An Introduction to Sports Law

Annual Meeting

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MARTIN J. GREENBERG is a lawyer specializing in the areas of real estate and sports law. He is the former Chair of the Wisconsin State Fair Park Board and the Wisconsin Sports Development Corporation, and served on the Board of the Southeast Wisconsin Professional Baseball Park District (Miller Park). He is an Adjunct Professor of Law at Marquette University Law School where he has taught real estate and sports law courses for over 39 years. He currently teaches the Representing Professional Athletes and Coaches Workshop and Sports Venues: From Election Day to Game Day. He is the founder of the National Sports Law Institute and served as its Director from 1989 to 1997. He is also the former Chair and a current member of the NSLI's Board of Directors. The Institute has established the Martin J. Greenberg Award for Excellence in the Study of Sports Law in honor of his many contributions. Greenberg was awarded the 2014 Master of the Game Award, the 2001 Joseph O’Neill Award, and the 2007 Charles W. Mentkowski Law Alumnus of the Year Award by the NSLI. He is also the recipient of the Milwaukee Bar Association Lawyer of the Year Legal Scholar Award (1988), the Wisconsin Bar Foundation Donald O’Melia Local Service Award (2009), the Wisconsin Law Journal Leaders in the Law (2009), and is noted in the publication “Best Lawyers in America.” Greenberg has authored or co-authored several books including Sports Law Practice (1993 & 1998), SportsBiz (1989), and The Stadium Game, Second Edition (2001).
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1. What is Sports Law and Who is a Sports Lawyer? By Matthew J. Mitten

Matthew J. Mitten is a law professor and director of the National Sports Law Institute, Marquette University Law School, in Milwaukee.

When you think of a “sports lawyer,” do you envision a lawyer who represents only a narrow pool of high-profile clients, such as professional athletes, sports leagues, or sports clubs? To the contrary, “sports lawyers” represent a wide variety of clients who need legal advice and representation that usually requires knowledge of several areas of law.

In my career as a sports lawyer (and now a sports law professor), I provided legal advice in a major league baseball player’s medical malpractice suit against his former team. I represented Harris County, Texas, in litigation concerning the Houston Oilers NFL club’s relocation to Nashville. But I also have been involved in a wider array of sport-related matters, especially in the area of intellectual property law.

I registered trademarks and copyrights on behalf of sports industry clients; provided advice regarding a trademark licensor’s potential legal liability for defective playing equipment manufactured by its licensee; defended a restaurant in a copyright infringement suit for showing a “blacked out” game to its patrons; filed an amicus brief on behalf of two sports medicine physician organizations in an Americans with Disabilities Act suit filed by a college basketball player against Northwestern University; and served as an expert witness in Title IX gender equity litigation.

As a sports lawyer, you might find yourself representing clients such as amateur and professional players; coaches, referees and officials; leagues; governing bodies of the sports industry; athletics administrators; educational institutions; and sports facility owners and operators. Even more broadly, your representation might extend to sports broadcasters; sports equipment manufacturers; sports medicine care providers; businesses that sponsor athletic events or athletes; and concessionaires who serve food and drink to fans at games.
Cont., What is Sports Law and Who is a Sports Lawyer? By Matthew J. Mitten

Virtually every field of law regulates or is relevant to one or more aspects of youth, high school, college, Olympic and international, professional, or recreational sports. The sports industry is vast in scope; has millions of athletes (but less than 10,000 U.S. major league and top-level individual sport professional athletes) and spectators; and generates billions of dollars annually. In fact, it is debatable whether “sports law” (like cyber law or healthcare law) is actually a discrete area of law or merely the application of many areas of law to a unique industry.

The eclectic nature of the sports law field requires sports lawyers to have expertise in several areas of law to effectively represent their clients. Sports law courses are a relatively recent addition to the curriculum at most law schools. Yet several courses I took as a law student, particularly antitrust, tort, and intellectual property law, provided me with enough general knowledge to represent clients in several sports-related matters and to teach sports law.

Counsel for professional leagues and clubs need a general understanding of contract, labor, private association, antitrust, tort, tax, and intellectual property law. Those representing professional athletes must be familiar with labor and employment, contract, federal and state tax, and worker’s compensation law, as well as athlete-agent regulation. A sports lawyer must have strong contract negotiation and drafting skills to represent professional sports industry clients. An understanding of the arbitration process is also important because most employment-related disputes between professional athletes and leagues or their respective clubs are resolved by mandatory arbitration. Representation of individuals, educational institutions, and governing bodies that are part of the youth, high school, college, or Olympic sports industries also requires broad knowledge of contract, private association, tort, and constitutional law (if the requisite “state action” exists) and of arbitration (for Olympic sports).

