

In the Arena

A Sports Law Handbook

EDITORS:

ELISSA D. HECKER, ESQ.

DAVID KRELL, ESQ.

CONTENTS

- Chapter 1 Intellectual Property Rights and Endorsement Agreements**
William H. Glover, Jr., Esq.
Elliot Solop, Esq.
- Chapter 2 How Trademark Protection Intersects With the Athlete's Right of Publicity**
Ronald D. Coleman, Esq.
- Chapter 3 Collective Bargaining in the Big Three**
Daniel Werly, Esq.
Katie Bosley, Esq.
Darsh Patel
- Chapter 4 Agency Law**
Gregg E. Clifton, Esq.
Michael Ackerstein, Esq.
- Chapter 5 Sports, Torts and Criminal Law**
Carter Anne McGowan, Esq.
- Chapter 6 Role of Advertising and Sponsorship in the Business of Sports**
Matthew D. Pace, Esq.
Regina Liang, Esq.
- Chapter 7 Doping in Sport: A Historical and Current Perspective**
Brent J. Nowicki, Esq.
- Chapter 8 Athlete Concussion-Related Issues**
Zack Eisner, Esq.
Nikki Wilson Crary, Esq.
- Chapter 9 Concussions—From a Neuropsychological and Medical Perspective**
Mark Herceg, Ph.D.
- Chapter 10 In-Arena Giveaways: Sweepstakes Law Basics and Compliance Issues**
Barry M. Benjamin, Esq.

Chapter 11 Navigating the NCAA Enforcement Process

Justin P. Sievert, Esq.

Chapter 12 Title IX

Jennifer A. Harper, Esq.

Alyson J. Guyan, Esq.

Daniel A. Peterson, Esq.

Chapter 13 Mascots: Handle With Care

David Krell, Esq.

Chapter 14 An Introduction to European Union Sports Law

Marie-Andrée Weiss, Esq.

Chapter 15 Dental and Orofacial Safety

La Shun Carroll, D.D.S.

Appendices

DETAILED TABLE OF CONTENTS

Introduction	xxi
Contributor Biographies	xxv

Chapter 1 Intellectual Property Rights and Endorsement Agreements

William H. Glover, Jr., Esq.

Elliot Solop, Esq.

[1.0]	I.	Trademarks.....	3
[1.1]	A.	Trademark Infringement	4
[1.2]	B.	Fantasy Sports	12
[1.3]	C.	Ambush Marketing.....	13
[1.4]	II.	Copyrights	14
[1.5]	A.	Fair Use	16
[1.6]	B.	Work for Hire	16
[1.7]	C.	Copyright Infringements	17
[1.8]	D.	Endorsement Contracts	20
[1.9]	E.	Outline and Contents of Typical Endorsement Agreement	20
[1.10]	1.	Title	20
[1.11]	2.	Description of the Parties	20
[1.12]	3.	Definition of Terms.....	21
[1.13]	4.	Term of Agreement	22
[1.14]	5.	Grant of Rights	23
[1.15]	6.	Duties and Obligations	23
[1.16]	7.	Marketing Rights.....	25
[1.17]	8.	Compensation.....	25
[1.18]	9.	Authorized Agent.....	26
[1.19]	10.	Prior Approval.....	26
[1.20]	11.	Default or Breach	27
[1.21]	12.	Termination for Cause.....	28
[1.22]	13.	Confidentiality.....	29
[1.23]	14.	Termination for Breach	30
[1.24]	15.	Use of Athlete's Identification After Termination	30
[1.25]	16.	Non-Assignment	30
[1.26]	17.	Arbitration	31
[1.27]	18.	Reservation of Rights	32
[1.28]	19.	Indemnification	32
[1.29]	20.	Limited Liability	33
[1.30]	21.	No Joint Venture	34

[1.31]	22. Governing Law.....	34
[1.32]	23. Severability.....	35
[1.33]	24. No Waiver	35
[1.34]	25. Notices.....	35
[1.35]	26. Attorney Fees	36
[1.36]	27. Entire Agreement	36
[1.37]	28. Modification of Agreement.....	36
[1.38]	29. Signatures of all Parties.....	37
[1.39]	III. Conclusion.....	37

Chapter 2 How Trademark Protection Intersects With the Athlete's Right of Publicity

Ronald D. Coleman, Esq.

[2.0]	I. Introduction	41
[2.1]	II. Protecting the Persona With Trademark	42
[2.2]	A. Trademarks and Secondary Meaning	42
[2.3]	B. Trademark Developments That Caused Confusion	43
[2.4]	C. TEAS: Removing Barriers to Nowhere	43
[2.5]	D. ITU: The Best of Intentions	44
[2.6]	E. IP Hyperenforcement: Be Careful of What You Wish.....	44
[2.7]	F. Trademarks in Names of the Famous.....	46
[2.8]	G. The Name Stealers	48
[2.9]	H. Trademarks in Names: The Morning After.....	50
[2.10]	I. Planning for a Brand That Outlives the Celebrity Athlete	51
[2.11]	J. The Limitations of False Trademark Endorsement by Likeness.....	52
[2.12]	K. Trademark Protection for Other Aspects of Personality.....	54
[2.13]	1. Celebrity Voices.....	54
[2.14]	2. Autographs	55
[2.15]	3. The Right of Publicity	57
[2.16]	a. General Principles of the Right of Publicity.....	59
[2.17]	b. Defenses to Right of Publicity Claims	61
[2.18]	III. Conclusion.....	65
[2.19]	A. The Lawyer's Tasks in Managing an Athlete's Brand for the Long Run	65
[2.20]	B. Practice Concentrations.....	65
[2.21]	1. Estate Planning.....	66

[2.22]	2. Provisions for Incapacitation.....	66
[2.23]	3. Trademark Lawyering	66
[2.24]	a. Clearance	67
[2.25]	b. Prosecution	67
[2.26]	c. Maintenance	67
[2.27]	d. Enforcement	67
[2.28]	e. General Brand-Management Lawyering.....	68
[2.29]	f. Right of Publicity	68
[2.30]	g. Social Media.....	68
[2.31]	h. Reputation Management and Defamation	68
[2.32]	i. Search Engines	69
[2.33]	j. Other Internet Issues.....	69

Chapter 3 Collective Bargaining in the Big Three

Daniel Werly, Esq.

