

THE WHARTON SCHOOL – UNIVERSITY OF PENNSYLVANIA  
SPORTS LAW (LGST 228-1)  
FALL 2019

Professor Marc Edelman

Tuesdays 3-6 P.M.

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**Professor:** Marc Edelman

**E-mail:** Marc@MarcEdelman.com

**Required Text:** Weiler, Roberts, Abrams & Ross. *Sports and the Law: Text, Cases, Problems (Fifth Edition)*

- ISBN-13: 978-1-62810-161-4
- If you purchase online, please make sure to purchase the **Fifth Edition**.

**Additional Reading:** Provided by bulk pack and at the listed websites.

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### **COURSE OVERVIEW**

Sports Law provides students with a broad overview about how commercial sports leagues are regulated both internally and externally. Substantive topics covered in this course include antitrust law, contract law, labor law and intellectual property law. In addition, this course will discuss the following topics: the law and economics of professional sports leagues; the role of the league commissioner; different league structures; rules for agent certification; intellectual property rights; state law publicity rights; state law due process rights; gaming law; and ownership of sports statistics.

### **GRADING PROCEDURES**

This course is designed to facilitate your learning – not to make it difficult to succeed. Every student can perform well in Law & Professional Sports if he/she completes the assigned readings before class, considers how the concepts apply, prepares assignments, and contributes to classroom discussion.

Grading for this course will be determined as follows:

- Final Examination (cumulative): 50% of course grade
- Midterm Examination: 35% of course grade
- Class Participation & In-Class Exercises: 15% of course grade

## ASSIGNMENTS

**The assigned readings are due on the days listed below.** Please read each assignment thoroughly prior to class. Your ability to discuss the material in the readings will impact your ability to participate in classroom discussion. (Please note that most class meeting dates correspond with two separate assignments. The numbers in front of each reading correspond with the order in which I recommend you read the assignment)

<b>Date</b>	<b>General Topic</b>	<b>Textbook Reading</b>	<b>Other Required Reading (either available in bulk-pack or online at the indicated website)</b>
Tues. 8/27 (Session 1)	Meet and Greet: Introductions and Course Overview	---	---
Tues. 8/27 (Session 2)	Introduction to Sports Law	(1) Sports and the Law, p. 1066-1070 ( <i>Crouch v. NASCAR</i> case)	(2) M'Baye v. World Boxing Association, 429 F.Supp.2d 660 (2006)
Tues. 9/3 (Session 1)	Internal Self- Regulation of Sports: The Leagues (Part 1)	--	Marc Edelman, "Why the 'Single Entity' Defense Can Never Apply to NFL Clubs: A Primer on Property Rights Theory in Professional Sports," in <i>FORDHAM INTELLECTUAL PROPERTY, MEDIA, &amp; ENTERTAINMENT LAW JOURNAL</i> (2008) <a href="http://papers.ssrn.com/sol3/papers.cfm?aabstract_id=1291974">http://papers.ssrn.com/sol3/papers.cfm?a abstract_id=1291974</a> ( <b>only read pages 897-910</b> )
Tues. 9/3 (Session 2)	Internal Self- Regulation of Sports: The Leagues (Part 2)	(2) Sports and the Law, p. 15- 25 ( <i>Finley v. Kuhn &amp; Turner v. Kuhn</i> cases).	(1) Major League Baseball Constitution
Tues. 9/10 (Session 1)	Internal Self- Regulation of Sports: Collective Bargaining (Part 1)	--	(1) Major League Baseball CBA ( <b>scan only</b> )  (2) Steve Howe arbitration (pulled from old edition of textbook)