Although sports lawyers have varied backgrounds, most of them did not obtain full-time employment with sports organizations or have a stable of sports industry clients upon graduation from law school. Rather, they gained legal knowledge, skills, and experience representing clients in other industries that transferred into handling sports-related matters. Very few attorneys spend a majority of their time practicing sports law, but many lawyers perform professional services for one or more clients who are part of the sports industry.

What legal knowledge, skills, and experience have you acquired thus far that may be useful in practicing “sports law”?

2. Marquette University Law School

National Sports Law Institute Program

Marquette University Law School’s Sports Law program provides the nation’s most comprehensive offering of sports law courses and student internships with sports organizations as well as opportunities to become a member of the Marquette Sports Law Review, and various national teams including the Baseball Arbitration, Basketball Negotiation, Game Day Case Competition, Sports Law Negotiation, and Sports Law Moot Court teams, as well as the Intramural Sports Law Negotiation team. Our broad, well-rounded curriculum is designed to provide law students with both a theoretical and practical education concerning legal regulation of the United States amateur and professional sports industries as well as an understanding of Olympic, international, and comparative sports law issues.

Students who are admitted to Marquette University Law School do not need to separately apply to be part of the Sports Law Program. All Marquette University Law School students are eligible to participate in the Sports Law Program by enrolling in sports law courses and meeting the standards for membership on the Marquette Sports Law Review. Students working toward receipt of the NSLI’s Sports Law Certificate can also participate in the National Sports Law Institute’s internship program.

The primary purpose of the Sports Law program is to enhance our students’ legal education. Sports law students learn about many specialized areas of law with general application outside the sports industry (e.g. antitrust, labor, intellectual property, federal disability discrimination laws, etc.) and develop contract negotiation and drafting, alternative dispute resolution, business planning, and transactional skills. They also learn how several related areas of law combine to govern a complex industry and how courts resolve competing policy concerns when different bodies of law intersect and conflict. Virtually all of the knowledge and skills developed by students in sports law courses and internships are readily transferable and useful in serving clients in other industries. Most Sports Law program alumni practice law and have a variety of clients, including some in the sports industry.

Students graduating from Marquette University Law School are eligible to earn a Sports Law Certificate from the National Sports Law Institute. In the semester of his or her graduation the Institute will present the Certificate and a medallion to each student who has satisfied all Certificate requirements.

Recently, our sports law students have also gained valuable internship experience with the NCAA, the United States Olympic Committee, NIKE, Inc., Major League Baseball, the Oakland Raiders, The Atlantic 10 Conference, and the Charlotte Bobcats, as well as local sports clubs and organizations, and university and high school athletic departments. Some of our recent alumni are employed by Major League Baseball, the Marquette University Athletic Department, the Milwaukee Brewers, Milwaukee Bucks, the Atlanta Braves, the Orlando Magic, the NCAA, the University of Notre Dame, and the University of Miami, among other organizations.
3. NSLI Sports Law Certificate

Classes offered:

- Amateur Sports Law
- Professional Sports Law
- Legal and Business Issues in Baseball
- Legal and Business Issues in Collegiate Athletics
- Legal Issues in Youth, High School, and Recreational Sports
- Sports Industry Governance
- Sports Sponsorship and Marketing
- Legal and Business Issues
- Representing Professional Athletes and Coaches
- Sports Venues: From Election Day to Game Day
- Seminar: Selected Topics in Sports Law
- Topics in Advanced Legal Research: Sports Law
- Contemporary Legal Issues: Comparative and International Sports Law
- Contemporary Legal Issues: Sports Industry Taxation Issues
- Sports Law Moot Court Team
4. Greenberg’s Coaching Corner

