

# SPORTS



# LAW

ADAM EPSTEIN

# **Sports Law**

**Adam Epstein, Esq.**



## WEST LEGAL STUDIES

### **Sports Law** by Adam Epstein

**Business Unit Executive Director:**  
Susan L. Simpfinderfer

**Executive Production Manager:**  
Wendy A. Troeger

**Executive Marketing Manager:**  
Donna J. Lewis

**Acquisitions Editor:**  
Pamela Fuller

**Production Manager:**  
Carolyn Miller

**Channel Manager:**  
Wendy Mapstone

**Editorial Assistant:**  
Sarah Duncan

**Production Editor:**  
Matthew J. Williams

**Cover Design:**  
TDB Publishing Services

COPYRIGHT © 2003 by Delmar Learning. West Legal Studies is an imprint of Delmar Learning, a division of Thomson Learning, Inc. Thomson Learning™ is a trademark used herein under license.

Printed in Canada  
1 2 3 4 5 XXX 06 05 04 03 02

For more information contact:  
Delmar Learning  
5 Maxwell Drive  
Clifton Park, NY 12065-2919.

Or find us on the World Wide Web at  
[www.DelmarLearning.com](http://www.DelmarLearning.com) or  
[www.WestLegalStudies.com](http://www.WestLegalStudies.com)

ALL RIGHTS RESERVED. No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means—graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information storage and retrieval systems—without written permission of the publisher.

For permission to use material from this text or product, contact us by  
Tel (800) 730-2214  
Fax (800) 730-2215  
[www.thomsonrights.com](http://www.thomsonrights.com)

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

Epstein, Adam.  
Sports law / Adam Epstein.  
p. cm. -- (The West Legal Studies series)  
Includes index.  
ISBN 0-7668-2324-5  
1. Sports--Law and legislation--United States.  
I. Title. II. Series.  
KF3989 .E67 2002  
344.73'099--dc21

2002041017

ISBN: 0-7668-2324-5

## NOTICE TO THE READER

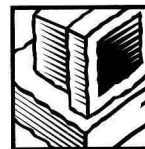
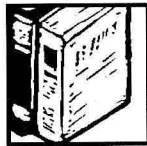
Publisher does not warrant or guarantee any of the products described herein or perform any independent analysis in connection with any of the product information contained herein. Publisher does not assume, and expressly disclaims, any obligation to obtain and include information other than that provided to it by the manufacturer.

The reader is notified that this text is an educational tool, not a practice book. Since the law is in constant change, no rule or statement of law in this book should be relied upon for any service to any client. The reader should always refer to standard legal sources for the current rule or law. If legal advice or other expert assistance is required, the services of the appropriate professional should be sought.

The Publisher makes no representation or warranties of any kind, including but not limited to, the warranties of fitness for particular purpose or merchantability, nor are any such representations implied with respect to the material set forth herein, and the publisher takes no responsibility with respect to such material. The publisher shall not be liable for any special, consequential, or exemplary damages resulting, in whole or part, from the readers' use of, or reliance upon, this material.

# **Sports Law**

# The West Legal Studies Series



## Your options keep growing with West Legal Studies

Each year our list continues to offer you more options for every area of the law to meet your course or on-the-job reference requirements. We now have over 140 titles from which to choose in the following areas:

- |  |  |
|--|--|
| Accounting and Financials for the Law Office | Intellectual Property                    |
| Administrative Law                           | Interviewing and Investigation           |
| Alternative Dispute Resolution               | Introduction to Law                      |
| Bankruptcy                                   | Introduction to Paralegalism             |
| Business Organizations/Corporations          | Law Office Management                    |
| Civil Litigation and Procedure               | Law Office Procedures                    |
| CLA Exam Preparation                         | Legal Nurse Consulting                   |
| Computer in the Law Office                   | Legal Research, Writing, and Analysis    |
| Contract Law                                 | Legal Terminology                        |
| Criminal Law and Procedure                   | Paralegal Employment                     |
| Document Preparation                         | Product Liability                        |
| Elder Law                                    | Real Estate Law                          |
| Employment Law                               | Reference Materials                      |
| Environmental Law                            | Social Security                          |
| Ethics                                       | Sports Law                               |
| Evidence Law                                 | Torts and Personal Injury Law            |
| Family Law                                   | Wills, Trusts, and Estate Administration |

## You will find unparalleled, practical support

Each book is augmented by instructor and student supplements to ensure the best learning experience possible. We also offer custom publishing and other benefits such as West's Student Achievement Award. In addition, our sales representatives are ready to provide you with dependable service.