Tues. 9/10 (Session 2)	Internal Self-Regulation of Sports: Collective Bargaining (Part 2)	--	National Football League v. National Football Players Association & Brady, 820 F.3d 527 (2d. Cir. 2016)
Tues. 9/17 (Session 1)	Application of Antitrust Law to Professional Sports Leagues (Part 1)	--	Marc Edelman, "Are Commissioner Suspensions Really any Different from Illegal Group Boycotts," in CATHOLIC UNIVERSITY LAW REVIEW (2009) <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1428480">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1428480</a>
Tues. 9/17 (Session 2)	Application of Antitrust Law to Professional Sports Leagues (Part 2)	Sports and the Law, p. 360-365; pp. 376-380 (majority opinions in <i>Smith v. NFL</i> and <i>Mackey v. NFL</i> )	--
Tues. 9/24 (Session 1)	Applying Antitrust Law to Unusually Structured Sports Leagues (Part 1)	--	<i>Fraser v. Major League Soccer</i> , 284 F.3d 47 (1 <sup>st</sup> Cir. 2002)
Tues. 9/24 (Session 2)	Applying Antitrust Law to Unusually Structured Sports Leagues (Part 2)	--	Marc Edelman, "Does the NBA Still have Market Power," in RUTGERS LAW JOURNAL (2009) <a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1473493">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1473493</a>
Tues. 10/1 (Session 1)	The Non-Statutory Labor Exemption to Antitrust Law (Part 1)	--	<i>Mackey v. National Football League</i> , 543 F.2d 606 (8 <sup>th</sup> Cir. 1976) ( <u>you do not need to re-read the second part of the Mackey case that replicates the prima facie arguments we discussed on 9/17.</u> )
Tues. 10/1 (Session 2)	The Non-Statutory Labor Exemption to Antitrust Law (Part 2)	--	<i>Clarett v. National Football League</i> , 369 F.3d 124 (2d Cir. 2004)

Tues. 10/8 (Session 1)	Beyond Impasse: Antitrust Lawsuits to Enjoin Lockouts	--	<i>Brady v. Nat'l Football League</i> , 2011 WL 2652323 (8 <sup>th</sup> Cir. 2011)  (* ) Note: This will probably be the most challenging reading of your academic career. Please make a good faith effort, and we will discuss in detail in class. We will also spend some time on the practical implications of the case holding.
Tues. 10/8 (Session 2)	Baseball and its Historic Antitrust Exemption	Sports and the Law, p. 189-200 ( <i>Flood v. Kuhn</i> )	--
<b>Tues. 10/15 (Sessions 1 and 2)</b>	<b>MIDTERM EXAM</b>	--	--
Tues. 10/22 (Session 1)	Review and Discussion of Midterm Exam	--	--
Tues. 10/22 (Session 2)	Introduction to Labor Law and Collective Bargaining	Sports and the Law, p. 218-224; 228-233 (Messersmith & McNally Grievances and subsequent appeal)	--
Tues. 10/29 (Session 1)	Sports Agency & Regulation of Agents		(1) Marc Edelman, "Disarming the Trojan Horse of the UAAA and SPARTA: How America Should Transform its Sports Agent Laws" in HARVARD SPORTS & ENTERTAINMENT LAW JOURNAL (2012) <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132123">https://papers.ssrn.com/sol3/papers.cfm? abstract_id=2132123</a>  (2) NFLPA Regulations Governing Contract Advisors (online link appears below) <a href="https://nflpaweb.blob.core.windows.net/media/Default/PDFs/Agents/RegulationsAmendedAugust2016.pdf">https://nflpaweb.blob.core.windows.net/ media/Default/PDFs/Agents/Regulations AmendedAugust2016.pdf</a>

Tues. 10/29 (Session 2)	Sports Agency & Salary Arbitration	Sports and the Law, p. 705-718	--
Tues. 11/5 (Session 1)	Intellectual Property – Trademark Law	Sports and the Law, p. 661-668; p. 673-677 ( <i>Indianapolis Colts v. Metropolitan Baltimore Football Club; Boston Profession Hockey v. Dallas Cap</i> )	--
Tues. 11/5 (Session 2)	Intellectual Property – Copyright Law and Hot News Rights	(1) Sports and the Law, p. 679- 682 ( <i>WCVB-TV v. Boston Athletic Ass'n</i> )	(2) Marc Edelman, “From Meerkat to Periscope: Does Intellectual Property Law Prevent the Live Streaming of Commercial Sporting Events” in COLUMBIA JOURNAL OF LAW & THE ARTS (2016) <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2661875">https://papers.ssrn.com/sol3/papers.cfm? abstract_id=2661875</a>
Tues. 11/12 (Session 1)	Commercial Athletes and the Right of Publicity	Sports and the Law, p. 628-641 ( <i>Haelen v. Topps; Zachini v. Scripps Broadcasting &amp; ETW Corp. v. Jireh Publishing</i> )	--
Tues. 11/12 (Session 2)	Legal Issues in Fantasy Sports	Sports and the Law, p. 652-657 ( <i>CBC Distribution v. Major League Baseball Advanced Media</i> )	--

