

The Taxation of Professional United States Athletes in Both the United States and Canada

The Article explains some of the major tax issues that professional athletes must face. The nature of the profession makes the proper payment of taxes very complicated. The Article states that the tax issues begin at the federal level, but continue to both the state and municipal levels. One of the issues discussed is the different tax implications found in different states around the country and the complications that arise due to the large amount of travel that occurs while a professional athlete. These are factors that should be considered by an athlete when trying to make a decision about where to play. Today, most athletes must also consider the tax implications of international travel, which seems to accompany the profession in a growing fashion with most of the sporting leagues based in the United States also having teams in Canada. The Article concludes by stating that athletes must remember to consider the tax issues with every decision they make because the money they earn over the few years of playing will most likely need to support them for many years after they retire from athletics.

Transsexuals and Gender Classifications in Sports

Competitive sports have long been dependent upon gender as a basis for the classification of athletes; however, the placement of transsexual male-to-female athletes in sports contravenes the concept of gender as a coherent category. The problems facing sports today is how to classify transsexuals and how to determine “true” sex for the purposes of competition. An analysis of the court’s ruling in the Renee Richards case sets the ground work for understanding the complications with using gender as a classification for sports. The current landscape is altering its tests and qualifications to fairly address transsexual athletes seeking inclusion in professional sports competitions. The results of this article call into question the use of gender as a category in competitive sports.

Performance Enhancers in Baseball

This article addresses the problems of performance enhancers in professional baseball by creating an inflated offensive production. This article first focuses on steroids and its effects on the body, then history of steroid use. The second part of this article addresses other performance enhancers such as: amphetamines, pain killers, insulin, HGH, Erythropoietin supplements, and genetic, performance enhancers. In addition, there is the alternative explanation that performance enhancers are not the only explanation for the recent increase in offensive productivity. The following categories are explained as possible explanations: smaller ball parks, rule changes, expansion, interleague play, equipment, technology.

School Nicknames

This article discusses the economic and legal impact of changing a school nickname, using Marquette as an example of schools that have faced public pressure to change their mascot name and has subsequently lost goodwill, brand recognition and the associated economic impacts. Also, this article analyses consumer loyalty to school nicknames and the impacts of a name change. This article further examines the recent trend toward political correctness in college athletics and the pressure being exerted by the NCAA. Furthermore, this article assesses the courts treatment on lawsuits brought against universities with politically incorrect nicknames and a school's potential use of trademark law principles.

"Cheering Speech at State University Athletic Events" discusses the tension between the First Amendment rights of spectators and the rights of listeners at games, such as other spectators, players, and coaches. Although the "twelfth man" plays an important role in creating a home-field advantage, spectators should be prevented from saying whatever they want. Through content-neutral regulations, a state university can curtail the disruptive content of certain cheering speech. The author proposes banning alcohol, zoning portions of the venue for families, dismantling student sections, and regulating speech personally directed at participants.

A Fresh Set of Downs? Why Recent Modifications to the Bowl Championship Series Still Draw a Flag Under the Sherman Act

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The recent modifications to the Bowl Championship Series (BCS) have not resolved the organization's antitrust issues that they were intended to address. The college bowl games, a feature unique to NCAA Division I football, have expanded from one to twenty-eight games, and, as a result of their traditionally regional ties, have made selecting a national champion problematic. Postseason games originated in 1894 at Soldier Field in Chicago, and the Rose Bowl began the first bowl game in 1902. By the early 1930s, there were dozens of bowls and bowl/conference affiliations began to emerge. As the bowls became discrete from the regular season, they became the conclusion to the season, and the Associated Press and Coaches Polls were used to rank the teams and set a national championship game. However, due to the subjective nature of these rankings, controversies often occurred, leading to undesirable outcomes like split national championships, as occurred in the 1970 season.

National television and the revenue-generating power of the bowl system led to four developments that permanently altered college football. The first such event was the 1976 formation of the College Football Association (CFA) by sixty-three college football programs. The CFA was intended to facilitate members' dealings with television networks outside of the auspices of the NCAA, leading to courts finding the NCAA in violation of antitrust law in NCAA v. Board of Regents of the University of Oklahoma. The second development was Notre Dame's independent dealing with NBC in 1990, which led other schools to broker similarly independent deals, and caused the 1990s conference realignment. The third event was the formation of the College Football Coalition and the Bowl Alliance. These organizations attempted to remedy the problem of crowning a true national champion. The Coalition, formed in 1992, faced problems in both the traditional conference/bowl tie-ins and the Rose Bowl's refusal to participate. In 1995, the Alliance was formed, and eliminated tie-in requirements, but still did not secure the participation of the Rose Bowl. The fourth development occurred in 1997, when the Alliance collapsed after Michigan and Nebraska split the national title, leading the Rose Bowl to finally abandon its rigid conference ties.

