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THE END OF STRICT LIABILITY? LEGAL PERSPECTIVES ON CURRENT ANTI-DOPING POLICIES IN SPORT

This paper focuses on three overlapping accepts of the current 'fight' against drugs in sport: the evolution of the policy of strict liability; areas of future legal challenge; and the consideration of a radical amendment to the current approach i.e., permitting the controlled use of performance enhancing drugs or methods.

On the first point, this paper reiterates that in the mid-1990s the application of strict liability was overly rigid and absolutist in nature and, although WADA has subsequently modified it, one still has to question whether the contemporary policy is on any objective assessment, and when placed against the norms of article 6ECHR, a fair, reasonable and legally robust policy?

Second, and more broadly, there is little doubt that the 'benevolent paternalism' underpinning WADA's approach will face difficult challenges in the years ahead in the shape of gene manipulation technology, micro-boosting techniques and designer or third generation versions of existing performance enhancing drugs. Already this has seen a ratcheting up of WADA's monitoring and detection mechanisms and the implementation of schemes surrounding the enforcement of the whereabouts rule; the introduction of biological passports for athletes and the retrospective testing of athletes' samples. All of these schemes are likely to encounter further legal challenge.

Finally, and in light of the above legal and administrative difficulties associated with the current approach, this paper will conclude by considering the very sustainability and durability of that approach and whether some controlled use of performance enhancing methods should now be considered.

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BONUS BABIES AND DRAFT DODGING: RETHINKING BASEBALL'S ANTITRUST EXEMPTION THROUGH THE RULE 4 DRAFT

Major League Baseball, and most North American leagues, have implemented amateur drafts to allocate entering players during the 20th century. Unlike their peer leagues, MLB has a separate, free-market system of entry for amateur players from Latin America and Japan. North American amateur players are perhaps the only class of players in any sport who are systemically disadvantaged relative to foreign competition.[1]

I look at the scope of the draft in light of U.S. federal court decisions' rule of reason analysis, the history of baseball regulation, and whether drafts are, in fact, anti-competitive. I compare the MLB draft to drafts in other North American leagues, Japanese baseball and Australian Rules football, particularly the different role the MLB Players' Association plays in baseball relative to other professional sports unions in North America.[2]

My analysis shows the strength of the indications that the draft does increase competitive balance, suppress prices for the top end of the amateur talent pool, and is the subject of a conflict of interest for the MLBPA and its role negotiating on behalf of amateur players, its purported future membership.

I also look at as a case study the plight of Puerto Rico, whose players were not included in the draft until 1989. I find that the number and quality of Puerto Rican-born Major League players has fallen precipitously over the past two decades.[3]

Finally, I offer suggestions for reform that offer pro-competitive as well as pro-free market changes in the current corruptive incentives of the current system.[4]

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[1] The contrast is appropriate in two main ways. First, MLB is the only one of the big four leagues that does not have a uniform system of entry for international and domestic players. Second, MLB has around 28% of its players from outside the 50 states; the NHL is around 25% (it's been as high as 30%) from outside North America, and the NBA is currently around 18%, so there are somewhat similar profiles for those leagues in how they assimilate foreign talent.

[2] The MLBPA is different from the other unions in the sense that the vast majority of players who sign professional contracts will never join the union. NBA, NHL and NFL players are immediately members upon signing their professional contract after they are drafted. The vast majority of MLB draft picks never reach the majors, and thus never receive the benefit of collective bargaining for basic things like travel and drug testing, let alone salary and freedom of movement.

This makes the conflict of interest far stronger as the link to traditional union-shop style apprenticeships is far more attenuated in the baseball framework. This makes examining the viability of the non-statutory exemption (at least applied to the MLBPA) more relevant than in other leagues. No one in the process has any interest in helping the drafted players.

[3] I support the above theory with econometric and market-concentration analysis techniques. Puerto Rico is a terrific flashpoint.

[4] My solutions basically build upon a hybrid of the old bonus baby rule (replacing the 25-man roster spot with a 40-man roster spot) and current best practices (top players get major league contracts anyway) in an approach that I have not seen others use.

Short version: by keeping a draft (with hard slot bonuses) for the top 100 amateur players, but allowing teams to sign the remaining amateur American players for whatever amount (up to the lowest slotted bonus) they want, this ensures that the top-tier talent remains distributed properly among the teams without concerns for "signability." By forcing the drafted picks to be included on the 40-man roster (and thus use their option years, though younger picks would have more option years) and also by forcing high-bonus international amateurs to be included on the 40-man roster, we allow the amateur player free agency at an early age, thus trading his loss of initial freedom of movement with greater agency earlier in his career, similar to his peers in other sports.

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SPORTS IMAGE RIGHTS – FROM THE EUROPEAN CIVIL LAW PERSPECTIVE GERMANY, POLAND AND ITALY

The legal significance of sports image rights has been increasing as athletes' likenesses, identities, indicia etc. are often used to promote individual athletes, sports teams, clubs and even major sporting events themselves. As it has evolved to become a significant player in the multi-billion dollar sports industry around the world, the importance of sports image rights as a marketing tool promoting the value of image rights was first discovered by the marketers who used it in the course of the market battle for consumers' attention. This phenomenon was also noticed by the theory of law and therefore the protection against unauthorized commercial use of the persona in sport has thus become one of the frequently discussed in scholarship and litigated matters in the contemporary sport industry. The legal right to control the value of the identity is referred to as the right of publicity.
The aim of this paper is to present the way this concept, originally rooted in the American doctrine[1] and distinguished from the right to privacy[2] is approached in the civil law countries. The protection of the certain identifiable indicia, within the appropriation of personality theory, derives from the statutes there. The features of a human being are considered as strictly linked to the individual and therefore constituting the personality rights. Because of their character and the fact of being attributed to the certain person, the personality rights are per definition nonassignable and non-descendible and of non property character. However, as this approach does not correspond with the realities of the free market economy where image, and sports image in particular, is equated with asset, the civil law systems must have modified the above interpretation and find a way to protect strictly commercial interests in the personality rights.
This paper provides a currentand practical overview of recent developments, regulation and cases in Germany (delivered on art. 22, 23 of Law of artistic Creations[3] and art. 12, 823 of the Civil Code[4]), Poland (delivered on art. 23 of the Civil Code[5] and art. 81 of the Copyright Act[6]) and Italy (delivered on art. 10 of the Civil Code[7] and art. 96, 97 of the Copyright Act[8]). Special focus will be given to the question of post-mortem protection and in this respect the entitlement of the heirs to make a claim against an intruder who invades the rights of the deceased, as well as a revolutionary judgment of Bundesgerichtshof in Marlene Dietrich's case[9]. In addition, practical matters such as content of the contract for use of the sports image rights, collective exploitation of such rights, and conflict of law questions will be also examined.

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[1] *See* Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir.); J. Thomas McCarthy, *The Rights of Publicity And Privacy*, 2nd, Thomson West.
[2] Louis D. Brandeis, Samuel Warren, *The Right to Privacy*, Harvard Law Review 1890, vol. 4, no. 5; Pavesich v. New England Life Insurance Co. et al. 122 Ga. 190; 50 S.E. 68; 1905. As the cornerstone of recognition of a right of publicity W. Prosser's doctrine may be considered. *See* W. Prosser, *Privacy*, 48 Cal. L. Rev. 383 (1960).
[3] Kunsturhebergesetz of 9 January 1907.
[4] Bürgerliches Gesetzbuch of 18 August 1896.
[5] Kodeks cywilny of 23 April 1964.
[6] Ustawa o prawie autorskim I prawach pokrewnych of 4 February 1994.
[7] Codice civile of 16 March 1942.
[8] Protezione del diritto d'autore e di altri diritti connessi al suo esercizio of 22 April 1941.
[9] Entscheidungen des BGH in Zivilsachen 143, 214; Neue Juristische Wochenschrift 2000, 2195.

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EUROPEAN SPORTS MERCHANDISING AGREEMENTS: CONTROVERSIAL CLAUSES AND HOW TO DEAL WITH THEM IN LEGAL AND PRACTICAL TERMS

Sport is now big business accounting for more than 3% of world trade and more than 2% of the combined GNP of the twenty-seven Member States of the European Union.

The commercialisation of sport takes many forms. Sports merchandising is one of them and is an integral, well-established – and lucrative – component of the sports marketing mix.

The Paper will critically examine several controversial clauses in European Sports Merchandising Agreements, from an English Common Law, European Civil and Community Law point of view:

- *enforceability of exclusivity and territorial restrictions;*
- *so-called 'Morality Clauses' particularly topical in view of the Tiger Woods affair;*
- *force majeure and suspension clauses;*
- *exchange control restrictions;*
- *tax impact on the 'bottom line' and mitigation; and*
- *'rights of first refusal' and 'matching options'.*

The Paper will also offer some legal and practical solutions addressing these problematic clauses.

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SHOULD DOPING IN SPORT BE CRIMINALISED AS A DISCRETE OFFENCE IN THE UK?