Katie Bosley, Esq.

Darsh Patel

[3.0]	I. Why CBAs in the Big Three are Important.....	73
[3.1]	II. Collective Bargaining in Major League Baseball	74
[3.2]	A. Revised Drug-Testing Policies.....	78
[3.3]	B. Signing Bonus Pool.....	78
[3.4]	C. Expanded Playoff Structure	78
[3.5]	III. Collective Bargaining in the NFL	78
[3.6]	A. Increased Medical Benefits	81
[3.7]	B. HGH Testing	82
[3.8]	C. The Franchise Tag.....	82
[3.9]	D. Hard Salary Cap	82
[3.10]	E. System of Fines and Appeals for On-Court Incidents	83
[3.11]	F. Rookie Compensation System	83
[3.12]	IV. Collective Bargaining in the NBA	83
[3.13]	A. Amnesty Provision	86
[3.14]	B. Salary Cap Floor and Luxury Taxes	86
[3.15]	C. “Stretch” Provision.....	86
[3.16]	D. Revenue Sharing Program Among Teams.....	87
[3.17]	V. Conclusion.....	87

Chapter 4 Agency Law

Gregg E. Clifton, Esq.

Michael Ackerstein, Esq.

[4.0]	I.	Introduction: What is Agency Law?	91
[4.1]	II.	What Is a Player Agent?	91
[4.2]	A.	The Varied Functions of the Player Agent.....	91
[4.3]	1.	Negotiating on Behalf of the Professional Athlete	92
[4.4]	2.	Counseling the Professional Athlete	92
[4.5]	3.	Managing the Professional Athlete	93
[4.6]	4.	Marketing the Professional Athlete.....	93
[4.7]	B.	Players Associations and Agents.....	94
[4.8]	C.	Union-Agent Relationships	94
[4.9]	1.	National Football League Players Association (NFLPA).....	94
[4.10]	2.	National Basketball Players Association	95
[4.11]	3.	Major League Baseball Players Association	95
[4.12]	4.	National Hockey League Players Association	96
[4.13]	D.	Agent-Athlete Agreements.....	97
[4.14]	E.	Agent-Athlete Litigation	97
[4.15]	1.	<i>Zinn v. Parrish</i>	97
[4.16]	2.	<i>Detroit Lions v. Argovitz</i>	98
[4.17]	3.	<i>Brown v. Woolf</i>	98
[4.18]	F.	Government Regulation	99
[4.19]	III.	The Uniform Athlete Agent Act	99
[4.20]	A.	Registration and Certification in New York State	100
[4.21]	B.	Required Form of Contract	100
[4.22]	C.	Prohibited Conduct.....	101
[4.23]	D.	Penalties	101
[4.24]	IV.	Sports Agent Responsibility and Trust Act (SPARTA)	102
[4.25]	A.	Prohibited Conduct.....	103
[4.26]	B.	Disclosure Requirements.....	103
[4.27]	C.	Penalties	103
[4.28]	V.	NCAA Regulations.....	104
[4.29]	VI.	Ethical Considerations.....	105
[4.30]	VII.	Conclusion.....	106

Chapter 5 Sports, Torts and Criminal Law

Carter Anne McGowan, Esq.

[5.0]	I.	Introduction	109
[5.1]	II.	Actions in Tort	109
[5.2]	A.	Preliminary Question: Is Tort Liability Appropriate in Sports?	109
[5.3]	B.	The Appropriate Standard for Liability.....	111
[5.4]	1.	A Brief Overview of the Standards.....	111
[5.5]	a.	Negligence	111
[5.6]	b.	Recklessness	111
[5.7]	2.	Recklessness Versus Negligence.....	112
[5.8]	3.	Recklessness and Consent.....	115
[5.9]	a.	The Rules of the Game.....	115
[5.10]	b.	Part of the Game.....	116
[5.11]	c.	A Brief Word About Intentional Torts.....	118
[5.12]	II.	Criminal Sanctions	119
[5.13]	A.	An Overview of Criminal Assault.....	119
[5.14]	B.	The Genesis of Criminal Assault Actions: Canada.....	120
[5.15]	C.	American Cases.....	123
[5.16]	1.	The Rules of the Game Versus a Part of the Game as Applied to Criminal Assault.....	123
[5.17]	2.	Defenses	125
[5.18]	III.	Coach and Organizational Liability for Player Actions	126
[5.19]	A.	Criminal Conspiracy	128
[5.20]	B.	Respondeat Superior	130
[5.21]	C.	Ratification	130
[5.22]	IV.	Conclusion.....	131

Chapter 6 Role of Advertising and Sponsorship in the Business of Sports

Matthew D. Pace, Esq.

Regina Liang, Esq.

[6.0]	I.	Introduction	135
[6.1]	II.	Advertising Versus Sponsorship	139
[6.2]	A.	Advertising	141
[6.3]	1.	Television Advertising	141
[6.4]	2.	Online and Social Media	143
[6.5]	3.	Print, Radio and Outdoor Advertising	144

[6.6]	4. A Case Study in Advertising: Effective CBS/Turner's New Partnership Leads to Increase in Ratings	145
[6.7]	B. Sponsorship	147
[6.8]	C. Ambush Marketing	153
[6.9]	D. A Case Study in Sponsorship: The Rise of NASCAR	153
[6.10]	III. Conclusion	154

Chapter 7 Doping in Sport: A Historical and Current Perspective *Brent J. Nowicki, Esq.*

