

## CHAPTER 2 THE BUSINESS OF SPORTS

As the Introduction to this chapter explains, this book and the subject that it explores - Sports Law - is about the application of a wide variety of legal principles to the sports industry. The goal of this chapter is obviously not to explain all of the business relationships and business issues that define the multi-billion dollar sports industry. Instead, we have focused on a few of the more fundamental relationships and structural issues in sports: (1) the relationships between and among the teams in a league and the relationship between each team and the league; (2) the legal and business consequences of the traditional model of league sports, in which the league is initially conceived of as merely an association owned and controlled by the owners of each of the teams; (3) the recent changes in league structure that have been considered, and in some cases adopted, as a result of business and legal concerns presented by the traditional league sports model -- yielding the so-called "single entity" or "hybrid single entity" league; (4) the differences and similarities between individual and team or league sports; and (5) relationships among those involved in the production and marketing of individual sports events and circuits. This chapter sets the stage for discussions in later chapters about the economic, contractual, and competitive relationships in the sports business.

The chapter is divided into four textual sections with associated questions, with a *Notes and Questions* section at the end of the chapter that goes beyond issues raised in the preceding textual sections:

I.	Introduction	pages 7-11
II.	Some General Observations in the Nature of Leagues, Circuits, Tours, and Collective Behavior	pages 11-19
III.	The League: An Excursus on the "Traditional" and "Single Entity" Models	pages 19-38
IV.	Team and Individual Sports: A Comparison	pages 39-52
V.	Notes and Questions at the End of the Chapter that Focus and Expand Upon Issues Raised throughout the Chapter	pages 52-58

From a pedagogical perspective, we believe this chapter has a number of benefits.

1. You can assign this chapter for background reading before the first class. It should get students thinking about the business issues, thereby preparing them for the class.

2. If you decide to "teach" this chapter, it should be relatively easy to start the class with a socratic dialogue or at least an open discussion, focusing on either the subjects addressed in the text or the many questions posed in the chapter, or a combination thereof. For professors seeking to encourage class participation throughout the course, it is our experience that it is important to have participation in the first class, to set the stage and expectations of the students for future classes. It should be possible to conduct a relatively lively discussion, with broad participation, focused on a selection of a few or many of the questions on page 10 of the text, especially if the syllabus or the posted assignment for the class directs the students to be prepared to discuss those questions. No specialized knowledge or background is necessary to contribute to a discussion of questions like the following.

1. How many different sports can you list?
2. What makes them a sport and not a game?  
(*e.g.*, bridge, chess, horse racing, car racing, poker, cricket, rugby, sky diving, cheerleading, baton twirling, aerobics, obstacle course competitions, American Gladiators, the decathlon, steeplechase, video games, badminton, croquet, darts, pool/billiards, arm wrestling, martial arts, (kayak, kung-fu, tae-kwon-do, judo); fencing, boxing, etc.)
3. Which are professional sports and why?
4. How significant are sports in the United States?
5. What facts would you point to in support of the significance of sports? (*e.g.*, sections of some newspapers divide into the following categories: US News, World News, Local News, Sports, Entertainment, Business, Classified Ads; one sixth of many television news broadcasts, most watched televised events = Super Bowls, etc.)
6. Why are sports important?
7. Why do people care about some sports and not about others?
8. Why do you care about certain sports and not others?
9. Why are some sports very popular on television or as events to attend (*i.e.*, live gate attendance) while others are not?
10. Why are some sports very popular as participation sports in the United States, but not as spectator sports, either with respect to live gate attendance or television?
11. Why does the popularity of specific sports vary widely from country to country?
12. Why must an eighteen year old freshman shoot a critical free throw facing a screaming, towel-waving throng, while a veteran golfer or tennis player is unable to putt or serve without total silence?
13. Are athletes more disposed to domestic violence than non-athletes?

If you do not cover all the questions that you want to address in the first class, you can start each subsequent class with a discussion about one or two of the remaining (or similar) questions. You can also return to questions that you have discussed, for a follow-up discussion, later in the semester. Everyone should be able to contribute to the discussion of these questions, even if they have not prepared for class.

Another question/problem that can provoke a discussion filling an entire two or even three hour class:

You are part of a group that has convened to discuss the formation of a new professional sports league (you can pick a sport - *e.g.*, Volleyball (men's or women's, 6-person or 4-person or 2-person Teams)). What business and legal issues have to be

resolved? Describe everything that has to be or should be done before the league starts its first season.