This paper looks at the rationales for doping among the athlete community and considers why doping seems different (for the purposes of invoking criminal law) to use of other performance-enhancing products. An uncontroversial premise is that doping is a real, if not rife, feature of elite and amateur involvement in sport. A theory is developed here as the thesis idea: regulatory interventions should further the value that participation in sports should be transparent, rather than drug-free. Current practice is in contrast to this, in that it (exclusively) pursues a policy of prohibition. Hence, doping is a covert practice. Accordingly, there is no regulatory system to absorb the reality of doping athletes. The paper takes as a precept that individuals who are using drugs in order to enhance sports performance *should* be regulated. That is a legitimate role that either the State or regulatory bodies should and can perform. To that end, fair and effective regulation should reflect the most defensible, evidence-led clinical and scientific understanding of the risks and effects of drug-taking.
The paper considers the readiness of other (Continental) jurisdictions to discretely criminalise doping associated with sport (as a separate offence in the criminal calendar). Currently, doping regulatory breaches in the UK are classified as 'violations' because they are not discrete criminal offences. Having considered these other regulatory models, an administrative law-based model is proposed in preference to criminal law-based interventions and disposals. Finally, the feasibility of two mutual regulatory models are discussed; introducing biological passports for athletes and a pharmacy-based dispensing model to advise and service doping athletes. These proposals are specifically adapted to fit the sports regulatory context. Each furthers the policy aim identified here: good sports regulatory practices should value transparency in sports, rather than pursuing prohibition as a panacea.

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GLOBAL GOVERNANCE: REGULATING SPORT TRANSNATIONALISM

Sport global governance -institutions such as the International Olympic Committee (IOC); Fédération Internationale de Football Association (FIFA); Union of European Football Associations (UEFA); World Anti-Doping Agency (WADA) and Union Cycliste Internationale (UCI)- have powers to decide who participates, when, and where. Decisions on athletes eligibility -including doping bans and non-doping issues such as nationality transfer- as well as decisions on commercial, endorsement, and labour contracts are to name but a few areas of major importance to states, societies, and individuals. Regulating global sport markets also involves multinational corporations and global capital. Issues of corruption, bribery, and financial 'doping' threaten fair play and stability of teams, leagues, sport international institutions and as well as domestic and global economies. Ultimately, this paper is about global governance. Sport transnationalism opens space for conceptual innovation and working through broader dilemmas of global governance. Sport governance reveals both points of convergence and contestation for issues of legal regulations, political authority, economic interests, and social norms. I examine questions on the relationship between globalization and global governance through institutional, labour, and political economy analysis in the area of sports.

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TAXATION & SPORTS' BUSINESS: AN INTERNATIONAL AND FRENCH PERSPECTIVE

Why was France's national soccer team eliminated, a few weeks ago, in the first round of the World Cup? Why did the *Lyon Olympique* (OL) soccer team lose in the Champion League play-off in 2009? Is it because the Lyon club cannot compete financially with big European clubs like Real Madrid, Manchester United or FC Barcelona? This simple economic assessment follows a revenue analysis of the richest European clubs. The truth is, France is lagging behind, not to say *red card* or *flyweight*. That is to say, if we consider the hypothesis that the best players are paid more, it is not surprising that the largest revenues paid to sportsmen and women outside of France produce superior performance.

However, since the *Bosman* decision of 1995, players are free to circulate throughout all European Union countries. Being able to offer an attractive salary is thus partially determined by the working cost for the club, and the tax aspect partially determines the ability to offer an attractive salary. What then is the situation in France with regard to this tax regime? What then is the situation in France with regard to France's European competitors? The *Besson* report clearly spells out that France has social and fiscal withholding taxes that are 16% higher than the UK. Moreover, French budgets are 134% less than some other European clubs. Decidedly, OL is not playing in the same financial league… It is in this context - not purely French, but European – that the question of tax law as applicable to sportsmen and women should be examined.

This topic has the taste of a *cream pie*. All the more to talk about specificity/characteristic as a concept always poses a relative problem: in relation to what subject matter or discipline? Taken as such, tax law was long considered autonomous.

Moving away from the worn-out debate about whether tax law is autonomous or not in relation to civil law, and getting back more precisely to the question of the characteristics of sports tax law, the discussion is going to take on a new light. In fact, a soccer player often retires at age 30. Generally speaking, sports people have a career that is terribly - or wonderfully - short, depending on our viewpoint of life. During this short time however, he or she often earns a considerable sum of money that is hard to conserve until *retirement* comes around.

Should tax law not take into account this unusual situation? If yes, could French public finances bear the burden of not replenishing their coffers? Does respecting the principle of equality towards tax constitute different treatment for sports people? To the contrary, could one argue that it is more profitable for our country to attract, rather than chase away, *sports business* by offering an advantageous tax regime? Should we try to prevent massive relocation of liable taxpayers? All these questions constitute the backdrop of a sports tax system. And, in many ways, these questions are posed in other sectors as well. This introduction is a reminder that general tax law is applicable to the sports sector, whether group activities, or individual sportsmen or women.

For sports clubs, their profits, means, and activities are subject to taxes. First of all, profits are subject to corporate tax. This is particularly true for sports-oriented limited companies that are subjected to a 33.1/3% tax rate. This is ordinary tax law. And, the State benefiting from a third of the profits is not just an anecdote: the income statement cumul of the 20 Ligue 1 clubs in France represents a tax of 21 million Euros!

Nonetheless, if taxing a sports company is the rule, it becomes an exception to the rule if the same activity is controlled by a public person or a non-profit organization. For a non-profit organization,

being liable for corporate tax depends on the management system, whether or not it is equivalent to that of a commercial company.

Besides profits, a territorial economic contribution (formerly "business license tax" or "*taxe professionnelle*") is levied on the rental value of capital assets used by sport organizations, the tax rate of which depends on regions with a measure of autonomy: one must simply be engaged in a *regular, unpaid professional activity*. Thus, the limited liability company that organizes the *Tour de France* bicycle race is subject to type of tax. However, one must also consider high value stadiums that bear both local, and real property taxes.

Finally, these companies are potentially subject to taxes on turnover, the first tier of which is VAT. VAT is levied on a great number of sport organizations, in particular sport companies. The problem involving VAT is neither new nor original: for example, one could ask the classic question regarding taxation on transfer indemnities for professional players or subsidies.

The rules for general taxation mentioned previously regarding organizations is also true for the sports people themselves. Like all natural persons, sports people are taxed on a progressive tax scale, on their revenue by adding diverse revenue categories calculated according to appropriate rules. More precisely, the revenues of sports people are taxed (i) either in the tax category of "*Salary Income*" if they have an employment contract – which in general is the case for soccer players or motorcyclists; (ii) or, if they exert an independent activity, in the category of "*Non Commercial Profits*" – or even in the category of "*Industrial and Commercial Profits*," should they carry out commercial activities. Professional boxers, golf or tennis players all operate as independent contractors. They too are subject to VAT levied only on activities such as commercial advertising or, capitalizing on the publication of their photo.

Here again, it is not only the application of ordinary tax law; here and there weary debates still appear, like for example the deduction of allowable expenses, or the fiscal regime in relation to indemnities for breach of an employment contract. Add to that other measures like the tax shield ("*bouclier fiscal*"), or lowering the tax scale on revenue. It is therefore necessary to remove from this study a number of rules which, although relevant to non-profit sport organizations, are not limited to them: other non-profit organizations in the social, educational, and cultural domains are subject to a similar tax regime.

If one wants to tighten the tax rules specific to sports activities, one will realize that even these rules also target other categories: artists and wealthy taxpayers.

First, this paper investigates the question of relocation of sports people – those who emigrate to avoid French taxation. These tax rules have an international flavor and are gathered in this paper under the heading of *International Tax*. A second set of rules, more or less specific, vary from staggering sports revenue – like artists – to the *Buffet* tax, applied *only* to sport organizations. These last rules, which do not directly target relocation, in the objective, are examined under the heading *Domestic Tax*.

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INTELLECTUAL PROPERTY RIGHTS IN BASKETBALL

A growing part of the economic value of sports is linked to Intellectual Property Rights (IPR). In an increasingly globalised and dynamic sector, the effective enforcement of IPR around the world is becoming an essential part of the health for sport economy.
The branding of sports, sports events, sports clubs and teams, through the application and commercialisation of distinctive marks and logos, and the exploitation of image and TV rights, constitute a marketing phenomenon that has led to a new lucrative global business of sports marketing. The complexity of the issues hinders the achievement of complete international harmonization, and notwithstanding the great advances that have been made, there still remain significant areas of divergence both in substantive law and in procedure.
The contribution of jurisprudence has been of fundamental importance for the application of IPR to sport and, in this regard, American courts are particularly influential, mostly in consideration of the fact that the principles asserted in that system have influenced various European juridical cultures. This paper will focus on the continuing struggle over the extent to which sports leagues, teams and athletes are able to control – and prevent the unauthorized use of – their IPR.
An analysis of the main legal aspects will specifically refer to recent practical developments, with a focus on basketball, where experts and courts have adapted relevant useful principles to draft contracts and understand legal issues in the matter of IPR applied to sports. Regarding basketball, there will be a comparative analysis of relevant cases, mainly in the USA, but also some interesting ones in Italy and other EU member states. This approach will yield an understanding of the leading role carried out by US courts. In this field, cases studies are absolutely relevant and morph into a worldwide pattern, which defines disputes regarding IPR in basketball. On the other hand, in Italy, like in all European countries, the IPR controversies, even if interesting, have lesser impact. In fact, in EU countries, the basketball movement does not reach the highest financial levels and the competitions are known often only within their states. The comparative view will point out the peculiarities of both systems and their distinct differences.