## We want to hear from you

Our best contributions for improving the quality of our books and instructional materials is feedback from the people who use them. If you have a question, concern, or observation about any of our materials, or you have a product proposal or manuscript, we want to hear from you. Please contact your local representative or write us at the following address:

West Legal Studies, 5 Maxwell Drive, Clifton Park, NY 12065-2919

For additional information point your browser at

**[www.WestLegalStudies.com](http://www.WestLegalStudies.com)**

**THOMSON**  
★  
**DELMAR LEARNING**

## Dedication

*To the guidance and tutelage of Dr. Harry Rutledge,  
Emeritus Professor, Department of Classics, University of  
Tennessee.*

# Preface

The goal of this book is to provide easy access to the legal issues involved in sport and the sport industry. The book's target audience is the nonlawyer and non-law student, though certainly this book should be enlightening for those trained in law as well. Sport management, legal studies, and paralegal students should find that this text is easy to read and covers the basics of the legal issues surrounding sports.

*Sports Law* includes 12 chapters. Some chapters, such as Sports Contracts, introduce the reader to skills sets, while other chapters, such as Sports Torts, present a more general view of that area of the law. The instructor is encouraged to provide course supplementation on the different chapters, though this text was written with the goal that no other supplementation would be necessary.

While one might debate the order of chapters or the order of importance of the issues, the author has given special attention to the needs of students who might study law only this once during their academic career. Clearly, though the focus of the book is on American jurisprudence, relative weight is given to international issues as well, particularly with regard to the Olympic Movement.

Actual cases have been included in the text so instructors and students need not copy cases from other books and can feel comfortable using this book as the sole course text. Questions have been included at the end of each chapter to allow students and instructors to ponder questions with clear-cut answers and others not so clear. Chapter summaries are also written with the expectation that readers could realize an overall appreciation of the context of the chapter.

Numerous Internet sites, additional cases, and statutes are provided throughout the book to enable students to further explore relevant issues and decisions. It is important to recognize that laws may change each year, and therefore students should beware to consult the latest cases and decisions since the writing of this text. In fact, it is highly recommended that the instructor note the latest versions of that particular state's laws to enhance (and verify) this text. Additionally, cases may be overruled or reversed; therefore, cases are meant to coalesce the concepts in the chapter rather than be used as the prime or "best" case that addresses a subject.

# About the Author

Adam Epstein earned his B.A. (Classics), M.B.A. (Management) and J.D. from the University of Tennessee. He currently serves as the Chair of the Legal Studies Department at South College in Knoxville. He has served as an adjunct assistant professor at the University of Tennessee and Pellissippi State Technical Community College in Knoxville as well. Mr. Epstein is a Rule 31 General Civil Mediator in Tennessee.

Mr. Epstein has represented numerous professional athletes over the years, including several national champions and olympians primarily in the sports of swimming and triathlon. He co-authored *Sports Law and Legislation: An Annotated Bibliography* (1991), and has authored numerous articles that have been featured in the *Journal of Legal Aspects of Sport*, *Tennessee Bar Journal*, *The Paralegal Educator*, and Marquette University's *For the Record*. He has also served as a reviewer for numerous textbooks.



# Acknowledgments

The author and Delmar Learning would like to thank the following reviewers:

Jeffrey A. Helewitz, Esq.

William J. Mulkeen  
Essex County College

Robert Diotalevi  
Florida Gulf Coast University

Les Sturdivant Ennis  
Samford University

Kenneth Frank  
Brenau University

Prof. Paul Anderson  
Marquette University Law School

# Introduction to Sports Law

Students who are interested in studying sports law are usually excited about the prospect. I am well aware of students across the country who have requested that such a subject be taught in their curriculum.

The target audience of this text is undergraduate legal studies, paralegal studies, and sport management students. This text may also complement studies in general business law and other special legal topics courses. This text is not written for the graduate law student, though it certainly provides valuable information and fundamentals for such study.

Attempts to teach sports law are often met with mild resistance from faculty for several reasons. First, most educators have no experience in this area of the law. Second, many educators feel that students will not ultimately work in such an environment and therefore such study adds little or no value to preparation for participation in the legal profession. Finally, even though there are numerous sports law textbooks, most are designed for the graduate study of law or in law school. Few law schools consistently offer such a course.

Real-world cases, real-world documents, and special features are designed to show that working in an environment that influences or is affected by sports or athletes is likely to occur at some point during the course of one's career and is no longer considered just a "lucky" prospect.