[7.0]	I. Introduction	159
[7.1]	II. Early Attempts to Regulate Drug Use in Sport	159
[7.2]	A. World Anti-Doping Agency	160
[7.3]	B. World Anti-Doping Code	161
[7.4]	III. An Athlete's Due Process Rights for Alleged Doping Violations	164
[7.5]	IV. The United States Anti-Doping Agency	167
[7.6]	V. Court of Arbitration for Sport	169
[7.7]	VI. Anti-Doping Policies of Non-Olympic Sports	171
[7.8]	A. Major League Baseball	172
[7.9]	B. National Basketball Association	174
[7.10]	C. National Football League	175
[7.11]	VII. What to Do If an Athlete-Client Tests Positive	178
[7.12]	VIII. Conclusion	180

Chapter 8 Athlete Concussion-Related Issues *Zack Eisner, Esq.* *Nikki Wilson Crary, Esq.*

[8.0]	I. Introduction	183
[8.1]	II. History	185
[8.2]	III. State Legislation	189
[8.3]	A. Guidelines and Standard of Care	189
[8.4]	B. Creating an Effective Concussion-Management Plan	190
[8.5]	IV. Federal Legislation	191
[8.6]	V. Collegiate Regulations	192
[8.7]	VI. Potential Liability For Injuries	194
[8.8]	A. Liability for Injuries in Professional Athletics	194
[8.9]	B. Liability for Injuries in Professional Athletics Under Workers' Compensation Laws	196

[8.10]	1. Proving the Causation Elements of the Claimant's Workers' Compensation Claim ...	198
[8.11]	2. Defenses Against Workers' Compensation Claims by the National Football League.....	199
[8.12]	C. Liability for Concussive Injuries in Athletics Under the Negligence Standard	203
[8.13]	D. Legal Duty of the NFL Under the Negligence Standard	203
[8.14]	E. Legal Duties of Physicians Regarding Return-to-Play Decisions	204
[8.15]	1. Legal Duties of Athletic Trainers.....	205
[8.16]	2. In Order to Prove Negligence for a Concussive Injury, the Athlete Must Show That a Breach Occurred	206
[8.17]	3. In Order to Prove Negligence for a Concussive Injury, the Athlete Must Show Causation	207
[8.18]	4. In Order to Prove Negligence for a Concussive Injury, the Athlete Must Show Damages	208
[8.19]	F. Potential Defenses to a Negligence Action.....	208
[8.20]	VII. Conclusion.....	209

Chapter 9 Concussions—From a Neuropsychological and Medical Perspective

Mark Herceg, Ph.D.

[9.0]	I. Introduction	213
[9.1]	II. Long-Term Effects of Repeated Concussions.....	218
[9.2]	III. Neuropsychological Testing in Concussion Management	219
[9.3]	IV. Concerns with the Evaluation Process	220
[9.4]	V. Conclusion.....	221

Chapter 10 In-Arena Giveaways: Sweepstakes Law Basics and Compliance Issues

Barry M. Benjamin, Esq.

[10.0]	I. What is a Game of Chance?	225
[10.1]	II. Structuring a Game of Chance In View of State Lottery Laws	226
[10.2]	III. Structuring a Game of Chance In View of the Gambling Laws: "Game for Game's Sake"	229
[10.3]	IV. Preparing the Official Rules for a Game of Chance....	229
[10.4]	A. Eligibility.....	230
[10.5]	B. No Purchase Necessary; How to Enter	230

[10.6]	C. Prizes and Selection of Winners.....	231
[10.7]	D. Suggested Releases and Limitations on Liability	231
[10.8]	E. Winners List	231
[10.9]	F. Sponsor Information.....	232
[10.10]	V. State Registration and Bonding Requirements for a Game of Chance	232
[10.11]	VI. Advertising a Game of Chance	233
[10.12]	VII. What is a Game of Skill?.....	235
[10.13]	VIII. In-Arena Promotions	237
[10.14]	A. The T-Shirt Cannon.....	237
[10.15]	B. The Half-Court Shot.....	238
[10.16]	IX. Conclusion.....	239

Chapter 11 Navigating the NCAA Enforcement Process

Justin P. Sievert, Esq.

[11.0]	I. Introduction	243
[11.1]	II. NCAA Rules: Compliance and Institutional Control.....	245
[11.2]	III. The NCAA Enforcement Process.....	246
[11.3]	A. Investigation	247
[11.4]	B. Charging.....	249
[11.5]	C. Hearings	250
[11.6]	D. Penalties	253
[11.7]	IV. Stare Decisis and the NCAA Enforcement Process	254
[11.8]	V. Legal Analysis of the USC Infractions Appeals Decision.....	256
[11.9]	VI. Implementation of Penalty Guidelines	260
[11.10]	VII. Pennsylvania State University Sanctions and the NCAA Enforcement Process	264
[11.11]	VIII. Best Practices in Navigating the Enforcement Process.....	266
[11.12]	A. Develop Internal Investigation Policies and Procedures	267
[11.13]	B. Provide a Mechanism for the Campus Community to Report Allegations	267
[11.14]	C. Conduct Due-Diligence on all Allegations	268
[11.15]	D. Initiate a Prompt Internal Investigation.....	268
[11.16]	E. Prepare for an Investigation	268
[11.17]	F. Prepare for Investigation Interviews	269
[11.18]	G. Follow Investigative Methodologies That Avoid Additional Liability	270

[11.19]	1. Federal and State Privacy and Confidentiality Statutes	270
[11.20]	2. Invasion of Privacy	270
[11.21]	3. Defamation.....	270
[11.22]	4. False Imprisonment.....	271
[11.23]	H. Collect and Analyze all Relevant Evidence	271
[11.24]	I. Develop Effective and Consistent Self-Corrective Measures and Self-Imposed Penalties.....	271
[11.25]	IX. Conclusion.....	271

Chapter 12 Title IX

Jennifer A. Harper, Esq.

Alyson J. Guyan, Esq.

Daniel A. Peterson, Esq.

