have been reorganized into three chapters: Chapter 6 (“Regulating Professional Athletics”), Chapter 7 (“Labor Law and Relations”), and Chapter 8 (“League Governance, Rival Leagues, and Developing Global Issues”).

We hope you enjoy our second edition and that it provides a useful tool for understanding, and stimulating discussion of, legal regulation of amateur and professional sports within the United States and internationally. As always, your comments and suggestions for improving our book are welcome. Please feel free to contact any of us: Matt ([matt.mitten@marquette.edu](mailto:matt.mitten@marquette.edu)), Tim ([davistx@wfu.edu](mailto:davistx@wfu.edu)), Rod ([rodney.smith@svu.edu](mailto:rodney.smith@svu.edu)), or Bob ([lawprofs@tampabay.rr.com](mailto:lawprofs@tampabay.rr.com)).

*Matthew J. Mitten*  
*Timothy Davis*  
*Rodney K. Smith*  
*Robert C. Berry*

February 2009

## First Edition

This book facilitates study and analysis of the significant legal, historical, economic, and sociological issues affecting the development of both the amateur and professional sports industries in the twenty-first century. It provides sports law professors and students with a comprehensive, multipurpose text of cases, materials, and problems that gives a balanced perspective on how some of America’s largest and most popular industries are regulated by our legal system. The book takes an in-depth look at the legal regulation of interscholastic

athletics, intercollegiate athletics, Olympic and international sports, and professional sports.

In our experience, law students most effectively learn about legal regulation of the sports industries by understanding the underlying historical, economic, and sociological factors influencing the developing nature of the various legal relationships that exist therein (e.g., athlete and team, university and NCAA, professional team and league, etc.). To accomplish this objective, this book initially covers the respective internal regulatory mechanisms for the different levels of athletic competition (e.g., high school, college, Olympic, and professional sports); then it considers the primary bodies of public law that shape and constrain them. Individual chapters of this book focus on racial and gender equity issues in sports and facilitate multidisciplinary consideration of these important, contemporary topics. The book considers economic policy and consumer welfare issues as part of its coverage of how courts have applied antitrust law to the sports industries. This interdisciplinary examination of sports and law also is intended to appeal to upper-division undergraduate and graduate students.

This book provides a vehicle for applying general principles typically covered in first-year courses, such as contracts, torts, constitutional law, criminal law, and civil procedure, to sports-related legal issues and problems. For example, it includes coverage of the following issues: the nature of a university's contractual obligations to its student-athletes, tort liability of an athletic event participant to another participant, a state high school athletic association's status as a state actor and high school students' federal constitutional rights, criminal liability for on-field violence, and the implications of American courts' lack of personal jurisdiction over international sports governing bodies.

A sports law course also provides a means of initially exposing students to specialized areas of law such as antitrust, labor, intellectual property, and workers compensation laws as well as relatively new legislation such as the Americans with Disabilities Act. Our book considers how each of these areas of law (and others) regulates the sports industries. It also provides introductory materials and hypothetical problems to facilitate students' understanding of these legal principles and their application to the sports industries and society in general.

This book incorporates the strengths of existing casebooks while also providing broader coverage of contemporary sports law issues. It includes the leading historical and recent sports law cases and provides detailed explanatory material, notes, and questions to facilitate students' understanding of complex legal doctrines. It also raises some of the deeper philosophical, sociological, psychological, and economic policy issues that arise in the sports context. This approach both mirrors the practice of law in the twenty-first century generally and heightens students' understanding of sports-related legal issues. In addition, this book includes some negotiation exercises and problems designed to develop students' client counseling and transactional skills. These unique features combine both theoretical and practical components to provide sports law students with a well-rounded learning experience.

The breadth and depth of this book provide the flexibility necessary to achieve a wide range of teaching and learning objectives. It is suitable for use as a primary text in either a two- or three-credit-hour general sports law course covering individually selected amateur and sports law topics as well as issues common to both industries. It also can be used in separate two-hour or three-hour courses focusing primarily on either amateur or professional sports law issues.

Alternatively, it can be used for two separate one-semester courses designated Sports Law I and Sports Law II. In addition, this book provides a suitable text for use in sports management programs and other academic disciplines studying sports law.

A sports law course provides several important educational benefits in addition to providing students with an understanding of the legal framework governing the amateur and professional sports industries. Perhaps the most important one is that the study of sports law provides students with a package of readily transferable knowledge and skills applicable to a wide variety of legal and non-legal careers. It is one of the relatively few law school courses not limited to consideration of a single, discrete area of substantive law. This book enables thoughtful study of how several different bodies of law combine to regulate the amateur and professional sports industries. It also facilitates students' ability to synthesize several different discrete bodies of law, to recognize how they combine to govern sports, and to understand how laws that conflict are harmonized. In doing so, the book also encourages student examination of the role of sport in our culture and how law responds to serious cultural and moral questions.

