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NEGOTIATING  
AND  
DRAFTING  
SPORTS VENUE  
AGREEMENTS

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Peter A. Carfagna

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# NEGOTIATING AND DRAFTING SPORTS VENUE AGREEMENTS

By

**Peter A. Carfagna**

*Visiting Lecturer in Sports Law  
Harvard Law School*



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Finally, I would like to thank the many Harvard Law School students who have taken my sports law courses each year, for motivating and challenging me to make each class more special than the last as we continue to explore the multi-disciplinary bases or “truths” (“veritas”) underlying current sports law principles—as well as, perhaps more importantly, what those principles should be as they inevitably evolve each semester. Specifically, my Teaching Assistants over the past 2 years, especially Megha Parekh, as well as Matt Accornero, Ashwin Krishnan and Liz Rich, deserve Sports Law “Hall of Fame” inductions for being so thoughtful and creative in helping me turn “Negotiating and Drafting Sports Marketing Agreements” from an HLS course into this book.

In closing, I truly hope that this unique publication will be helpful to many future sports law students, as well as other sports law instructors and practitioners alike.

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## Introduction

This book is the third book in my series of “Sports and the Law” books, designed to compliment the other two.<sup>1</sup> Having previously discussed the evolution of America’s three major sports leagues in “Sports and the Law: Examining the Legal Evolution of America’s Three Major Leagues” and athlete representation in “Representing the Professional Athlete,” this book focuses on drafting sophisticated contractual documents for a sports venue owner/operator in the Sports Law world. In particular, rather than negotiating and drafting only particular clauses or the “material terms” of an agreement, a legal memorandum, or brief, as is done in the other two books, this book challenges students to negotiate and draft the entire agreement from beginning to end.

As such, this third book “completes the circle” begun by the other two, thus equipping the reader to be a “three-tool attorney,” able to represent (1) a professional sports team (“Sports and the Law: Examining the Legal Evolution of America’s Three Major Leagues”); (2) a professional athlete (“Representing the Professional Athlete”); and now, based on this book, (3) the owner/operator of a sports venue.

The venue-related agreements that will be negotiated and drafted in this book will include a lease agreement between a municipality that is constructing a new stadium/arena and the owner/operator of a team that will play in the new venue (see Chapter 2). It will also require the drafting of a “naming rights” agreement for such a venue (see Chapter 3), as well as a companion “presenting sponsorship” agreement (see Chapter 4). Additional categories of sponsorship for the owner of the team (or venue) will also be explored, including media rights agreements (see Chapter 5), food and beverage rights agreements (see Chapter 6), the medical and financial services categories (see Chapters 7 and 8, respectively) and lastly, sponsorships by state-operated entities (see Chapter 9).

By drafting these agreements in seriatim fashion, students will learn how “exclusivity” will have to be offered in the foundational sponsorship agreement categories, which, in turn, will limit the “benefits” that will remain available to be offered in the remaining categories of sponsorship. Students will also learn how to draft non-exclusive category sponsorships for smaller dollar amounts, by

1. SPORTS AND THE LAW: EXAMINING THE LEGAL EVOLUTION OF AMERICA’S THREE “MAJOR LEAGUES” (West 2009) and REPRESENT-

ING THE PROFESSIONAL ATHLETE (West 2009).

offering “softer” in-kind incentives to such sponsors including, for example, a variety of on-field and off-field corporate entertainment opportunities for the sponsor and its employees/clients. Also, the coordination of all such sponsorships with the team’s print/multimedia advertising, as well as with the broadcasts of the team’s games, will be examined. (“Exemplar” Student Group responses for each Chapter’s drafting exercise are set forth in the Teacher’s Manual that accompanies this book.)

In general, this book will strive to create an environment in which the students will be required to function as if they were members of a major sports agency’s legal department or a law firm that specializes in sports law. Students will have the opportunity to explore and experiment with negotiating strategies as well, since there is rarely one “right answer” in most situations. In so doing, this book will better prepare students both for externship opportunities while in school and sports-related employment post-graduation by allowing them to master the skills related to negotiating, drafting, and analyzing the various moving parts of complicated sports venue-related agreements.

# Chapter 1

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## BOILERPLATE CONTRACTING CLAUSES

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This chapter introduces and outlines several essential “boilerplate” clauses to be used across all types of agreements and in all of the hypotheticals throughout this book. When going through the drafting hypotheticals in the chapters that follow, students should refer back to this chapter to ensure that they do not miss essential clauses or elements of clauses presented here.

Contracts relating to the sports industry are often unique, particularly because most are subject to rules implemented by the governing bodies of the sports league. Such contracts, however, will usually still contain so-called “boilerplate” provisions. Although these clauses are often thought to be less meaningful parts of the contract because they do not contain the heart of the deal terms, the opposite is true; boilerplate provisions are so fundamental that lawyers include them in most contracts.