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THE INTERNATIONAL OLYMPIC COMMITTEE'S ROLE IN PROMOTING AND PROTECTING WOMEN'S HUMAN RIGHTS IN SPORT

One of the key ingredients missing from the global discourse on the Olympic Games is a legal analysis of the International Olympic Committee's (IOC) obligation to promote and protect human rights in sports. At this nexus, lies a variety of issues that arise from the activities of the IOC. From selecting host cities for the Olympic Games to setting the rules and events that make up international sport, the IOC is the standard bearer for how international sport is played, both on and off the field.

My presentation will look at the IOC's role as an international non-governmental organization (INGO) and what that means for promoting and protecting women's human rights. There are multiple issues related to gender equity at the Olympic level including equal sports and events for men and women, the participation of women from all countries that send male competitors, sexual harassment and abuse protections, sexual orientation and identity protections, gender testing procedures, equality in leadership and coaching, and equality in funding for male and female athletes.

Through the lens of gender in-equality in sport, I will outline how the IOC, as an INGO, is responsible for preventing discrimination, enforcing international standards, and bringing gender equity to the world of international sport. I will then show how the IOC has violated international customary law, including the Olympic Charter, as well as its failures within the international human rights regime, despite being recently awarded United Nations Observer Status. Finally, I will make recommendations for the IOC to take meaningful and corrective action to meet its international responsibilities.

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A COMPARATIVE RESEARCH BETWEEN THE SPANISH AND GERMAN ORGANIZATION SYSTEMS FOR PROFESSIONAL LEAGUES

In this paper I will make a general comparison between these two systems, studying the relationship between leagues and sport federations and some other topics, the main one will be:
Which kind of organization and financial requirements do the professional teams need to fulfill in order to be accepted in the Professional league? For this topic I will research the Football and Basketball professional leagues of these two countries.
The main difference is that in Spain the teams must have the form of Sports Corporation, compulsory due to Sports Law regulation.
In Germany the teams can keep the status of “normal” sports clubs, but they need to pass a control check (Lizenzierungsverfahren) by the League. They can also take the form of a Corporation or a limited company, or some other German company form, but this step is not compulsory.
For someone who does not know much about these two countries, this difference could look as a small one, and he or she could think that the Spanish system could be the better one in order to control the new clubs and to be sure that all teams are financially healthy and properly managed, but after analyzing both systems and the different leagues we will find out that the truth is another one.
Next, to focus the economical and business aspect of this topic, I will compare both systems in the field of TV rights.
And, last but not least, after analyzing these both systems, maybe we can try to answer a bigger question: Is State intervention useful in Sport?

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TRANSFER OF ADOLESCENTS[1]

This research investigates principles, according to which FIFA, FIBA, and EHF determine that minors cannot be transferred, unless special conditions[2] arise. These self-regulatory bodies do not depend on governments and sometimes clash with them[3]. This examination teases out such private entities norms' compliance with certain aspects of public law[4].

In *Bernard*[5], it was established that national sport policy and governing bodies' rules (applied to soccer) can prevail over the freedom of movement if they fulfill four conditions[6]. In strict legal terms, adolescents, minors under 16 years old[7], cannot sign a binding contract, thus one expects that their parents act in their child's best interest.

It is e.g. surprising that Spanish adolescents can be transferred to English football clubs, leaving the local Spanish club without any legal protection. As a result of *Bernard*, more clubs will see this as a "golden parachute" to protect their investment in the grassroots. Admittedly, most disputes are solved amicably.

Inverting the interpretation of *Bernard*, can a club be held liable for not investing sufficiently in the grassroots so that when the time comes for concluding on professional contracts no player would desire to remain in the particular club? It can be argued that we are entering a new stage where proportionality of investment and rate of return for grassroots are vital for teams of modest financial means. Will such teams maintain investments in their grassroots?

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[1] Directive 94/33/CE, Article 3 Definitons. For the purposes of this Directive:
(c) 'adolescent' shall mean any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law…

[2] EHF, FIFA and FIBA include these special conditions for transfers, having two primary justifications: (i) due to the parents' work, (ii) education for the player is provided both during his immediate training period, and in view of an overall education helping the player after a professional career. Thus one notes that the international federations' common theme is to consider the athletes' further education and ensuing days upon concluding the professional sports career.

[3] As was recently observed during the Football World Cup, whereby FIFA President threatened the French government with sanctions levied against the French federation and national team, should the government continue to meddle with the federation's affairs.

[4] *See* Directive 94/33/CE of June 22, 1994, on the protection of young people at work.

[5] Case C-325/08, Olympique Lyonnais SASP v. Olivier Bernard, Newcastle United FC, ECJ 16 March 2010. Freedom of movement for workers as well as compensation debated, although Olympique Lyonnais requested indemnity for damages.

[6] 1. Must be applied in a non-discriminatory manner, 2. Must be justified by overriding reasons in the public interest, 3. Must be suitable for securing the attainment of the objective which they pursue, and 4. Must not go beyond what is necessary for that purpose.

[7] For example Gai Assulin, from humble Israel to Barcelona Atlètic with only 12 years of age.

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FACTORS AFFECTING THE INCIDENCE AND THE SPREAD OF ADMINISTRATIVE AND PERCEIVED CORRUPTION AND ITS CONTROLLING METHODS IN IRAN SPORT ORGANIZATIONS

Today sport in Iran is experiencing a quantitative and qualitative development when compared to the period before the Islamic Revolution (1979). Various sport organizations and professional leagues for different sport fields as well as many medals are the current results of sport in Iran. However, in parallel with the development of sport organizations and sport teams, one of Iranian sport managers' apprehensions is administrative corruption in these organizations. As a result, the aim of the present research was to identify the factors which bear an effect on the incidence and spread of administrative corruption and to develop methods to control it in Iranian sport organizations.
This research was a descriptive, survey and field study; it was considered as an applied research based on its aim as well. To provide the research tool, the literature on corruption in Iran and abroad was reviewed. Then, the elites were interviewed to collect the factors affecting the incidence and spread of corruption and the controlling methods in Iranian sport. A researcher-developed questionnaire was prepared based on the above data. The questionnaire investigated the staff members' viewpoints on the factors which can spread corruption in sport as well as the factors which can prevent the incidence and spread of corruption in sport. After the reliability and validity of the questionnaire had been approved, it was distributed among the statistical population. The statistical population consisted of all staff members of the Central Organization of Physical Education Organization, sport federations and elite athletes (n=975) and the sample included 521 subjects. Descriptive and inferential statistics were used to analyze the data.
The results showed that staff members' economic status, cultural features, organizational features and the quality and quantity of rules respectively played a role in the incidence and the spread of administrative corruption in Iranian sport organizations. The findings also showed that all methods which controlled administrative corruption played a role in controlling it in sport organizations and they were ranked as follows: a rise in staff members' income to prevent employment corruption, efficient financial systems to collect efficient rules, to acquaint clients with rules, to depoliticize administrative system, to establish an independent center to fight administrative corruption in organizations, to educate staff members on administrative corruption, privatization and harsher punishments. The findings of this research can help sport organization managers and policy makers to coordinate and decide how to control and prevent the incidence and spread of administrative corruption and how to create an organization with administrative health so that sport in Iran can be promoted.

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CAN LEARNING DIFFICULTIES POSE A PROBLEM TO SPORTS?

Professional sport is often considered as being inherently discriminatory. However, when considering disabled athletes, in theory, competitive limitations directly attributable to their disabilities should be mitigated by rules and regulations not applicable to their able-bodied counterparts. Therefore, being disabled often means adjustments (or the offer of adjustment) being made to some aspect of a competitor's sport.

This paper will analyse the laws applicable in the United Kingdom with some reference to other legal systems, to see if there is in fact an arbitrary line that can be drawn with relation to the law and subsequent issues imposed upon sports governing bodies by the law.

This paper will predominantly focus on participants with learning difficulties defined under the DDA 2005 as a disability. For example, under English law a dyslexic sports professional could in theory bring a case against their employer if they felt they were being treated unfairly because of their disability: what does reasonable adjustment equate to in the law of sport?

