

THE LAW  
OF  
SPORTS

WEISTART  
LOWELL

**Copyright ©by The Bobbs-Merrill Company, Inc. 1979**

**Library of Congress Card Number: 79-84249**

**ISBN 0-672-82337-3**

**Printed in the United States of America**

**All Rights Reserved**

With our deepest affection and thanks, we  
dedicate this volume

To

Ruth, Lisa, and Whitney Weistart

and

Nancy and Whitney Lowell

*whose support and encouragement has been exceeded  
only by their extraordinary patience*

## PREFACE

When we first began planning for this book in 1972, we had in mind a volume that would be modest in length and limited in topical coverage. At that time, a project of such moderate proportions seemed quite appropriate: the legal aspects of sports activities were largely unexplored in the literature and case developments were limited in number. Even a casual perusal of the materials which follow, however, will suggest that the final product bears little resemblance to the original design.

What happened between 1972 and the present to produce these changes in the nature of the project? To find the answer, one need simply compare the state of sports-related legal issues in 1972 and those which are treated in this book. In 1972, the antitrust exemption for baseball had been confirmed, and it appeared that the reserve clause was invulnerable to legal attack. In the other professional sports, the traditional player restraints were intact and there was a popular belief that the devices were not subject to serious antitrust challenge. On another front, player unions, which had appeared off and on in the early years of baseball, reappeared in a somewhat halting fashion in all of the professional sports. Because the unions were at their initial stages of development, their impact on league operations as of 1972 had been slight and their future seemed uncertain. In the tax area, professional sports franchises were attractive tax shelters, and they had not been specifically challenged. When a franchise was sold, the new owners were often unabashed in allocating all but a minute portion of the sales price to assets which would produce high depreciation deductions (and a rapid recovery of the initial capital investment).

On the amateur side in 1972, there were some cases testing the rules of high school athletic associations on matters relating to eligibility, athlete conduct, and the right to participate. The trend of precedent, however, was highly deferential to the authority of the athletic organization. At the collegiate level, suits against the NCAA were a rarity, and the meager precedents did not yield a coherent theory of the legal status of the NCAA. Indeed, any suggestion that actions of the NCAA might be reviewable under the antitrust laws seemed truly fanciful.

This state of affairs stands in rather sharp contrast to the developments which are treated in the following pages. In each of the areas mentioned, and in many others, the last half decade has seen changes of the most fundamental sort. In the early stages of the preparation of this book, the rapid legal developments were a source of some frustration. In several areas, the products of early research had to be discarded, or relegated to background discussion, as new theories replaced traditional approaches. In the final analysis, though, the litigation explosions on the antitrust, tax, labor, and amateur regulation fronts were welcome developments. On a general level, the cases of the mid-'70s served to finally strip away the myth that sports activities were recreational in nature and, thus, not subject to close legal scrutiny. But there was another benefit of the litigation which more directly affected the writing of this book. The litigation of the '70s did much to firm up our initial perceptions of the legal framework to be applied to sports-related issues. Theses which formerly could only be put forward in a tentative fashion can now be stated with the greater

certainty that comes from successful testing in the courts. We certainly know much more about the legal implications of player restraints, collective bargaining, player contract depreciation, and amateur regulations than we did just a few years ago. As a result, predictions about the course of future developments can be made with more confidence than could have been generated in 1972.

This is not to suggest, however, that there are no interesting sports issues left to be pursued. Indeed, the exploration has probably only just begun. In the process of defining the proper framework for analysis of sports-related controversies in the litigation of the '70s, the courts significantly increased the potential for litigation. Actions and activities which were formerly thought to be unreviewable are now perceived as being well within the realm of judicial scrutiny. Thus, we hope that one effect of this book will be to suggest the need for further clarification in a great number of areas. For example, despite the persistence of the issue, the courts have yet to settle the question of whether there is anything like a constitutionally protected right to participate in amateur athletics. At the professional level, the courts have not yet given proper consideration to the difficult antitrust questions which arise in connection with league decisions limiting the number or location of club franchises.

