

1999

Sports and the Law: A Modern Anthology

Alfred Mathewson
mathewson@law.unm.edu

Kenneth Shropshire

Follow this and additional works at: http://digitalrepository.unm.edu/law_facbookdisplay



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Mathewson, Alfred and Kenneth Shropshire. "Sports and the Law: A Modern Anthology." (1999). http://digitalrepository.unm.edu/law_facbookdisplay/40

This Book is brought to you for free and open access by the School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Book Display Case by an authorized administrator of UNM Digital Repository. For more information, please contact disc@unm.edu.

Sports and the Law

A Modern Anthology

Edited by

Timothy Davis
Alfred D. Mathewson
Kenneth L. Shropshire

Carolina Academic Press
Durham, North Carolina

Copyright © 1999 Timothy Davis,
Alfred D. Mathewson, and Kenneth L. Shropshire
All Rights Reserved

ISBN 0-89089-734-4
LCCN 99-65466

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Printed in the United States of America

Contents

Prologue	xiii
Part I — Sports in Law and Society	
Chapter 1: Sports Law or Sports and the Law?	3
Introduction	3
Kenneth L. Shropshire, <i>Introduction: Sports Law?</i> , 35/2 AM. BUS. L.J. 181 (1998)	3
Simon Gardiner, <i>Birth of a Legal Area: Sport and the Law or Sports Law?</i> , 5 SPORT & LAW J. 10 (1997)	4
Chapter 2: Sports as a Microcosm of Law and Society	9
Introduction	9
Matthew J. Mitten, Foreword to <i>Symposium: Sports Law as a Reflection of Society's Laws and Values</i> , 38 S. TEX. L. REV. 999 (1997)	10
Elizabeth G. Thornburg, <i>Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System</i> , 10 WIS. WOMEN'S L. J. 225 (1995)	11
Part II — Professional Team Sports	
Chapter 3: The Structure and Governance of Sports Leagues	23
Introduction	23
1. The Economics of Professional Team Sports	25
Harold L. Vogel, <i>Entertainment Industry Economics: A Guide for Financial Analysis</i> 263-274 (4th ed. 1998)	25
2. The Commissioner	30
Matthew B. Pachman, <i>Limits on the Discretionary Powers of the Professional Sports Commissioners: A Historical and Legal Analysis of Issues Raised by the Pete Rose Controversy</i> , 76 VA. L. REV. 1409 (1990)	30
3. Monopoly Power	35
Stephen F. Ross, <i>Monopoly Sports Leagues</i> , 73 MINN. L. REV. 643 (1989)	35

4. Single Entity Status	47
Lee Goldman, <i>Sports, Antitrust, and the Single Entity Theory</i> , 63 TUL. L. REV. 751 (1989)	47
Gary R. Roberts, <i>The Antitrust Status of Sports Leagues Revisited</i> , 64 TUL. L. REV. 117 (1989)	62
Chapter 4: Owner Control Over Athletes, Ownership and Franchise Locations	79
Introduction	79
Don Kowet, <i>The Rich Who Own Sports</i> 3–8 (1977)	80
1. Over Athletes	82
James T. Brennan, <i>Injunction Against Professional Athletes Breaching Their Contracts</i> , 34 BROOK. L. REV. 61 (1967)	82
2. Over Individual Owners	86
L. Patrick Auld, <i>Ownership Control over Professional Sports Teams' Payrolls: Could Anyone Have Stopped Tom Werner from Dismantling the San Diego Padres?</i> , 12 U. MIAMI ENT. & SPORTS L. REV. 129 (Fall 1994/Spring 1995)	86
3. Over Franchise Locations	96
(a) Background	96
Comment, <i>The Super Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws</i> , 81 HARV. L. REV. 418 (1967)	96
(b) Private and Public Law	100
Matthew J. Mitten & Bruce W. Burton, <i>Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field</i> , 56 MD. L. REV. 57 (1997)	100
Chapter 5: Labor Law and Player Associations	125
Introduction	125
Robert C. Berry & William B. Gould, <i>A Long Deep Drive to Collective Bargaining: Of Players, Duress, Brawls, and Strikes</i> , 31 CASE W. RES. L. REV. 685 (1981)	126
Dylan M. Carson, Note, <i>The Browning of Sports Law: Defining the Survival of the Labor Exemption After Expiration of Bargaining Agreements</i> , 30 SUFFOLK U. L. REV. 1141 (1997)	135
Chapter 6: The Regulation of Sports Agents	145
Introduction	145
Landis Cox, Note, <i>Targeting Sports Agents with the Mail Fraud Statute: United States v. Norby Walters & Lloyd Bloom</i> , 41 DUKE L.J. 1157 (1992)	146
Jan Stiglitz, <i>A Modest Proposal: Agent Deregulation</i> , 7 MARQ. SPORTS L.J. 361 (1997)	153