Under Statutory legislation, the employer has to make suitable provisions that allow an employee to effectively carry out their work. Can this only serve as a hindrance to other competitors and do other disabled competitors or able-bodied competitors have legal recourse against their employer in any way? We will discuss whether the applicable law, the DDA 2005, offers suitable legislation that should govern employers in a sporting context. Further consideration will be given to the recent changes regarding effective acknowledgement of learning disabilities within sport and the application of the DDA 2005 in relation to this.

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SPORTS LEGISLATION IN JAPAN

Sports legislation reflects the will of a country toward sports policy. The legal foundation which regulates sports legislation is the Fundamental Law of Sport. To acquire some guidance in a country's sports policy, therefore, it is crucial to analyze the Fundamental Law of Sport.

In Japan, whose Constitution does not have any provisions concerning sports, the role of the Fundamental Law is played by the Sports Promotion Act. This Act, although it has undergone several revisions since its establishment in 1961, is still in force. The document consists of four chapters and twenty-three sections. The first chapter: „General Provisions", says that the government and local authorities shall endeavor to maintain the conditions for practicing sports. In order to achieve this purpose the Minister of Education, Culture, Sports, Science and Technology formulates the necessary basic plan for sports promotion. Chapter 2 contains „Measures of Sports Promotion". It also provides regulations and support for holding the National Athletic Meet, and the promotion of all kind of sports. Chapter 3 specifies the data concerning the establishment of the Sports Promotion Council and the Physical Education Committee members, while Chapter 4 determines guidelines on the government subsidy. In fact, this law has constantly contributed to holding the National Athletic Meet every year since 1946, and to maintaining some of the sports facilities.

However, the Sports Promotion Act has some characteristics worth highlighting: 1) a number of provisions specify that the government and local authorities are not under an obligation to promote sports, but are under an obligation to *endeavor* to promote sports, 2) the Laws and Cabinet Order are insufficient to put the Act in practice, 3) unlike e.g. the French Fundamental Law of Sports, it does not clearly determine either the authority of the government in the domain of sports or the real obligations that accompany it.

In conclusion, the facts mentioned above show that the Japanese Fundamental Law of Sports declares the responsibilities of the government and local authorities for undertaking endeavors to promote sports, and that the actual promotion of sports in Japan is being achieved by „self-help" of the sports circles rather than by strong initiative of the government.

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SPONSORSHIP ACQUISITION AND ACTIVATION WITH FORTUNE 100 COMPANIES: THE CASE OF USA WRESTLING (USAW)

In the early years of sport marketing, sponsorship activities often served the interest of corporate executives (Stotlar, 2005), and they were focused on advertising opportunities. USA Wrestling had utilized this philosophy in its sponsorship approach for some time. The purpose of this case study is to present the strategic approach implemented by the NGB[1] of wrestling in the U.S. in order to acquire and fulfill sponsorship agreements with Fortune 100[2] companies. A case study methodology was used, as documentation/archives (sponsor progress reports) and direct observations (USAW events) were sources of evidence.
In 2008, USAW presented to several prospect partners a proposal aiming to engage its members and their families with the sponsors' brand attributes. Activation programs utilized interactive web features, celebrity interviews, social media opportunities, and award programs. The outcome of the initiatives was: excitement and engagement of the USAW membership base; establishment of agreement with four new sponsors, including two Fortune 100 companies; 100% increase in sponsorship revenue within two years; measurable data for sponsors to evaluate their impact. This presentation will expand on strategic sponsorship initiatives related to USAW, and illustrate practical implications.

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[1] National Governing Bodies (NGB) of an Olympic sport in the U.S. are non-profit organizations assigned by the U.S. Olympic Committee (USOC) to manage the Olympic Teams of the sport and all grassroots efforts. Such organizations as the USOC in the U.S receive no public funding.
[2] The **Fortune 100** is an annual list compiled and published by Fortune magazine that ranks the top 500 U.S. closely held and public corporations as ranked by their gross revenue after adjustments made by Fortune to exclude the impact of excise taxes companies collect. The list includes publicly and privately-held companies for which revenues are publicly available.

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APPLICABILITY OF RULES ON THE FIELD OF FAIRPLAY ON FOOTBALL
THE ESTABLISHMENT OF A FAIRPLAY CODE OF CONDUCT

This paper explores various theories of social conflicts which evaluate fairplay in football.
The author focuses on the concept of fairplay as the transcendence of boundaries. This interpretation presents complex phenomena in the contemporary game of football. The importance of football-specific laws and research models in trans-national and international variations are also highlighted. Research undertaken in the field of fairer game was rather diverse; patterns of geographic variation (Bale, 1994), emergence of new cultural geography (Raitz, 1995; Pred, 1995), notion of "placelessness" (Ralh, 1976; Auge, 1995), geographic perspective conventionalised places (Wagner, 1981), cultural perspectives (Eichberg, 1998; Loland, 2002), and the work of Sack (1986), who argued that territorialisation of power over people and space was a way of making football a fairer game. The need for enforceable fairplay conduct is discussed, and a theoretical, composite view of an applicable fairplay law is proposed. There is an argument to establish "laws of the game" to institute a systematic and coherent use of football in economic and social development while maintaining fairplay. The game of football is a notion of social cohesion to address social concerns, both symbolically at the global level and practically within and between communities. Therefore, football is to commit to the principle of playing to win, consistent with fairplay, and complying with the laws of the game. This paper goes on to explore one of the key questions raised by this stream, namely how commercialisation altered fairplay in general, and the role of regulation within the game in particular. The author concludes by suggesting that the applicability laws on fairplay could force many stakeholders (*players, managers, coaches, officials, clubs, owners*), to comply with the conduct of fairplay in contemporary football.

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HOW CAN DISCRIMINATION IN SPORT HAPPEN?

In the title of this paper the author has posed a question concerning the possibility of occurrence of such a negative phenomenon as discrimination in sport, which by definition, and in accordance with the Olympic idea, should be free from any form of discrimination.
The paper focuses in particular on discrimination on the grounds of sex and on the grounds of nationality. Some selected legal documents have been analysed, directly or indirectly concerning the said issues. They include, among others, the Olympic Charter, Convention on the Elimination of All Forms of Discrimination against Women, European Sport for All Charter, Directive 78/2000/EC, Treaty on European Union and Treaty on the Functioning of the European Union.
The paper deliberates also on a specific nature of sport and its social importance, emphasized by numerous international institutions and organisations. In this context (specific nature of sport) the author has raised the issue of the existence of exceptions from the general rule of non-discrimination in sport.
The question regarding the occurrence of discrimination in sport, put in this paper, does not refer only to social issues, but also, or even predominantly, to the issue of free market liberties. This is a topical and an interesting issue, taking account of the regulations included in the Treaty of Lisbon, effective as of December 1, 2009 which provides for the Union the basis to act in the area of sport. It is accompanied by questions concerning the necessity to take into consideration the specific nature and role of sport in the issues related to discrimination, for example in the context of the free flow of people.
It should be noted that sport is now governed by the European Union law, and in particular by the provisions regarding free market liberties and, directly related to them, anti-discrimination provisions.

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SPORTS ARBITRATION - A JUDGE'S PERSPECTIVE

This comparative law paper focuses on sports arbitration and compares three sets of rules: German national DIS Sport Arbitration Rules[1], internal procedural rules by National Federations like Deutscher Fußballbund[2] and international CAS arbitral proceedings. Although quite similar, the procedural approach varies due to a different legal tradition[3]. For example, DIS does not provide for a consultation while the CAS rules do.
Germany was a latecomer to the international arbitration scene[4], largely due to an outdated arbitration law and the lack of an internationally recognised arbitration institution[5]. As of 1 January 2008 the German Institution of Arbitration has established the German Court of Arbitration for Sport[6]. By contrasting the jurisdiction of each institution and thus delimiting the field of jurisdiction of the German Court and the CAS, comparative charts and graphics point out the areas in which exclusive jurisdiction of one of theses institutions exists.
Various reasons may lead to international sports federations being prevented from enforcing their sanctions on an equal basis. External sport governance and internal political pressure may lead a national federation to either facing international sporting exclusion or internally the discontinuation of state funding[7], or the state accreditation/support/recognition of its policies, not to mention judicial sanctions in case of contempt of a national court's decision.
Concluding remarks from a judge's viewpoint outline the reasons behind the recent changes and give recommendations for future changes of the arbitral proceeding rules in Germany. Reasons include the need for faster proceedings, higher arbitration fees, electronic court files, clearer wording and transparency of the proceedings[8], more opportunities for involvement for young colleagues[9], and more chances for support and recognition within political circles[10].