It is also pertinent to note that during the early stages of the preparation of this book, we were drawn into discussions, both between ourselves and with others, about whether there really was any such thing as "the law of sports." The hypothesis to be dealt with was one which suggested that rather than having any law which was unique to sports, what we really had was "the law," and while this applied to sports, it also applied equally to other activities and industries. Hence, it could be doubted whether there was anything special to be said about the application of legal doctrine to sports issues.

While the early debates on this point were interesting — and, indeed, aided our development of a structure for the book — it soon became clear that there were many areas in which sports-related problems required a specially focused analysis. On some matters, there are legal doctrines which apply in the sports area and nowhere else. This is the case, for example, with respect to such diverse matters as baseball's antitrust exemption and some of the tax rules to be applied to the recapture of depreciation on player contracts. The more common situation, however, is one in which the doctrine applied to a particular sports problem is not unique, but the factual setting is sufficiently peculiar that the results are not the same as would obtain in other contexts. In the area of amateur sports, for example, the proscription against sex discrimination is based on the same political and sociological notions which have led to statutes and court decisions outlawing sex discrimination in employment, housing, and public benefits. However, none of these areas raise the issues (and tensions) which are posed by the significant differences in the revenue-generating potentials of traditional men's and women's sports. On the professional side, perhaps the most vivid illustrations of the factual uniqueness of sports problems can be found in the antitrust area. Sections 1 and 2 of the Sherman Act do not contain different language to be applied in sports cases. In that sense, then, the law relevant to the sports industry is the same as will be applied to other areas of commerce. A glance at the cases, however, will suggest that there is a good deal of judicial reasoning in the sports areas which is not



very conventional. On many issues, a professional sports league is perceived as a blatant cartel, and one which enforces rules which have no purpose other than preventing competition. Nonetheless, through the course of litigation in the last several years, increasing numbers of courts have concluded that such behavior does not necessarily run afoul of the antitrust laws.

It has also become clear that, in addition to the possibly unique application of legal doctrine, there are a great number of areas in which sports problems are of sufficient factual uniqueness to require a specialized analysis. Our initial conclusions in this regard have been confirmed by the discovery of several areas in which the courts have been misled by drawing inappropriate analogies between sports activities and other endeavors. These are explored in the pages which follow. While it is true that the analysis of sports-related problems can be advanced by reference to the results achieved in non-sports contexts, we have found that this is an analytical technique which must be used with some care. Accordingly, the reader will find numerous instances in this text in which a significant part of the analysis is devoted to evaluating various non-sports precedent in terms of its appropriateness in the sports area.

An additional point that we should make about the preparation of this book is that it addresses the legal issues that are raised by an industry with vast contours. The sports industry ranges from the playing fields of elementary schools to the cavernous stadiums in which professional football games are played; from the aristocratic stables in which pure-bred horses are trained to the urban gymnasiums in which aspiring boxers prepare for their bouts; from the negotiating tables at which collective bargaining is conducted between representatives of owners and players to the tax planning that precedes the negotiation of an individual contract between player and team; from the grace of an Olympic gymnast to the violence that is frequently found in football and hockey; from the acquisition of elaborate equipment to build strong bodies to the injection of drugs to enhance performance; from the often informal administration of amateur athletics at the local level to the very formal procedures of the United States Congress as it deliberates over legislation proposed to regulate some aspect of athletics; from the often simplistic legal issues posed by an injury in a game to the frequently intransigent technicality of a federal antitrust challenge to a rule of a professional league; and from the terms of a collegiate scholarship to the rules relating to pari-mutuel betting.