In 1998, the BCS was formed after the Rose Bowl agreed to participate in a national bowl system that would crown a single national champion. The BCS joined the Fiesta, Orange, Rose, and Sugar Bowls with the sixty-three schools in the ACC, SEC, Big East, Big 12, Big Ten, and Pac-10 conferences, along with Notre Dame. It initiated a process whereby the four bowls chose from the six conference champions and two at-large bids, and allowed for a rotating national champion game among the four member bowls. Only teams who are members of participating conferences or those ranked sixth or higher in the BCS standings are eligible for BCS bowls, making appearances by non-BCS teams highly unlikely. Further, Notre Dame is eligible for a BCS bowl provided it is ranked within the top ten, making it even less likely for non-member school participation. This arrangement financially disadvantages non-member schools since the revenue from the BCS games is distributed among member and participating non-member schools primarily.

The inherent problems in the BCS arrangement were made clear in 1998 and 1999, when Tulane and Marshall (respectively), both non-member schools, had perfect seasons, but were excluded from the national championship game. In 2001, BYU had a perfect season, but was excluded from BCS consideration in part due to their relative lack of marketability. In response, Scott Cowen, the President of Tulane University, formed the Presidential Alliance for Athletics Reform in 2003, an organization of non-BCS members. The BCS has since added a fifth bowl game by allowing one of the member bowls to host both its regular bowl game and the national championship game. The member conference champions still have guaranteed spots in BCS bowls; however, one non-BCS conference school will have a chance to play provided it is ranked in the top twelve in the BCS standings or it is ranked in the top sixteen, and ranked higher than one of the member conference champions. After 2007, all Division I-A conferences will be subject to the same criteria to determine whether their champion automatically qualifies for a BCS game.

Though the NCAA was historically excluded from antitrust scrutiny as a result of its involvement in amateur, rather than professional, athletics, their heightened commercial activity has led courts to examine the Sherman Act's applicability to the organization. This was first recognized in Hennessey v. NCAA, which applied a rule of reason test because of the large commercial value of the television contract the NCAA procured for its members. In NCAA v. Board of Regents for the University of Oklahoma, the Supreme Court found that the strict NCAA regulation of television rights for college football violated antitrust laws by limiting price and output under the rule of reason. The Tenth Circuit Court of Appeals in Law v. NCAA applied a rule of reason test to reject such procompetitive justifications for the NCAA as creating more balanced competition, cutting member costs, and "maintaining competitive equity" among members.

The BCS would not likely warrant per se analysis. The Supreme Court in Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co. mandated that boycotters must possess either market power or exclusive access to an essential competitive element. Even though the BCS may meet this standard, it is only applied in clear-cut cases, and the procompetitive justifications of the BCS will render such per se analysis insufficient, as the Court recognized in Board of Regents. A quick-look analysis is similarly insufficient, since such analysis does not involve a complete examination of procompetitive benefits. Despite the fact that the Court used a quick-look test in Board of Regents, the subtlety of the anti-competitive effects of the BCS mandates different treatment than the NCAA.

Under a rule of reason approach, the BCS violates antitrust law. The rule of reason starts with an analysis of the anticompetitive effects of the arrangement in question. Because non-member schools are effectively denied participation in BCS bowls, their recruiting efforts suffer as a result of diminished visibility. The exclusion of non-member teams similarly puts non-BCS schools at a disadvantage in coaching prospects. Finally, the revenue distribution system employed by the BCS clearly favors member schools, creating a vicious cycle which continues to enrich BCS schools at the expense of non-BCS schools, which cannot afford to effectively compete within the BCS structure.

Under the rule of reason test, courts should next examine the procompetitive justifications of the arrangement. The BCS allows for a national champion, which provides national exposure and interest, as well as generating more revenue. Further, because of the BCS's rejection of the conference tie-in system, all schools are granted a chance to participate in the bowls as long as they meet the criteria. Despite the new modifications, such as an expansion of the number of conference champions which can participate and the addition of a permanent twelfth regular season game, the BCS still fails under antitrust scrutiny. Strength of schedule still greatly hinders non-member schools, especially since member schools play very few road games against non-member schools. The addition of the twelfth game will help non-member schools as member schools seek to find opponents, which will reduce some of the power the BCS schools hold over non-member schools. The BCS Ranking system also disadvantages non-member schools since it relies on both subjective polls and computer polls that rely on strength of schedule to determine placement. This reliance leads member schools to prefer other member schools as opponents in order to preserve a high strength of schedule ranking. Further, non-member schools have little chance of reaching a BCS bowl given the rigid criteria established by the BCS. The addition of the fifth BCS bowl does not remedy this, and the treatment of Notre Dame continues to be a problem for non-BCS schools. These factors outweigh any procompetitive benefits provided by the BCS, thus violating antitrust law.

The rule of reason test ends with an analysis of whether the purposes of the arrangement can be reached through less anticompetitive means. The BCS system fails to meet this test. A playoff system could remedy the lack of access non-members have to the BCS bowl system. The only procompetitive objective of the BCS that cannot be preserved in a playoff system would be the adherence to the tradition of the college bowls. Alternatively, the BCS system could be abandoned except for a single national championship game, which would allow the revenue generated to be more equally distributed.