[12.0]	I. Introduction: What Is Title IX?.....	275
[12.1]	II. History and Purpose of Title IX	275
[12.2]	III. Application of Title IX	278
[12.3]	A. Scope of Coverage	278
[12.4]	1. Who Is Covered by Title IX.....	278
[12.5]	2. Meaning of “Recipient”	279
[12.6]	3. Meaning of “Educational Programs or Activities”	279
[12.7]	4. Coverage of Students and Employees.....	280
[12.8]	5. Title IX’s Anti-Discrimination Prohibitions—Forms of Discriminatory Conduct	281
[12.9]	6. Disparate Treatment.....	281
[12.10]	7. Mixed Motive Analysis.....	284
[12.11]	8. Disparate Impact	285
[12.12]	a. Retaliation.....	286
[12.13]	b. Sexual Harassment	288
[12.14]	c. Sexual Violence and the 2011 Dear Colleague Letter	290
[12.15]	d. The U.S. Department of Education’s Specific Prohibitions With Regard to Educational Programs and Activities	293
[12.16]	IV. Admissions and Recruitment	294
[12.17]	A. Admissions	294
[12.18]	1. Recruitment.....	295
[12.19]	2. Favoring Single-Sex Educational Institutions in Recruitment and Admissions	295
[12.20]	B. Educational Programs or Activities	296
[12.21]	1. Specific Prohibitions	296

[12.22]	2. Aid, Benefits, or Services Not Directly Provided by the Recipient	297
[12.23]	C. Housing	297
[12.24]	D. Comparable Facilities.....	297
[12.25]	E. Access to Classes and Schools	298
[12.26]	F. Periodic Evaluations.....	300
[12.27]	1. Meaning of “Substantially Equal” Regarding Classes and Activities	300
[12.28]	2. Meaning of “Substantially Equal” in the Operation of Single-Sex Elementary and Secondary Schools	300
[12.29]	3. Access to Institutions of Vocational Education.....	301
[12.30]	G. Counseling and Use of Appraisal and Counseling Materials.....	301
[12.31]	H. Financial Assistance	301
[12.32]	I. Athletic Scholarships.....	303
[12.33]	J. Employment Assistance to Students	303
[12.34]	K. Health and Insurance Benefits and Services	303
[12.35]	L. Marital and Parental Status	304
[12.36]	M. Pregnancy and Related Conditions	304
[12.37]	N. Medical Certification.....	304
[12.38]	O. Comparable Education	304
[12.39]	P. Same Health Care and Benefits.....	305
[12.40]	Q. Pregnancy Leave	305
[12.41]	R. Athletics	305
[12.42]	S. Textbooks and Curricular Materials.....	306
[12.43]	T. Standards for Measuring Skill or Progress in Physical Education Classes	306
[12.44]	V. Anti-Discrimination in Employment.....	306
[12.45]	VI. Equality in Athletics	306
[12.46]	A. Implementing Guidance	307
[12.47]	B. The 1975 Implementing Regulation.....	307
[12.48]	C. The 1979 “Policy Interpretation”	308
[12.49]	D. The 1996 “Clarification”	309
[12.50]	E. The 2003 “Further Clarification”	312
[12.51]	F. The 2005 “Additional Clarification”	312
[12.52]	G. 2008 Dear Colleague Letter	313
[12.53]	H. 2010 Clarification.....	314
[12.54]	I. Key Legal Decisions Shaping Title IX’s Application to Athletics	315
[12.55]	VII. Compliance with Title IX.....	317

[12.56]	A. Recipient's Obligations	317
[12.57]	1. Recipient's Procedural Obligations.....	317
[12.58]	2. Recipient's Obligation to Train.....	318
[12.59]	3. Recipient's Obligation to Respond	318
[12.60]	4. Recipient's Obligation to Investigate.....	319
[12.61]	5. Recipient's Grievance Procedure	320
[12.62]	6. Compliance With Title IX in Athletics: Equity in Athletics Disclosure Act.....	321
[12.63]	VIII. Enforcing Title IX.....	322
[12.64]	A. Responsibilities of the Department of Education Office of Civil Rights.....	322
[12.65]	1. OCR Policy and Procedure	322
[12.66]	2. OCR Investigations	322
[12.67]	3. OCR Compliance Reviews	323
[12.68]	4. OCR and the Power of Referral	323
[12.69]	5. Responsibilities of the Department of Justice.....	323
[12.70]	6. Responsibilities of the U.S. Equal Employment Opportunity Commission	324
[12.71]	7. Responsibilities of the New York State Department of Education	325
[12.72]	8. Elements of a Compliance Review Conducted by the NYSED.....	325
[12.73]	9. Other Responsible Parties	326
[12.74]	10. Title IX Investigations.....	326
[12.75]	a. Recipient Grievance Procedures.....	327
[12.76]	b. Office of Civil Rights Administrative Actions.....	327
[12.77]	(1) OCR Jurisdiction.....	327
[12.78]	(2) OCR Prerequisites.....	328
[12.79]	(3) Voluntary Compliance	328
[12.80]	(4) Administrative Action.....	329
[12.81]	(5) OCR Appeals	329
[12.82]	IX. Court Actions	329
[12.83]	X. Title IX Remedies	330
[12.84]	A. Voluntary Compliance Options.....	330
[12.85]	B. OCR Remedies.....	331
[12.86]	C. Litigation Remedies	332

Chapter 13 Mascots: Handle With Care

David Krell, Esq.

