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Sports and the Law: Using Court Cases to Teach Sports Economics

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Abstract

The purpose of this paper is two-fold. First, it lays forth a rationale for the use of court cases in teaching a sports economics class. Second, it provides an overview of the most important cases related to sports economics. Court classes allow students to develop critical reading and reasoning skills while allowing the instructor to present readings outside the standard textbook that are accessible to most undergraduates. A sports economics course with a focus on legal issues also broadens the course to fit better within a liberal arts education rather than being a narrow speciality field.

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Introduction

As a part of an undergraduate economics curriculum, sports economics is a relatively young field. As such, the discipline has fewer “tried and true” teaching methodologies as compared to other courses like principles and intermediate macro and micro. The purpose of this paper is two-fold. First, it lays forth a rationale for the use of court cases in teaching a sports economics class. Second, it provides an overview of the most important cases related to sports economics. Even those teachers who choose not to directly include the study of court decisions in their class need to have a working knowledge of sports law because of the critical impact that many court decisions have had on the development of the professional and collegiate sports industry in the United States.

So, why study court cases in an economics class? The most obvious answer is that the courts have played a crucial role in the economic development of American sports. It may not seem to the average sports fan that the Supreme Court has anything to do with their enjoyment of the game they watch on television on Sunday afternoon, but nothing could be further from the truth. High school basketball stars who jumped straight to the NBA like Kevin Garnett and LeBron James, can thank Spencer Haywood and Court for their decision in his favor, opening the door for non-college graduates to enter the league. The stunning success of the U.S. Women’s National Soccer team in the 1999 World Cup is a direct result of court enforcement of the provisions of Title IX of the Education Amendments of 1972 which barred gender discrimination in athletic programs at college institutions. When the local baseball team signs new stars or loses talent to big-spending clubs, this can be traced directly back to the decision in *Flood v. Kuhn* that, at least in part, ushered in the era of free agency in Major League Baseball. Tiger Woods’

spectacular golf career hinged on his ability to play on public golf courses as a child, a privilege denied to African Americans only a few years before his birth. Indeed, the courts have examined everything from ticket scalping to television contracts to the use of golf carts in professional tournaments touching nearly every aspect of modern spectator sports.

Many topics typically covered in a sports economics class cannot help but cover legal issues. For example, baseball's antitrust exemption is discussed in nearly every textbook covering sports economic issues. What better way to discover the origin of this admitted strange exemption than to read the court's original reasoning? The same idea applies to franchise movement, labor relations, free agency, and a host of other subjects.

Beyond this, however, the use of court cases in an undergraduate economics class is valuable in numerous other ways. First, court classes allow students to develop critical reading and reasoning skills. Most written court decisions present a clear view of the competing differences of the two parties as well as an explanation as to how the court arrived at its final decision. In many cases, a dissenting opinion is also recorded providing yet another viewpoint from the court. Students who read these opinions learn to read and analyze the decisions carefully in order to follow the logic of the court. In addition, in many of the cases related to sports law, the written opinions also present interesting historical background of the sport, leagues, and teams involved in the case.

Court cases also allow the instructor to present readings outside the standard textbook that are accessible to most undergraduates. Many sports economics classes are taught as a lower-level elective or as part of a sports management curriculum, and therefore the students are unlikely to have taken a course in econometrics or perhaps even statistics as a prerequisite.

Therefore many students may lack the mathematical background to fully understand many of the classic journal articles in the field, but a professor may wish to present material that rises above the level of Sports Illustrated or ESPN.com. Court cases neatly fit into a niche between the popular press and the rigorous analytical complexity of most scholarly articles. Of course, court opinions are typically filled with technical issues regarding the appeals process, court jurisdiction, and descriptions of the lawyers involved in trying the case. Much of this minutia of the legal process is of interest only to the legal scholar. Therefore, a teacher using court cases should select them carefully and attempt to strip down the opinions in order to make the decisions more easily accessible to the non-legal expert and in a way that the reasoning of the court can be more plainly seen.

Finally, students seem to respond positively to the experience. Many economics majors strongly consider law school after graduation, so an opportunity to read legal opinions is of great interest to them. Even those students not pursuing a career in law, find the cases interesting. Most have heard of the great legal cases like *Brown v. Board of Education*, but have no idea what the whole legal system is about. Furthermore, the increasingly contentious Supreme Court confirmation process has introduced the general public to legal terms like *stare decisis* but without much idea about what they mean or why they are important. A sports economics course with a focus on legal issues not only provides this type of information but also broadens the course to fit better within a liberal arts education rather than being a narrow speciality field of interest to sports junkies but few others.