ARTICLES/PRESENTATIONS

*Buyouts - Coaching Free Agency* (January 2, 2015)
*Zero Tolerance - Abuse Must End - An Opinion* (October 1, 2014)
*Beckie Francis Sues Oakland for a Non-redacted Investigation Report that Led to Her Termination* (August 5, 2014)
*Checklist for Negotiating and Drafting of Coaches’ Employment Agreements* (June 11, 2014)
*Representations and Warranties in College Coaching Contracts* (June 3, 2014).
*Bill Gibbons: A Student-Athlete Finally Takes the Coach to Court* (February 6, 2014)
*Coaching Free Agency Has a Price: Liquidated Damages Upheld in the Geno Ford / Kent State Case* (December 3, 2013)
*Pray To Play: The Termination Of Beckie Francis* (October 23, 2013)
*Coach Accountability Reduces Vicarious Liability* (September 6, 2013)
*Mike Rice, Jr., For Cause or Not For Cause -- You Make the Call* (August 9, 2013)
*Steve Alford - Postscript - An Expensive Buyout Provision* (July 29, 2013)
*Steve Alford - Coaching Free Agency is Just a Matter of Money* (June 24, 2013)
*CEOs in Headphones - Postscript* (June 13, 2013)
*CEOs in Headphones - Financial Engineering* (May 1, 2013)
*Consent to Interview - Best Practices* (March 25, 2013)
*Wisconsin Concussion Law is a No Brainer* (March 5, 2013)
*Opinion: Behind the Bielema Jump*, Milwaukee Journal Sentinel (December 19, 2012)
*Rollover Clauses Still Utilized In College Coaching Contracts* (November 1, 2012)
*At Last - Rulings in the Williams v. Smith and Marist v. Brady cases* (September 24, 2012)
*The Defense of Sovereign Immunity: Mike Leach and Texas Tech* (September 4, 2012).
*Tattoogate Impacts Urban Meyer’s new OSU Contract* (August 1, 2012).
*University of Illinois Assistant Coaches Controversy: A re-examination of Assistant Coaches’ Term of Contract* (March 16, 2012).
*Tattoogate* (January 10, 2012).
*A bad year for college sports raises questions*, Milwaukee Journal Sentinel (December 24, 2011)
*"The Secret Agreement"* (July 18, 2011).
*Take My Coach and I’ll Take You to Court* (January 4, 2011).
Greenberg’s Coaching Corner, Continued

ARTICLES FROM FOR THE RECORD: THE OFFICIAL NEWSLETTER OF THE NATIONAL SPORTS LAW INSTITUTE

Head Coach’s Authority to Hire Assistant Coaches and the Necessity of a Paper Trail – The Jimmy Williams Case, Volume 21, No. 3 (July – September 2010)

The Use of Clawback Clauses in College Coaches’ Contracts, Volume 21, No. 2 (April – June 2010)

Leaping Without Looking: MOUs Create Risks When Universities Do Not Know Their Legal Significance, Vol. 21, No. 1 (January – March 2010)

Interview – You May Be Fired, Volume 20, No. 1 (January – March 2009)


College Athletics – Chasing the Big Bucks, Volume 19, No. 2 (April – June 2008)

Good Drafting Makes Good Contracts, Volume 18, No. 3 (July-September 2007)

ARTICLES FROM THE MARQUETTE SPORTS LAW REVIEW


5. Coaches’ Contracts

Termination for Cause:
Moral Turpitude – Rick Majerus’ Contract

“An act of baseness, vileness or depravity in the private and social duties which a man owes his fellow men or to society in general.”

“An act or behavior that gravely violates the moral sentiment or accepted moral standards of the community.”

Do any of the following constitute an act of moral turpitude?

Urinating on a street, intercourse with a student, use of profanity, display of sexually explicit pictures on office walls, solicitation of a prostitute, or deceit.
6. Sport$Biz – An Irreverent Looks at Big Business in Pro Sports

In 1989, journalist Dale Hoffman and I co-authored a book entitled Sport$Biz: An Irreverent Look at Big Business in Pro Sports. In reviewing the book, the New York Times stated that “Sport$Biz is an eye opening account of a society that cares more about sports than it does about cancer research.”

In 2012 and 2013, through the efforts of Time Warner Sports-Wisconsin, I hosted a sports business program entitled “Sport$Biz,” which focused on the important business and legal issues facing sports in the State of Wisconsin. Guests included Commissioner Bud Selig, Bucks owner Herb Kohl, former Marquette, Utah, and St. Louis Basketball Coach Rick Majerus, Green Bay Packers’ President Mark Murphy, and UW Athletic Director Barry Alvarez, to name a few.

There is no business like show business, except for Sport$Biz. In order to be an effective sports lawyer, knowledge of the industry and the business of sports is as important as the legal aspects.