In whatever form this book is used, we trust that students and faculty alike will enjoy their engagement with the material as much as we have. We have found that sports law deals with issues that merit deep study and reflection. We hope that this book encourages such study.

*Matthew J. Mitten*  
*Timothy Davis*  
*Rodney K. Smith*  
*Robert C. Berry*

March 2005

# Acknowledgments

## Third Edition

We thank our editors at Wolters Kluwer and Aspen Publishers, particularly Peter Skagestad, for their assistance and suggestions regarding the third edition of this book, as well as Newgen–Austin and Rebecca Logan for their work in connection with its production. As always, we very much appreciate the comments from professors who have used the previous editions of our book in their sports law courses and their useful suggestions regarding how to improve our third edition. Matthew Mitten expresses his gratitude to Aaron Hernandez for his research assistance and comments regarding this edition of our book. He also thanks Jessica Berman for her review of portions of Chapter 7 and provision of updated information. Timothy Davis thanks Wake Forest University School of Law for its generous research support and Wake Forest law students Thailer Buari and Nathan Harrill for their research assistance. Rodney Smith thanks his research assistants, Lindsay Demery and Brian McMillen, for their able research assistance and Dean Rudy Hasl for his continuing support. Jeremi Duru is grateful to Dan La Luz, Angad Patheja, Amanda Naldjieff, and Michelle Winters for their research assistance.

## Second Edition

We thank the people at Wolters Kluwer and Aspen Publishers, particularly Taylor Kearns, for their assistance and suggestions regarding the content of the second edition of this book, as well as Newgen North America and Andy Sieverman for their editorial assistance. We are grateful for the helpful comments and suggestions regarding how to improve our second edition from professors who have used the first edition of the book in their sports law courses. Matthew Mitten expresses his gratitude to Kaitlyn Wild for her research assistance and comments regarding the second edition of our book. He also regrets his inadvertent failure to acknowledge Jeffrey Benz's insightful review and comments on Chapter 4 as well as Kristin Muenzin's research assistance in connection with our book's first edition. Timothy Davis acknowledges the research assistance and comments provided by David Ginzer and David Rea. He also expresses gratitude for the research support provided by Wake Forest University School of Law. Rodney Smith expresses his gratitude to his assistant, Pat Griffin,

who readily offers a helping hand, and to his coauthors for understanding the difficulties that attend having a college president as a teammate.

### First Edition

We thank many people for their support and assistance in preparing this book. We begin by thanking the many people at Aspen Publishers for their helpful guidance and editorial support. We also thank students in our sports law classes who generously commented on the manuscript of this book. In addition, we acknowledge the insightful commentary offered by the professors who provided reviews of our manuscript.

Robert Berry expresses his gratitude and deep appreciation to long-time colleagues who have worked with him on various writings dealing with sports and legal regulation—in particular, William B. Gould IV, Stanford University, and Glenn M. Wong, University of Massachusetts–Amherst. He also is indebted to colleagues and students over the years at his home school, Boston College, and at various other law schools where he has visited—most notably, Capital University and the Ohio State University.

Timothy Davis acknowledges the conscientious research assistance provided by the following dedicated students at Wake Forest University: Nancy Ladson, Jeffrey Lepchenske, Antonio Lewis, Stephen Marshall, and Kenneth Menzel. He is also grateful for the excellent secretarial and computer assistance provided by Beverly Marshall and Beth Malone. Finally, he expresses gratitude for the research support provided by Wake Forest University School of Law.

Matthew J. Mitten thanks Jefferson Read, Robert Koch, Mark Dodds, William Appleton, Melissa Vittone, and Susan Jones for their helpful research assistance and Professor Eric Goldman for his thoughtful review of Chapter 12. He also appreciates the secretarial and computer assistance provided by Carrie Kratochvil and Peter Hackl as well as proofreading of portions of our manuscript by Jenna Merten.

Rodney Smith gratefully acknowledges the able research assistance provided by his former students Christie Woodruff, Jay Fowler, Thor Larsen, Robert Walker, and Leanne Austin. He also appreciates the excellent secretarial support offered by Karol Usmani. Finally, he acknowledges the support of Dean Don Polden, Provost Ralph Faudree, President Shirley Raines, and funding from the Herff Chair of Excellence at Cecil C. Humphreys School of Law at the University of Memphis.

We also thank the following authors, publishers, and copyright holders for permitting us to include excerpts from these works:

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