Sports law is not considered a classic legal subject for law schools, and some traditionalists vehemently refuse to recognize it as a legitimate field of study in the legal profession. However, I have never met a lawyer or professor who was not interested in becoming involved in this field in some way whether on a full-time basis or merely to complement an already established civil or criminal practice or interest.

"Sports law" may be referred to as "sports and the law" in some circles. In other words, recognition that sports law is its own field might evoke strong debate, usually in the negative. However, realize that one will succeed in understanding sports law much better if it is clear that sports is a multibillion dollar industry with rules that are often not found in everyday life. Some students and educators might refuse to accept the fact that in the sports business the normality of the legal environment is difficult to comprehend, even twisted. Such resistance to accepting that rules are different in the sports industry will surely affect the study of this subject negatively. The importance and role of television cannot be underestimated in terms of its revenue streams, through advertising and sponsorship, for organizations, leagues, teams, colleges, and universities.

Rarely will a single employee of an organization outside of sports refuse to work or "hold out" from appearing for work due to the fact that other similarly situated

employees are paid more for the same services. In the professional sports world, this is commonplace. In other fields, employees rarely have an agent. Employers might fire an insubordinate employee, and no one in the community would care. There would be no discussion in the newspaper, on the radio, or over the Internet. In the sports business, professional athletes and administrators may end up handsomely rewarded for outrageous behaviors. Sports law is about money. Sports law is about people. Sports law is about power. Sports law is about ego. These concepts sound remarkably similar to the descriptions often associated with the legal profession.

Professional and amateur sports leagues and organizations are recognized as profitable ventures involving large capital resources. They also regulate players and agents. Women have had a great influence in certain areas of sports and the law. Teenagers are becoming multimillionaires due to subsidies from athletic sponsors and organizations. Cities are taxing citizens to build stadiums and steal franchises from other cities. Fans are suing players and suing each other for injuries received during a sports contest, while local and state governments are seeking criminal sanctions against both fans' and athletes' misdeeds. Amateur associations and teams are increasingly becoming involved in debate over recruiting athletes and rules involving their sports, and fans are suing players for breaches of contract. The list goes on.

All in all, the study of sports law is still fun. It focuses on what many of us wish we could really do in any profession: get paid to play and have fun. Sports law evolves almost daily. Therefore, it is important that the reader use this book as a starting point for further research and to learn the fundamentals of an exciting area of the law.

# Contents

**Preface xvii**

**Introduction to Sports Law xxi**

---

## **CHAPTER 1**

### **Sports Agents 1**

Introduction 1

Who Is a Sports Agent? 1

Qualifications to Become a Sports Agent 2

Professional Leagues 2

Formal Education to Become an Agent 3

General Agency Law Principles 3

Fiduciary Duties 4

History of Sports Agency 4

Agent Hierarchy 5

Agent Roles 5

Other Sports Clients 6

Agent Regulation 6

State Regulation of Sports Agents 7

Testing Sports Agents 7

EXHIBIT 1–1: Uniform Athlete Agents Act 9

Importance of Focus of Agent Laws 14

Violators of State Agent Laws 14

Statutory Framework 15

Sports Agent as Lawyer 15

Professional Codes of Ethics 15

Sports Agent Fees 16

States Regulating Fees 16

Regulation by Players Associations/Unions	17
NFLPA	17
MLBPA	17
NHLPA	18
NBPA	18
Breach of Fiduciary Duty	18
NCAA Student Athletes Turning Professional	18
Professional Sports Counseling Panels	19
EXHIBIT 1–2: Excerpt of NCAA Rules Governing Agents	20
Summary	28
Key Terms	29
Additional Cases	29

---

## CHAPTER 2

### Sports Contracts 33

Introduction	33
Sports Agents and Contracts	33
Personal Services Nature of Sports Contracts	34
Public Nature of Sports Contracts	34
The Occupation of “Athlete”	34
General Contract Law Principles	35
Definition	35
Offer and Acceptance	35
Consideration	36
Statute of Frauds	36
Valid, Void, Voidable	37
Good Faith	37
Categories of Contracts	38
Team Contracts versus Individual Contracts	38
The Professional Services Contract	38
Endorsement Contracts	39
Appearance Contracts	39
Drafting the Sports Contract	40
Sports Contract Drafting Suggestions	40
Implied Contracts	47
Damages and Remedies for Breach	47
Types of Remedies	47

NCAA Contracts and Amateurism	57
Evolution of Amateurism	58
Other NCAA Contract Issues	59
Letter of Intent	59
Health Club Contracts	60
Major League Contracts	60
Summary	61
Key Terms	61
Additional Cases	62