The vastness of this industry crystallized as we searched to identify the legal principles that would apply to the various relationships in the industry. In our effort to adequately state these principles, we also quickly learned that the "law of sports" was not confined to contract and antitrust law. Rather, it includes a wide variety of legal subject areas. To facilitate the project, we divided the various subject areas between us. In the final product which appears here, our separate efforts can be identified on a chapter by chapter basis. Professor Weistart was responsible for the materials in Chapter 3 (Legal Relationships in Professional Sports), Chapter 4 (Enforcement of Professional Sports Contracts) and Chapter 5 (Antitrust Aspects of Sports Activities). Mr. Lowell prepared the balance of the material, in particular Chapter 1 (Regulation of Amateur Athletics), Chapter 2 (Public Regulation of Sports Activities), Chapter 6 (Collective Bargaining and Professional Sports), Chapter 7 (Federal Income

Taxation of Sports Activities) and Chapter 8 (Liability for Injuries in Sports Activities).

Finally, we should note that the materials in this book reflect authorities that were published through July of 1978. While there have certainly been important developments in the interim, it was not feasible to include them in this volume. These developments will be reflected in periodic supplements.

The authors are indebted to a large number of friends and colleagues who have in one way or another helped in the preparation of this book. We thank them all equally and hope that they will understand that individual acknowledgement would not be possible (or fair to those who were not mentioned). But we would like to express our sincere gratitude to our friend Ken Pye, who provided us with much of the encouragement and opportunity to begin this project. We would also like to publicly thank each other. During the gestation period of this book, we have each learned from the other and, more importantly, developed a close friendship, the fruits of which we will hope to enjoy in the years to come.

In addition, we would like to give particular recognition to the efforts of June Hubbard who has worked on the book for the past five years. Ms. Hubbard's contribution was unique in the truest sense of that word. Among other things, she conceived and implemented a system for gathering sports law-related articles from the major newspapers in the United States and Canada. In addition, she provided invaluable research and technical assistance, ranging from preparing the manuscript to introducing much needed rationality to our citation system. Her fine efforts in the preparation of this material are greatly appreciated. On another point, it must be noted that her knowledge of and devotion to the sport of hockey are truly significant, in no small part because they are maintained in a setting in which most others believe a puck to be a mischievous fairy.

John C. Weistart  
Cym H. Lowell

*November 11, 1978*

## SUMMARY TABLE OF CONTENTS

	<i>Page</i>
Dedication .....	iii
Table of Contents .....	vii
Preface .....	xvii
Chapter 1. Regulation of Amateur Athletics .....	1
Chapter 2. Public Regulation of Sports Activities .....	113
Chapter 3. Legal Relationships in Professional Sports .....	196
Chapter 4. Enforcement of Professional Sports Contracts .....	334
Chapter 5. Antitrust Aspects of Sports Activities .....	477
Chapter 6. Collective Bargaining and Professional Sports .....	777
Chapter 7. Federal Income Taxation of Sports Activities .....	840
Chapter 8. Liability for Injuries in Sports Activities .....	933
Table of Cases .....	1037
Index .....	1135



# TABLE OF CONTENTS

	<i>Page</i>
Dedication .....	iii
Summary Table of Contents .....	v
Preface .....	xvii
<b>CHAPTER 1. REGULATION OF AMATEUR ATHLETICS</b>	
§ 1.01. In General .....	1
§ 1.02. Administrative Structure of Amateur Athletics .....	3
a. Restricted Competition .....	4
b. Unrestricted Competition .....	5
c. Importance of the Administrative Structure .....	6
§ 1.03. Status of the Amateur Athlete .....	6
§ 1.04. Organizational Definition .....	7
§ 1.05. Judicial Definitions .....	8
§ 1.06. Scholarship Cases .....	9
§ 1.07. Workmen's Compensation Cases .....	12
§ 1.08. Federal Income Tax Cases .....	15
§ 1.09. "Amateur" Status .....	19
§ 1.10. "Rights" of the Amateur Athlete .....	20
§ 1.11. The "Right" to Participate .....	20
§ 1.12. The Athlete-Coach Relationship .....	25
§ 1.13. Freedom from Unreasonable Regulation .....	31
§ 1.14. Amateur Athletic Organizations and Institutions .....	32
a. Constitutional Status .....	32
b. Nonconstitutional Status .....	37
§ 1.15. Rule-Making in Amateur Athletics .....	44
a. Nonconstitutional Inquiry .....	45
b. Constitutional Inquiry .....	49
§ 1.15.1. Rule-Making by Private Institutions .....	52
§ 1.16. Good Conduct .....	56
§ 1.17. "Amateur" Standing .....	59
§ 1.18. Participation in Non-Approved Events .....	61
§ 1.19. Longevity .....	63
§ 1.20. Transfer of Residence .....	64
§ 1.21. Grades .....	68
§ 1.22. Sex .....	70
§ 1.23. Marriage .....	86
§ 1.24. Race .....	89
§ 1.25. Drugs .....	90
§ 1.26. Spectator Disturbances .....	91
§ 1.27. Tournament Classifications .....	92
§ 1.28. Enforcement Activities in Amateur Athletics .....	93
§ 1.29. Legislative Intervention in Amateur Athletics .....	107

