

**SPORTS AND ANTITRUST
FALL, 2006
TUESDAY, 4:00 p.m. to 5:50 p.m.
ADJUNCT PROFESSOR MICHAEL S. KELLY
SYLLABUS**

CLASS 1—AUGUST 22, 2006

An overview of recurrent antitrust issues facing professional sports leagues, e.g., franchise relocation, pooling of broadcast rights, restraints on players' freedom of movement and/or compensation, equipment standards, etc.

Reading Assignments: (Cases denoted by an asterisk are recommended but not required)

Los Angeles Memorial Coliseum v. The NFL, 726 F.2d 1381 (9th Cir. 1984)
(Raiders II) (majority opinion and dissent)
Robertson v. NBA, 389 Fed. Supp. 867 (S.D. NY 1975)
Clarett v. NFL, 306 Fed. Supp. 2d 379 (S.D. NY 2004)

All three of these decisions, though meticulously reasoned, reached the wrong result. By the conclusion of the term, you will understand why.

CLASSES 2 & 3 – AUGUST 29 and SEPTEMBER 5, 2006

These classes are not explicitly directed to sports cases. Rather, they trace the rise of the populist era of antitrust jurisprudence followed by the rise of the Chicago-school approach. This is heavy lifting to be sure, but it provides the key to understanding (later in the course) where and why sports antitrust cases often go wrong.

Class 2 Reading Assignments:

U.S. v. Sealy, Inc., 388 U.S. 350 (1967) (majority and dissent)
U.S. v. Topco Associates Inc., 405 U.S. 596 (1972) (majority and dissent)
U.S. v. Arnold, Schwinn & Co., 388 U.S. 365 (1967) (majority and dissent)
Albrecht v. Herald Co., 390 U.S. 145 (1968) (majority and dissent but skip the concurring opinion)
Klor's Inc. v. Broadway-Hail Stores Inc., 359 U.S. 207 (1959)

Class 3 Reading Assignments:

Continental TV Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977) (majority only)

Broadcast Music Inc. v. Columbia Broadcasting System Inc., 441 U.S. 1 (1979)
(majority only)

National Collegic Athletic Association v. Board of Regents of University of
Oklahoma, 468 U.S. 85 (1984) (majority only)

Northwest Wholesale Stationers Inc. v. Pacific Stationery and Printing Co., 472
U.S. 284 (1985)

Business Elecs. Corp. v. Sharp Elecs. Corp., 485 U.S. 717 (1988)

State Oil Co. v. Khan, 522 U.S. 3 (1997)

CLASSES 4 & 5 – SEPTEMBER 12 and SEPTEMBER 19, 2006

These classes will address various of the “governance” issues raising antitrust concerns, e.g., restrictions on franchise movement, restrictions on ownership eligibility, restrictions on the pooling of broadcast rights, and the ability to exclude non-conforming equipment or discipline players who violate league rules.

Class 4 Reading Assignments:

Los Angeles Memorial Coliseum v. The NFL, 791 Fed. 2d 1356, 1366-1376 (9th
Cir. 1986) (Raiders III)

NBA v. SDC Basketball Club Inc., 815 Fed. 2d 562 (9th Cir. 1987) (Clippers
case)

Sullivan v. NFL, 34 Fed 3d 1091 (First Cir. 1994) (especially at 1111-1113)

Class 5 Reading Assignments:

Chicago Professional Sports Ltd. Partnership v. NBA, 961 Fed. 2d 667 (7th Cir.
1992) (WGN I)

Chicago Professional Sports Ltd. Partnership v. NBA, 95 Fed. 3d 593 (7th Cir.
1996) (WGN III)

Gilder v. PGA Tour, 727 Fed. Supp. 1333 (D. Ariz. 1989)

Blalock v. LPGA, 359 Fed. Supp. 1260 (N.D. Ga. 1973)

CLASS 6 – SEPTEMBER 26, 2006

This class will address the concept of “single entity” as applied to professional sports leagues.

