

BOOK REVIEW

Understanding Sports Law

Understanding Sports Law. By Timothy Davis and N. Jeremi Duru. Carolina Academic Press. 2023. \$55.

Reviewed by Nick Noonan.

Sports law comprises a duality. It entails both the application of various general legal concepts to the relationships emerging from and in sports, and a substantive legal doctrine with its own rules, decisions, and legislation. Law students, lawyers, and practitioners each approach the study of sports law with varying levels of knowledge resulting from this duality. Most will be familiar with the general legal concepts — contracts, torts, and constitutional law — from early in their legal education and may also have some grasp of more specialized concepts, such as antitrust and labor law. At the same time, few will be acutely familiar with the unique and specialized application of these concepts to the relationships that exist within sports. This relative few may have taken advanced courses in sports law or have practice or teaching experience in the area. As such, an effective sports law text must be accessible to its general readership — providing a useful overview of key concepts and contentious issues — while delivering something of value to the experienced, by way of both provocative and challenging questions and new insights. Timothy Davis and N. Jeremi Duru’s *Understanding Sports Law*¹ recognizes and addresses this duality by providing a textbook useful for students, practitioners, and law professors alike.

The book successfully navigates both foundational and advanced areas of sports law in a way that is accessible to all, but thought-provoking for even the well-versed. While many sports law texts focus on one or a few discrete topics within the area, this book effectively takes on a near-exhaustive consideration of sports law in its full breadth, ranging from

¹ Timothy Davis & N. Jeremi Duru, *Understanding Sports Law* (2023).

amateur sport to professional sport, sports governance to historical and contemporary social issues in sport including gender and racial inequality, and everything in between. This is no small feat, yet the authors accomplish it deftly. This breadth is one of the book's greatest strengths. Sports law, both in teaching and in practice, often focuses on either amateur or professional sports; on social issues in sports, or on governance of sports leagues; on representing a sports team, or representing athletes. As such, expertise among practitioners and professors is often diffuse. This book provides a broad yet detailed overview that enables all readers to develop a detailed and reasonably comprehensive understanding of sports law and all that this broad field entails, including areas that are often marginalized in sports law scholarship such as the history of women's sports leagues and gender inequality in professional sports.

Understanding Sports Law is divided into six parts, each focusing on a separate piece of the sports law puzzle, such as amateur athletics, sport and society, professional sports leagues, professional athletes, health and safety, and intellectual property. This organization can be thought of as tracking an athlete's career from amateur to professional. In the authors' words, "the material is organized according to the level of sports participation."² This gives the reader insight into the journey underlying the sporting experience for athletes and those along for the ride. It begins with a consideration of legal issues in high school athletics before moving on to college athletics and the Olympics. It then offers wide-ranging discussions of the legal and social issues pertaining to coaching, gender and sex discrimination, and racial discrimination. The book is mindful of the fact that some substantive and societal issues transcend the level of sports participation and thereby require a chapter of their own. Further, the decision to place these discussions before the chapters on professional sporting leagues demonstrates an awareness of the growing need for amateur athletes, as well as their professional counterparts, to be aware of and grapple with their position as athletes in society. The text provides thoughtful consideration of these critical topics and will serve as a useful aid for students, practitioners, and academics to wrestle with them in the context of sports.

Each chapter of the book gives a broad overview of the past, present, and future of the area and its legal issues. Most begin with an accessible introduction to the topic or entity. The authors then discuss relevant legal issues and open policy questions, presenting intriguing questions and offering helpful suggestions as to where answers may lie. Where applicable, the authors engage in a detailed discussion of relevant case law. For instance,

² *Id.* at xix.

in Chapter 2, “Legal Issues in College Athletics,” the authors provide a thorough examination of the development of antitrust law as it pertains to the NCAA. They trace the case law from *NCAA v. Board of Regents*, 468 U.S. 85 (1984), which held that the NCAA’s proposed television plan was a restraint on open competition and trade and thus violated the Sherman and Clayton Antitrust Acts, to the landmark *O’Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015), which along with *Alston v. NCAA*, 141 S. Ct. 2141 (2021) has recently revolutionized NCAA-athlete relations by finding that the NCAA’s profiting from the likeness and namesake of college athletes, as well as their restrictions on providing college athletes with non-cash compensation for academic purposes, were contrary to antitrust laws. They also discuss the ongoing *House v. NCAA* litigation in California, which — among many other things — seeks damages for college athletes who were unable to profit from name, image, and likeness (NIL) prior to its permissibility in 2021, as well as to examine the NCAA’s restrictions on the use of NIL as a recruiting tool. These cases are fundamentally about NIL compensation for college athletes, a burgeoning area that is rife with policy considerations. On this topic, a reader may be left wanting more from the book, as the discussion primarily focuses on providing a to-the-point summary of the legal questions and holdings of these cases and the legislative responses to them. One could imagine a broader discussion of NIL that goes beyond these core cases and engages with the complex legal and normative debates surrounding NIL rights for college athletes. This is touched on somewhat in Chapter 12, “Intellectual Property Issues in Sport,” but not robustly enough to do more than whet a reader’s appetite. This is not to say that the authors shy away from policy discussions, taking positions, or making predictions. They occasionally do so, and much to the reader’s benefit. For instance, the concluding section of Chapter 12 deals with the “technological cat and mouse game” of sports broadcast infringement.³ In informing the reader of the past and present landscape and the potential future direction of this area, the authors usefully draw on case law and provide commentary on the implications of further developments in this area. For instance, they note the challenges involved in applying copyright law as technology develops, particularly in the context of broadcasts, which is exacerbated by the Supreme Court’s recent polarization on the issue.

