

The Evolution of Sports Law

The first thing that anybody involved in sports law will tell you is that there is no such thing as sports law. The term “sports law” can encompass numerous practice areas that concern athletes and the business of sports. For instance, one single client athlete can have issues in business, criminal, contract, family, intellectual property, non profit or tort law to name a few. Other athlete issues involving league rules or National Collegiate Athletic Association (NCAA) rules must also be able to be interpreted so that the athlete’s best interests are protected. On a bigger scale, the business of sports is big business and billions of dollars are at stake when negotiating TV contracts, dealing with public relations nightmares, and collective bargaining agreements among sports leagues.

This has not always been true. Believe it or not, the business of sports was not always big business and athletes were not always highly compensated, subjected to drug testing or allowed to use their name and likeness from their college days for profit. This article will discuss some key decisions that have shaped the way athletes participate in sports and how we view them today.

Free agency, with regards to the major sports leagues such as Major League Baseball (MLB), Major League Soccer (MLS), National Basketball Association (NBA), National Football League (NFL), and the National Hockey League (NHL), was not always so free and star players in the early days of professional sports were much more likely to play their entire career with one team. This was due to something called the reserve clause which stated that at the expiration of a player’s contract, the rights to that player were to be retained by that team. In 1972 the Supreme Court in *Flood v. Kuhn*, 407 U.S. 258 (1972), held that MLB could uphold the reserve clause through an anti-trust exemption, however the Court admitted that the exemption was an anomaly and baseball was considered part of interstate commerce. That admission led to an arbitrator later nullifying the reserve clause and opening the door to free agency in all sports. This was a big win for professional athletes everywhere as they could now negotiate with all interested parties for the highest compensation any one suitor would pay.

With this new found freedom, athletes now had to change teams through free agency came the need for athlete agent representation, and thus the sports agent was born. In the early days of sports anybody could call themselves a sports agent, as the barrier to entry was nonexistent. There was essentially no regulation of agents and athletes would often suffer the consequences by receiving poor advice. Today, the business and regulation of sports has evolved such that most states have laws that regulate athlete agents, most sports leagues have their own certification programs to regulate agents of their respective leagues, and the NCAA has rules in place that affect how athletes may interact with sports agents. In Washington State RCW 19.225 is on the books, otherwise known as the Uniform Athlete Agent Act. Those who violate the

Washington Uniform Athlete Agent Act could face a stiff penalty of up to \$10,000 and be charged with a class C felony. These regulations were put in place to look out for the best interest of the athlete and make sure agents are not taking advantage of athletes. Young athletes, who upon an initial meeting with an agent, are usually still in college and may come from underprivileged backgrounds. Currently there are more than 460,000 college athletes and less than two percent will go pro in their sport.¹ This creates a scarcity of potential clients for athlete agents to represent and the competition is fierce to represent the best prospects.

Due to the social and financial allure the sports industry provides, agents have been known to bend if not break the rules and regulations in order to land a top client. Agents have previously admitted or been found guilty of paying athletes or providing improper gifts to athletes in college in exchange for the opportunity to represent them when they go pro.² This conduct of course violates NCAA rules and many state rules which may lead a player to be kicked off his/her college team, cause the athlete financial loss due to a drop in draft position, and leaves the athletes' university left to face potential sanctions.

Once an athlete has finished his or her amateur career, there is only a limited number of years to maximize the athlete's earning potential in the pros. For example, the average career of a professional athlete in one of the major sports leagues is only three to five years³. With success comes great rewards in the form of long term contracts that can be in the form of standard player contracts or lucrative endorsement deals. This will in turn drive the athlete to do whatever it takes to reach the peak of success. Professional sports leagues know the stakes are high and therefore have recently taken measures to ensure their leagues are putting pure, non enhanced athletes in play by regulating substances athletes can consume. The goal is to make sure that performance enhancing drugs are not being consumed as well as regulating any illegal substances which could negatively reflect on the leagues.

One of the first challenges to drug testing happened in 1990 when student athletes at Stanford University challenged their school and the NCAA's drug testing policy and said it invaded their constitutional right to privacy which was upheld.⁴ However, later, in 1999, a California appellate court ruled that schools had a compelling interest to keep drugs out of their schools and therefore drug testing was not an invasion of student athletes privacy.⁵ On the professional level, athletes are subject to their leagues and associations' policies and procedures. These policies and procedures can regulate doping, drug abuse, and other issues such as personal conduct. The

¹ <http://www.ncaa.org/about/resources/research/probability-competing-beyond-high-school>

² See *Confessional of an Agent, Sports Illustrated*, Josh Luchs, October 18, 2010.

³ See *The Average Career Earning of athletes across America will Shock you*, By Nick Schwartz, USA Today, October 24, 2013. <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>

⁴ See *Hill v National Collegiate Athletic Association, Board of Trustees of Leland Stanford Junior University* (Court of Appeal of California, USA, 25 September 1990)

⁵ *Miller v Cave City School* (United States Court of Appeals (8th circuit), 31 March 1999).

penalties for violating such rules can include fines, suspensions, or even banishment for extreme violations.

One such example of a league policy rule came to the forefront in the Seahawks most recent Super Bowl run involving Marshawn Lynch. The NFL has stated in their policies and procedures that players must make themselves available to the media or else they could be fined. Lynch did the minimum to comply with the rule by barely speaking to the media, but nonetheless making himself available, and thus avoiding a fine. If a player disputes a suspension or a fine issued by a league there are usually league policies in place in which players can appeal an adverse decision.

In a recent case decided last summer, *O'Bannon et al. v. NCAA et al.*, No. 09-3329, 2014 WL 3899815 (N.D. Cal. Aug. 8, 2014), the issue of whether student athletes should be able to profit from their own name and likeness used in college was decided. The NCAA argued that paying its student athletes would be a violation of its concept of amateurism in sports, while O'Bannon, a former basketball star who played on UCLA's 1995 National Championship team, argued on behalf of all division I men's football and basketball players that upon graduation players should be compensated if colleges use their images for commercial purposes. The court ruled in favor of O'Bannon and stated that the NCAA rules and bylaws operate as an unreasonable restraint on trade, in violation of antitrust law. This is the first step in what I believe will eventually lead to student athletes being paid a modest stipend while playing collegiate sports and, incidentally, making their schools billions of dollars.⁶

The evolution of sports law is no different than any other type of law. It continues to evolve with the changing times and technology. New rules and court decisions will be put in place to react to the need for change when issues arise. If we have come this far over the last 50 years in sports, it's hard to imagine what the business of sports and the laws that regulate them will look like in another 50 years.

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⁶ See <http://www.usatoday.com/sports/college/schools/finances/>