## CHAPTER 2. PUBLIC REGULATION OF SPORTS ACTIVITIES

	<i>Page</i>
§ 2.01. In General .....	113
§ 2.02. Athletic Regulatory Commissions .....	114
§ 2.03. Commission Issuance of Licenses .....	117
§ 2.04. Commission Rule-Making .....	125
§ 2.05. Good Conduct and Character .....	129
§ 2.06. Undesirable Shareholders .....	132
§ 2.07. Drugs .....	134
§ 2.08. Minimum Fees .....	139
§ 2.09. Patron and Participant Exclusion .....	140
§ 2.10. Sex Discrimination .....	147
§ 2.11. Race Discrimination .....	150
§ 2.12. Qualification .....	150
§ 2.13. Purses .....	151
§ 2.14. Manager's or Agent's Contracts .....	151
§ 2.15. Decisions of Referees or Umpires .....	154
§ 2.16. Championships .....	156
§ 2.17. Private Entity Rule-Making .....	157
§ 2.18. Commission Enforcement Proceedings .....	158
§ 2.19. Judicial Review of Commission Determinations .....	168
§ 2.20. Public Regulation of Gambling on Sports Events .....	172
§ 2.21. Unlawful Sports Activities .....	180
a. Prize-Fighting .....	180
b. Violence in Sports .....	184
§ 2.22. Regulation of Discrimination in the Use of Athletic Facilities .....	190

## CHAPTER 3. LEGAL RELATIONSHIPS IN PROFESSIONAL SPORTS

§ 3.01. Scope of Chapter .....	196
§ 3.02. Interpretation of Standard Player Contracts: Problems in Contract Formation .....	199
a. Introduction .....	199
b. Problems in Contract Formation: Offer and Acceptance ..	200
c. The Role of Commissioner Approval .....	204
§ 3.03. Status of Agreements Collateral to the Standard Player Con- tract .....	206
§ 3.04. General Rules of Interpretation .....	210
§ 3.05. Interpretation of Provisions Pertaining to Injuries and Physical Condition — The Basic Rights of the Parties ..	215
§ 3.06. Determination of Club's Responsibility for Injuries .....	223
a. Conditions Precedent to the Club's Liability .....	223
b. Determination of Player Fitness .....	227
§ 3.07. Club's Right to Terminate Player Contracts .....	230
a. The Nature of the Employment Relationship .....	231
b. The Consequences of Termination .....	233
c. The Grounds for Termination .....	235