Tues. 11/19 (Session 1)	Sports Gambling and E-Sports	--	(1) Marc Edelman, "Regulating Sports Gambling" in GEORGE MASON LAW REVIEW (2018) <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285361">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285361</a>  (2) Article on e-sports to be assigned during semester.
Tues. 11/19 (Session 2)	College Sports: Antitrust Litigation (Part 1)	Sports and the Law, p. 270- 280 ( <i>NCAA v. Board of Regents</i> case; majority opinion	--
<b>Tues. 11/26</b>	<b>NO CLASS – WHARTON FOLLOWS A THURSDAY SCHEDULE</b>		--
Tues. 12/3 (Session 1)	College Sports: Antitrust Litigation (Part 2)	--	<i>In re National Collegiate Athletic Association Grant-in-Aid Cap Antitrust Litigation</i> , 375 F.Supp.3d 1d 1058 (N.D. Cal. 2019)
Tues. 12/3 (Session 2)	College Sports: Labor and Employment Litigation	--	National Labor Relations Board Ruling, Northwestern University & College Athletes Players Union, Case No. 13-RC-121359 (N.L.R.B., Aug. 17, 2015) (including appendix with 13 <sup>th</sup> Department ruling) ( <b>Note: Read the 13<sup>th</sup> Department decision first (included as the appendix). Then, proceed to read the N.L.R.B. decision. It will make more sense if you read the material in that order)</b>  Berger v. National Collegiate Athletic Association, 843 F.3d 285 (7th Cir.2016)

### GENERAL COURSE POLICIES

The following are my general course policies. They exist for the purpose of making the course run smoothly. While they may at first seem strict, I am sure you will find that these policies help to maintain a productive and professional educational environment. **If you have any questions or concerns, please do not hesitate to let me know.**

**Attendance Policy:** Participation in class is required, as it is a necessary component of learning the subject matter. Students that are repeatedly late, absent, or unprepared for class will receive a final class participation grade of “0” – a result that will substantially affect their grade in the course. This may lead to a final course grade that is as much as one full letter grade below what they otherwise would have received.

**Lateness Policy:** All classes will begin promptly at the designated time. **Tardiness to class, by any amount of time, will be treated identically to an absence under the course attendance policy (referenced directly above).** Students are responsible for ensuring they budget an adequate amount of time for travel to class, keeping in mind the inevitable possibility of delays.

**ADA Procedures:** The University of Pennsylvania is committed to providing an educational experience that is accessible to all students. In accordance with this policy, students in need of accommodations due to a disability should contact the Office of the Dean for Special Student Services for verification and determination of reasonable accommodations as soon as possible after admission to the University, or at the beginning of each semester.

**Business professionalism is expected.** The professional appearance of yourself and your work is important. You should not turn anything in to me that you would not turn in to an employer, and you should not present yourself in class in a manner that you would not present yourself to an employer (casual dress in class, however, is acceptable). It is expected that all work, including emails, will be typed and proofread. If you need assistance or have questions, please do not hesitate to ask me.

**Class Participation Policy:** Class participation is an important part of the learning experience. Students are expected to regularly participate in class, and to be respectful when other students are participating. Students unprepared to participate in a given class session are required to let me know by email at least one (1) hour before the start of that class session. I will respect all such requests to avoid “call.”

**Gender Pronouns:** As is traditionally the case in legal education, I typically call upon students using gendered titles (e.g., Mr., Ms.). If you prefer a different gendered title, or a gender neutral title, please let me know. It is my goal to make all students feel both comfortable and respected.

**Policy on Recording Class:** Recording class lectures is strictly prohibited unless you receive an express waiver from me allowing you to tape record a given class or series of classes. If you would like such a waiver, please see me after class, or in my office hours.

**Makeup exams will not be given,** unless agreed upon in advance. Note the date of the final exam assigned by the University of Pennsylvania. **No rescheduling** of the final will be granted.

**This syllabus is subject to change.** Prompt notification of any such changes will be given.