Among the greatest strengths of this work is the authors’ ability to teach law in general through the lens of sports law. Readers who have not been exposed to various specialized sub-areas of law will gain an

³ *Id.* at 450.

appreciation for, and understanding of, them by seeing how they work in the sports context.

Chapter 1, titled “Legal Issues in Interscholastic (High School) Athletics,” is an illustrative example. Perhaps to the surprise of readers, eligibility rules in high school athletics provide an instructive exploration of judicial deference. Rules of the relevant Interscholastic Athletic Association, or High School Athletic Association, as the case may be, prohibit the transfer and recruiting of athletes; bar the participation of athletes over a certain age or in their fifth year of high school; and set standards for academic eligibility and good conduct.⁴ These rules are oft-challenged, and Davis and Duru use them to demonstrate the importance of a judicially deferential approach to constitutional challenges. They point to the example of *Isabella v. Arrowhead Union High School District*, 323 F. Supp 3d 1052 (E.D. Wis. 2018), where an athlete was caught hosting a gathering with classmates where alcohol was served and was suspended from four soccer games by her school. The athlete brought multiple constitutional challenges, which were dismissed by the district court on the principle that the court should defer to the school’s “classification or construction of its own rules . . . so long as they were not so irrational or arbitrary as to shock the conscience.”⁵

The authors also explore judicial deference in sport through *Art Gaines Baseball Camp, Inc. v. Houston*, 500 S.W. 2d 735 (Mo. Ct. App. 1973), which dealt with a rule that athletes who attended a sport-specific camp for more than two weeks during the summer were ineligible in the following year. Again, the court invoked judicial deference in determining that “we . . . entrust the control and supervision of the extracurricular activities” within a school to the school itself, that “members are in the most advantageous position to appreciate the regulations under which they must act to achieve desired goals,” and accordingly that courts should not interfere as long as the regulations are reasonable and do not infringe on the law or public policy.⁶ To those well-versed in administrative law, these may seem like rather obvious instances of judicial deference as a foundational piece of judicial review. Yet, many readers of this book may not be administrative law experts — at least, not yet — and therefore the book serves as a useful tool for introducing such readers to this fundamental aspect of the law and how it plays out in the context of sports.

⁴ *Id.* at 10.

⁵ *Id.* at 11.

⁶ *Id.* at 11-12.

This is similarly the case in Chapter 8, titled “Labor Law, Labor Relations and Collective Bargaining.” Labor law is an immense field with complex jurisprudence. But sports law provides a useful context for novices to become acquainted with it and for experts to gain an appreciation of how it applies to sports. Professional sports teams are employers, and the athletes who play for them are their employees. This statement may seem self-evident, but for Davis and Duru, it is the jumping-off point for a rich discussion of employer and employee rights in the sporting context. The history of the National Labor Relations Board (NLRB)’s treatment of professional sports leagues provides readers with a useful example of jurisdiction and applying federal law to interstate activity.

Of particular interest to the sports fan may be the discussion of players’ freedom of movement. The authors provide a compelling history of free agency, trades, and their pre-cursors, which date back at least a century to *Philadelphia Ball Club, Ltd. v. Lajoie*, 202 Pa. 210 (Pa. 1902), where a baseball player was prevented from transferring to a different team in the same city (Philadelphia) by the MLB’s ‘reserve clause,’ which effectively barred player movement. This system largely stripped players of their freedom of movement, becoming the standard for many years and effectively creating what the authors view as an anti-competitive market for athletes that capped player salaries. In Davis and Duru’s estimation, this was only solved once players turned to antitrust law — as was the case in most sports leagues — or, in the unique circumstances of the MLB, contract law.⁷

The authors argue that the most robust tool for professional athletes to use in labor relations is their respective league’s collective bargaining agreements. They highlight that these have been key to establishing the existing framework that affords players a great deal of freedom of movement under both free agency and trades. Though not discussed in the book, the trials and tribulations of MLB players throughout the 20th century as they struggled to attain greater autonomy over their careers presents a striking contrast to the 21st century, when so-called ‘super teams’ (in the NBA and NFL, among other leagues) are formed with increasing regularity, composed of elite players who can essentially force their way onto (and off of) teams at will. The chapter would have been enhanced with some discussion of this recent development, and a comparison of the MLB’s history with labor relations to that of other leagues (for instance, the 1993 Reggie White free agency saga in the NFL) would have further enhanced the reader’s takeaways from this section.