The purpose of this Sport$Biz Blog is to explore in tandem some of the most important legal and business issues affecting professional sports. [http://www.greenberglawoffice.com/category/sportsbiz/](http://www.greenberglawoffice.com/category/sportsbiz/)

Postings include:
- Reflections on the 2014 All-Star Game
- A Privately Financed Arena – NBA Style
- Titletown Development District
- NBA Commissioner Adam Silver on Gambling
- Jock Tax
- Larry Sanders and Bucks Part Ways
- The Value of NBA Franchises Have Skyrocketed
7. Exploding Salaries
2014’s Highest-Paid Athletes (U.S.)

• Floyd Mayweather (boxer): $105 million
• LeBron James (NBA): $72.3 million
• Kobe Bryant (NBA): $61.5 million
• Tiger Woods (golf): $61.2 million
• Phil Mickelson (golf): $52.3 million
• Matt Ryan (NFL): $43.8 million
Highest Paid Athletes in Wisconsin

Milwaukee Brewers
Matt Garza – 4 year, $50 million ($12.5 million average)
Ryan Braun – 8 year, $45 million ($5.625 million average)
Aramis Ramirez – 3 year, $36 million ($12 million average)

Green Bay Packers
Aaron Rodgers – 5 year, $110 million ($22 million average)
Clay Matthews – 5 year, $66 million ($13.2 million average)
Randall Cobb – 4 year, $40 million ($10 million average)

Milwaukee Bucks
Ersan Ilyasova – 5 year, $40 million ($8 million average)
O.J. Mayo – 3 year, $24 million ($8 million average)
Jared Dudley – 5 year, $21.25 million ($4.25 million average)
League Minimum and Average Salaries

- **MLB**
  - Average: $3.2 million
- **NBA**
  - Average: $5.15 million
- **NHL**
  - Average: $2.4 million
  - Minimum: $525,000 (2014)
- **NFL**
  - Average: $1.9 million
  - Minimum: $435,000 (2015 rookie)
8. Player Bankruptcy – Financial Distress
Where does it all go?
Players’ Financial Stress

• As of 2009, 60% of former NBA players have gone bankrupt or are under financial stress within 5 years of retirement

• Reasons for Financial Stress/Bankruptcy:
  – Spending like the checks are still coming in
  – Creating an unsustainable lifestyle
  – Buying exorbitant items (houses, cars, jewelry)
  – Risky or inane business investments
  – Misallocation of assets to non-liquid assets and private equity deals
  – Misplaced trust in agents, investors, and/or family members
  – Divorce and/or paternity actions
  – Supporting a list of enablers
Example: Jack Johnson (Columbus Blue Jackets – NHL)

- Johnson has earned $18 million in his 9-year NHL career, and is scheduled to earn an additional $5 million in 2014-15 season
- 2011: Signed a seven-year, $30.5 million contract
  - Signed a Power of Attorney, granting his mother full control of his finances
- Johnson’s mother borrowed at least $15 million in her son’s name against his future earnings, taking out a series of high-interest loans ($3 million at 24% interest)
  - Bought a house in Manhattan Beach, California without Johnson’s knowledge (mortgage carried a 12% rate)
- Johnson filed bankruptcy:
  - Assets: $50,000
  - Total debts: more than $10 million
  - $6,339 in his checking account
  - $2,202.62 in his savings account
What To Do...

- Five members of the Milwaukee Bucks are 21 years of age or younger
- Current owner Wes Edens took a group of Bucks players to his Martha’s Vineyard home to hear private presentations on financial management
  - Financial advising and financial management is a necessity for players after retirement
- Current Bucks player Michael Carter-Williams placed his $4.5 million rookie contract (then with Philadelphia 76ers) in a trust fund to prevent him from touching his earnings
  - Carter-Williams relied solely on his earnings from Nike and Panini trading cards
- Leagues require players to attend mandatory financial boot camps and seminars
  - Possible the league and/or players’ union may interject if the issues continue
Woodson, a Financial All-Star

“...Consider Green Bay cornerback Charles Woodson. Not only is he a Heisman Trophy winner and an NFL defensive player of the year, he is also a financial all-star. Woodson is an entrepreneurial athlete who has planned for his retirement from the day he started playing football. Woodson owns and develops real estate, and he has his own clothing line and wine brand. He has become smart in the ways of investment and has surrounded himself with ethical and competent people.