---

## **CHAPTER 3**

### **Sports Torts 63**

Introduction	63
General Tort Theories	64
Negligence	64
Contributory Negligence versus Comparative Negligence (Fault)	65
Gross Negligence and Recklessness	66
Spectator Injuries	66
No Fly Zones	69
Wrongful Death	69
Malpractice in Sports	69
Sports Officials	77
Workers Compensation	77
Insurance	78
Torts and Waivers	78
Ticket Stubs and Waivers	79
Minors and Waivers	79
Statutes of Limitation	79
Intentional Torts	80
Defamation of Character	80
Intentional Interference with Contractual Relations	81
Commercial Misappropriation	81
Products Liability	81
Strict Liability in Torts	82
Summary	82
Key Terms	83
Additional Cases	83

---

**CHAPTER 4****Sports Crimes 87**

- Introduction 87
- Variety of Crimes 88
  - Relationship to Torts 88
  - Contact Sports 88
  - Crimes Unrelated to Sports Conduct 89
- General Criminal Law Principles 89
  - Burden of Proof 89
  - Defenses to Crimes 89
  - Criminal Intent 90
  - Felony versus Misdemeanor 90
  - Assault and Battery 90
- Sports Violence 91
  - Governmental Legislation 91
  - Internal League Controls 91
- Crimes Against the Person 91
  - Illegitimate Sports Violence 91
  - Fans and Spectators 93
  - Sports Officials and Crimes 93
  - Sports Agent Crimes 94
- Crimes Affecting the Public Health and Welfare 95
  - Ticket Scalping 95
  - Sports Gambling 96
  - Sports Bribery and Game Fixing 96
- Crimes Against the Government 98
  - RICO 98
  - Illegal Drugs 98
- Summary 99
- Key Terms 99
- Additional Cases 99

---

**CHAPTER 5****Title IX and Other Women's Issues 103**

- Introduction 103
- Born from the Civil Rights Movement 103
- College Sports 104
  - NCAA's Role in Promoting Compliance 105

Title IX Criticism	105
<i>Grove City College v. Bell</i>	105
Title IX Tests and Fundamentals	106
Test 1: Substantial Proportionality	106
Test 2: History of Expansion of Women's Programs	106
Test 3: Full and Effective Accommodation of Women's Interests	107
Evolution of Title IX	107
<i>Cohen v. Brown University</i>	107
<i>NCAA v. Smith</i>	113
Men and Title IX	114
Men's Programs Funding Women's Programs	114
Contact Sports Exception	114
Football	114
Men's Programs Cut Due to Title IX	115
General Accounting Office Releases Reports on Title IX	115
Report on Team Discontinuation	116
Other Women's Issues	117
Women Competing on Male Teams	117
Men Competing on Women's Teams	117
Equity in Athletics Disclosure Act	117
Equal Pay Act of 1963	121
Sexual Harassment	122
Family and Medical Leave Act	123
Health Clubs for Women Only	124
Summary	124
Key Terms	125
Additional Cases	125

---

## CHAPTER 6

### Disabilities and Sports 127

Introduction	127
Relevant Statutes	127
High Schools	127
NCAA	128
The Rehabilitation Act of 1973	128
Proof of Discrimination under § 504	129
The Americans with Disabilities Act	129
Four Major ADA Categories	130



Reasonable Accommodation	130
What Is Impairment?	131
Undue Hardship	131
Not Covered	131
Proof of Discrimination under the ADA	131
Risks to Self and Other Participants	131
Role of EEOC	132
Alcohol and Other Drugs	132
Golfers and other Professional Sports	132
Possible Unfair Advantage	137
Martin's Supreme Court Decision	138
The Olinger Case	138
The Individuals with Disabilities Education Act	138
Specific Disabilities	159
Age Limits and Eligibility	160
Age Discrimination in Employment Act	160
Summary	161
Key Terms	161
Additional Cases	162

---

## CHAPTER 7

### Drugs and Sports 163

Introduction	163
Performance-Enhancing versus Illegal Drugs	163
Constitutional Framework	164
Fourth Amendment	164
Fifth Amendment	165
Fourteenth Amendment	165
NCAA Regulation	179
Professional Sports	179
National Football League	180
The Olympic Games	180
International Olympic Committee Policies	180
Significant Historical Perspectives in Drug Testing	181
EXHIBIT 7-1: International Olympic Committee List of Banned Substances	182
Recent Drug Concerns: HGH and EPO	188
United States	188
Summary	189