A Sports Law Primer for Sports Economists

So, what cases should be covered in an economics class or what cases should a sports economist at least have some basic knowledge of? In a true sports law class, a great deal of time would be spent on things like contract law and liability. While player contracts and personal injury lawsuits might be the bread and butter of many lawyers, they are of less interest to sports economists. For an economist, the field of sports law is probably best broken into four subject areas: baseball's antitrust exemption; antitrust and labor relations; leagues, members and rivals, and antitrust; and sports and discrimination regarding race, gender, and disability. The next sections of this paper will discuss these topics in turn.

Baseball's Antitrust Exemption

That competition among competing firms promotes general welfare is one of the central tenants of economics. A cartel is a group of firms which, though officially independent, make decisions as a group. The Sherman Act of 1890 and subsequent federal antitrust laws prohibit firms from conspiring with one another to prevent competition, and the very first decisions made by the Court regarding the antitrust statutes took steps to eliminate the formation of cartels.

Sporting events and leagues present an unusual problem to the Court and to economists, however. For a game to take place, the two competitors must agree to compete with each other, and in order for a sports league to run smoothly, a great deal of cooperation between teams, who are nominally competitors, must occur. While economists would undoubtedly condemn a situation where the primary providers of a commodity like steel or oil in separate cities around the country got together to decide how their product was to be distributed among the consumers

in each of the cities, in the case of a national sports league, without such agreements the league would cease to function. The questions that face the Court in this section are to what extent are leagues' agreements with one another "ancillary" in nature, that is a necessary part of producing the final product in an efficient manner, and what agreements are "naked" restraints designed only to reduce competition at the expense of consumers and labor.

The Supreme Court first addressed the issue of antitrust in relation to sports leagues in *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs et al.*, (1922). The Federal League was formed in 1914 as an attempt to compete with the established National and American Leagues as a third major baseball league, and in a novel attempt to break into the market sued the two established leagues for antitrust violations. The Federal League's first lawsuit was filed in the District Court of Northern Illinois under Judge Kenesaw Mountain Landis who stated that attacks on baseball "would be regarded by this court as a blow to a national institution." By the time Landis issued a ruling, the Major Leagues had reached agreements with all but one of the Federal League teams driving the league out of business following the 1915 season. Five years later, Landis went on to become the first commissioner of Major League Baseball.

Following Landis' ruling, the remaining team, the Baltimore Terrapins, filed suit separately. While the Supreme Court acknowledged baseball engages in commerce and that the commerce consists of teams traveling across state lines to play opposing teams, nevertheless baseball the court decided that baseball did not qualify as interstate commerce as the interstate travel was a "mere incident, not the essential thing." Since the federal antitrust statutes only apply to interstate commerce, as opposed to "purely state affairs," this ruling established the

infamous “antitrust exemption” enjoyed by Major League Baseball since that time.

This decision has been widely criticized by legal and economic scholars as well as by future members of the court. “Subsequent court decisions made baseball’s exemption increasingly difficult to justify. The Supreme Court consistently denied other industries, particularly other sports, the right to use the Federal Baseball ruling as a precedent. Somehow the Court was able to see that other sports were commerce while it maintained the fiction that baseball was not.” (Leeds and von Allmen, 2002).

The court had its next chance to address the antitrust issue in *Toolson v. New York Yankees* (1953). Toolson was a relatively unknown minor league player for the New York Yankees who objected to baseball’s reserve clause that indefinitely bound players to specific teams. The majority argued that, as set forth by the *Federal Baseball* decision, in enacting the antitrust laws Congress intended professional baseball to be exempt. In addition, Congress had plenty of time since *Federal Baseball* to change the law and by not doing so gave tacit approval to the previous decision. Justices Burton and Reed broke from the majority arguing that even if baseball in the 1910s did not constitute interstate trade, the tremendous growth in the popularity of the sport over the intervening forty years, and in particular the growth of radio and television revenues, certainly placed the leagues within the purview of federal antitrust statutes by the 1950s. While not commenting on the legality of Major League Baseball’s reserve system, they called upon the court to reverse the *Federal Baseball* decision and lift the league’s antitrust exemption.

