

Adjunct Professor Eric Combs

Spring 2011

Thursday 4:40-6:40 Rm. 302 2 Credit Hours

REQUIRED TEXT:

Yasser, McCurdy, Goplerud & Weston, SPORTS LAW: CASES & MATERIALS (6th ed. Lexis 2006).

There will be supplemental materials identified and provided throughout the semester.

COURSE COVERAGE

This course will examine selected legal, financial, and policy issues and disputes that arise in the world of sports. The course will also include (to the MAXIMUM degree possible) discussion of current developments and events in the world of sports, in the context of determining the role and utility of the law in forming, changing and/or implementing policy both in the “field of play” and off it. I would expect such current events to include the percolating NFL-NFLPA dispute and potential “lockout”; imminent labor-management negotiations in the NBA and NFL; and recent NCAA rulings with respect to eligibility.

CLASS PARTICIPATION AND ATTENDANCE

Each student is expected to attend class fully prepared to discuss the assigned materials and to present their analyses of any assigned hypotheticals and problems set forth in the readings. We will utilize the hypotheticals and/or problems to differing degrees and in different ways, announced in advance. Sometimes we may produce written product; sometimes we may utilize a 'role play' simulation in which you assume the role of a party or attorney in the case; often I will expect them to spur thought and discussion rather than written work product. In addition, we may engage in some traditional 'Socratic' dialogue. I expect you to have read the assigned hypotheticals, problems and cases, and to have thought about the issues and possible solutions. In thinking about the problems, be prepared to give advice or your views, where requested, or to take a position on the dilemma or issue presented.

Attendance is mandatory. I have tentatively planned a “field trip” for the class that is likely to be outside normal class hours, but will not be mandatory.

GRADING:

1. PARTICIPATION

Your class participation is critical to the success and enjoyment of your learning experience in this course. Participation is particularly important when we have exercises in which we simulate actual cases and scenarios that arise in the world of sports law. **Class participation and performance in these exercises and assignments will be considered as part of your final course grade.**

2. FINAL EXAM

The final exam is likely to be a take-home exam, but the exact format and timing of the final exam will be determined at a later date and announced sufficiently in advance of exams to permit proper preparation.

CONTACT INFORMATION:

Eric K. Combs
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Phone: 513.357.9662
Mobile: 513.325.8611
Email: combs@taftlaw.com

CLASS SCHEDULE & SYLLABUS:

Set out below is the tentative syllabus and reading assignments for the course. Unless otherwise noted all reading assignments are from the Yasser, *et. al* casebook. From time to time additional materials may be made available. I also hope to bring at least one guest speaker throughout the course of the semester. Therefore, the course schedule may be revised to accommodate speakers or other significant developments. Please let me know if you have any suggestions for guest speakers as well. Please note that we may not have time to cover every assignment, and the class will be polled as to particular topic interest as the semester progresses.

There are two class dates that we may need to re-schedule: March 17 and March 31. We will either schedule make-up classes or have a guest professor on those dates.

Class Date	<u>SPORTS LAW TOPIC</u>	READINGS
January 20	<p>Introduction to Sports Law—To what does “Sports Law” refer?</p> <p>PART I: AMATEUR SPORTS CH 1: LEGAL RELATIONSHIPS IN AMATEUR SPORTS Introduction to Amateurism, Athletic Associations, the NCAA Athletes' Rights & Scholarships <i>Taylor v. Wake Forest</i> <i>Ross v. Creighton</i> <i>Jackson v. Drake</i></p>	<p>Please read (if you can) 2 short article attached to the syllabus</p> <p>Chapter 1 pp. 1-18</p>
January 27	<p>Coaching Contracts <i>Rodgers v. Georgia Tech</i> <i>O'Brien v. OSU</i></p> <p>CH 2: AMATEUR SPORTS ASSOCIATIONS: RULES, PROCEDURES, ELIGIBILITY</p> <p>A. Constitutional Issues * <i>Brentwood Academy v. Tennessee Athletic Ass'n</i>, 530 U.S. 288 (2001)</p> <p>B. NCAA Eligibility Issues <i>NCAA v. MO</i> (Tex. 2005) <i>Bloom v. NCAA</i> (Colo. App. 2004)</p> <p>C. General Eligibility Issues <i>Indiana High Assn v. Avant</i> <i>Tiffany v. Arizona Interscholastic</i></p>	<p>Chapter 1 pp. 30-52</p> <p>pp. 73-82 Additional cases not mandatory</p>
	CH 3: GENDER EQUITY IN AMATEUR ATHLETICS	
February 3	<p>A. Intro & Constitutional Issues <i>Hoover v. CSU</i> <i>Williams v. Bethlehem</i> <i>Blair v. WSU</i></p> <p>B. Title IX 20 USC § 1681(a) A Case Close to Home, Part II: <i>Miller v. University of Cincinnati</i>, 2008 WL 203025 (S.D. Ohio Jan. 22, 2008)</p> <p><i>Cohen v. Brown</i> (1st Cir 1996) <i>Pederson v. LSU</i> <i>Kelley v. Illinois Bd. of Trustees</i> (7th Cir. 1994)</p>	<p>pp. 117 -133</p> <p><i>Miller case</i>; pp. 134-171</p>