[13.0]	I.	Introduction	335
[13.1]	II.	Licensing	336
[13.2]	A.	Before Drafting the Licensing Agreement	336
[13.3]	B.	Drafting the Licensing Agreement	336
[13.4]	1.	Introduction	336
[13.5]	2.	Parties	337
[13.6]	3.	Grant of Rights and Reserved Rights	337
[13.7]	4.	Property	338
[13.8]	5.	Licensed Products	338
[13.9]	6.	Territory	338
[13.10]	7.	Advance	338
[13.11]	8.	Royalties	339
[13.12]	9.	Channels of Distribution	340
[13.13]	10.	Marketing Date/Distribution Date	340
[13.14]	11.	Representations and Warranties	341
[13.15]	12.	Insurance and Indemnity	342
[13.16]	13.	Approvals	344
[13.17]	14.	Manufacturing and Distribution	345
[13.18]	15.	Safety Certificates and Recalls	346
[13.19]	16.	Samples	347
[13.20]	17.	Legal Notice	347
[13.21]	18.	Ownership	348
[13.22]	19.	Accounting/Auditing Rights	349
[13.23]	20.	Default Interest	349
[13.24]	21.	Sell-Off	350
[13.25]	22.	Governing Law	351
[13.26]	23.	Breach, Default and Remedies	351
[13.27]	24.	Termination as to Country and/or Licensed Product	353
[13.28]	25.	Method of Payment	354
[13.29]	26.	Additional terms	354
[13.30]	27.	Execution	356
[13.31]	III.	Conclusion	356

Chapter 14 An Introduction to European Union Sports Law

Marie-Andrée Weiss, Esq.

[14.0]	I.	The Rights of the Players	359
[14.1]	A.	Free Circulation of Workers and Freedom to Provide Services	359
[14.2]	B.	Freedom to Transfer From One Club to Another	361
[14.3]	C.	The Protection of Underage Players	364
[14.4]	D.	Protection Against Doping	366
[14.5]	II.	Protection of the Public	367
[14.6]	A.	Protection Against Advertisement of Products Noxious to Health	367
[14.7]	B.	Right to Watch Sports Events	369
[14.8]	III.	Sport as a Business	371
[14.9]	A.	Intellectual Property: Protection of Databases	371
[14.10]	B.	Trademarks and Passing-Off	373
[14.11]	C.	Freedom to Provide Services and Gambling	379
[14.12]	D.	Antitrust	383
[14.13]	IV.	Conclusion	385

Chapter 15 Dental and Orofacial Safety

La Shun Carroll, D.D.S.

[15.0]	I.	Introduction	389
[15.1]	II.	Dental Trauma	389
[15.2]	A.	Mouth Guards as a Preventive Measure	390
[15.3]	B.	Management of Orofacial Injuries	391
[15.4]	III.	Orofacial Injury and Management	393
[15.5]	IV.	Conclusion	394

Appendix 1	Waiver and Release of Claims for Future Injuries or Death by an Adult Applying to Participate in a Bicycle Race.	397
-------------------	---	-----

Appendix 2	Release From Liability By Parent/Guardian for Students Under the Age of 18 to Participate in a Dance and Fitness Program	399
-------------------	--	-----

Appendix 3	Release From Liability by Adult Regarding Participation in a Dance and Fitness Program	401
-------------------	---	-----

Appendix 4	Waiver and Release From Liability for Soccer Training	403
-------------------	--	-----

Appendix 5	Waiver and Release by Parent of Minor Child From Liability for Soccer Training	405
-------------------	---	-----

Appendix 6	Release of Claims for Future Accidental Injuries or Death by Parent or Guardian of Minor Child Regarding a Church Youth Group Ski Outing	407
Appendix 7	Waiver and Release by Parent of Minor Child From Liability for Soccer Training in Favor of Soccer Organization and Instructors	409
Appendix 8	Release From Liability by Adult Regarding Participate in a Fitness Program	413
Appendix 9	Waiver and Release by Parent of Minor From Liability for Wrestling Training	415
Appendix 10	Health Club Membership Agreement	419
Appendix 11	Employment Agreement Between Health Club and Employee With Noncompetition and Confidentiality Provisions	425
Appendix 12	Consent Form by College or University Student-Athlete to Drug Testing.....	429
Appendix 13	Representation Agreement Between Agent and Professional Rodeo Cowboy Regarding Procurement by Agent of Endorsements and Paid Appearances for Cowboy	431
Appendix 14	Agreement Regarding Employment of Student-Athlete in Accordance With College Compliance Program	435
Appendix 15	Contract of Employment with Golf Course Superintendent Employment Agreement.....	437
Appendix 16	Community College Football Bowl Game Agreement.....	441
Appendix 17	Endorsement Agreement Between Athlete and Athletic Equipment Manufacturer.....	447
Appendix 18	Broadcasting Agreement Between Radio Station and High School Regarding Broadcasting Athletic Contest	457
Appendix 19	Waiver, Release, Assumption of Risks and Indemnity Agreement—Participation in Water Sports.....	461
Appendix 20	Identification of Insurance for College or University and Authorization for Treatment.....	467
Appendix 21	Informed Consent Form for Physical Fitness Program.....	471

Appendix 22	Media Rights Agreement Between High School Athletic Association and Radio or Television Station.....	475
Appendix 23	Instruction to Jury—Essential Factual Elements Necessary to Hold an Instructor, Trainer, or Coach Liable for an Injury to a Participant in a Sports Activity	489
Appendix 24	Sports Physical Form.....	491
Appendix 25	Complaint Due to Fall While Ice Skating as a Result of Inattentiveness of Skating Instructor	497
Appendix 26	Complaint by a Baseball Game Spectator Struck by Bat Thrown by Player.....	501
Appendix 27	License and Endorsement Agreement Between Apparel Company and Professional Athlete	505
Appendix 28	Rules-of-the-Game Jurisdictions	519
Appendix 29	Regulations Prohibiting Anti-Discrimination in Employment, Title 34, Education.....	521
	Resources and References	526
	Table of Authorities	529

EDITORS

ELISSA D. HECKER, ESQ.