Chapter 7: Societal Issues	161
Introduction	161
1. Race and Gender	162
Jay J. Coakley, <i>Sport in Society: Issues & Controversies</i> 211-214 (6th ed. 1998)	162
Edward Rimer, <i>Discrimination in Major League Baseball: Hiring Standards for Major League Managers, 1975-1994</i> , 20 (2) J. SPORT & SOCIAL ISSUES 118 (1996)	166
Kenneth L. Shropshire, <i>Diversity, Racism, and Professional Sports Franchise Ownership: Change Must Come from Within</i> , 67 U. COLO. L. REV. 47 (1996)	173
2. Domestic Violence	183
Laurence Schoen, Note, <i>Out of Bounds: Professional Sports Leagues and Domestic Violence</i> , 109 HARV. L. REV. 1048 (1996)	183
Chapter 8: Broadcasting and Intellectual Property	193
Introduction	193
1. Broadcasting	194
Alan Fecteau, <i>NFL Network Blackouts: Old Law Meets New Technology with the Advent of the Satellite Dish</i> , 5 MARQ. SPORTS L. J. 221 (1995)	194
2. Intellectual Property	202
Darryl C. Wilson, <i>The Legal Ramifications of Saving Face: An Integrated Analysis of Intellectual Property and Sport</i> , 4 VILL. SPORTS & ENT. L.J. 227 (1997)	202
Part III—Intercollegiate Athletics	
Chapter 9: Governance and Reform of Intercollegiate Athletics	215
Introduction	215
1. History of Intercollegiate Athletics and the Amateurism Principle	218
Joanna Davenport, "From Crew to Commercialism— The Paradox of Sport in Higher Education," in <i>Sport and Higher Education</i> 6–13 (Donald Chu, Jeffrey O. Segrave, & Beverly J. Becker eds. 1985)	218
Kenneth L. Shropshire, <i>Legislation for the Glory of Sport: Amateurism and Compensation</i> , 1 SETON HALL J. SPORT L. 7 (1991)	223
2. Governance and Reform of Intercollegiate Athletics	223
(a) Major Studies	227
Howard J. Savage, <i>American College Athletics</i> 291-311 (1929)	227
The Special Committee on Athletics, <i>The Role of Faculty in the Governance of College Athletics</i> , ACADEME 43 (Jan.–Feb. 1990)	230