[1] www.dis-arb.de/sport
[2] http://www.dfb.de/index.php?id=504064
[3] DFB has created its own "homegrown" rules , others (www.vdst.de) copy the Civil Procedure Code or refer to Criminal procedure law.
[4] Until recently, German law excluded recourse to arbitration, a point that states should take into consideration when implementing arbitration clauses in favour of a specific arbitral institution.
[5] The European & Middle Eastern Arbitration Review 2009, http://www.globalarbitrationreview.com/reviews/14/sections/54/chapters/521/germany/
[6] *Mertens*, SpuRt 2008, 180
[7] The German horseriding federation being dissolved and thus prevented from national funding: www.tagesspiegel.de/sport/deutscher-reitsport-nicht-mehr-fest-im-sattel/1532284.html
[8] For online publication of rulings, cf.*Vieweg*, SpuRT 2009, 192
[9] Those interested who are sport- as well as ADR-lovers and not necessarily legal scholars.
[10] Especially in doping cases, the aim of politicians for "clean games" is rising.

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THE MORE THE MERRIER? THE CHANGING EUROPEAN LANDSCAPE OF ANTI-DOPING

Initially, combating doping was primarily a concern for sporting organizations. Over time, political institutions have become increasingly involved on a national and global level. This paper brings attention to a current shift in the European regulatory landscape of anti-doping as the European Union and European Union law are becoming increasingly significant.

After the Treaty of Lisbon, the EU has both interest and competence to play a larger role in the European anti-doping movement[1]. Increased involvement by the European Union is likely to be advantageous from certain perspectives, e.g. by introducing more effective measures of enforcement.

However, the paper argues that "EUridification" is also prone to change antidoping in Europe in regards that warrant careful consideration. EU involvement will shift power away from current actors and to the EU. As a consequence, Member States will experience that the field for exercising national policy becomes more limited. Similarly, increased EU regulation in the field is likely to add to the juridification of sport, something that according to some already constitutes a significant problem. It is also likely to affect the direction of the European anti-doping movement.

Unlike sporting organizations and to a greater extent than national governments, the EU must balance the interest of effectively combating doping against the general aims of the Union, including the protection of fundamental rights and the realization of the internal market[2]. Another foreseeable consequence of increased involvement by political institutions is a shift in focus away from doping in sport and towards doping in society more generally.

[1] Article 165 TFEU. *See, e.g.* White Paper on Sports, COM(2007) 391 final, 2.2.
[2] *See, e.g.*, Case C-519/04 P *Meca-Medina and Majcen v. Commission* [2006] ECR I-6991.

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APPLYING THE APPLICABLE LAW
THE *EX AEQUO ET BONO* PROVISION OF THE F.A.T. RULES

One of the characteristics of arbitration is the freedom of the parties to choose the applicable law, i.e. the law governing the merits of the dispute. A freedom existing not only in the ad-hoc, but also in the institutional arbitration, such as the arbitration held by the FIBA Arbitral Tribunal. However, the latter has expressly shown its preference to the *ex aequo et bono* doctrine.

According to the theory[1] the arbitrator, when asked to act *ex aequo et bono* may either apply the relevant rules of law ignoring formalistic rules or rules which appear harsh or unfair to the certain case, or decide according to the general principles of law, or even ignore completely any rules of law and decide the case on its merits as those strike him.

F.A.T. rules are in favor of the second of these alternatives, stating (in art. 15.1) that "*Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law*".

Moreover, according to the F.A.T. jurisprudence[2], the *ex aequo et bono* doctrine allows the arbitrator to "*pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules*".

Aim of this paper is to examine the way F.A.T. applies this doctrine throughout the four years of its function.

[1] *See*, among others, Redfern, A and Hunter, M. *Law and practice of international commercial arbitration* 3rd edition, 2-72.
[2] *See*, among others 0073/10 FAT, available at
htttp://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/16810/selNodeID/16810/fat-awards.html

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LONGITUDINAL PROFILING, SPORTS ARBITRATION AND THE WOMAN WITH NOTHING TO LOSE: REFLECTIONS ON *PECHSTEIN V INTERNATIONAL SKATING UNION*

The nature of doping disputes before the CAS means their determinations are invariably concerned with issues of good governance and procedural fairness. Substantive legal argument is all-but-absent in CAS doping 'jurisprudence' and, with the exception of the competition law arguments raised in *Meca-Medina v Commission* [2006] ECR I-6991, there has yet to be a case where an athlete, rebuffed by the CAS in a doping dispute, has sought recourse to the courts in order to advance wider legal arguments which had not been considered in the CAS proceedings.

Could Claudia Pechstein be the next athlete to take that step? Pechstein has an arguable case that (inter alia) competition law is infringed by the provisions on longitudinal profiling[1]. No substantive legal arguments to that effect were advanced in *Pechstein v International Skating Union* CAS 2009/A/1912, 1913, but that says more about the absence of law in the putative 'Court' of Arbitration for Sport than it does about the potential merits of the claim and Pechstein has now intimated that she is willing to advance proper legal arguments in proper legal proceedings. Given that she has nothing much to lose, it is quite possible that she will do so.

The CAS Rules and the Rules of the Swiss Federal Code lay down very limited grounds for appeal against CAS determinations, but this would be an appeal against the ISU on competition law grounds, not an appeal against the CAS ruling, and is thus similar to *Meca-Medina*. At no stage in *Meca-Medina* (nor in the analogous case of *ENIC/UEFA*) was the European Commission (or, thereafter the European court) invited to consider if they might not have jurisdiction over a matter that had previously been the subject of a CAS determination, and Pechstein's application would not be treated any differently: the Commission will have jurisdiction and so will the courts in the event of any subsequent appeal. But even if jurisdiction is accepted, can she possibly hope to succeed on the merits? After *Meca-Medina* one might be tempted to think not, but *Pechstein* shows that establishing a viable test for blood doping has been notoriously difficult, and ninety mandatory blood tests over a ten-year period intuitively seems a disproportionate response to the 'problem' of blood doping. CAS and WADA are clearly comfortable with the science behind longitudinal profiling and have accepted the need for such an invasive scheme, but would the courts be convinced? The author, mindful of *Whitefield v General Medical Council* [2003] HRLR 9, thinks they would, but the issues arising in *Pechstein* could yet create a conflict between the WADA Code and the European courts.

[1] Longitudinal profiling involves a long-term comparative analysis of an athlete's blood composition. It can help detect the use of a synthetic version of recombinant human erythropoietin (rHuEPO), which can increase the number of red blood cells in circulation and improve the oxygen-carrying capacity of the blood. It therefore has the potential to improve athletes' performance, especially (although not exclusively) in endurance sports. Its effects are similar to altitude training but the benefits last longer.

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FOOTBALL CREDITORS AND INSOLVENCY IN THE UK

This paper will look at the treatment of football creditors in the UK under insolvency law and practice. In formal terms there is no special legal regime applicable to football clubs. They are subject to the normal processes of insolvency law including liquidation and administration. In practice however there are some differences in the application of the rules with administrations rather than liquidations being the order of the day. Moreover, in a financial restructuring "football" creditors are treated more favourably than general creditors. The football leagues including the Premier League insist that football creditors are paid in full before the football club is allowed to fulfil its league fixtures. In effect, and by dint of private arrangement, football creditors are accorded a position akin to secured creditors. In the Portsmouth case, which is ongoing, it seems that the Revenue authorities are determined to mount a legal challenge to the privileged treatment of football creditors and this paper considers whether the "football creditor" rule is capable of withstanding legal challenge.

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CONTEMPORARY ISSUES IN DRUG TESTING AND DOPING CONTROL – COURT OF ARBITRATION FOR SPORT EXPERIENCES AND THE CURRENT ADR PROCESS

Doping cases are becoming increasingly complex particularly in non-analytical cases. Will arbitration be a suitable dispute resolution process for these more frequent and newer challenges? This keynote address will encompass the latest cases such as *Valverde*, *Landis*, and how they challenge the system and require increasing costs to establish the case.

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THE CONCEPT OF THE PUBLIC INTEREST IN SPORT: JUSTIFICATIONS OF RESTRICTIONS OF THE FUNDAMENTAL FREEDOMS OR RESTRICTIONS OF COMPETITION IN THE CASE-LAW OF THE COURT OF THE EUROPEAN UNION

The place of '*the state*' in economic life and the role of '*private actors*' and the '*market*' in the provision of collective goods are changing. Public functions are delegated to private actors and the increasing interdependencies between the public and private spheres of economic action in the single European common market have as a result a convergence in the interpretation and application of the EU provisions on fundamental freedoms and competition law. The decisions of the Court of Justice of the European Union concerning sport governing bodies show that entrusting private parties with governance functions does require new legal answers to prevent the abuse of their powers and fill the lacuna between competition and fundamental freedoms.

The purpose of this paper is to examine in more detail the convergence between the fundamental freedoms and competition law provisions in the field of sport, focusing on how restrictions of the fundamental freedoms or competition can be justified on the basis of the evaluation of social policy (non-market) goals. This value conflict is demonstrated in the case-law of the Court on sporting rules, both on cases concerning restrictions of fundamental freedoms and competition. For instance, restrictions of the fundamental freedoms were justified by imperative requirements in the public interest in the case-law of the Court on sports betting, as well as in its recent decision in the *Bernard* case (C-325/08, decision dated March 16, 2010). At the same time in the field of competition law, the contested FINA anti-doping rules were found not to "*necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.*" (C-519/04 P, *Meca-Medina*, para 45). Furthermore, the Commission acknowledges the overriding role of non-market goals in the assessment of the competition provisions of the Treaty by stating that: "*Goals pursued by other Treaty provisions can be taken into account to the extent that they can be subsumed under the four conditions of Article 81(3)*" (Guidelines on the application of Article 81(3) of the Treaty, OJ C 101 2004, para 42).