	<i>Page</i>
§ 3.08. The Role of Discretion in the Club's Power to Terminate a Player's Contract .....	239
§ 3.09. No-Cut Contracts .....	248
a. The Various Types of Job Security Clauses .....	248
b. Interpretation of No-Cut and Salary Guarantee Clauses ..	250
1. The Undefined No-Cut Clause .....	251
2. The Football No-Cut Clause .....	254
3. The Salary Guarantee .....	255
c. Release of an Athlete Under a No-Cut Contract .....	256
§ 3.10. Contractual Aspects of Player Discipline .....	258
a. Background .....	258
b. Limitations on the Club's Disciplinary Power .....	261
c. Enforcement of Contract Provisions Affording Procedural Protection .....	268
d. Other Aspects of Player Discipline .....	270
§ 3.11. The Player's Basic Rights Under the Contract: Compensation, Bonuses and the Right to Terminate .....	271
a. The Athlete's Right to Compensation .....	271
b. The Legal Status of Bonus Payments .....	274
c. The Player's Right to Terminate the Contract .....	279
§ 3.12. Contractual Aspects of the Option and Reserve Clauses ...	283
a. Duration of the Team's Right to Continue the Player's Contract .....	285
b. The Manner of Exercising the Option .....	288
c. The Terms Governing the Option Year .....	289
§ 3.13. Assignment of Player Contracts — The Basis of the Club's Right to Assign .....	291
a. The Common Law Background .....	293
b. The Liability of the Original Contracting Team Following an Assignment .....	298
§ 3.14. Limitations on the Right to Assign a Player's Contract ....	300
a. Potential Objections by the Player .....	300
b. The General Obligation of Good Faith .....	304
c. Bargained-For Limitations on the Team's Right of Assignment .....	305
§ 3.15. The Legal Status of Professional Sports Leagues — The Nature of the Relationship Between Clubs Within a League .....	306
a. The League Constitution and Bylaws: The Contract Between the Clubs .....	307
b. The Role of the Commissioner in League Governance ...	311
§ 3.16. Membership Rights .....	313
a. Admission to Membership .....	313
b. Discipline of Members .....	315
§ 3.17. Athletes and Their Agents — Background .....	319

	<i>Page</i>
§ 3.18. Exclusive Agency Arrangements . . . . .	323
a. The Agent's Right to Compensation . . . . .	323
b. The Duties of the Agent . . . . .	326
§ 3.19. Other Aspects of the Athlete-Agent Relationship . . . . .	328
a. Conflicts of Interest . . . . .	328
b. The Duration of the Agency Contract . . . . .	331
 CHAPTER 4. ENFORCEMENT OF PROFESSIONAL SPORTS CONTRACTS	
§ 4.01. The Coverage of This Chapter . . . . .	334
§ 4.02. Judicial Enforcement of Player Contracts: The Nature of the Remedy . . . . .	336
§ 4.03. The Context in Which the Enforcement Questions Arise . . . . .	343
§ 4.04. The Source of the Club's Exclusive Right to the Athlete's Services . . . . .	347
a. Relevant Contract Terms . . . . .	347
b. Enforcement in the Absence of an Express Covenant . . . . .	349
§ 4.05. Express Covenants and the Requirement of Reasonable- ness . . . . .	351
§ 4.06. Validity of the Contract as a Prerequisite to Injunctive Re- lief . . . . .	358
§ 4.07. Requirement That the Athlete Possess Unique Skills: In- adequacy of Money Damages . . . . .	359
a. Reason for the Rule . . . . .	360
b. Criteria by Which Uniqueness is Determined . . . . .	362
c. Evidence of the Athlete's Unique Skill . . . . .	363
§ 4.08. Related Requirements of Irreparable Harm to the Plaintiff Club . . . . .	364
§ 4.09. Other Aspects of the Adequacy of Remedies at Law . . . . .	366
§ 4.10. Unfair Competition as an Element of Plaintiff's Case . . . . .	369
§ 4.11. Requirement of Mutuality . . . . .	373
a. The Concern for Mutuality of Obligation . . . . .	376
b. Mutuality of Remedy . . . . .	377
c. Mutuality of the Parties' Equities . . . . .	381
§ 4.12. Unclean Hands Defense . . . . .	383
a. The Rule and Its Application . . . . .	383
b. Interference with Existing Contractual Relationships . . . . .	384
c. Improprieties in Contract Negotiations . . . . .	389
d. The Effect of an Assignment Upon the Unclean Hands Defense . . . . .	390
§ 4.13. Illegality or Unconscionability as a Defense . . . . .	391
§ 4.14. Tort Aspects of Contract-Jumping: New Employer's Inter- ference with the Existing Contractual Relationship . . . . .	397
a. Introduction . . . . .	397
b. Elements of the Tort . . . . .	398
c. Requirement of Improper Interference . . . . .	399
d. The Intent Requirement . . . . .	404
e. The Justification for the Defendant's Action . . . . .	406