While the leagues and unions do offer financial boot camps and mandatory financial seminars, this process must begin earlier than the beginning of a pro career. Our universities, realizing that our future pro athletes are ill-prepared to handle the financial aspects of their lives, should begin that preparation with courses (sponsored by the professional leagues) at the college level so that we have more Woodson-types out there.

Finally, if the statistics are actually as bad as indicated, the league or union may have to step in. Creating new rules to impose a constructive trust on income earned by professional athletes to protect themselves and their families from themselves may be the best step.”

9. Milwaukee Arena Financing – 
*The Jock Tax*
Jock Tax
Background

• Originated in 1991
  – State of California imposed its state tax on earnings of Chicago Bulls players that traveled to Los Angeles to play the Lakers in that year’s NBA Finals
  – Illinois “retaliated” by imposing its own jock tax on out-of-state players
• By 2014, the only states with a major professional team without a jock tax were:
  – Florida; Texas; Washington; and Washington, DC
    • Florida, Texas, and Washington have no state income tax
• Examples:
  – LeBron James (Cleveland Cavaliers) pays approximately $33,248 for two games played in Milwaukee
  – Kobe Bryant (Los Angeles Lakers) pays $18,924 in taxes for one game played in Milwaukee
Milwaukee Bucks –
Current Arena Situation

• Bucks currently play at the BMO Harris Bradley Center
• Arena opened October 1, 1988 (26 years old)
• Constructed at a cost of $91 million
  – 2015 equivalent: $181 million
• NBA mandate requiring the Bucks to have or be close to completion of a new facility by 2017
  – If funding is not secured in time, it is highly probable the Bucks will be forced to relocate to a new city.
Funding for a New Arena – The Jock Tax

• Estimated cost for new arena in downtown Milwaukee is approximately $500 million
  – $100 million given by former Bucks owner Herb Kohl
  – $150 million given by current Bucks majority owners Wes Edens and Marc Lasry
  – $50 million contribution from the City and County of Milwaukee
• Gov. Scott Walker has proposed $220 million in state appropriations bonds in support of the new arena
  – Professional athletes must pay state income tax in every state they play.
    • Duty Days Method: Divides the players total number of work days during the season by the number of days spent playing in that state
    • Games Played Method: Divides the total number of games in the season into the total number of games played in that state
  – Gov. Walker proposes the bonds would be repaid by diverting new income-tax revenue paid by Bucks players, employees, and visiting NBA players. A “jock tax.”
  – Wisconsin Senate Majority Leader Scott Fitzgerald stated the plan was “pretty much dead.” (March 19, 2015)
  – Wisconsin Senate Majority Leader Scott Fitzgerald plan - $150 million bonding plan through the Board of Commissioners of Public Lands (April 2, 2015)
Sports.comm – A New Sports and Entertainment District

On April 8, 2015, the Bucks unveiled their plans for a new arena and a sports.comm to be located north of the Bradley Center on the Park East Corridor.
10. Titletown Development District
Area Surrounding Sports Facilities

• Sports facility must be more than a space to view a sporting event
  – Centerpiece for an entertainment district
  – Destination for working, eating, watching, congregating, buying, and socializing
• Combines the needs of the sports franchise with the needs of the community
• Has become a practical necessity for owners to keep their teams economically viable
  – Stadium revenues and revenues generated by auxiliary real estate development are generally not included in league revenue sharing
• Increases visitor population to the area, revenue for the team, assessed valuation, produces real estate and sale tax revenues, and brings jobs to the local community
Titletown Development – The Beginning

• Began with reconfiguration of Lambeau Field in 2003 to utilize the Atrium concept
  – Activities, Fan Zone, Pro Shop, Packers Hall of Fame, pub/restaurants, and meeting/event facilities
  – Allows the Packers to capitalize on a 365 day business by attracting 2-3 million visitors
Titletown Development District

- Packers organization has acquired 66 acres of property ($49 million value) around the stadium
- Proposed uses:
  - Sports complex
  - Health and wellness facility
  - Hotel and exhibition hall
  - Winter attractions
  - Retail
  - High-end dining
  - Condominiums
  - Entertainment facilities
- Packers estimate the development is likely to attract 7-8 million people per year
- Would be a long-term and worthwhile payback for the public funds invested in Lambeau Field
11. Escalating Value of NBA Franchises
Escalating Value of NBA Franchises