⁷ This was because the MLB had a longstanding antitrust exemption, as highlighted by the authors both in Chapter 8 and elsewhere in the book.

Perhaps the book's strongest exploration of broader legal and social issues through the lens of sports is Chapter 6's analysis of "Race and Racial Discrimination Issues in Sports." This wide-ranging chapter presents an overview of the racially discriminatory structures in American law and society followed by tools available today to challenge racial discrimination in sports, with particular attention to college athletics. The chapter concludes by addressing recent controversies over the continued use of Native American names and mascots in sports and their legal implications. The authors provide a comprehensive history of race-based exclusion in sports that confronts the painful history of racism at all levels of American athletics and how it continues today. This deft and nuanced treatment is perhaps no surprise, given the authors's background as scholars of race in sports. A revealing aspect of this history that the authors emphasize is that the exclusion of Black athletes from sports was not just a result of segregationist laws but of so-called "gentlemen's agreements" between league officials to exclude Black players. As the authors note, informal exclusion drove Black jockeys, baseball players, and other athletes out of their respective leagues. This informal exclusion was driven by league votes, rules, and customary hiring practices as well as physical and verbal abuse of Black athletes by players, fans, media, and executives.⁸ This widespread social and customary exclusion became ingrained in sports culture. While discriminatory legal structures may be changed by legislatures and courts, racist social norms and gentlemen's agreements proved harder to eradicate. However, in the authors' view, these norms gradually did change, bringing desegregation in sport as with many other areas of American society over the course of the twentieth century. The authors suggest that at least part of this change in sports was borne of self-interest, as teams realized they were forsaking a potential competitive advantage by cutting out a portion of their prospective talent pool.⁹

After tracing the social history of racism in sport, Davis and Duru examine the legal mechanisms available for challenging racial discrimination in sport, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) and 42 U.S.C. § 1981, under which individuals subjected to racial discrimination can sue the perpetrator. The authors incisively argue that the unique features of professional sports leagues have made racial discrimination suits on these grounds a largely ineffective remedy. Specifically, the insularity of leagues often means that lawsuits seen by teams as disrupting league stability render the litigant a pariah from the

⁸ *Id.* at 191.

⁹ *Id.* at 193.

league, hampering their job prospects with all of the league's teams. The authors draw on examples across the NFL and NBA, including former Miami Dolphins head coach Brian Flores who brought a racial discrimination lawsuit against the NFL in 2022. These examples prove useful, but a reader may be disappointed by this chapter's omission of the most prominent racial justice advocate in professional sports today, Colin Kaepernick. Though Kaepernick's exclusion from the NFL resulted from his protests against racial injustice, rather than, at least ostensibly, directly from Kaepernick's race, the collusion of NFL teams to exclude him from playing in the league stands as a chilling example of why those in professional sports leagues fear bringing discrimination complaints against the league, and discussing it would have further enhanced the authors' examination of racism and sports. More generally, the authors explain the legal standards of disparate treatment and disparate impact that determine whether a racial discrimination plaintiff can succeed by showing she has experienced discriminatory effects (disparate impact) or whether she needs to also show the defendant had discriminatory intent (disparate treatment). Needing to show disparate treatment, which is required to bring a claim under § 1981 but not Title VII, often creates an insurmountable hurdle for plaintiffs that leads their claims to be dismissed at summary judgment.¹⁰

These discussions provide readers a deeper understanding of the racial dynamics that underlie professional sports and why their improvement seems to be lagging behind. In the broader context of the book, Chapter 6's discussion of race in sport serves as an apt microcosm. The book provides a detailed yet accessible overview that strives to provide readers with both the foundation and higher-level analysis of what shapes sports law today. Much the same, Chapter 6 is fundamentally concerned with providing readers an understanding of how and why race and racial discrimination issues in sports came to be. The current problems it carefully details — ranging from racial discrimination toward coaching staff and players, to disproportionality in college admissions, to offensive names and mascots — are inextricably linked to the history from which they arose. A reader comes away from reading this book well-informed that, while sports bodies and institutions have made progress toward racial equality from the days of segregation, the world of sports — like the country — still has a long way to go. Davis and Duru demonstrate that the legacy of segregation that persists through gentlemen's agreements and racial exclusion continue to be felt, and the only way forward is to meaningfully grapple with them.

¹⁰ *Id.* at 198.

Understanding Sports Law is a valuable addition to the sports law literature. It provides an accessible yet comprehensive overview of the vast areas of law that sports implicate, organized in a manner that promotes a holistic understanding of each area of sports law. At the same time, it uses sports law as an example — a teaching tool — to educate readers about the law more broadly through its many intersections with sports. The book is an informative and readable resource that may be relied on by students, professors, and practitioners alike as a primary or supplementary sports law text.