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TEXT, CASES AND PROBLEMS

Fourth Edition



Paul C. Weiler, Gary R. Roberts,  
Roger I. Abrams & Stephen F. Ross

WEST

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*By Steve Ross*

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## PREFACE

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When we were asked by Professor Paul Weiler and Dean Gary Roberts to join them as co-authors of *Sports and the Law*, we were awed by the project and mindful of the responsibility. Although we have both written books and articles on the business of sports, the Weiler/Roberts casebook is the definitive comprehensive and systematic analysis of the legal aspects of this important part of the entertainment business. We vowed to carry on that tradition.

Sports have become ubiquitous in modern American society. We move seamlessly from one season to the next. Our news media devotes an enormous amount of time and space to sports happenings. Sports stars are public figures of major importance. Major sporting events, like the Super Bowl, have become public festivals. (In fact, the 2010 Super Bowl between the New Orleans Saints and the Indianapolis Colts garnered the most viewers, 106 million, of any television program in history.) Sports have an extraordinary, if not unique, ability to facilitate social transformation.

Practitioners of sports law recognize that most of the legal issues raised in the field parallel those of other areas of their practice. They address issues of labor law, antitrust, contract law, criminal law, constitutional law, statutory interpretation, intellectual property law, administrative law and torts before a variety of forums, including state and federal courts, agencies, private arbitration, and across the negotiation table. A course in sports law covers many, but certainly not all, of the issues that sports lawyers face in their representation of a broad variety of clients in the sports industry. Sport lawyers specialize in representing athletes, teams, leagues, conferences, public recreational programs, colleges and universities, or other organizations involved in professional, collegiate, Olympic, and amateur sports.

In editing this Fourth Edition, we have tried throughout to focus on cases and events that do more than simply apply established law and legal principles to sports situations. For example, the *StarCaps* litigation discussed in Chapter 2 raises unique issues as to the ability of a national sports enterprise (in this case, the National Football League) to apply its uniform negotiated drug testing policy in the face of state statutes regulating drug testing. Of course, the underlying precedent on preemption involves non-sports entities, but the issues faced by the NFL are distinctly sports related. Similarly, in *American Needle* in Chapter 3, the recent Supreme Court case involving the question whether the NFL is a single entity for antitrust law purposes, the distinctive nature of professional sports leagues makes the controversy particularly interesting and important to our project.

We cannot re-teach tort and contract law, two topics all law students should have mastered before coming to sports law. We try, however, to introduce basic concepts of labor law, antitrust, and intellectual property,

areas where students might not have had previous opportunity to study. In particular, many may find the intersection of labor law and antitrust law to be the most difficult part of the course, but the challenge will prove valuable.

Technology, immigration, and search for new markets have made sports increasingly globalized. The major American sports leagues have adopted aggressive efforts to market their sport internationally. North American sports programming increasingly cover international soccer, rugby, and cricket. More significantly for the North American sports lawyer, as professional sports becomes increasingly sophisticated overseas, foreign legal tribunals that wrestle with similar issues will create precedents and illustrations that the skilled sports lawyer will want to appreciate to develop arguments at home.

During the course of studying with these materials, students will be introduced to a variety of important societal and legal issues that transcend sports. We deal with questions of discrimination based on race, gender and handicapped status. We address questions of institutional competence and capabilities. We focus on the commissioners, leagues, teams, and associations that provide structure to the games. We examine publicly-made law and privately administered systems of adjudication. In every instance, we seek input from the users of the casebook about their views on reasoning and outcomes.

All of law is man-made. Some of it offers remarkable incite; some of it is, frankly, trash. All of it—the good, the bad and the ugly—is important to anyone who intends to practice law. We should each be able, through thoughtful reflection, to distinguish positive contributions to the resolution of disputes in society from those decisions that would have benefitted from rethinking. Critical analysis in this and every area of the law should be the lawyer's lodestar. Having the opportunity to develop those analytic skills in a course that requires reading cases about baseball, basketball, football, hockey, tennis, soccer, boxing and NASCAR can make a difficult task sweeter.

Our job as the new co-authors of this casebook has been to take the path-breaking work of our colleagues and move the ball forward. We hoped we would bring something new to the project without losing anything that made this casebook so successful in the past. Students come to sports law thinking it might be only fun and games, but they will be quickly disabused. The study of this material will require rigorous and thoughtful examination. On the other hand, ESPN will be a valuable source of hypotheticals. That will be worth the work.

ROGER I. ABRAMS  
STEPHEN F. ROSS

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We must first acknowledge our colleagues, Paul Weiler and Gary Roberts, for their inspired decision to take a traditional casebook and turn it into the definitive textbook on the law and the business of sports. We agreed to undertake this project knowing that Paul and Gary would guide our efforts and superintend our final product. That remains a great comfort. In addition to the insights provided in prior editions, the new co-authors would also like to acknowledge and thank the many colleagues, sports law professors, academics from other disciplines who study sports, practicing sports lawyers, and industry executives—too numerous, unfortunately, to name—who over the years have generously shared their own expertise in helping us shape our own perspectives that we were able to apply in crafting revisions to this book.

Each of us benefited from the work of research assistant. At Northeastern, Roger Abrams was able to call upon Sophia Lingos and Lindsey Owens for their careful work as research fellows. At Penn State, Steve Ross would like to thank Marcos Fernandez and S. Douglas Webster for timely and helpful work.

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