Over the next several years, the court’s logic became increasingly strained. In *United States v. International Boxing Club* (1955), the U.S. antitrust division brought suit against the

great heavyweight boxer Joe Louis and a group of boxing promoters charging an attempt to monopolize the boxing business. The defendants argued that as a sports organization it should be exempt from the antitrust laws due to the court's previous rulings in *Federal Baseball* and *Toolson*. The Court divided into three factions. Chief Justice Warren, writing for the majority, stated that the court should not extend this exemption to boxing. While the Court passed on another opportunity to overturn its previous decision, Warren went so far as to suggest that if the current court had the duty to hear *Federal Baseball* for the first time, it likely would not have granted the original exemption. Still, the majority concluded that legal concept of *stare decisis*, that is "let the old decision stand," took precedence over correcting a mistake of a previous Court.²

The Court's second faction, Justices Burton and Reed, while concurring with the majority that boxing should not be granted an exemption to the nation's antitrust laws, expressed that they would also have overturned the *Federal Baseball* decision and eliminated baseball's exemption at the same time.

The third prevailing opinion, summed up best by Justice Frankfurter (and joined by Justice Minton) in the first sentence of his dissent is that, "It would baffle the subtlest ingenuity

²Of course, the concept of *stare decisis* played a crucial role in what is perhaps the Supreme Court's most famous decision, *Brown v. Board of Education* (1954). In this case, the Court chose not to "let the old decision stand" and overturned *Plessy v. Ferguson* (1896) which had established the legality of segregation. The Court recognized that, in practice, the notion of "separate but equal" established in *Plessy v. Ferguson* led to distinctly unequal treatment for minorities. *Stare decisis* continues to play a crucial role in important modern cases. While a majority of current Supreme Court justices likely believe that *Roe v. Wade* (1973), which established a constitutional right to abortion, was wrongly decided, the decision facing the Court today is whether righting a (perceived) previous wrong is more important than respecting standing precedent.

to find a single differentiating factor between other sporting exhibitions, whether boxing or football or tennis, and baseball insofar as the conduct of the sport is relevant to the criteria or considerations by which the Sherman Law becomes applicable to a ‘trade or commerce.’” In their opinion, baseball and other sports should be treated identically, and given the fact that the Court had already granted immunity to baseball would extend that immunity to boxing as well.

In *Radovich v. National Football League* (1957), the court concluded that baseball was not only different from individual sports such as boxing but also other team sports such as football. Bill Radovich, an all-Pro offensive lineman for the Detroit Lions, left the NFL in 1946 for an unaffiliated team in California due to a family illness. The NFL, like the other major professional sports of the day, had not yet expanded to the West Coast. When Radovich was blacklisted at the urging of the NFL by west coast teams, Radovich filed his ultimately successful antitrust suit against the league. Stripped of their antitrust protection, the NFL, fearing another antitrust lawsuit, began to deal in earnest with their players for the first time. The NFL Player’s Association, which had been formed just a year before the ruling, immediately won concessions from owners including a league-wide minimum wage, payment to injured players, medical insurance, and a retirement plan.

The case of *Flood v. Kuhn* (1972), brought to an end any hopes that the Supreme Court would overturn its decisions in either *Federal Baseball Club v. National League* or *Toolson v. New York Yankees* that established major league baseball’s antitrust exemption. Along with *Federal Baseball* and *Toolson*, *Flood* is the third case of what is known as “baseball’s antitrust trilogy.” While three of the justices would have overturned the previous cases, five others voted to continue the exemption and leave the next move in the hands of Congress. In this decision,

Justice Blackmun gives a thorough summary of the cases that sprang from *Federal Baseball* and *Toolson* explaining how the Court arrived at an antitrust exemption for baseball alone and why the Court felt it appropriate that Congress and not the Judiciary should remove the exemption. The Court also made it clear that baseball should be considered a unique exception to the antitrust laws and that *Federal Baseball* should once and for all be laid to rest as a precedent for exempting other sports.