	CH 5: LEAGUE DECISION MAKING/COMMISSIONER POWER	
February 10	ANTITRUST ISSUES IN PROFESSIONAL SPORTS A. Introduction—Compare and Contrast Leagues in Major Sports B. Sports League Operations - Fundamental Characteristics & Antitrust Issues <ol style="list-style-type: none"> 1. The Historical Baseball Antitrust Exemption 2. Modern Scrutiny of the Exemption <i>Flood v. Kuhn</i> (US 1972) <i>Piazza v. MLB</i> (ED Pa 1993) 3. <i>American Needle v. NFL</i> (will be distributed) 4. A Case Close to Home, Part III <i>Kentucky Speedway, LLC v. NASCAR</i>, 2009 WL 4723176 (C.A.6 (Ky.)) 	pp 229-268
February 17	OTHER LEAGUE ISSUES IN PRO SPORTS A. League Decision Making B. Membership <i>Morisani v. MLB</i> <i>New Orleans Pelicans</i> <i>Piazza v. MLB</i> <i>Levin v. NBA</i>	pp. 269-295
February 24	C. Franchise Relocation <i>LA Memorial Coliseum Comm'n v. NFL</i> (9 th Cir. 1984) <i>NBA v. SDB Basketball Club, Inc</i> (1987) (p312) <i>St. Louis Convention v. NFL</i> (8 th Cir. 1998) (p314)	pp. 296-324
March 3	C. Merchandising/Broadcasting D. League v. League - Monopoly E. Authority of League Commissioners <i>Finley v. Kuhn</i> CH 6: LABOR RELATIONS IN PROFESSIONAL SPORTS A. Introduction	pp. 325-327 pp. 350-356 pp. 379-389 pp. 397-407

March 10	B. Collective Bargaining C. Antitrust Law, Labor & the "Nonstatutory Exemption" <i>Brown v. No Football, Inc.</i> (US 1996) <i>Mackey v. NFL</i> (8 th Cir. 1976) Messersmith/McNally Arbitration <i>Silverman v. MLBPRC</i> (2 nd Cir. 1995) Maurice Claret v. NFL (3 rd Cir. 2004)	pp. 407-449
March 17 (likely to be rescheduled)	CH 7: ENFORCEMENT OF SPORTS CONTRACTS <i>Minnesota Muskies, Inc. v. Hudson</i> <i>Munchak Corp. v. Cunningham</i> (4 th Cir. 1972) <i>Dallas Cowboys v. Harris</i> (Tex. App. 1961) A Case Close to Home, Part IV: NFL Workers Compensation Cases, including <i>Abdullah v. Cincinnati Bengals, Inc.</i> & <i>Bruce Matthews v. Titans</i>	pp. 451-504 Will be distributed
March 31 (likely to be rescheduled)	SPORTS FACILITIES AND THE LAW A. Construction, Ownership and Management of Sports Facilities B. Competing Opinions of Public Financing/Ownership C. Rights of Landlords, Tenants and Spectators in Publicly Owned Stadia	Reading material to be distributed
April 8	CHAPTER 12: TORTS AND SPORTS <i>Bourque v. Duplechin</i> <i>Nabozny v. Barnhill</i> <i>Hackbart v. Cincinnati Bengals</i> <i>Gavvin v. Clark</i> Notes	pp. 683-726
April 15	CLASS & PROFESSOR CHOICE We will determine in advance a topic of interest to the class that has not yet been covered or that warrants more discussion.	TBD