Knight Foundation Commission, <i>Report of Knight Foundation Commission on Intercollegiate Athletics, Keeping the Faith with the Student-Athlete: A New Model for Intercollegiate Athletics</i> (March, 1991)	236
(b) Commentary	243
John R. Thelin, <i>Games College's Play: Scandal and Reform in Intercollegiate Athletics</i> 1-3, 197-99 (1994)	243
Robert N. Davis, <i>Athletic Reform: Missing the Bases in University Athletics</i> , 20 CAP. U. L. REV. 597 (1991)	246
Rodney K. Smith, <i>An Academic Game Plan for Reforming Big-Time Intercollegiate Athletics</i> , 67 DENV. U. L. REV. 213 (1990)	250
Chapter 10: Institutional Relationships	259
Introduction	259
1. Models of Intercollegiate Athletics	260
Timothy Davis, <i>Intercollegiate Athletics: Competing Models and Conflicting Realities</i> , 25 RUTGERS L.J. 269 (1994)	260
Alfred D. Mathewson, <i>Intercollegiate Athletics and the Assignment of Legal Rights</i> , 35 ST. LOUIS U. L.J. 39 (1990)	273
2. Student-Athlete/University Relationship	285
Michael J. Cozzillio, <i>The Athletic Scholarship and the College National Letter of Intent: A Contract by Any Other Name</i> , 35 WAYNE L. REV. 1275 (1989)	285
Harold B. Hilborn, Comment, <i>Student-Athletes and Judicial Inconsistency: Establishing a Duty to Educate as a Means of Fostering Meaningful Reform of Intercollegiate Athletics</i> , 89 NW. U. L. REV. 741 (1995)	298
C. Peter Goplerud, III, <i>Pay for Play for College Athletes: Now, More Than Ever</i> , 38 S. TEX. L. REV. 1081 (1997)	309
Chapter 11: Constitutional and Statutory Dimensions	319
Introduction	319
1. Due Process	321
Sherry Young, <i>The NCAA Enforcement Program and Due Process: The Case for Internal Reform</i> , 43 SYRACUSE L. REV. 747 (1992)	321
Ronald J. Thompson, Comment, <i>Due Process and the NCAA: Are There Any Constitutional Standards</i> , 41 UCLA L. REV. 1651 (1994)	335
2. Property Interest and Right to Participate	344
(a) Defining the Student-Athlete's Property Interest	344
Brian L. Porto, Note, <i>Balancing Due Process and Academic Integrity in Intercollegiate Athletics: The Scholarship Athlete's Limited Property Interest in Eligibility</i> , 62 IND. L.J. 1151 (Fall 1986/87)	344

(b) Academic Eligibility	354
Kenneth L. Shropshire, <i>Colorblind Propositions: Race, the SAT and the NCAA</i> , 8 STANFORD L. & POL'Y REV. 141 (1997)	354
3. Disability Issues	363
(a) Academic Eligibility	363
Katie M. Burroughs, <i>Learning Disabled Student Athletes: A Sporting Chance Under the ADA?</i> , 14 J. CONTEMP. HEALTH L. & POL'Y 57 (1997)	363
NCAA-Department of Justice Consent Decree (1998)	374
(b) The Right to Participate and Enhanced Risk	383
Matthew J. Mitten, <i>Enhanced Risk of Harm to One's Self As a Justification for Exclusion from Athletics</i> , 8 MARQ. SPORTS L.J. 189 (1998)	383
4. Antitrust Challenges	399
James V. Koch, <i>The Economic Realities of Amateur Sports Organization</i> , 61 IND. L.J. 9 (1985)	399
George Kokkines, Note, <i>Sherman Act Invalidation of the NCAA Amateurism Rules</i> , 105 HARV. L. REV. 1299 (1992)	400
Gary Roberts, <i>The NCAA, Antitrust, and Consumer Welfare</i> , 70 TUL. L. REV. 2631 (1996)	410
Chapter 12: Social and Legal Restructuring	429
1. Racism in College Athletics	429
Introduction	430
Rodney K. Smith, <i>When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics</i> , 61 MO. L. REV. 329 (1996)	429
Timothy Davis, <i>The Myth of the Superspade: The Persistence of Racism in College Athletics</i> , 22 FORDHAM URB. L.J. 615 (1995)	433
Marilyn V. Yarbrough, <i>A Sporting Chance: The Intersection of Race and Gender</i> , 38 S. TEX. L. REV. 1029 (1997)	445
2. Gender Issues in Collegiate Sport	450
Introduction	450
(a) The Social Significance of Sport for Women	452
<i>Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression</i> , 110 HARV. L. REV. 1627 (1997)	452
(b) Title IX: Status of the Law	455
Deborah Brake & Elizabeth Catlin, <i>The Path of Most Resistance: The Long Road Toward Gender Equity in Intercollegiate Athletics</i> , 3 DUKE J. GENDER L. & POL'Y 51 (1996)	455
Crista D. Leahy, Note, <i>The Title Bout: A Critical Review of the Regulation and Enforcement of Title IX in Intercollegiate Athletics</i> , 24 J. C. & U.L. 489 (1998)	465