Boilerplate provisions include those designating the location and forum in which a dispute arising under the contract will be resolved, whether the parties must submit the dispute to an alternative dispute resolution process prior to or in lieu of litigation, the law that will govern the dispute, the effect of the invalidation of a portion of the contract, who has the right to amend the contract, whether the contract has third party beneficiaries, and the like. For instance, the terms set forth in the confidentiality and survival paragraphs may be critically important when a team terminates an agreement with one sponsor and seeks another sponsor in the same product or service category; indeed, the team does not want prospective sponsors to know the price paid by the original sponsor. If the terms of the deal are confidential, then neither the team nor the former sponsor can legally divulge the sponsorship fee paid, and provided that the confidentiality clause survives the termination of the original sponsorship agreement, its provisions will continue to

bind the parties. Without survival, confidentiality would last only until the termination of the agreement, and the team would be unable to keep a prospective sponsor from discovering the amount of the past fee.

Boilerplate clauses should not remain identical across agreements; they should be altered to fit the specific contractual relationship. Termination and Remedies clauses, for example, will vary dramatically across agreements; in a sponsorship agreement, a breach like nonpayment will give rise to termination rights, whereas it might not in a lease agreement. Furthermore, remedies will include the right to injunctive relief in some cases, but not in others. These distinctions are essential to the agreements; having a right to seek an injunction is a very powerful equitable remedy that can be an important way for a party to enforce its rights in certain agreements, such as a lease agreement in which the city seeks to stop a team from playing in another venue.

Perhaps most important to keep in mind when tailoring standard clauses, as well as the other clauses of any sports-related agreement, are the preexisting limitations on the team's rights. The teams are members of the larger leagues and are subject to league rules, regulations, and standards. League constitutions, bylaws, and other rules and regulations promulgated by the leagues may limit the amount of indebtedness that a team may take on, who can hold an ownership interest in the team, and the types of sponsors that the team can engage.

The following section discusses clauses common to most contracts, and, where appropriate, the ways in which these boilerplate provisions may be altered to reflect the unique aspects of the sports industry.

## ***Definition and Scope of the Deal***

### **Definitions**

Although short and simple agreements usually define terms in context, parties often include a separate section listing all defined terms in longer agreements like lease or purchase and sale agreements. This enables the parties to refer to complex concepts repeatedly without explaining a concept each time that it is addressed. This also enables lawyers to change material terms by altering only the definition, rather than modifying the concept each time it appears in the agreement. Often the parties' names will be defined terms, which allows parties to indicate which portion of their entity or which persons associated with their entity intend to be bound by the agreement. Other agreements incorporated by reference may also be important defined terms.



The critical defined terms will differ from deal to deal. For a lease agreement, the definition of the “Stadium Premises” or equivalent term will dictate which areas the lessor and lessee own, operate, and maintain. In a sponsorship agreement, the category for which the sponsor obtains “exclusivity” is perhaps the most important definition, and the most hotly debated deal point, within the agreement. A broadly defined category gives the sponsor greater freedom to exclude its competitors and to require the team to use a variety of its product or services, whereas a narrowly defined category may give the team the ability to economically exploit a larger number of categories.

If a team grants Coca-Cola exclusivity within a category defined as “All Beverages” without further defining the term “beverages,” for example, the team probably could not then contract with a different company to provide beer or other alcoholic beverages. Terms not otherwise defined in the agreement often take on their standard meaning outside the context of the agreement, so “all beverages” would be understood to include all drinks. Thus if the team grants to Coca-Cola the “All Beverages” category, without a definition of the type beverages the parties intend to both include and exclude, it is likely that Coca-Cola could then claim that under the plain meaning of the agreement, it alone owns the right to advertise and sell all drinks, both alcoholic and nonalcoholic, in conjunction with the team and at the venue.

Pouring rights are the right of a beverage company, the pouring rights sponsor, to sell its beverages (or have them sold) in a given facility. Exclusive pouring rights ensure that the pouring rights sponsor is the only company, within its defined category of exclusivity, whose products will be sold, or “poured,” in the venue. Under normal circumstances, either the team or the team’s landlord owns the pouring rights of the facility. In the situation above, in which Coca-Cola has exclusivity for “all beverages,” Coca-Cola would effectively own, or at least have leased, all of the pouring rights for the facility. Coca-Cola, rather than the team itself, therefore, would likely have the right to sell the pouring rights for alcohol, instead of the team. If, however, the team sold Coca-Cola the exclusive rights to a more narrowly defined category like “nonalcoholic beverages,” then the team would still have the freedom to contract with a different sponsor for exclusivity and pouring rights in an alcoholic beverages category.

In many sponsorship agreements, the definitions of “Competitor” and “Competitor Products” will be as important as that of the category. The defined “Competitor” and “Competitor Products” terms allow the parties to draft exclusivity from two perspectives: first, from the perspective of what is allowed under the agreement (that is, the definition of the Sponsor’s “Products” within the