	<i>Page</i>
§ 4.15. Arbitration in Professional Sports: The Legal Framework . . .	408
a. Nature of Arbitration . . . . .	408
b. Law Applicable to Arbitration . . . . .	412
c. The Enforceability of Agreements to Arbitrate . . . . .	415
1. Commercial Arbitration . . . . .	415
2. Labor Arbitration . . . . .	420
d. Securing Compliance with the Agreement to Arbitrate . . . . .	421
1. Commercial Arbitration . . . . .	421
2. Labor Arbitration . . . . .	423
§ 4.16. Controversies Subject to Arbitration . . . . .	423
a. Interpretation of the Arbitration Clause . . . . .	423
b. Club's Right to Enjoin Player's Breach of Contract . . . .	426
c. Arbitrator's Role in Defining Arbitrability . . . . .	429
1. Commercial Arbitration . . . . .	429
2. Labor Arbitration . . . . .	430
§ 4.17. Matters Not Subject to Arbitration . . . . .	431
a. Waiver of the Right to Arbitration . . . . .	432
b. Public Policy Limitations on the Exclusivity of the Arbitration Remedy . . . . .	433
§ 4.18. Procedural Aspects of Arbitration . . . . .	436
§ 4.19. The Commissioner's Role as Arbitrator . . . . .	440
§ 4.20. Grounds for Vacating an Arbitrator's Award . . . . .	447
a. Commercial Arbitration . . . . .	447
b. Labor Arbitration . . . . .	451
§ 4.21. Jurisdiction Questions in Sports Litigation: Suits Against Clubs . . . . .	454
a. Standards Defining In Personam Jurisdiction . . . . .	456
b. Foreign State Contacts of Professional Sports Clubs: Receipt of Revenues . . . . .	459
c. Number of Games Played in the Forum State . . . . .	463
d. Recruiting Activities . . . . .	466
e. Sports Broadcasts into Foreign Jurisdictions . . . . .	470
§ 4.22. Jurisdiction Over Players . . . . .	472
a. Importance of Proper Forum Selection . . . . .	472
b. Player's Residence as an Appropriate Forum . . . . .	473
c. Place of Contracting . . . . .	475

## CHAPTER 5. ANTITRUST ASPECTS OF SPORTS ACTIVITIES

	<i>Page</i>
§ 5.01. Scope of Chapter .....	477
§ 5.02. Baseball's Antitrust Exemption .....	480
a. The Baseball Cases .....	482
b. Sports Other Than Baseball .....	489
c. State Antitrust Laws .....	492
d. The Scope of Baseball's Antitrust Exemption .....	496
§ 5.03. The Player Restraints: An Overview .....	500
a. Reserve and Option Clauses .....	501
b. The Draft System .....	504
c. The Prohibition on Tampering .....	505
d. Recent Developments .....	507
§ 5.04. Labor Exemption: Background .....	524
a. Introduction .....	524
b. Supreme Court Precedents .....	527
c. Conclusion .....	540
§ 5.05. Availability of Labor Exemption Where Parties Agree to Player Restraints Following Meaningful Collective Bar- gaining .....	541
a. Statement of the Problem .....	541
b. A Preliminary Concern: Would a Union's Acquiescence to Player Restraints Violate Its Duty of Fair Represen- tation? .....	543
c. The Antitrust Laws as a Separate Concern .....	547
d. May an Employer Claim the Benefit of the Labor Ex- emption? .....	549
e. The Relevance of Prior Supreme Court Decisions .....	551
f. The Relevant Labor Law Principles .....	556
g. Tolerance of Other Anti-Competitive Labor-Management Terms .....	562
h. Application of Labor Exemption to Other Collective Bar- gaining Terms .....	565
§ 5.06. The Importance of the History of the Parties' Collective Bargaining Relationship .....	568
a. The Sports Cases .....	568
b. Commentary on the Cases .....	584
c. Deference to Future Bargaining .....	588
§ 5.07. The Player Restraints: The Substantive Antitrust Issues ..	590
a. Background .....	592
b. Supreme Court Decisions .....	597
c. The Sports Cases .....	600
1. Early Cases .....	601
2. Kapp Case .....	603
3. Robertson Case .....	605
4. Mackey Case .....	608
5. Smith Case .....	613