• Senator Herb Kohl purchased the Milwaukee Bucks for $18 million in 1985
• Bucks are a small market team with no franchise star, no state-of-the-art arena, and a 25-year legacy of losing
  – One of the smallest revenue producing teams in the NBA
• Sen. Kohl sold the Bucks to hedge fund billionaires Marc Lasry and Wesley Edens at a price of $550 million in 2014
  – Plus an additional $150 million contribution towards the cost of a new arena
• Bucks sale was later followed by Donald Sterling’s forced sale of the Los Angeles Clippers to former Microsoft CEO Steve Ballmer for a record $2 billion
  – Forbes had previously valued the Clippers at $575 million
• Forbes Franchise Evaluation (January 2015)
  – Values of NBA teams rose an average 74% in one year
  – Average team now estimated to be worth $1.1 billion
Cause of Escalating Prices

- **Exclusivity**
  - One of the world’s most exclusive clubs
  - Supply & Demand: only 30 NBA teams
  - Not everyone can buy a professional sports franchise

- **New TV Deal**
  - October 2014, the NBA announced a 9-year, $24 billion ESPN/Turner TV package that will generate approximately $2.67 billion/year through 2025
    - 180% increase in the current payment from $930 million/year

- **Local Media/TV Deals Growing**
  - NBA franchises may sell their own local television rights
    - No revenue sharing like in the NFL
    - Los Angeles Lakers signed a $4 billion deal that will result in $122 million in local television revenue
  - Has created small media empires
Cause of Escalating Prices (continued)

• New Collective Bargaining Agreement (CBA)
  – Owner-favorable CBA following the 2011 NBA lockout
  – Amount of revenue shared with the players was reduced from 57% to a 49/51 split under the new CBA
    • Increases owner profits, which in turn makes the team more valuable
  – Realigned revenue sharing to provide small market teams (e.g., Milwaukee Bucks) an ability to survive and succeed

• Internationalization/Globalization of the game
  – Increase in the number of foreign players in the league
  – Exhibition contests in foreign countries
    • Milwaukee Bucks vs. New York Knicks in London (January 2015)

• Tax Shelter
  – Availability to write off the purchase of the team over 15 years
12. Tax Advantage of Owning a Pro Sports Franchise
Roster Depreciation Allowance

- Former baseball executive and owner Bill Veeck convinced the IRS that professional athletes depreciate in value
  - Players “waste away” after entering into their professional contracts
  - Convinced the IRS that a sports team roster, like an office copy machine, is a depreciable asset
- IRS permitted a depreciation deduction regarding the acquisition of a team
  - Known as the Roster Depreciation Allowance (RDA)
Roster Depreciation Allowance

• RDA permitted a team to deduct a player’s contract as a depreciating asset (amortization) as well as a current business expense
  – Players compensation is carried in the expense column and subtracted from the net operating income on an amortized basis

• 1977-2004: Owners could allocate up to 50% of the purchase prices to players’ contracts as a depreciable asset over a 5 year period (50/5 Rule)
Roster Depreciation Allowance Today

- **American Job Creation Act of 2004**
  - Club owners could depreciate all tangible property acquired in connection with the franchise
  - Could amortize all intangible assets
    - Players’ contracts, sponsorship agreements, luxury suite contracts, and the franchise itself
  - Able to be amortized over a 15 year period
- **Can be used to offset income (profitable franchise) or losses used against the owner’s other 1040 income**
- **Allows an owner to amortize the full purchase price of their team**
  - One of the most advantageous tax aspects of owning a professional franchise
  - Attracts high income individuals and companies because of the tax shelter aspects of the business
  - Creates another added value to a professional sports franchise
Roster Depreciation Allowance

- **Example 1: Golden State Warriors (NBA)**
  - Purchased in 2010 for $450 million
  - Purchase price can be amortized over 15 years and produce at a marginal 35% tax rate
  - Produces tax savings of approximately $157.5 million over the 15 year period

- **Example 2: Brooklyn Nets (NBA)**
  - For fiscal year 2006, total salaries of approximately $59 million deducted from income
  - “Depreciation and amortization” deduction of approximately $41 million
  - Consolidated statements represents an actual cash loss of $27 million
    - Operating loss of $14.4 million; interest expense $12.6 million
  - Total loss of $68 million
    - At a tax rate of 35% = $23,837,706 in tax savings
13. Betting on Sports
International Sports Betting

- Widely popular and legalized
- Subject to regulation
- Can place bets at stadium kiosks, on your smartphone, or using a TV remote
Sports Betting in the United States