Elissa D. Hecker practices in the fields of copyright, trademark and business law. Her clients encompass a large spectrum of the entertainment and corporate worlds. In addition to her private practice, Ms. Hecker is Chair of the Board of Directors for Dance/NYC (<http://dancenyc.org/>). She is a past Chair of the Entertainment, Arts and Sports Law (EASL) Section of the New York State Bar Association. She is also Co-Chair and creator of EASL's Pro Bono Committee; Editor of the *EASL Journal* and the *EASL Blog*; Editor of the books *Entertainment Litigation*, *Counseling Content Providers in the Digital Age* and *In the Arena*; a frequent author, lecturer and panelist; and a member of the Board of Editors for the *NYSBA Bar Journal*. She is a member of the Copyright Society of the USA (CSUSA), a member of the Board of Editors for the *Journal* of the CSUSA, and Editor of the CSUSA Newsletter. She is a Super Lawyers Rising Star, recipient of the CSUSA's inaugural Excellent Service Award, and recipient of the New York State Bar Association's 2005 Outstanding Young Lawyer Award. Ms. Hecker can be reached at (914) 478-0457, heckeresq@heckeresq.com, or through her website at <http://heckeresq.com/>.

DAVID KRELL, ESQ.

David Krell is a noted speaker, journalist, attorney, and popular culture historian. Mr. Krell is writing a book about the Brooklyn Dodgers, expected to be published in 2015. His corporate and CLE presentations include *The Ethics of Jackie Robinson*; *The Brooklyn Dodgers: Triumph, Tragedy, and Teamwork—What We Can Learn From Baseball's Most Beloved Team*; *Baseball's Greatest Legal Cases*; and *The Ethics of Baseball: What We Can Learn From Baseball's History*. He has presented on baseball history topics at the Society for American Baseball Research Frederick Ivor-Campbell 19th Century Conference; Society for American Baseball Research Jerry Malloy Negro League Conference; Cooperstown Symposium on Baseball and American Culture; and Mid-Atlantic Nostalgia Convention. Mr. Krell has also lectured on legal writing for the International Trademark Association and the Villanova University School of Law Alumni Association. His article series, *Krell's Korner*, which focuses on the legal cases, deals, and people that shaped the entertainment, arts, and sports industries, has appeared in NYSBA's *EASL Journal* since 2009. He is a member of the bar in New York, New Jersey, and Pennsylvania. He received a B.A. degree in communications from the University of Maryland, a J.D. from Villanova University School of Law, and an LL.M from Cardozo Law School. He lives in Jersey City, New Jersey.

AUTHORS

MICHAEL B. ACKERSTEIN, ESQ.

Michael B. Ackerstein is an Associate in the Boston office of Jackson Lewis LLP, where he practices in the firm's Collegiate and Professional Sports Industry Group. He received his B.A. in political science from the University of Wisconsin-Madison and his J.D. from Georgetown University Law Center in 2013. Mr. Ackerstein is a member of the Sports Lawyers Association. Prior to joining Jackson Lewis LLP, he interned at the U.S. Department of Commerce.

BARRY M. BENJAMIN, ESQ.

Barry M. Benjamin is the Chair of Kilpatrick Townsend's Advertising, Promotions, and Media practice. He focuses on advertising, intellectual property, technology, and media law in the areas of litigation, advice and counseling, and regulatory defense. As an experienced litigator, Mr. Benjamin handles false advertising and trademark claims, trade dress, copyright, misappropriation, and fraud claims. Outside the litigation context, he negotiates contracts ranging from traditional agency-client, co-promotion, talent, sponsorship, and licensing agreements, as well as advanced advertising (web and mobile) agreements such as data licensing, publisher, and agency and advertiser insertion orders and deals. He also reviews and advises on advertising campaigns, and drafts terms and conditions for all forms of marketing initiatives, including sweepstakes, contests, direct mail, telemarketing, and charitable marketing programs. His practice includes technology-related areas such as consumer privacy issues, the development of website terms of use and privacy policies, data security, and breach notification policies.

KATIE BOSLEY, ESQ.

Katie Bosley is employed by the Beverly Hills Sports Council sports agency, where she focuses on the representation of basketball players. She received her J.D. and Sports Law Certificate from Marquette University Law School, where she was a member of the *Marquette Sports Law Review*. She is a contributor to the sports law website, sportslaw101.com.

LA SHUN L. CARROLL, D.D.S.

La Shun L. Carroll, a general dentist in Rhode Island, is a native New Yorker born and raised in Manhattan's Greenwich Village. After graduating *magna cum laude* with a degree in philosophy and natural science from Baruch College, he attended the University at Buffalo School of Dental Medicine on an Arthur A. Schomburg academic fellowship, graduating *cum laude* in 2005. Dr. Carroll previously served as Dental Director of a community health center, where he worked with the under- and uninsured and performed oral health examinations for the Department of Children and Families in suspected cases of child abuse and neglect. He has also worked as a consultant to the special investigator of the Division of Medicaid Fraud for the Vermont Secretary of State. He has licenses in New York, Vermont and Rhode Island, and has been both a clinical director in a corporate dental office and a dentist in private practice. He is a member of American Mensa.

GREGG E. CLIFTON, ESQ.

Gregg E. Clifton is the Managing Partner in the Phoenix, Arizona office of Jackson Lewis LLP. He is Co-Chair of firm's Collegiate and Professional Sports Industry Group and serves as an editor of the firm's sports law blog, www.collegeandprosportslaw.com. He has advised professional franchises on general labor and employment issues and serves as lead counsel for several MLB teams in their salary arbitration matters. Mr. Clifton has represented NCAA and NAIA collegiate clients regarding rules compliance, investigatory matters and in disciplinary hearings. He has also worked in agent regulation and enforcement in professional and college sports, and provides counsel on issues relating to NCAA and NAIA amateurism issues and athlete eligibility questions. He previously was Chief Operating Officer and Vice President of Team Sports for Gaylord Sports Management and served as President of the Athlete and Entertainment Division for Woolf Associates in Boston. He is a frequent speaker at law schools and bar associations, and is often cited as an expert source in the national media. He has co-authored multiple publications. He received his A.B. degree, *cum laude*, from Harvard University, where he was the recipient of the John Harvard Scholarship for Academic Excellence. He earned his J.D. from the Hofstra University School of Law. He is a member of the Arizona, New York and New Jersey bar associations. He is also a member of the Sports Lawyers Association, the American Bar Association and its Section on Labor and Employment Law and its Forum on Entertainment and Sports Industries. Mr. Clifton is past Chair of the New Jersey State Bar Association's Sports Law Committee.