**ESPN.com:** Commentary[\[Print without images\]](#)

Thursday, January 6, 2011

Players' case for football in 2011

By George Atallah
Special to ESPN.com

The current collective bargaining agreement between the NFL players and owners that was signed in 2006 will expire on March 3. In May 2008, NFL owners opted out of the agreement early. The players want to play a full NFL season in 2011 and have offered to extend the current deal in an effort to work out a long-term deal without an interruption of league operations. The players haven't asked for anything more and literally don't want anything more. They have asked simply to play under the existing agreement.

The NFL is at the height of its popularity and success. According to reports Thursday, the NFL and ESPN are close to a nearly \$2 billion renewal for the rights to "Monday Night Football." In 2010, 65 of the top 100 watched sporting events in the U.S. were NFL games. Eighteen of the top 20 viewed telecasts this television season were NFL games, and we haven't even seen the playoffs yet. Revenues are up. Sponsorships are up. Every television ad for this year's Super Bowl was sold months ago. All signs and indicators point to extraordinary success and rapid growth for the business of football.

According to the NFL and team owners, however, the "economic model in the NFL doesn't work." What's more, they have prepared for and are openly threatening a lockout if it's not "fixed." What is their proposal to fix it? They've asked the players for more than a \$1 billion reduction in the players' portion of revenues in the first year alone of a future CBA. By the way, in a league with no guaranteed contracts, revealed dangers of the game and injury concerns at their peak, they want players to play two extra regular-season games.

The players maintain that one fundamental question needs to be answered in earnest if there is to be an agreement before a lockout: Why is the current deal so bad? If owners had decided to make this a direct business transaction between partners, the players are confident a deal would've been struck a long time ago. Business partners get together, sign confidentiality agreements, exchange financials and negotiate. Our repeated requests for detailed financial information that would help us answer the quintessential question have been denied.

As a result, players and fans have to go by what we do know. I recently sent a letter to all sports editors to set the record straight on the economics and revenue breakdown between players and owners because the phrase most frequently seen is that "players get 60 percent of revenues." This is not an accurate depiction. Players receive approximately 50 percent of all revenues in the NFL. Or, players receive approximately 60 percent of total revenue in the NFL after the owners take a number of expense credits that add up to more than \$1 billion a year.

This is significant because the past 10 years of financial data at the highest levels show that the players' portion of revenues has decreased slightly. Simply put, the available data directly contradict the rationale and explanation of the NFL's justification for a rollback or, worse, a lockout. An unjustified lockout not only would prevent players from playing and fans from watching but also would have real negative economic consequences on NFL team cities.

The players have asked repeatedly for financial transparency and economic information. We have been told publicly and privately that detailed financials are "none of your business." In an era of greater financial transparency, this is confusing. Frankly, it signals that this negotiation is about something much different from figuring out how to work together to secure the future of the game.

For example, the owners have been clamoring for a rookie wage scale. They cited "exploding" rookie contracts as a reason for opting out early in 2008. The players offered a proposal to address owners' concerns called the proven performance plan. The NFL said no based on unwillingness to guarantee that the saved rookie money would go toward proven veteran players.

It's a shame that, nearly 1,000 days after the NFL owners opted out of the CBA, they can't guarantee NFL games next year. It's a shame heading into exciting playoffs with great games ahead that this unresolved issue continues to steal headlines. It's a shame that the owners are threatening to prevent players from playing football. It's a shame that the unanswered question remains: Why is this deal so bad?

The NFL players have asked me to share a simple request on their behalf: Open the books and let us play.

George Atallah is the assistant executive director for external affairs at the NFLPA. You can follow him on Twitter at [@georgeatallah](#).