Despite the BCS's likely antitrust liability, it is such a powerful financial entity that courtroom battles could prove unfeasible. Non-member schools, already at a financial disadvantage, likely could not afford to mount a serious challenge to the system. However, the issue could be brought before congress, a viable option since many congressmen have taken it upon themselves to examine the BCS already. However, such an examination is unlikely until the next BCS scandal, given the success of the 2006 bowl series.

High School Liability

Because high schools don't insure the health of their students, they are not strictly liable for injury and a student must prove tortious conduct in a suit against his schools. Leahy v. School Board held that Florida schools are responsible for "giving adequate instruction in the activity, supplying proper equipment, making reasonable selection or matching of participants, providing nonnegligent supervision of the particular contest, and taking proper post-injury procedures to protect against aggravation of injury." Many other states adopt a reasonable care standard. California defined reasonable care in Knigh v. Jewett as intentional injury or reckless conduct that is outside the scope of normal sport activity, and in Kahn v. East Side Union High School District applied this standard to coaches as well as schools, noting that coaches do not have a duty to prevent risk, merely one not to increase it.

Suits against a school for athletic injuries tend to involve the assumption of risk doctrine, which holds that if the athletes are aware of the risks of a sport, their voluntary participation constitutes consent to such risks. Courts have consistently held that high school and college athletes are capable of such consent. This doctrine tends to prevent unnecessary and excessive lawsuits, as well as preserving competition in student athletics. While the assumption of risk doctrine bars liability for inherent risks, liability may still be found for injuries that are not inherent to participation.

There is no clear pattern of what is considered non-inherent risk, although suits against schools have been generally unsuccessful. In Beckett v. Clinton Prairie School, a student's suit against his school when he collided with another student in pursuit of a fly ball during baseball practice was unsuccessful since the court found the student had knowledge of the risk. Nebraska courts have held that the duty of care for high school coaches is that of a reasonable, prudent person in a similar position. However, some such suits have been successful. Coaches and schools have been found liable when injured players are allowed to play or return to play without first using reasonable care to assess the student's medical condition. Such suits will turn on both the facts of the case and the relevant state law.

The liability of coaches to high school pitchers for arm injuries is more complex, and has no governing uniform standard. High school baseball has become more competitive, and serious athletes tend to focus on a single sport year round, which puts increased strain on their bodies. Doctors have seen a sharp rise in the number of high school athletes undergoing surgery for damage to their muscles, ligaments, and tendons. For example, Dr. James Andrews performed roughly five times as many "Tommy John" surgeries in 2003 as he did from 1988-1994. This surgery is expensive and involves a long, painful period of rehabilitation. Though increased technology and availability of medical services may account for some of the increase, Andrews and others believe that it is a result of the parents and athletes's belief in the athlete's talent, and overuse are more to blame.

The overhead throwing motion used by baseball pitchers increases their risk for elbow and shoulder injuries. Such injuries can be caused by overuse, muscle instability, a lack of conditioning, and incorrect pitching mechanics. The risks can only be limited, not eliminated by the remedy of these factors. Overuse is a factor that increases with age and playing time, and has been shown in clinical studies to be a common bond among most athletes undergoing the Tommy John surgery. Overuse injuries are especially likely after a period of increased activity, and are most common in hard-throwing athletes,

which tend to be the most effective high school pitchers. Despite the link between overuse and injury, however, other factors, such as genetics, body development, and mechanics must also be taken into account when determining pitch counts. Muscle instability and poor conditioning are problematic because of the nature of the throwing motion, which can cause imbalance and flexibility problems that can only be mitigated with proper conditioning. Improper pitching mechanics are also a cause of injury. Though there is not widespread agreement on a single proper mechanic, medical experts emphasize the need for instruction in proper mechanics. Warm-up and cool-down periods are universally deemed necessary, and certain characteristics of a pitching motion are understood to be generally harmful for all players. Finally, proper conditioning is agreed to be vitally necessary.

"No Tying in Football" examines the sale of season tickets in the National Football League (NFL). In order to purchase a season ticket plan, a consumer must purchase not only the eight regular season home games, but also two preseason home games. These preseason games are a separate product from regular season games because they are inferior in quality and meaningless in the standings. When NFL teams force consumers to buy an inferior product upon purchasing a desired product, they engage in illegal tying arrangements that violate our antitrust laws. Although courts confronted this issue in the 1970s, a reexamination of this issue is in order because the lower courts incorrectly analyzed the relevant markets and misconstrued the Supreme Court's tying arrangement framework.

Comment on C.B.C. Distrib. & Mktg. v. MLB Advanced Media, L.P.

This Article details the facts and reasoning behind the court's decision in *C.B.C. Distrib. & Mktg. v. MLB Advanced Media, L.P.*, 443 F. Supp. 2d 1077, 1080 (E.D. Mo. 2006). A brief description of the fantasy sports industry is provided. The Article examines general principles of right of publicity law and examines the court's application of the law to the facts. Finally, the author provides his own analysis, calling into question some of the court's conclusions.