RONALD D. COLEMAN, ESQ.

Ronald D. Coleman is a Partner with the firm of Goetz Fitzpatrick LLP in Manhattan and New Jersey. He is a commercial litigator and general business lawyer focusing on Internet-related law and torts of competition, including copyright and trademark infringement. He is shown as counsel of record for the prevailing parties in numerous reported decisions that have shaped the legal frontier regarding the use and abuse of intellectual property on the Internet. An award-winning legal journalist and frequent panelist, he is the author of numerous works about the law for both attorneys and non-lawyers, including his *Likelihood of Confusion* blog. He received his bachelor's degree with a concentration in economics from Princeton University and obtained his law degree from Northwestern University.

NIKKI WILSON CRARY, ESQ.

Nikki Wilson Crary is an attorney with the law firm of Jackson Lewis LLP, where her practice is focused on counseling in the areas of sports compliance, health and safety issues in sports, and NAIA and NCAA compliance. Ms. Crary also practices employment litigation on behalf of management and provides advice and counsel on all employment issues.

ZACHARY EISNER, ESQ.

Zachary Eisner is a graduate of St. John's University School of Law, and a certified mediator with a focus on divorce and family law. He has published on cognitive psychology and negotiation as well as religious divorce. He splits his time between Miami, Florida and New York.

WILLIAM H. GLOVER, ESQ.

William H. Glover drafts forms, legal digests and legal summaries for U.S. Legal Forms. He received his B.B.A from the University of Mississippi in 1973 and his J.D. from the University of Mississippi School of Law in 1976. He joined the firm of Wells Marble & Hurst in 1976 as an Associate and became a Partner in 1979. While at Wells, he supervised major real estate commercial loan transactions and employment law cases. His practice also involved estate administration and general commercial law. Mr. Glover joined the faculty of Belhaven University in Jackson, Mississippi in 1996 as Assistant Professor of Business Administration and University Attorney, where he taught business law and business ethics in the BBA and MBA programs until 2004, before a short stay at Wells Marble & Hurst, PLLC as General Counsel. Mr.

Glover is a LTC and Staff Judge Advocate for Headquarters of the Mississippi State Guard. He was called to active duty during Hurricanes Dennis, Katrina and Gustav. He received the Magnolia Medal from the Mississippi Army National Guard in 2010.

ALYSON J. GUYAN, ESQ.

Alyson J. Guyan is an Associate in the Washington, D.C. Region office of Jackson Lewis LLP. A member of the Collegiate and Professional Sports Industry Group, she counsels colleges and universities on NCAA and Title IX compliance matters. Ms. Guyan also provides guidance to clients on the requirements of athlete-agent laws and regulations, and advises and represents employers in a broad range of employment law matters arising under federal and state law, including claims based on the Fair Labor Standards Act, Title VII of the Civil Rights Act, the Family and Medical Leave Act, and the Americans with Disabilities Act. She works on administrative matters before the National Labor Relations Board and the Equal Employment Opportunity Commission, as well as state agencies. Ms. Guyan is a member of the Virginia Bar, the District of Columbia Bar, and the U.S. District Courts for the District of Columbia and the Eastern District of Virginia. She earned her J.D. and M.B.A. from George Washington University in 2005. She received her B.A. in psychology from Emory University in 2001.

JENNIFER A. HARPER, ESQ.

Jennifer A. Harper is a labor and employment attorney in Washington, D.C., and Chair of the Sports Law Subsection of the Arts, Entertainment, Media, and Sports Law Committee of the D.C. Bar Association. Ms. Harper counsels clients across the spectrum of sports and athlete management. With 15 years' experience in law and public policy, her practice includes gender equity, contracts and compensation, athletic association rules and bylaws, civil rights laws, agency audits and investigations, administrative actions, arbitrations, and litigation defense. She focuses on Title IX and represents clients on matters ranging from Title IX audits to state and federal investigations and private litigation. She writes and presents on legal issues affecting educational institutions and has been quoted in the media for her insights on federal regulatory compliance in collegiate sports. She is a founding member of the Collegiate and Professional Sports Industry Group at Jackson Lewis LLP, representing clients throughout the sports world, including public and private educational institutions, professional sports teams, sports management organizations, coaches, agents and sports agencies, current and former professional play-

ers, and others. She frequently writes and presents on legal issues affecting educational institutions and has been quoted in the media for her insights on federal regulatory compliance in collegiate sports. She earned her J.D., with honors, from George Mason University School of Law. She received her B.A., *cum laude*, from Kenyon College and her M.A., *summa cum laude*, from Ball State University. She can be reached at jennifer.harper@mac.com.

MARK HERCEG, PH.D.

Dr. Mark Herceg is the Director of Neuropsychology at Burke Rehabilitation Hospital in White Plains, New York. He completed his training in Rehabilitation Psychology and Neuropsychology at the Rusk Institute of Rehabilitation Medicine, NYU Medical Center. Prior, he was on staff at NYU Medical Center and the Brain Injury Day Treatment program. He was also with Neuropsychology Consultants in Norwalk, Connecticut, affiliated with the Norwalk Hospital Rehabilitation Department. He received his doctoral degree in Clinical Health Psychology with a concentration in Neuropsychology from the Ferkauf Graduate School of Psychology at Yeshiva University. He holds an academic appointment as Assistant Professor of Psychology in Clinical Neurology at Weill-Cornell Medical Center. Dr. Herceg has presented on rehabilitation of brain injury and stroke to European medical groups, physicians, and medical schools in Croatia. He also serves as a consultant to Silver Hill Hospital in New Canaan, Connecticut. He has been featured on CBS News, *MD News Magazine*, and WVOX radio.

REGINA M. LIANG, ESQ.