	<i>Page</i>
d. Comments on the Issue of Per Se Illegality . . . . .	617
e. Player Restraints Under the Rule of Reason . . . . .	621
1. The Case for Total Elimination of Player Restraints: A Critique . . . . .	622
2. General Characteristics of Reasonable Restraints . . . . .	625
§ 5.08. Other Antitrust Issues: Playing Rules; Limitations on Roster Size; and Acquisition Deadlines . . . . .	629
a. Rules of Competition . . . . .	629
b. Roster Limitations and Acquisition Deadlines . . . . .	634
§ 5.09. Player Discipline . . . . .	642
a. Procedural Aspects of Discipline . . . . .	645
b. Substantive Aspects of Discipline . . . . .	652
c. Fines v. Suspension . . . . .	662
d. Discipline by Individual Clubs . . . . .	664
§ 5.10. Exclusionary Practices of Sports Associations . . . . .	665
a. The Nature of the Antitrust Inquiry . . . . .	668
1. Purpose of the Rule . . . . .	671
2. Is the Particular Control a Reasonable Means of Achiev- ing an Otherwise Proper Goal? . . . . .	676
3. The Procedural Concern . . . . .	678
b. Other Approaches . . . . .	684
§ 5.11. Antitrust Aspects of the Ownership and Location of Sports League Franchises . . . . .	687
a. Movement of Existing Franchises: The Requirement of League Approval . . . . .	694
1. The Section 1 Issues . . . . .	695
2. The Section 2 Issues . . . . .	702
b. Exercises of Monopoly Power: The Injury to Rival Leagues . . . . .	705
1. The Traditional Tests: Monopoly Power and Its Misuse . . . . .	708
(a) Monopoly power . . . . .	709
(b) Misuse of market position . . . . .	714
(i) Specific intent to monopolize . . . . .	715
(ii) Monopolies achieved through secondary il- legality or unfair conduct . . . . .	716
(iii) Activities which solidify the monopolist's mar- ket domination . . . . .	719
(iv) Application in the sports industry . . . . .	720
2. The Natural Monopoly Theory . . . . .	724
3. Concluding Comments on the Antitrust Complaints of Rival Leagues . . . . .	732
c. Antitrust Complaints by Municipalities and Local In- vestors . . . . .	733
1. The Applicability of Section 1 . . . . .	734
2. The Section 2 Issues . . . . .	736
(a) A duty to deal fairly? . . . . .	736