However, the boundary between common market and competition policy and non-market goals is very fragile. Given the special nature of sport, I will attempt in this paper to define which non-market goals in the field of sporting rules may constitute *imperative requirements in the public interest* or *legitimate objectives*, able to justify restrictions of the common market or competition provisions. When do the activities, competences and objectives of sport actors and governing bodies constitute requirements of public interest and when do they become an attempt to promote and protect the private financial interests of the sport stakeholders? The recently established supplementary competence of the EU on the field of sport (Art. 165 TFEU) and the objectives of the EU action in the field of sport will also be taken under consideration.

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GLOBALIZING BASEBALL: THE WORLD BASEBALL CLASSIC AND OTHER MLB INITIATIVES

In 2006, Major League Baseball (MLB) president Bob DuPay noted, "Our world has become increasingly smaller. As a result, entertainment product – our product – is going to be worldwide…It can't just be about the United States" (King, 2006, para 60). Though MLB recognizes that it must expand its marketing activities beyond the United States, there are a variety of potential political, economic, legal, and technological concerns that must be overcome to effectively grow the game of baseball and, more importantly to MLB owners, the MLB brand.

One of the primary mechanisms for growing the game of baseball and MLB's worldwide influence was the establishment of the World Baseball Classic (WBC) in 2006 (Nagel, Brown, Rascher & McEvoy, 2010). Despite some initial problems, the 2006 tournament generated sufficient attendance and media attention that the event was contested again in 2009. After a "successful" 2009 tournament, the next WBC has been set for 2013. Though the next WBC has been scheduled, there are a variety of questions regarding the number of participants and format that have not yet been answered. However, more important are the questions regarding the growth of the WBC, MLB's influence (rather than an "independent" governing body) over the sport's development, and disbursement of potential emerging revenues.

This presentation will examine the current state of MLB's globalization efforts. It will discuss pertinent issues pertaining to the past and future operation of the WBC as well as explore the likely successes and failures of other MLB marketing initiatives. The presentation will incorporate interviews with various MLB representatives as well as baseball officials from multiple countries.

Reference

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COLLECTIVE ORGANISATION AND EXTERNAL REGULATION OF PROFESSIONAL RUGBY LEAGUE IN THE UNITED KINGDOM[1]

The Super League is Europe's premier professional rugby league competition[2]. It is regulated by the Rugby Football League (RFL) and in 2010 involves fourteen clubs, of which thirteen are in the United Kingdom and one in France. The RFL and the clubs manage the competition's commercial arrangements under Super League (Europe) Ltd (SLE).

Certain regulatory measures applied in the Super League competition affect detrimentally the employment interests of players[3]. The measures are adopted by the clubs and the RFL through decision-making processes contained in the constitutional documents of SLE and the RFL. The decision-making processes do not involve the players and there is no obligation to consult with players prior to the implementation of a measure.

Some professional rugby league players are represented by the Rugby League Players' Association (RLPA). In 2007 the RLPA did not appoint player representatives at clubs and it did not inform players of measures or their effects for a player's employment. The extent of consultation (if any) undertaken by the RFL with the RLPA prior to the adoption of regulatory measures was also unclear.

A number of measures adopted by the RFL and the clubs infringe European competition law. External pressure in the form of European competition law and the principles of free movement can exert a restraining influence on the RFL's regulatory activities. Effective collective organisation of professional players is also required to control the exercise of private regulatory power. Incorporating the measures in a collective bargaining agreement balances the interests of all participants in the competition.

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[1] The information contained in this presentation is based on doctoral research conducted by the author between 2006 and 2009. In the course of that research the author interviewed thirty-one participants in professional rugby league including the Rugby Football League, the Rugby League Players' Association, Super League clubs, professional players, coaches and sports agents. Information extracted from the interviews was incorporated in a doctoral thesis to support arguments made regarding the organisation and regulation of the competition. The thesis, entitled "Collective Organisation and External Regulation of Professional Rugby League in the United Kingdom", was submitted in October 2009 to fulfil the requirements of the degree of Doctor of Philosophy at Trinity College, Dublin, Ireland.

[2] Rugby league differs from rugby union although historically the two codes are linked: *see* Tony Collins, *Rugby's Great Split: Class, Culture and the Origins of Rugby League Football* (2006) 2ed, Routledge, London.

[3] For example, the competition operates under a salary cap (which limits the total amount a club may spend on player salaries) and the "club trained rule" (which specifies the number of "club trained", "federation trained" and "academy" players that a club may include in its first team).

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INTERNATIONAL SPORTS ACTIVITIES
LEX SPORTIVA AND INTERNATIONAL LEGITIMACY

The origin and legal nature of the rules of law in the world of sport is an important issue in the field of Sports Law. The sports legal order (*Lex Sportiva*) consists of state law and the law of the national and international bodies representing organised sport. However, this special feature of the Lex Sportiva, raises a series of questions concerning: a) the application of its provisions in each national sports legal order and b) conflicts regarding which law will prevail. The complexity of the regulation and organisation of international sport activities gives rise for the need to clarify the relationship between Lex Sportiva rules and: a) the domestic law of any given state and the national legal order, b) the international legal order and c) the law of supranational bodies such as the European Union.

Private initiative which shaped and organised sport as we know it today played a leading role in creating the field of sporting activity. Key elements of the sporting autonomy at state level are:

a) Volunteers and sports clubs as key factors in the development of sport,

b) The recognition of organisational autonomy for the sports movement, even if subjected to restrictions and

c) Its social importance, and the need for financial support.

The autonomous Olympic and sporting legal order (Lex Sportiva and Lex Olympica), to the extent that they relate to the domestic Lex Sportiva (rules of sports federations) prevails over national rules of sports law while in the case of conflict between rules on a sport covered by the Olympic Charter it regulates special problems concerning such sport in a unique manner. In this context, there cannot be any conflict between the Lex Sportiva system and public international law. Lex Sportiva, as a special body of sporting, non-national law, regulates relations within the sporting order, which is a field that international law would not appear to be interested in regulating.

Major questions for sports law are, who is the proper judge and how should sporting disputes be resolved by the sporting jurisdictional order. Another major question is whether a form of private law, such as international, non-national sports law -the Lex Sportiva- can ensure its own implementation, and how conflicts between national sporting legal orders and national courts can be avoided.

Disputes are initially resolved before the jurisdictional bodies of sports associations and then by recourse to the Court of Arbitration for Sport (CAS).

In the case of professional athletes, their actions are subject to the rules of the European Union, as actions related to an economic activity. Matters of personal and economic freedoms of the athletes are also related with provisions of Federations regulating the number of non-national players in professional leagues.

Similarly in the international field of sporting activity, the expansion of the rules of the *Lex Sportiva*, on matters not purely of sporting nature, for example on areas of economic and personal freedom, lacks or a certain legitimizing basis. Such ability could only be given to a legal entity contracted on the basis of international law. A legal entity provided with the competence to issue such rules and regulations. Furthermore such legal entities could be provided with the competence to shape the *Lex Sportiva* to the appropriate point in accordance with the general principles of law relating to personal and economic freedom.

The second matter is the lack of the special procedural provisions needed for the resolution of the relevant disputes concerning the application of both the *Lex Sportiva* rules, and the rules of sports and the public law, applied either by sports special tribunals, or by the specifically legitimized courts for the remaining differences in sport. Consequently, the recourse to a tribunal such the Court of Arbitration for Sport (CAS), at an international legitimatized basis, would give the right solution to the problem of resolving sport related disputes both internationally and nationally.

Such a legitimation would also be the router for the determination of the jurisdiction of the resolution bodies for disputes arising in the field of the *Lex Sportiva*, while solving once and for all the problem of ensuring a "*fair*" trial.