Reading Assignments:

Los Angeles Memorial Coliseum v. The NFL, 519 Fed. Supp. 581 (C.D. Cal. 1981)

North American Soccer League v. NFL, 670 Fed. 2d 1249 (2d Cir. 1982)

Fraser v. Major League Soccer, 284 Fed. 3d 47 (First Cir. 2002)

*Rothery Storage & Van Co. v. Atlas Van Lines Inc., 792 Fed. 2d 210 (D.C. Cir. 1986)

Review relevant portions of Raiders II and WGN I & III.

CLASSES 7, 8 & 9 – OCTOBER 3, OCTOBER 17 & OCTOBER 24, 2006

These classes will establish the antitrust framework for analyzing league-imposed restraints on players, e.g., the reserve clause, the amateur draft, salary caps, etc. In order to understand this area, it is essential to learn the scope and limits of the “non-statutory” labor exemption to the antitrust laws. The seminal Supreme Court cases enunciating and applying this doctrine -- Pennington and Jewel Tea -- were decided on the same day and reached apparently opposite results. This led to 30 years of confusion in mainstream antitrust jurisprudence regarding the scope of the non-statutory labor exemption. This confusion was finally put to rest by a series of cases arising in the context of professional sports.

Class 7 Reading Assignments:

United Mine Workers v. Pennington, 381 U.S. 657 (1965) (opinion of Justice White only)

Amalgamated Meat Cutters v. Jewel Tea, 381 U.S. 676 (1965) (opinion of Justice White)

*Amalgamated Meat Cutters v. Jewel Tea, 381 U.S. 697 (1965) (concurring opinion of Justice Goldberg)

Mackey v. NFL, 543 Fed. 2d 606 (8th Cir. 1976)

Class 8 Reading Assignments:

Denver Rockets v. Allpro Management Inc., 325 Fed. Supp. 1049 (C.D. Cal. 1971)

Kapp v. NFL, 390 Fed. Supp. 73 (N.D. Cal. 1974)

*Smith v. Pro Football Inc., 593 Fed. 2d 1173 (D.C. Cir. 1978)

Wood v. NBA, 602 Fed. Supp. 525 (S.D. NY 1984)

Bridgeman v. NBA, 675 Fed. Supp. 960 (D. NJ 1987)

Class 9 - Reading Assignments:

Powell v. NFL, 764 Fed. Supp. 1351 (D. Minn. 1991)

Brown v. Pro Football Inc., 50 Fed. 3d 1041 (D.C. Cir. 1995)

NBA v. Williams, 45 Fed. 3d 684 (2d Cir. 1995)

Clarett v. NFL, 369 Fed. 3d 124 (2004)

CLASS 10 – October 31, 2006

This class and the next will address the principles of market definition that have been developed by the courts in mainstream antitrust cases, and the specific application (and often misapplication) of those principles when applied in the context of professional and amateur sports.

Reading Assignments:

Federal Trade Commission v. Staples, Inc., 970 Fed. Supp. 1066, 1072-1080 (D. D.C. 1997)

*U.S. v. Oracle Corp., 331 Fed. 2d 1098, 1158-1174 (N.D. Cal. 2004)

CLASS 11 – NOVEMBER 7, 2006

This session will illustrate how practicing lawyers go about proving or disproving market definition in real-life cases. Harry Robins and Clay Everett, antitrust practitioners at Morgan Lewis, will explain the essentials of market definition based upon high-profile cases they have personally handled. Their bios can be accessed through the Morgan Lewis website.

CLASSES 12 & 13 – NOVEMBER 14 and NOVEMBER 21, 2005

These sessions will discuss baseball's unique non-statutory exemption. This exemption is often referred to in the popular media and almost always mis-characterized.

Reading Assignments:

Federal Baseball v. National League, 259 U.S. 200 (1922)

Toolson v. New York Yankees, 346 U.S. 356 (1953)

Radovich v. NFL, 352 U.S. 445 (1957)

U.S. v. International Boxing Commission, 348 U.S. 236 (1955)

Flood v. Kuhn, 407 U.S. 258 (1972)

Piazza v. Major League Baseball, 831 Fed. Supp. 420 (E.D. Pa. 1993)

The Curt Flood Act of 1998

CLASS 14 – NOVEMBER 28, 2006

Review

**All cases and materials referred to above can be accessed through TWEN.
No textbooks are required.**