In his plea to the court to lift the reserve clause, Flood states, “I am not a piece of property to be bought and sold, irrespective of my wishes.” His words recall the Dred Scott¹ case over a century earlier where black slaves were determined to be property and nothing more. It therefore comes as no surprise that Justice Thurgood Marshall comes to Flood’s defense considering Marshall’s history as a civil rights lawyer in the 1950s and 1960s and his position as the first African American member of the Supreme Court. In his stinging dissent, Marshall asks the Court to right its past wrongs and let Flood to make his case without allowing Major League Baseball to hide behind its long-standing antitrust exemption. What is most striking about Marshall’s dissent, however, is his prescient statement to Flood near the end of his comments where he warns that Flood may not have prevailed even if *Federal Baseball* had been overturned. Marshall points out the federal labor laws and federal antitrust laws run counter to one another, and since the Major League Baseball Players Association had begun collective bargaining with the league

¹ In *Dred Scott v. Sanford* (1857), the Supreme Court ruled that Dred Scott, a black slave, remained the property of his master despite having lived for an extended time in Illinois and Wisconsin, areas in which slavery was outlawed. The Court ruled that as a Negro and as a slave, Scott was not a citizen and therefore did not have the right to sue for his freedom. The Court went even further by declaring the Missouri Compromise of 1820, which restricted slavery in frontier territories, unconstitutional. The Court’s decision outraged Northern abolitionists and led directly to the nomination of Abraham Lincoln as the Republican candidate for President in 1860.

shortly before Flood was traded, Flood would have to balance his contention that the league was violating antitrust laws with the fact that the players were forming an effective union. Indeed, in this respect, *Flood v. Kuhn* also ushered in the modern era of league/player relations as many of the subsequent cases involving leagues and their players have centered on the issue of collective bargaining.

While Flood was unsuccessful in his bid to force free agency on the league through the antitrust laws, Major League Baseball players had to wait only a short time until gaining that right. Despite winning the Flood case, MLB came under severe pressure due to the case to enter into a collective bargaining agreement with the players. The agreement signed between the players and the owners in February 1973, less than one year after the Flood decision, both altered the reserve clause and established an arbitration panel to hear players' grievances.

In October 1975, the Players Association filed grievances on behalf of Andy Messersmith and Dave McNally alleging that by playing out the final year of a renewal contract, they had satisfied the conditions necessary for free agency. In *Kansas City Royals v. MLB Players Association* (1976), the U.S. Court of Appeals for the Eighth Circuit upheld the arbitration panel's decision granting these players free agency.

While *Flood v. Kuhn* established that the "business of baseball" was exempt from the antitrust laws, it left open the question of what exactly constituted the scope of the exemption. Appeals Court rulings in several cases appeared to grant an expansive view of the exemption. In cases such as *Finley v. Kuhn* (1978) and *Professional Baseball Schools and Clubs v. Kuhn* (1982), various appeals courts concluded that the "business of baseball" includes such things as franchise location, player allocation, and game scheduling. In a pre-trial motion hearing in *Piazza*

v. MLB (1993), however, a case that involved whether or not MLB could legally block the move of the Giants franchise from San Francisco to Florida, District Court Judge John Padova muddied the water by holding that, in his opinion, the Supreme Court meant only to exclude the reserve clause from antitrust prosecution. Before the contradiction between Padova and other Appeals Court rulings could be worked out the courtroom, however, Piazza and MLB settled out of court, leaving open the scope of MLB's antitrust exemption.

Since this case was decided, Congress has acted to limit the antitrust exemption enjoyed by Major League Baseball. Twenty-six years after *Flood v. Kuhn* – a year after Mr. Flood's death from cancer – Congress passed the "Curt Flood Act of 1998" guaranteeing major league players protection under the federal antitrust statutes in their labor dealings with baseball owners. Since the Curt Flood Act specifically exempted only MLB's antitrust exemption with respect to labor and since subsequent court decisions such as that in *MLB v. Crist* (2003)² have granted the more expansive view of the exemption, the clear implication is that baseball still enjoys a unique exemption from the antitrust laws that govern the other American sports as well as the rest of American industry.

Antitrust and labor relations

As noted previously, the notion that competition among different firms promotes general welfare is one of the central tenants of economics. A cartel is a group of firms which, though officially independent, makes decisions as one body. The "Sherman Act of 1890" and subsequent

²In this case, the local government in Tampa successfully sued MLB on antitrust grounds to prevent the contraction of the Tampa Bay Devil Rays by the league.

federal antitrust laws prohibit firms from conspiring with one another to raise prices, and the very first decisions made by the Court regarding the antitrust statutes took steps to eliminate the formation of cartels.