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THE OPINION OF THE FANS FOR SPORTS JUSTICE IN GREECE

This survey investigates the opinion and feelings of fans in relation to the Greek sports justice system and its bodies, namely it aims to gauge the level of satisfaction of fans related to sports justice.
The Greek Sports Justice system is complex and its bodies are not recognized by the Constitution as courts. Their decisions are either considered of administrative nature, subject to appeal at the Conseil d' Etat (see the example of the motorcycle federation of Greece - MO.TO.E.[1]), or of civil nature subject to appeal at the Civil Courts of second instance.
The survey follows the methodology of empirical research and in combination with statistical data, the relevant literature, and case law, leads us to some conclusions. The problem in this investigation is the way fans form an opinion on sports courts, and their perception of the Greek sports justice system.
The survey investigated the views of fans on the structure of the Greek sports justice system, its alleged defects, whether it fulfills its role, their opinions in relation to its rulings, and finally whether they feel justice is served.
For the purpose of this research, a questionnaire of 30 questions and 45 variables was created and distributed to five hundred people that were selected randomly among students of the Faculty of Physical Education and Sports Education and the Faculty of Law of the University of Athens, Lawyers and members of the Hellenic Center on Research of Sports Law – HCRSL.
After the data collection and the verification of its statistical significance (Cronbach's a = 0.768), (K.M.O.[2] = 0.757 and 27 FL[3]> 0.6), it was thoroughly analysed with the use of SPSS (quantification of the data once they were grouped).
The analysis of the data leads us to the finding that fans have a negative view of the Greek sports justice system, mainly because of the lack of specialised judges, the archaic relevant legislation, and the structure of this system that does not ensure a fair trial despite the relevant provisions of the Greek Constitution and the European Convention for the protection of Human Rights.
Furthermore, the analysis shows that the negative feelings of fans for the Greek sports justice system do not affect their feelings towards their beloved clubs and their devotion to them.
Finally, the survey shows that fans favour the creation of a special Court with specialised Judges as the best solution for the purification of the Greek sports justice system.

[1] A very important decision from the European Court of Justice in C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, 1 July 2008.
[2]. The Kaiser-Meyer-Olkin test measures the sampling adequacy which should be greater than 0.5 for a satisfactory factor analysis to proceed.
[3]. The Factor Loadings are the correlation coefficients between the variables and factors.

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"SPORTS IMAGE" AND THE LAW

In the context of what is called the new media environment, the term "sports image" is used meaning the athlete's right to their own image as well as the right to exploit commercially a sports event.
Under Greek law sports events are not recognised as original intellectual products, so they are not protected under the Law on Intellectual Property. Individuals (sportsmen) producing the sports event, are not aware of the result, i.e. its final form. The elements of competition and improvisation combined with physical contact are enough to guarantee a different result every time, no matter how many times the event is repeated. This is why a special legal provision had to be introduced.
To what the athlete's right to their own image is concerned the Greek legislator seems to have defined the personality right in a general way allowing thus the content of this right to be constantly expanded in order to cover for the ever growing needs of our times. As a result enumerating all the rights contained in the general personality right is neither possible nor useful. It is up to the bearer of the right to decide each time whether their personality is offended in any way. The protection of one's image right does not come without restrictions or exceptions. Also the athlete as a bearer of the right may "legitimise" an infringement. The most common legal tools in order to justify an otherwise illegal infringement in most European countries are the athlete's consent or the doctrine of the acceptance of risk or the public's right to information.
The purpose of the present paper is to present the Greek law concerning the protection of the sports image as well as the exceptions to this protection and to compare the provisions to those of other European countries in order to show that more often than not similar problems inevitably result to similar solutions.

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LEGAL ANALYSIS OF THE ECJ JUDGMENT IN C-325/08 *BERNARD*

The aim of this paper is to provide a multi-context legal analysis of the *Bernard* judgment and its practical impact on sports. It can be said that the judgment has contributed towards the specificity of sports and further recognition of their social and educational function mentioned in the second subparagraph of Article 165(1) TFEU. However, the question remains if and to what extent has this article been a factor behind the rule in *Bernard* or whether the pre-TFEU sports law and policy were decisive factors with Article 165(1) performing only a symbolic supportive role. Such exploration of the reasons behind the rule should shed some light on the yet undecided legal issues in sports. Thus, reflecting on *Bosman* and considering the compliance of a '6+5' rule against free movement provisions will be particularly interesting in the light of *Bernard.* This also involves consideration of those analytical points of the judgment that might render *Bernard* in conflict with *Bosman* and other ECJ judgments on the one hand, and the search for consistency, on the other.
Furthermore, in terms of immediate practical contribution of the judgment the enquiry focuses on the issue of application of the *Bernard* rule regarding training compensation to other sports and other sectors. A follow-up question regards the criteria for calculation of training compensation and who should be paying for it. Finally, current FIFA regulations and CAS jurisprudence on compensation systems, notably in *Matuzalem* and *Webster*, will be looked at through the lens of *Bernard*.

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THE COLLEGIATE MODEL (NCAA) OF AMATEUR SPORTS AND ITS GLOBALIZATION

The National Collegiate Athletics Association (NCAA) is a private association of more than 1000 U.S. colleges and universities. It administers amateur athletics competition among teams of student-athletes. As with any athletics association, the NCAA sets and enforces rules of competition and also monitors certain conduct off the field that has impact on competition (performance-enhancing substances, for example). Because the NCAA regulates competition among *students*, its regulations extend to other areas, including academic standards to compete and financial aid, as these also have impact on a level playing field.

First, the presentation seeks to provide a fuller picture of how a collegiate model of athletics participation is administered. To that end, the NCAA's organizational structure, areas that are regulated, and the relationship of the NCAA national office to member institutions are examined. The presentation also focuses on how the NCAA enforces and interprets rules. The Committee on Infractions, which handles institutional culpability for major violations and is a form of alternative dispute resolution, is analyzed. Further, the session describes the student-athlete reinstatement [to eligibility] process, which deals with the eligibility consequences to student-athletes of their commission of violations. To clarify the relationship between institutional and individual (student-athlete, coach, athletics staff member, booster) responsibility, the presentation briefly addresses agency law. The session also addresses the nature of private associations and the legal structure in the United States that governs those, like the NCAA, whose membership is multi-state or national.

Finally, on a global scale, the NCAA is a major player in the recruitment of (academic and athletic) talent. Brief retrospect and analysis of international student-athletes' issues are followed by an elaborate investigation of contemporary problems in the transition of international student-athletes in the somewhat unique world of athletics participation and academics combination, in the competitive arena the NCAA affords. Specifically, the session will explore the academic and amateurism issues that most frequently pose problems for international student-athletes, and the ways the NCAA policy-drafting bodies and the voting membership of its institutions have attempted to provide several resolutions over the past 10 years. Most timely, the recent policies, which are flexible and attentive toward international student-athletes emanating from the much different club-based socio-cultural federalized model of sport governance, are presented and particularly analyzed from theoretic and practical application angles, assisting academics and practitioners form a deeper, broader, more informed, and balanced understanding of these complex issues.

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HOW TO DEVELOP ENTREPRENEURSHIP CULTURE IN THE SPORT INDUSTRY: OBSTACLES AND CHALLENGES – EXPERIENCES FROM IRAN

The rapid changes in science and technology throughout the world and the transformation of sport into an industry, have led to physical education and sport professionals in Iran being confronted with new challenges. To overcome such challenges sport professionals need to employ creative approaches and methods (Shajie & Hojatian, 2006). In this regard, the role of entrepreneurship and entrepreneurs can be instrumental. Entrepreneurship may bring economical boom, change in life style and creation of career opportunities for people from all walks of life (Ball, 2005).
The main objective of this research is to investigate entrepreneurship culture in the Iranian sport industry with an emphasis on the obstacles and demographical problems in this geographic region. Factors such as education system, values, outlooks, cliché beliefs, the contrast of roles and others are examined. For this purpose, 97 males and 64 females, randomly selected from sport and physical education departments in Governmental, Non-profitable and Profitable universities in Iran were stratified and Shajie Entrepreneurship Obstacles measurement questionnaires (SEOMQ) were distributed. Data analysis was performed by one way ANOVA, Independent-samples T test, and Pearson correlation coefficient. Results showed that major entrepreneurship obstacles are Problems in providing capital (23.5 %), Government policies (18.2 %), academic field (8.4 %), lack of career opportunities (7.8 %), lack of guidance and consultation (6.5 %), Cultural problems of the society (5.2 %) and Economical problems of the society (5.2 %). Therefore, physical education students require organized and accurate plans for developing entrepreneurship behavior and overcoming the existing obstacles and problems.

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FACTORS INFLUENCING SPORT CAREER CHOICE OF STUDENTS IN IRANIAN UNIVERSITIES

The purpose of the study was to determine the factors that influence sport career choice of Iranian Universities' students. 97 males and 64 females, randomly selected from sport and physical education departments in Governmental, Non-profitable and Profitable universities in Iran were stratified and Knefelkamp and Sleptiza's revised scale were distributed. Content validity was confirmed by experts and internal consistency of questions in a pilot study was 0.83. Data analysis was performed by one way ANOVA, Independent-samples T test, and Pearson correlation coefficient. There was a significant relationship between students' intellectual development of career choice and field of study and type of university as the factors of success in career choice ($p<0.05$). Based on the results, the majority of the students were willing to accept more responsibility in relation to their career choice (relativism position). The students' achievement at this level of intellectual development may arguably result from hopelessness or lack of confidence in external mechanisms, rather than the result of educational outputs. Therefore, conducting career counseling workshops for faculty members and students, offering internship courses, motivating the students to network professionally and develop research agendas, are useful to enhance intellectual development in sport and physical education students.