Regina M. Liang is a Corporate Associate in the New York office of Herrick, Feinstein LLP, engaging in a variety of matters including emerging company and venture capital transactions, investments, joint ventures, financings and restructuring. Ms. Liang graduated from Fordham University School of Law, where she was the recipient of the Archibald R. Murray Public Service Award and the Gerald C. Durr Fellowship. She received her B.A. from Wellesley College.

CARTER ANNE MCGOWAN, ESQ.

Carter Anne McGowan practices entertainment law with Sendroff & Baruch, LLP. She has been published in the *Cornell Journal of Law of Public Policy*; the *Seton Hall Sports Law Journal*; and the *Fordham Journal of Entertainment, Intellectual Property, and Media Law*. She received her undergraduate degree from St. John's University, graduating *summa cum laude* with a degree in history and a professional certificate in athletic administration. Her law degree is from Cornell Law School, where she served as the editor-in-chief of the *Cornell Journal of Law and Public Policy*; her M.F.A.s are from Brooklyn College (Performing Arts Management) and Tisch/NYU (dramatic writing). She is also a produced playwright and screenwriter.

BRENT J. NOWICKI, ESQ.

Brent J. Nowicki is Legal Counsel to the Court of Arbitration for Sport in Lausanne, Switzerland. He joined the Court of Arbitration for Sport in 2013 after seven years as an associate with the Buffalo, New York law firm of Hodgson Russ. He received his undergraduate degree from Fairfield University, where he was a member of the varsity lacrosse program, and his J.D., with honors, from the University of Buffalo. Mr. Nowicki has extensive experience in sports law, and has represented professional athletes and players' unions, and served as a consultant for clients in the sports industry. He was previously certified by the National Football League Players' Association and the Professional Lacrosse Players' Association as a contract advisor. Mr. Nowicki has represented athletes in all aspects of contract negotiations, rights of publicity, legal representations of grievances, hearings, and appeals, as well as the collection of severance or termination pay. On an international level, Mr. Nowicki has been active in the anti-doping movement in Olympic sports, where he defended high-profile athletes against doping allegations. He routinely speaks on the issues of anti-doping and sports law, is often quoted in newspapers and periodicals, and has acted as a political advisor in the area of sport doping. He also serves on the Board of Directors for the Police Athletic League of Buffalo, New York, and is the Assistant Men's Lacrosse Coach for Switzerland's 2014 Federation of Lacrosse World Team.

MATTHEW D. PACE, ESQ.

Matthew D. Pace is a Partner in the New York office of Arent Fox LLP. He has more than 20 years of professional experience working for and representing some of the biggest names in the sports industry in various matters, including team acquisitions and sales, sponsorship, licensing and promotional agreements and media rights issues.

DARSH PATEL

Darsh Patel is expected to graduate in May 2013 from Tulane Law School with a sports law certificate and securities law focus. Raised in New Jersey, he obtained a B.S. in finance from Boston University's School of Management in 2010. He plans to pursue work in the securities industry, and eventually, a professional soccer organization.

DANIEL A. PETERSON, ESQ.

Daniel A. Peterson is the Coordinator for Sport Development with the Memphis Grizzlies. He has worked with multiple schools and athletic departments on issues related to sports and education. He is a member of the New York State Bar, and he earned his J.D. from New York University School of Law in 2008. He earned his B.S. in industrial and labor relations from Cornell University in 2005.

JUSTIN P. SIEVERT, ESQ.

Justin P. Sievert serves of-counsel to the Michael L. Buckner Law Firm on issues relating to intercollegiate athletics and higher education law. He is also an adjunct sports, business, and labor and employment law professor at Davenport University, and admitted to practice in Florida and North Carolina, as well as the U.S. District Court for the Southern District of Florida. Mr. Sievert graduated from the University of Miami School of Law in 2008, was awarded his master's degree in education from St. Lawrence University in 2005, and received his undergraduate degree from Union College in 2003.

ELLIOT SOLOP, ESQ.

Elliot Solop earned his B.S. degree in finance from Montclair State University in 2009 and his J.D. from New York Law School in 2012. While at New York Law School, Mr. Solop served as the President of the Sports Law Society and was Chair of the 2011 New York Law School Sports Law Symposium. He is the founder of *The Sports Tomato* (www.thesportstomato.com) and 52 Fest: A Benefit for Eric LeGrand. He serves as Law Clerk to the Honorable John A. Jorgensen, J.S.C., New Jersey Superior Court, Family Division, Middlesex County, and hopes to pursue a career that combines his passions for sports law, family law, and tax law.

MARIE-ANDRÉE WEISS, ESQ.

Marie-Andrée Weiss is an attorney admitted to practice law in New York, and her admission is pending in France. Ms. Weiss graduated from the University of Strasbourg in France with a J.D. in business law, an LL.M. in criminal law, and an LL.M. in multi-media law. She also graduated from the Benjamin N. Cardozo School of Law in New York City with an LL.M. in Intellectual Property Law. She is a solo attorney and focuses her practice on intellectual property, privacy, and social media law. She frequently writes on these topics and on European Union law. Her article, “The Use of Social Media Site Data by Business Organizations in Their Relationship with Employees,” was published in 2011 by the *Journal of Internet Law*. She is the chair of an ABA subcommittee on European Union Data Protection Reform.

DANIEL W. WERLY, ESQ.

Daniel W. Werly is an attorney in the Chicago office of Foley and Lardner LLP. He is a member of Foley’s Sports Industry Team and Business Litigation & Dispute Resolution Practice. His practice extends to a wide array of litigation issues, including contractual disputes, consumer class action defense, and intellectual property disputes. He obtained his J.D. from Georgetown University Law Center and his undergraduate degree from Miami (Ohio) University. Admitted to practice in Illinois, the U.S. District Court for the Northern District of Illinois, and the Seventh Circuit Court of Appeals, Mr. Werly has published a number of articles and is a frequent speaker on sports law topics including collective bargaining issues. He is the editor of the sports law website, sportslaw101.com.