From an economic point of view, however, labor unions are identical to a cartel in that they are formed by workers joining together in an effort to raise their wages. From the very beginning, it was clear that Congress had no intention of including labor unions under the antitrust umbrella, and workers were specifically excluded from prosecution under antitrust laws under Section 6 of the “Clayton Act of 1914”.

The protection of labor unions from antitrust law, however, also spills over and provides industry a similar protection as long as the firm(s) is engaged in collective bargaining with a union. This two-way protection is known as the “nonstatutory labor exemption” to the antitrust laws and was inferred by the courts in order to facilitate collective bargaining.

The reasoning for providing companies with this sort of reciprocal protection is clear. Suppose a sports labor union negotiated a contract with a league that provided for some version of the reserve clause in exchange for higher salaries. It would be unfair for the union to then turn around and sue the league by claiming the reserve clause is a violation of the antitrust laws. In the words of the Supreme Court in *Brown v. Pro Football* (1996), “As a matter of logic, it would be difficult, if not impossible, to require groups of employers and employees to bargain together, but at the same time to forbid them to make among themselves or with each other *any* of the competition-restricting agreements potentially necessary to make the process work or its results mutually acceptable.”

As predicted by Justice Marshall in his dissent to *Flood v. Kuhn*, following the Flood decision, the primary role of the courts in organized professional sports moved from deciding whether certain league policies violated antitrust rules to whether the restrictive rules were part of fairly negotiated labor agreements.

In *Haywood v. NBA* (1971), the Supreme Court determined that the NBA, unlike baseball, could not claim an exemption from antitrust laws in order to protect its rules requiring that player be at least 4 years removed from high school before entering the league. Spencer Haywood, a member of the 1968 U.S. Olympic team, had joined the rival American Basketball Association (ABA) after only two seasons in college. After one season in the ABA, Spencer joined the Seattle Supersonics of the NBA in violation of the NBA's age policies. The court ruled that the NBA's age limit was an unreasonable restraint of trade and constituted a group boycott by the teams in the league of Haywood's services.

The Haywood ruling not only ushered in the era of underclassmen and, more recently, high school students entering the NBA draft but also led indirectly to free agency for NBA players. In 1967, the ABA was formed to compete with the NBA. Competition for players between the leagues led to sharply higher player salaries so that, starting from roughly equal levels in 1967, by 1972, the average professional basketball player earned nearly three times that of his NFL or MLB counterpart. In 1976, the NBA merged with the rival ABA absorbing four of that league's teams. The NBA players association, fearing the loss of the competing league would bring an end to escalating pay scales, brought an antitrust suit against the NBA in *Robertson v. NBA* (1975) to block the merger. The merger of the only two significant providers of professional basketball certainly seemed anti-competitive on its face, and in the wake of the

Haywood ruling, the writing was on the wall. The NBA settled with the players and granted them free agency in exchange for the players dropping the suit.

In the NFL, Radovich's legal victory in 1957 eliminated the reserve clause from the NFL, but in 1963, the Rozelle Rule was instituted, which required teams acquiring a free agent to compensate the team losing the free agent by an amount determined by the league commissioner. Of course, if the level of compensation is set high enough, the Rozelle Rule serves as a *de facto* reserve clause. In *Mackey v. NFL* (1976), the NFL Players Association (NFLPA) sued the league, charging that the Rozelle Rule was an unfair restraint of trade, just as the reserve clause was. The Eighth Circuit Court of Appeals did indeed find that the Rozelle Rule was anti-competitive and, most importantly, had never been agreed upon in fair bargaining between the league and the union so was not covered by the non-statutory labor exemption. Similarly, the NFL player draft was deemed anti-competitive in *Smith v. Pro Football* (1978) since it reduced the salaries for rookie players and since the plaintiff had been drafted prior to the first collective bargaining agreement between the league and its players in 1968. In both of these cases, care must be taken, however, to differentiate between the notion of economic competition and competition on the field. While a league rule such as a reverse order draft is designed to promote competitive balance on the field, it is anticompetitive from an economic standpoint as it reduces the number of buyers for a particular player to a single team.