MORE COMMENTARY »

ESPN.com: [Help](#) | [PR Media Kit](#) | [Sales Media Kit](#) | [Report a Bug](#) | [Corrections](#) | [Contact Us](#) | [Site Map](#) | [Mobile](#) | [ESPN Shop](#) | [Jobs at ESPN](#) | [Supplier Information](#)
©2009 ESPN Internet Ventures. [Terms of Use](#) and [Privacy Policy](#) and [Safety Information/Your California Privacy Rights](#) are applicable to you. All rights reserved.

[\[PRINT\]](#) **ESPN.com:** Commentary[\[Print without images\]](#)

Tuesday, January 11, 2011

The NFL's case for a new CBA

By Greg Aiello
Special to ESPN.com

EDITOR'S NOTE: Last week, ESPN.com published a guest commentary from an executive of the NFLPA about the ongoing collective bargaining agreement negotiations. Read it [here](#). Today, the league presents its point of view.

The NFL players' union says, "The players haven't asked for anything more and literally don't want anything more. They have simply asked to play under the existing agreement."

That ought to tell you something. If a collective bargaining agreement particularly favors one side, that side naturally won't want to change anything. That's how the players saw it in the '70s and '80s. The players believed the system favored the teams because there was no free agency. The players went on strike several times and then to court to change it.

Now the system does not work as well as it could from the standpoint of the teams. The time has arrived for adjustments that create an opportunity to make the game and league better.

The crux of the difference is this: The union accepts the status quo, while the NFL wants to improve and secure the future of the game for the benefit of fans and players.

The status quo means no rookie wage scale and the continuation of outrageous sums paid to many unproven rookies instead of shifting significant portions of that money to proven veterans and retired players.

The status quo means four preseason games in spite of the overwhelming rejection of it that by both fans and players.

The status quo means no league investment in new stadium development in Los Angeles and other cities, in international games, or in new technology to improve our service to fans in stadiums and at home.

The status quo means players continue to keep 60 percent of available revenue, in good years or bad, in a good economy or one with 10 percent unemployment, and no matter how much costs have risen for the teams. Player compensation has doubled in the past decade, and the union says NFL team payrolls rose 6 percent this year. Meanwhile, other costs for teams have risen dramatically.

NFL players have an extremely favorable revenue-sharing deal and full access to all information on revenue and a great deal of information on costs, including the largest cost, which is for players. The union has audit rights to all league and team revenue. The problem, however, is not revenue. It is costs. The union knows the problem. Costs must be properly balanced against revenue so that the league and the game can continue to grow. Companies with far more revenue than the NFL have gone bankrupt because they did not properly manage their costs. Our goal is to fix the problem now before it becomes a crisis. That means negotiating a fair agreement that

continues to provide billions to the players while also giving the teams a sustainable business model and improving the quality of everything we do.

Why is the current deal so bad, asks the union? Because it does not secure the best possible future for the game, players, clubs and fans. The union has said its "internal deadline" for reaching an agreement has passed. Does that mean the union has abandoned negotiations in favor of de-certification and litigation? We hope not. Rather than litigating and firing misguided salvos about the "shame" of the situation, it would be far more productive and much more in keeping with the interests of teams and fans if the union returned to the bargaining table and made a good-faith effort to reach an agreement before March 4. After that, it is going to become much more difficult.

The new CBA is about the future of the game and doing what's necessary to improve the quality of the game. That means addressing player safety, retired players, preseason, the way we pay rookies and making sure the league's business model works for the future. If we do that, players, teams and fans can continue share in the benefits of growth. The status quo is not acceptable because it will not allow us to build the game with the players as we have done so successfully in the past.

As commissioner Roger Goodell has said, if both sides give a little, everyone will get a lot.

Greg Aiello is the NFL's Senior Vice President of Public Relations. For more information on NFL collective bargaining issues, go to www.nflabor.com.

MORE COMMENTARY»

ESPN.com: [Help](#) | [PR Media Kit](#) | [Sales Media Kit](#) | [Report a Bug](#) | [Corrections](#) | [Contact Us](#) | [Site Map](#) | [Mobile](#) | [ESPN Shop](#) | [Jobs at ESPN](#) | [Supplier Information](#)
©2009 ESPN Internet Ventures. [Terms of Use](#) and [Privacy Policy and Safety Information/Your California Privacy Rights](#) are applicable to you. All rights reserved.