The discussion can focus on, among other things:

1. Structure of the league (*see further*, questions on page 18 of the text);
2. Rights of individual team owners or operators;
3. Number of teams and location of teams-strategic business considerations, including will league be national or regional or international, how to decide how many teams, where to place teams, expansion plans, and timetable;
4. Stadium/arena/facility selection -- what criteria in selecting facilities? Who decides -- individual teams or league?
5. Length of season (number of games - what time of year);
6. Player selection, dealing with players, cost of players, likelihood of a players association, strategy for dealing with players, possible players association;
7. Dealings with national governing bodies, international federations;
8. Possible changes in the rules of the sport to improve the product - for spectators, television, etc.;
9. Likely demographics, target audience - spectators and television viewers - for the sport;
10. Product design and marketing - ticket prices, site of arena, "halftime" entertainment, associated activities at games;
11. All-Star game(s), play-offs, championship games, format, etc.;
12. Possible sponsors, types of sponsorships deals for teams and league;
13. Name of the league, names of the teams, development of league and team marks and logos;
14. The competitive concerns about competing with existing leagues, possible future leagues? (*e.g.*, NFL v. AFL, WFL, USFL, CFL, Arena Football League; NBA v. ABA, CBA; NHL v. WHA);
15. The need to develop a minor league system?
16. Is there potential for marketing and promoting the league outside the United States? (*e.g.*, NFL's World League of American Football; Major League Baseball, NBA, NHL and NFL playing exhibition games outside the United States; Olympic dream teams of league all-stars to promote international interest, etc.)
17. Consideration of a co-ed league or a women's league associated with a men's league (*e.g.*, NBA and WNBA)?

18. The likely relationship between the professional league and colleges, universities and the NCAA if the sport is also an NCAA sport? What rules should the league have about players leaving high school or college or the pros? Why?
19. The need for league rules about the equipment to be used by the players and the teams?
20. League positions, employers -- should the league have a commissioner, with what responsibilities, functions, purposes, and authority?

These discussions obviously deal with issues that will be central focuses of subsequent chapters. The last question is an excellent discussion topic to end the class that precedes discussion of Chapter 3 (The Commissioner).

There are obviously too many questions for a single class discussion. One possibility is to discuss the idea of forming a new league and then return to the discussion throughout the semester as you focus on specific business questions that relate to the legal subject being addressed. For example, Note 19 before Chapter 3 (Commissioner), Note 14 before the contracts chapters that deal with competing leagues (Chapters 5 and 6) or before Chapter 11 (antitrust - inter-league competition), questions about league versus team rights and autonomy before Chapter 12 (antitrust - intra-league competition), Note 19 before Chapter 13 (antitrust equipment issues), Note 6 before the antitrust labor exemption (Chapter 9) or antitrust analysis of player restraints (Chapter 10), or labor law issues (Chapter 14-16), Notes 12 and 13 before Chapter 19 (intellectual property).

It is our view that there is no need to attempt to summarize the textual portions of Chapter 2 in this Teachers Manual. The first three text sections (including the Introduction) are generally self-explanatory. You should suggest that your students return to the discussion of traditional model and single entity leagues prior to Chapter 12, the antitrust chapter that includes substantial emphasis on "single entity" arguments made by traditional model leagues in defense of antitrust challenges. The final text section - the comparison between "individual" and league sports - was included in part in an effort to get the students thinking creatively about sports. It also serves as an introduction to the business of individual sports, and the world of title, presenting and official product sponsors. This portion of Chapter 2 may be useful for student to review when they confront issues related to individual sports in a number of subsequent chapters, including for example, Chapter 5 (*Shavers* case), Chapter 10 (*Volvo* case), Chapter 13 (antitrust equipment cases), and Chapter 19 (various intellectual property cases).

At the end of Chapter 2 we included the 1997 *Sporting News* list of the 100 Most Powerful People in Sports. In subsequent years, you might want to consult the most recent such list. The list is, in large part, meaningless. There is no real independent significance to a comparison of the "power" of a professional athlete, a sports agent, a league commissioner, and a television executive. Nevertheless, the list serves to remind students of the broad scope of the business of sports and introduces them to some of the people whose names are likely to surface in discussions of current sports issues. In addition, among the other points that we believe are illustrated by the list are the following:

1. Television companies and the commissioners of the major sports leagues are generally considered the most important decisionmakers in the sports in which they are involved;

2. Because of the legal implications of so many sports business decisions, the recent historical trend has been toward lawyers serving as commissioners of the major league sports;
3. While players are the most important part of the sports product, and can often negotiate lucrative contracts, as well as endorsement contracts, players are not making the decisions - their period of importance is generally relatively short and they do not have the "power" that owners and commissioners have;
4. The importance of sponsors is often not appreciated, but the presence of people who work for Nike, General Motors, Anheuser-Busch, Coca-Cola, McDonald's, Miller Brewing, John Hancock, Sprint, Adidas, Pepsi Co. and Reebok in the top 100 list is the result of the tremendous influence that the sponsorship dollars of sponsors in general and the top sports sponsors in particular have over sports - what sports are televised, what small sport leagues are launched, what individual sports events survive, and so on.