The NFLPA and other players unions fared more poorly in subsequent court decisions, however. Rookie point guard Leon Wood lost his complaint against the NBA's draft and salary cap (*Wood v. NBA*, 1987) since both items were part of the current NBA collective bargaining agreement. Similarly, the NFL players were unable to force the NFL through antitrust action to

accept their demands for expanded free agency in *Powell v. NFL* (1989) since the players and owners had at one time engaged in collective bargaining. Despite a breakdown in negotiations, the court decided that the non-statutory labor exemption was still in place until the union actually disbanded in late 1989 (as affirmed by *McNiel v. NFL* (1991).) The NFL players again lost an antitrust case in *Brown v. Pro Football* (1996) regarding compensation of reserve players due to the presence of collective bargaining. Most recently, Maurice Clarett lost his case against the NFL (*Clarett v. NFL* (2004)) in his bid to enter the NFL draft after completing his freshman season at the Ohio State University as the age restrictions on the draft were part of the NFL's current contract with its players. Similarly, no court action occurred after the NBA moved in 2005 to limit the ability of players to jump straight to the league after high school on the expectation that any court would immediately throw out such a lawsuit. It is crucial to note the differences between the Haywood ruling and the Clarett decision. Restricting underage players is considered illegal if the restriction was unilaterally imposed on players where no collective bargaining agreement was in place (i.e. Haywood) while such restrictions are legal if they are part of the bargaining process between labor and management (i.e. Clarett).

Leagues, Members and Rivals, and Antitrust

The next broad area of law that is of interest to a sports economist is not whether certain leagues or labor unions are subject to antitrust law but rather, if an organization is subject to such laws, what types of activities run afoul of the law and what is legal? One major area of court interest has been whether to consider leagues as single entities which can make economic decisions as a group or whether each team should be considered an individual unit that is not

allowed to collude with the other teams in its league to make decisions on pricing, output, and other economic variables.

For example, the much of the financial success of the NFL is due to the large national television contract that the league negotiates with broadcasters on behalf of its individual teams. Of course, having the league negotiate television contracts rather than individual teams effectively reduces the number of sellers from 30 to 1, a clear act of collusion that reduces competition. Indeed, in *U.S. v. NFL* (1953) in court found selling media rights as a league was anticompetitive and violated antitrust laws. Congress then intervened and granted the league (and subsequently other sports leagues) an exemption to the antitrust laws that allowed the NFL to negotiate television rights as a league. As part of this exemption, however, Congress ordered the NFL to not place their games in direct competition to college and high school football. The current NFL schedule which does not have either Friday night or Saturday games (until late in the season when the college season is over) is a direct result of this restriction.

Interestingly, while the NFL's teams were lobbying Congress to allow them to collude, certain teams in the National Collegiate Athletic Association (NCAA) were actively attempting to break up the NCAA's cartel. Prior to the mid-80s, the NCAA limited the number of television appearances that any individual school's football team could broadcast. The University of Oklahoma, among the most successful teams at the time sued the NCAA in order to negotiate with broadcasters for more television appearances. In *NCAA v. Board of Regents of the University of Oklahoma* (1984), the Supreme Court affirmed that sports leagues were a unique exception to other industries in that a certain degree of cooperation is required between nominal

competitors in order to produce the product. Therefore, the Court held that the NCAA's control of things like playing rules, player eligibility, etc., were appropriate behavior for the NCAA in order to make college football run smoothly. The Court ruled, however, that the NCAA's monopoly power should not extend into the economic realm of whether a school can appear on television or how much a school could charge for tickets or broadcast rights. For an economist, the Court's ruling had obvious results. The elimination of the NCAA cartel led to a massive expansion of the number of televised games³, and the increase in supply led to a significant decrease in the price of broadcasting rights for college football.

The role of league versus team also played a prominent role in *Fraser v. Major League Soccer* (2000). Major League Soccer (MLS) was formed in 1996 as the top American soccer league following the demise of the previous top league, the North American Soccer League (NASL), in 1984. MLS was very specifically formed as a single entity league where all teams would be owned by the league rather than by individual franchise owners. The league set very strict salary caps and players were under contract to the league rather than to an individual team, eliminating any competition between teams for a player's services. The players argued that this lack of competition was illegal on its face and sued for judicial relief. (Note that the players did not form a player's union until 2006, so the league was not protected by the non-statutory labor exemption.)

While syndicate ownership (that is the ownership of more than one team in a league by a single investor) has potential problems related to on-field competition (witness the infamous

³For example, NBC's contract with Notre Dame to broadcast all of that school's games on nationwide television led some to derisively call the network the "Notre Dame Broadcasting Network."