• An estimated $400 billion is illegally wagered on sports each year
• Professional and Amateur Sports Protection Act of 1992 (PASPA)
  – Effectively outlawed sports betting nationwide
    • Exceptions:
      – Sports Lotteries: Oregon, Delaware, Montana
      – Licensed Betting: Nevada
    • Exclusions:
      – Jai alai; horse and dog racing
• NCAA has threatened to ban all playoff games in Delaware (and potentially New Jersey) if the state allows betting on college sports
Sports Betting in the United States

• NBA Commissioner Adam Silver on sports betting:
  – Law should be changed to legalize betting that allows states to authorize on state-by-state basis
  – Subject to strict regulatory requirements and technological safeguards
    • Mandatory monitoring and reporting of unusual betting-line movements
    • Licensing protocol to ensure betting operators are legitimate
    • Minimum-age verification measures
    • Geo-blocking technology to ensure betting is occurring only where legalized
    • Mechanisms to identify/exclude people with gambling problems
    • Education about responsible gaming
Potential Issues and Profits

• Issues
  – Decreased integrity of the game
    • Potential for players, coaches, or officials influencing final scores
    • Fans cheering for/against “the line” instead of cheering for hometown bragging rights
  – Currently opposed by MLB, NHL, and NFL
    • Powerful group with deep pockets

• Profits
  – Regulated and taxed by the federal government
    • Creates positive economic growth around the country
  – Payment of a licensing fee or percentage of profits to the respective league as part of the betting service
    • Creates additional revenue stream for the leagues
  – Set aside funds to help fund the public’s contribution for future arenas and sports facilities
14. O’Bannon v. NCAA
O’Bannon v. NCAA - Background

- Ed O’Bannon played basketball at UCLA from 1991-1995
- NCAA rule: Violation for a student-athlete to be paid for commercial use of their image or likeness
- O’Bannon filed a lawsuit in federal court in California on behalf of the NCAA’s Division I football and men’s basketball players, challenging the NCAA’s rule
  - O’Bannon agreed to be the lead plaintiff after seeing his likeness from the 1995 UCLA National Championship team used in a video game without his permission
  - The game featured a UCLA player who played O’Bannon’s power forward position and matched his height, weight, bald head, skin tone, number 31 jersey, and shot left-handed
- O’Bannon alleges the NCAA’s rule operates as an unreasonable restraint of trade, in violation of U.S. antitrust laws (§1 of the Sherman Act)
Arguments and Holding

- **O’Bannon**: Rule deprives he and other student-athletes from his right of publicity and creates price-fixing among schools (tuition)
- **NCAA**: Rule is necessary to maintain amateur status of student-athletes and promotes a competitive balance
- **Holding**: District Court found for O’Bannon, holding that the NCAA’s rules and bylaws operate as an unreasonable restraint of trade
  - The NCAA’s long-held practice of barring payments to athletes violates antitrust laws
  - The NCAA’s objectives can be furthered in a substantially less restrictive manner
- **NCAA** has appealed the ruling and is currently in federal appeals court in San Francisco
  - NCAA has asked for an expedited ruling
  - If the NCAA loses in federal appeals court, the ruling may be appealed to the US Supreme Court
Potential Issues from *O’Bannon* ruling

- Judge set a $5,000 cap on earning potential by student-athletes
  - Possible antitrust violation for price fixing
- Rule only applies to Division I football and men’s basketball student-athletes
  - Potential Title IX implications
15. Are Sports Heroes Role-Models?

‘It was difficult to explain to my 7-year-old grandson, an avid baseball and Milwaukee Brewers fan, why MVP Ryan Braun was no longer in left field. Violating the rules, trying to circumvent a level playing field by taking a competitive advantage and deceiving the public, his employer, teammates and friends was a difficult explanation for a 7-year-old to comprehend.

His response, however, was interesting: "I don't think Ryan Braun is my favorite player anymore." How disappointing it was to see the player possessed of Hank Aaron wrists take a shocking fall from grace.

It brings to light the ever-nagging problem as to how we view professional athletes. We should celebrate and emulate their on-field heroics. Dedication, physical prowess, work ethic, perseverance, sacrifice and teamwork are characteristics that set them apart. Professional athletes' on- and off-the-field flamboyance, larger-than-life persona and constant limelight presence make them unforgettable figures in our lives. …”

A Special Thank You

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