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ANTITRUST LAWS AND THEIR RELEVANCE IN THE PROFESSIONAL SPORTS INDUSTRY – EXPERIENCES AND THE INDIAN PERSPECTIVE

Sport accounts for 3% of world trade. With the development of antitrust laws, it has become a major concern for competition authorities across the globe because this field has historically been dominated/controlled by a very small group of people. With the ever-increasing commercialization of sports, the sporting clubs/federations/corporate houses that govern/promote sport invest heavily in it by means of sponsorships, player acquisitions, etc. These federations or corporate houses employ all affordable avenues that may maximise profits so that they can maintain a sustainable and lucrative business practice. They also justify their profit maximising practices and the risks involved on the basis of the traditional self-regulation of sport. These practices raise antitrust concerns.
With this in the backdrop the main focus of this paper would be to compare and explain practices of US, EU, and Indian professional sport governing entities that may be held as anti-competitive under the respective competition laws. In the process, relevant theory and jurisprudence will reflect on US and EU Competition Laws and the 2002 Indian Competition Act, the recent SCOTUS decision in *American Needle*, the ECJ's decisions in *Meca-Medina* and *Bernard*, and contemporary problems in Indian professional (and rapidly growing) sports such as cricket, basketball, soccer, tennis, track and field, swimming and diving, auto racing, field hockey, water sports, et al[1]. The paper also highlights the intersection between sport and antitrust laws with regard to dominance of federations, sale of exclusive rights, denial of the use of stadiums, and the Essential Facilities Doctrine. This research addresses significant aspects of the integration of sports in competition policies, the application and enforcement of contemporary competition law, and the need for sports authorities to abide by national laws upholding fair competition.

[1] See K.K. Ramachandran, *Sports in the country of a billion: a study of the marketing possibilities and the resulting development of less popular sports in India*, in Simon Chadwick and Dave Arthur (eds.) International Cases in the Business of Sport, pp 165-177, (2008).

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THE COURT OF ARBITRATION FOR SPORT AND DOPING CASES: THE PROBLEM OF REFUSAL AND COMPELLING JUSTIFICATION UPON ART. 2.3 OF THE WADA CODE

Doping constitutes a conduct that is clearly against the principles of sporting fair play, as well as being dangerous to the health of the athletes. In the international sphere there are numerous conventions that govern this issue, of which the most important are the Strasburg Convention of 1989 and the Unesco Convention of 2005. In the sporting field, however, the main sources of governance are the Medical Code (1995-1995), the Olympics Anti-Doping Code (1999-2003) and, since 1st January 2004, the WADA Code. WADA is the Worldwide Anti-Doping Agency, which has the task of harmonizing national legislation and promoting research, as well as discouraging improper behaviour. The code that is currently in force was issued in November 2007 in Madrid. In matters of anti-doping procedure the TAS is responsible as appeal judge and throughout the years has developed an efficacious style of jurisprudence in evidential standards, objective responsibility, contractual law and *lex mitior*. Among the most debated violations of the WADA Code in this period is that of article 2.3, that is the refusal, without justification, to undergo blood testing. Ample space will be given to cases CAS 2009/A/1857 (Mannini/Possanzini versus Coni) and CAS 2009/A/1892 (Slay and Diaz versus Coni), the first cases to pose this problem, as well as a critique of the interpretation provided by the CAS.

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THE LEGAL STATUS OF THE PLAYERS' AGENTS IN TURKISH CIVIL LAW: COMPARISON BETWEEN THE EU ACQUIS

As in any other modern country, the role and number of players' agents in Turkey have significantly increased in recent years. Legal status of Turkish players' agents, who have reached hundreds in numbers and created hundreds of millions of USD in value in professional sports, follow this trend.

The related agents' developments may be studied under two groups:
- Legal Status of the Players' Agents under Turkish Civil Law.
- Regime (Regulations) of the International and National Sports Federations.
EU Acquis will affect Turkish Legislation on this matter, as it has done in others.

There are three Acts which may be applicable to the activities of players' agents at present under Turkish private internal law :
Turkish Civil Code (TMK)
Turkish Code of Obligations – Contract Law (TBK)
Turkish Commerce Law (TTK)
One can not say that the current situation fully responds to the expectations arising from agency contracts concluded by players' agents with clubs and players, as well as ancillary matters resulting from the activities of players' agents. Quite naturally it is the amendments and coordination in legislation that are required in view of rapid developments in sports and EU Acquis; moreover it is within the realm of possibility that a special Act on players' agents could be enacted.
Furthermore, the extent to which Turkish players' agents could enjoy the Cross-Border Services freedom under EU should also be scrutinized.

In synthesis, three main developments may be foreseen:
(EU's role will also be significant on the matter, as provided in the study on sport agents in the EU published in November 2009).
- Regulations of International and National Sports Federations applicable to the activities of sports agents that restrict EU Law freedoms are presently placed under the tolerance recognized by EU (Piau case and last EU study). These rules may be revoked or amended.
- Harmonization among countries may increase in terms of agents' regulations.
- Measures may be taken in the sector for improving ethics, correcting agents' image, and toward professionalization of sport placement activities.

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SHAPING SPORTS LAW IN CENTRAL ASIA: WHY SOUND REGULATION MATTERS?

The growing importance of sport and sports-related international ambitions of Central Asian countries[1] have raised interest in the region as an emerging sports market. Sports achievements have been traditionally viewed by the states in the region as a means to boost national pride and promote a country's image internationally. However, this domain still considerably lacks specialized regulation and public policy remains predominantly focused on social implications of sport. Although all Central Asian countries have adopted laws "On Physical Culture and Sports", the regulatory framework does not specifically address the challenges of the contemporary market-driven sports industry.

Despite an increasing number of mega-deals in the region[2] sports law remains an exotic area both for scholars and practitioners. Meanwhile, disputes over athletes' contracts breaches progressively increase. If foreign stars' interests are usually protected by well-drafted contracts and also by the significance of their deals to the attractiveness of local sports market, domestic athletes do not enjoy fundamental legal protection and in many occasions are bound by informal agreements that do not provide any remedies in case of breach. Given the lack of efficient legal protection and mechanisms of sports disputes resolution, regulatory intervention addressing commercial relations in sports is critical for all Central Asian countries. Sports regulation in this context should also ensure that investments brought to this sector target sustainable development of sport in Central Asia, rather than pursue short-term commercial goals or media effects.

Based on the fieldwork experience in Central Asia and Uzbekistan in particular, the author intends to analyze common problems and challenges of shaping sports law in the region, with particular insight into the creation of an efficient legal framework for agency and contract relations with athletes and sports managers, based on the analysis of Standard Player Contracts of various sports federations and in several jurisdictions[3], as well as mechanisms of sports disputes resolution[4]. Considering the importance of the legal profession in finding solutions to the aforementioned problems, a study focusing on initiatives and accomplishments of sports law promotion in the academic realm and legal training will supplement the analysis.

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[1] In modern context Central Asia includes such countries as, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

[2] Such as $14 million two-year contract with Brazilian football player Rivaldo to play for Uzbek club Bunyodkor and $18 million annually two-year contract with Luiz Felipe Scolari to coach the same team.

3 The analysis will specifically cover: FIFA Regulations on the Status and Transfers of Players, Players' Agents Regulations, Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber; FIBA Players' Agent and Player Standard Contract; NBA Standard Player Agent Contract.

[4] Such as Court of Arbitration for Sport (CAS), FIFA Dispute Resolution Chamber (DRC), FIBA Arbitral Tribunal (FAT) and other alternative dispute resolution mechanisms in sports.

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A LOOK AT THE CURRENT NBA LABOR NEGOTIATIONS:
WHAT ARE THE ISSUES AND WHAT ARE THE STAKES?

With the National Basketball Association (NBA) and the National Basketball Players Association (NBPA) beginning talks on a new Collective Bargaining Agreement (CBA) there are several issues to be resolved. The purpose of this presentation is to examine some of the key issues surrounding the new CBA. As a backdrop for this examination, the presentation will use the various CBAs from other American professional sports leagues.

In particular, the presentation will begin by examining the impact of the economic downturn on NBA teams under the current CBA, i.e. declining attendance v. escalating first year player salaries and the unsustainable, per NBA officials, cap exceptions. Next, the presentation examines the owners' initial proposal, which has been floating in the press, as a way of reducing the financial impact of the current CBA. Some of the proposed terms include the redistribution of Basketball Related Income (BRI), with teams keeping a larger slice of the total revenue pie, making some long-term deals non-guaranteed, which would allow teams to cut players without paying the full value of their contracts. In addition, the owners would also like to change the current salary-cap system. In particular, they would like to move from the current soft cap, with its' many exceptions, to a harder cap with few or no cap exceptions.

The presentation will also examine some of the counter proposals by the NBPA, as published over the summer of 2010, with particular attention to those proposals that challenge or contradict the NBA positions.

Finally, the presentation will conclude by examining the potential impact any new CBA might have on player movement to and from countries outside the United States.