1899 Cleveland Spiders), the court noted that such an organizational structure is not illegal, and individual “branches” or subsidiaries of the same company are under no obligation to compete with one another.

The court also noted that since no other “major” league existed at the time of the formation of MLS, it was difficult to argue that MLS reduced salaries for top American soccer players when no American market existed for them previously.

Finally, the court stated, that MLS (unlike the NFL, for example) could not be guilty of antitrust behavior since MLS did not have significant market power in the market for soccer talent. While it was the only “major league” buyer of players in the United States, numerous minor leagues also existed in this country, and dozens of other leagues that competed for American players existed in the rest of the world. Therefore, if one considers the relevant market to be the international market for soccer talent, as the court did, MLS was by no means a monopoly.

The definition of the relevant market also played an important role in several other prominent court cases. In 1955, the Supreme Court ruled *U.S. v. International Boxing Club*, that boxing was not baseball and therefore was not exempt from antitrust. The Court remanded the case back to the District Court for trial. In 1959, the case found itself before the Supreme Court again in *International Boxing Club v. U.S.* The antitrust division of the federal government accused International Boxing Club, including its premier fighter, Joe Louis, of monopolizing the market for championship boxing. The group indeed promoted 25 of the 27 championship fights that occurred over the period of the government’s complaint. International Boxing argued, however, that championship bouts are but a small part of the boxing industry and that they

therefore controlled only a small portion of the sport. The Court sided with the government's claim that championship matches are a distinct subset of the boxing industry as a whole, and therefore International Boxing's monopolization of this sub-market was illegal under antitrust laws.

Similarly, in *NFL v. NASL*, the North American Soccer League successfully challenged the NFL's restriction that its owners could not own another sports franchise. While the group of NFL owners had nothing like a monopoly on capital, the court identified a specific sub-market of "sports capital." By not allowing its owners to purchase other franchises, the NFL was shutting off a significant portion of the nation's "sports capital" from the rival NASL. The NFL subsequently changed its ownership rules such that a NFL owner could purchase another sports franchise in his or her own market or another sports franchise in a market where no other NFL team resides. Thus, NFL owners Paul Allen and Malcolm Glazer are allowed to become owners of the Portland Trailblazers and Manchester United, respectively, since the NFL does not have franchises in these cities. Similarly, Robert Kraft is allowed to own both the NFL's New England Patriots and MLS's New England Revolution.

The last set of issues commonly addressed by the courts related to antitrust involve existing leagues' responses to new leagues. Established leagues have generally dealt with rivals in three ways: merger, cut-throat competition, and expansion. For example, the established National League merged with the newly formed American League to form MLB in 1901, and the NBA and National Hockey League (NHL) each absorbed 4 teams from the rival ABA and World Hockey League (WHL) following their rivals' demise. Competition, whether fair or unfair, drove the Federal League out of business in 1915, killed the United States Football League (USFL) in

1985 as well as the Xtreme Football League (XFL) in 2004, and led to the Negro Leagues gradually disappearing following the integration of MLB in the late 1940s and early 1950s. Expansion played a role in the NFL's response to the rival American Football League in the early 1960s and MLB's response to the proposed Continental League in the late 1950s and early 1960s. The courts were involved in many of these rivalries.

Of course, *Federal Baseball* dealt directly with the competition aspect. Unfortunately, thanks to the court's decision to exempt baseball from antitrust law, one will never know how the court would have regarded MLB's attempts to drive the Federal League out of business. Courts in general have not been kind to rival leagues that attempted win in court what they could not achieve in the marketplace since the intent of antitrust law has always been to protect competition, not to protect competitors.

This sort of court reasoning is apparent in *AFL v. NFL* (1960). In this case, the upstart AFL contended that the NFL was complicating its entry into the national professional football market by expanding its own league into potential AFL cities. For example, both Minnesota and Dallas were granted expansion franchises soon after the AFL announced plans to locate teams in these cities. (Note that Minnesota and Dallas both still play in the NFC today.) The court responded that the NFL was not duty-bound to make entry into the market easy for the AFL and that the country still had enough existing viable cities to allow the AFL to begin play. Expanding into markets that might be attractive to potential competitors was not considered predatory behavior on the part of the NFL.