	<i>Page</i>
(b) League monopolies acquired by illegal or improper means . . . . .	746
d. Ownership Approval Requirements . . . . .	753
§ 5.12. The NCAA and the Antitrust Laws . . . . .	759
a. Applicability of the Sherman Act . . . . .	762
b. Nature of the Antitrust Review . . . . .	766
c. Rule of Reason Standard . . . . .	769
d. Case Developments . . . . .	771
1. Early Cases . . . . .	771
2. Subsequent Developments . . . . .	773
 CHAPTER 6. COLLECTIVE BARGAINING AND PROFESSIONAL SPORTS	
§ 6.01. In General . . . . .	777
§ 6.02. Coverage of the National Labor Relations Act . . . . .	787
§ 6.03. Protected Rights of Employee-Athletes . . . . .	788
§ 6.04. The Appropriate Bargaining Unit . . . . .	792
a. Existing Units . . . . .	792
b. Changing the Size of the Unit . . . . .	793
c. Establishing Different Units of Players . . . . .	796
d. Inclusion of the Commissioner . . . . .	800
§ 6.05. The Collective Bargaining Process . . . . .	802
§ 6.06. The Duty to Bargain . . . . .	803
§ 6.07. Exclusive Representation, Individual Bargaining, and the Union's Duty of Fair Representation . . . . .	806
§ 6.08. The Subject Matter of Collective Bargaining . . . . .	813
§ 6.09. Strikes and Lockouts . . . . .	823
§ 6.10. Grievances and Arbitration . . . . .	829
§ 6.11. Comment on Collective Bargaining in Professional Sports . .	836
 CHAPTER 7. FEDERAL INCOME TAXATION OF SPORTS ACTIVITIES	
Introductory Note . . . . .	840
§ 7.01. Taxation of Professional Athletes . . . . .	840
§ 7.02. The Athlete's Gross Income — Inclusiveness . . . . .	843
§ 7.03. Assignment of Income . . . . .	849
§ 7.04. Deductible Expenses of Professional Athletes . . . . .	852
§ 7.05. Tax Planning Possibilities for Professional Athletes . . . . .	859
§ 7.06. Deferred Compensation Arrangements . . . . .	859
§ 7.07. Pension Plans . . . . .	862
§ 7.08. Deferral by Contract . . . . .	866
§ 7.09. Deferral by Receipt of "Substantially Non-Vested Property" .	870
§ 7.10. Tax Sheltered Investments . . . . .	873
§ 7.11. Personal Service Corporations . . . . .	880
§ 7.12. Problems Posed by the Corporation . . . . .	881
a. Viability of the Corporation and Assignment of Income . .	881
b. Reallocation of Income . . . . .	885
c. Personal Holding Company Status . . . . .	888

# TABLE OF CONTENTS

xv

	<i>Page</i>
§ 7.13. Benefits to the Athlete .....	890
a. Deferral Through Qualified Plan .....	890
b. Deferral Through Corporate Fiscal Year .....	893
c. Other Benefits .....	894
§ 7.14. Taxation of College Athletes .....	896
§ 7.15. Taxation of Professional Teams .....	897
§ 7.16. Forms of Organization .....	898
a. Subchapter C Corporation .....	898
b. Subchapter S Corporation .....	899
c. General Partnership .....	900
d. Limited Partnership .....	901
e. Sole Proprietorship .....	901
§ 7.17. Acquisition of Individual Player Contracts .....	901
§ 7.18. Acquisition of a Team .....	906
§ 7.19. Sale or Exchange of Contracts and Teams .....	917
§ 7.20. Professional Teams as Tax Shelters .....	923
§ 7.21. Taxation of Sports Investments .....	925
 <b>CHAPTER 8. LIABILITY FOR INJURIES IN SPORTS ACTIVITIES</b>	
§ 8.01. In General .....	933
§ 8.02. Liability for Injury to Participants .....	933
§ 8.03. Liability for Injury to Spectators .....	951
§ 8.04. Waiver and Release of Liability .....	965
§ 8.05. Liability for Injuries in Educational Programs .....	970
§ 8.06. Liability of Coaches .....	980
§ 8.07. Liability for Providing Medical Treatment for Athletic Injuries .....	982
§ 8.08. Liability of Doctors in Treating Athletic Injuries .....	984
a. General Considerations .....	984
b. Relationship of Doctor to Athlete .....	988
c. Relationship of Doctor to School or Team .....	991
d. Examination of Athletes .....	993
e. Prescription of Drugs .....	995
§ 8.09. Liability for Defective Athletic Equipment — Negligence Liability .....	996
a. Suppliers of Athletic Equipment Without Charge .....	996
b. Lessors of Athletic Equipment .....	997
c. Manufacturers of Athletic Equipment .....	998
§ 8.10. Liability for Defective Athletic Equipment — Strict Lia- bility .....	1001
§ 8.11. Liability for Defective Athletic Equipment — Warranty Liability .....	1004
§ 8.12. Workmen's Compensation Liability .....	1007
§ 8.13. Professional Athletics .....	1009
§ 8.14. College and University Athletics .....	1013
§ 8.15. Employer Sponsored or Sanctioned Athletic Activities .....	1014
§ 8.16. Nuisance Liability .....	1017