United States Department of Education—Office of Civil Rights, <i>Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test</i> (May 16, 1996)	467
United States Department of Education—Office of Civil Rights, <i>Letter Clarifying Apportionment of Financial Aid in Intercollegiate Athletics Programs</i> (May 16, 1998)	476
(c) Title IX: Commentary	480
John C. Weistart, <i>Can Gender Equity Find a Place in Commercialized College Sports?</i> 3 DUKE J. GENDER L. & POL'Y 191 (1996)	480
B. Glenn George, <i>Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics</i> , 1995 WIS. L. REV. 647 (1995)	488
Crista D. Leahy, Note, <i>The Title Bout: A Critical Review of the Regulation and Enforcement of Title IX in Intercollegiate Athletics</i> , 24 J. C. & U.L. 489 (1998)	497
Deborah Brake & Elizabeth Catlin, <i>The Path of Most Resistance: The Long Road Toward Gender Equity in Intercollegiate Athletics</i> , 3 DUKE J. GENDER L. & POL'Y 51 (1996)	506
3. Violence in Intercollegiate Athletics	515
Timothy Davis & Tonya Parker, <i>Student-Athlete Sexual Violence Against Women: Defining the Limits of Institutional Responsibility</i> , 55 WASH. & LEE L. REV. 55 (1998)	515
Part IV — Tort Liability	
Introduction	524
Chapter 13: Liability of Participants	525
1. Standard of Care	525
Ray Yasser, <i>In the Heat of Competition: Tort Liability of One Participant to Another; Why Can't Participants Be Required to Be Reasonable?</i> , 5 SETON HALL J. SPORT L. 253 (1995)	525
Eugene C. Bjorklun, <i>Assumption of Risk and Its Effect on School Liability for Athletic Injuries</i> , 55 ED. L. REP. 349 (1989)	533
2. Liability of Colleges and Universities	538
William H. Baker, <i>Injuries to College Athletes: Rights and Responsibilities</i> , 97 DICK. L. REV. 655 (1993)	538
Cathy J. Jones, <i>College Athletes: Illness or Injury and the Decision to Return to Play</i> , 40 BUFF. L. REV. 113 (1992)	545
3. Liability of Medical Personnel	557
Matthew Mitten, <i>Team Physicians and Competitive Athletes: Allocating Legal Responsibility for Athletic Injuries</i> , 55 U. PITT. L. REV. 129 (1993)	557

Part V — Drug Testing

Introduction	570
Chapter 14: Drug Testing	571
1. General Considerations	571
Steven O. Ludd, <i>Athletics, Drug Testing and the Right to Privacy: A Question of Balance</i> , 34 HOW. L.J. 599 (1991)	571
2. Intercollegiate and High School Sports	575
Eric N. Miller, Comment, <i>Suspicionless Drug Testing of High School and College Athletes After Acton: Similarities and Differences</i> , 45 U. KAN. L. REV. 301 (1996)	575
3. Professional Sports	587
Ethan Lock, <i>The Legality Under the National Labor Relations Act of Attempts by National Football League Owners to Unilaterally Implement Drug Testing Programs</i> , 39 FLA. L. REV. 1 (1987)	587
Glenn M. Wong & Richard J. Ensor, <i>Major League Baseball and Drugs: Fight the Problem or the Player?</i> , 11 NOVA L. REV. 779 (1987)	600
Jennifer L. Johnson, Note, <i>Is Mandatory HIV Testing of Professional Athletes Really the Solution?</i> , 4 HEALTH MATRIX 159 (1994)	604

Part VI — Olympic Sports

Introduction	616
Chapter 15: Olympic Sports	617
1. Due Process	617
David B. Mack, Note, <i>Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes</i> , 10 CONN. J. INT'L LAW 653 (1995)	617
2. Arbitration of Disputes	627
Melissa R. Bitting, Comment, <i>Mandatory, Binding Arbitration for Olympic Athletes: Is the Process Better or Worse for "Job Security"?</i> 25 FLA. ST. U. L. REV. 655 (1998)	627
Index	639