The court has been similarly unkind to leagues that attempt to enforce rules on their own members. In *Los Angeles Coliseum v. NFL / Oakland Coliseum v. Oakland Raiders* (1984), the

stated that on antitrust grounds, the NFL could not block the move of the Oakland Raiders to Los Angeles. This ruling effectively prohibited sports leagues (except MLB which is, of course, exempt from antitrust action) from blocking the movement of franchises to new venues or metropolitan areas. The stark difference between MLB and other leagues is reflected in the fact that an average of 5 teams have moved to new cities in the NHL, NBA, and NFL since 1982 while only a single MLB has changed location since then.

Even winning an antitrust case is no guarantee that a new league will be successful. In 1983, investors began the USFL which was designed as a springtime rival to the NFL. The USFL was quite successful in attracting talent (including players such as Herschel Walker, Jim Kelly, and Doug Flutie) but was less successful in generating sufficient revenues to keep the league profitable. The NFL, according to the court, aided in the USFL's demise by engaging in predatory behavior including attempts to have exclusive dealing contracts with broadcasters. The trial jury found believable accusations by the USFL that any network giving a contract to the USFL would be punished by the NFL through various means. However, the same jury that found the NFL guilty of predatory behavior also determined that the USFL's financial difficulties were also largely of its own making and awarded the league only \$1 in damages (which was trebled to a similarly unhelpful \$3 under antitrust law). The USFL ceased operation immediately after the damage award was announced.

Sports and Discrimination

Sports have played an important role in the area of civil rights. Athletes such as Jesse Owens, Joe Louis, Jackie Robinson, Arthur Ashe, Mohamed Ali, Babe Zaharias Didrickson, and

Billy Jean King have all become important figures in the fight for racial and gender equality both in sports as well as in society as a whole. Once again, the courts have played an important role in providing for a “level playing field” for women, minorities, and even the disabled.

Brown v. Board of Education (1954) established that racial segregation was illegal in the public schools. *Dawson v. Baltimore* (1955) and *Holmes v. City of Atlanta* (1955) extended the prohibition of segregation to publicly owned and operated swimming pools, beaches, parks, and golf courses opening up opportunities for minorities to participate in sports such as tennis, swimming and golf. *Daniel v. Paul* (1969) extended the prohibition of segregation to privately owned “public accommodations.” In other words, if customers are routinely granted admission to a recreational facility but without being granted ownership or control of the facility as in a true “private club,” then private owners could also not discriminate. This ruling opened up semi-private or public/private golf courses, tennis clubs, and swimming facilities to minorities while only allowing discrimination at truly private members-only country clubs. Beyond these few cases, however, the courts have played only a minor role in eliminating racial discrimination in professional sports as most sports and leagues had begun to voluntarily desegregate well before legal action was undertaken.

The courts have played a much more important role in the enforcement of Title IX of the Education Amendments of 1972 which was intended to prevent gender discrimination in federally funded educational programs. The provision of athletic opportunities for women has been among the most visible results of Title IX and among the most contentious. By far the most important case involving Title IX is *Grove City College v. Bell* (1984). Grove City College was a private, conservative, religious college that did not wish to provide athletic teams for female

students. Grove City claimed that they were not subject to Title IX since they received no direct funding from the federal government. The Supreme Court disagreed citing the fact the many Grove City students received federally subsidized financial aid. In effect, Grove City was indirectly receiving federal money through their students, and the college would have to abide by Title IX regulations if it were to continue to accept students receiving federal financial aid. While this at first appeared to be a victory for the proponents of financial aid, the Court very specifically limited what portions of the college were subject to Title IX restrictions to the financial aid department itself. Although the financial aid would be used to fund general operations of the college including the athletic department, the Court either did not understand or did not concern itself with the economic concept of fungibility and limited the enforcement of Title IX to only the financial aid department. Congress later passed amendments to Title IX reversing this portion of the Court's ruling.

Other court rulings regarding Title IX have dealt with compliance with the federal law, the funding of men's athletic programs in the wake of increased funding for women's programs, and the issue of girls and boys playing on the opposite gender's teams.

Finally, the case of *PGA Tour v. Martin* (2001) is of interest to many sports economists due to the large amount of media attention it received. Casey Martin was a talented professional golfer with a disability that made it difficult to walk long distances. Martin sued the Professional Golfer's Association (PGA) for the right to use a cart on the pro tour. The PGA argued that the use of a cart would fundamentally alter the nature of the sport while Martin contended, and the court agreed, that a cart would be a reasonable accommodation for his recognized disability.