

SPORTS LAW – FINAL EXAM FACT PATTERNS (2008-2013)
PROFESSOR MARC EDELMAN

FALL 2012 BARRY LAW SCHOOL FACT PATTERN QUESTION & PUBLIC POLICY QUESTION:

Part II: Fact Pattern: Please respond to the following question (1 question with 2 subparts; worth 50 points total). For purposes of the following question, presume these facts to be true:

The year is now 2020.

The American Private High School Football Association (“APHSFA”) is a voluntary association of more than 3,000 American private high schools that compete against each other in organized football games. In 2013, members of the APHSFA voted to mandate that all student-athletes (as well as their parents) sign a form disclosure document (“Form Disclosure Document”) that stipulates the following:

You, the athlete (or legal guardian thereof, if the athlete is under the age of majority), authorize APHSFA, or any third party acting on its behalf, to use your name or picture to generally promote APHSFA events, as well as for any other commercial activities or programs that benefit the general purposes of APHSFA.

All APHSFA schools have since required their student-athletes to sign the Form Disclosure Document. High school football players who have refused to sign the Form Disclosure Document have not been allowed to play football for any APHSFA school.

In January 2015, APHSFA members formed the High School Licensing Company (“HSLC”) to serve as APHSFA’s licensing arm. The goal of HSLC was to find a way to use APHSFA members’ intellectual property rights to increase the association’s net profitability. One of HSLC’s primary goals was to broker agreements to license APHSFA members’ intellectual property rights to television stations, radio stations and videogame companies.

Thereafter, in 2016, HSLC brokered a four year deal on behalf of APHSFA with a videogame company, Electronics Live, to produce an APHSFA videogame series called High School Football Live. According to the agreement, the game would feature the top 100 ranked APHSFA football teams, and it would feature those schools’ logos, colors, and stadiums.

The original contract between APHSFA and Electronics Live did not say anything about the use of high school football players’ names and likenesses in the High School Football Live videogame. However, by all accounts, Electronics Live did not make any attempt to use such names and likenesses.

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In 2019, the original four-year agreement between AHSFA and Electronics Live expired. At that time, Electronics Live expressed some reluctance to renew the agreement. However, the parties ultimately reached a verbal, one-year extension.

The 2020 version of High School Football Live, which was created subject to this verbal extension, was somewhat different from the earlier editions. Most notably, unlike the previous editions, the 2020 edition featured avatars that matched exactly with the heights, weights, skin color, hair color, performance attributes, and uniform numbers of actual high school football players. According to the marketing director of Electronics Live, “these modifications of player avatars were intended to give the game a more realistic feel, which was needed to make the game more desirable to hard-core high school football fans.”

Within days of the launch of the 2020 version of High School Football Live, a class of more than 1,000 AHSFA football players filed suit against both Electronics Live and the AHSFA, arguing that their rights had been violated. The lawsuit is based on two general allegations: (1) that Electronic Arts violated the intellectual property rights of the plaintiff class; and (2) that AHSFA has unreasonably restrained trade by requiring all members of the plaintiff class to sign the Form Disclosure Document.

Electronics Live claims to have received a license to use the likenesses of actual high school football players from AHSFA; however, AHSFA denies having provided any such license. Meanwhile, AHSFA concedes that it requires all of its football players to sign the Form Disclosure Document as an initial requirement for athlete eligibility.

In an objective memorandum, address both the football player plaintiffs’ intellectual property claims (15 points) and their antitrust claims (35 points).

More detailed memo writing instructions appear on the following page.

Specific Memo-Writing Instructions

1. Your objective memorandum should be written using the following global structure (with point values for each topic listed below in parentheses).
 - **I. The football player plaintiffs' intellectual property claims (15 points)**
 - **II. The football player plaintiffs' antitrust claims (35 points)**
2. Your objective memorandum should break into a more detailed discussion of each area, using further headings if and where helpful.
3. For each issue (as well as each element of each issue), you should do the following: (1) state the applicable law; (2) apply the law to the facts; and (3) reach a conclusion. **For each issue, be sure to discuss every single element of that issue.**
4. **For the antitrust section of the memorandum, it is expected that you will address all elements of any antitrust claim that may be raised, as well as all potentially applicable defenses.**
5. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
6. Always spend the most time on the most relevant arguments, as well as on those arguments where your conclusion requires the most analysis.
7. If you discuss what you believe to be a remote argument, make sure to express your belief that the argument is remote, as well as why you believe it to be so.
8. If your answer warrants discussing a split in the circuits, explain that split.
9. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
10. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.
11. Have fun! (This is, after all, Sports Law)

SUMMER 2012 FORDHAM LAW SCHOOL FACT PATTERN QUESTION:

Part II: Fact Pattern: Please respond to the following question (1 question with 3 subparts; worth 75 points total; not all subparts are worth equal points). For purposes of the following question, presume these facts to be true:

The year is now 2050. The Facsimile Baseball League (“FBL”) is one of six professional baseball leagues in the world and one of three leagues with teams based in the United States.

The FBL has 36 teams, based across the United States, Latin America, and Canada. Average team franchise values are upwards of \$3 Billion, and single-season player salaries range from \$400,000 (league minimum) to \$65,000,000 (highest negotiated salary).

League managers and coaches earn anywhere from \$100,000 to \$10,000,000 per season. The league commissioner, Roger Badelli, earns an annual salary of \$25,000,000.

FBL managers, hitting coaches and pitching coaches are non-unionized employees. All have signed ‘standard coaching agreements’ with their respective teams in which they agree to be bound by all terms in the FBL Constitution. FBL players are unionized and thus must sign a standard player contract based on the terms agreed to in the FBL Collective Bargaining Agreement.

In all other respects (other than those distinguished above), the FBL operates identically to – and subject to the same constitution, bylaws and collective bargaining agreement as – Major League Baseball.

* * *

In November 2049, FLB Commissioner Roger Badelli accused members of the Louisiana Sinners baseball team of engaging in a long-term “bounty program” whereby Louisiana Sinners pitchers intentionally hit opposing batters in the head with pitches in exchange for cash payments. According to the commissioner, several different Louisiana Sinners pitchers hit an opposing player in the head with a fastball between the 2046-2049 seasons.

Furthermore, according to Badelli, on the final day of the 2049 season, Louisiana Sinners pitching coach William Gregg explained that it was very important that the team pitch St. Louis Muppets starting shortstop Fozzie Smith high and inside. Gregg then held up \$100,000 cash and promised it to any pitcher that could hit Fozzie Smith in the head with a pitch. That night in the eighth inning, with the Sinners trailing 11-0, Sinners 20 year-old rookie pitcher Jonathan Lucifer hit Smith in the helmet with a 97 mile per hour fastball. Smith missed the entire post-season and World Series with post-concussion syndrome.

After claiming to have conducted a twelve-week investigation in which he purportedly read approximately 20,000 documents totaling more than 50,000 pages that detailed the Sinners bounty scheme, Commissioner Badelli announced on March 1, 2050 that, based on evidence of a sustained

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pattern of paying bounties, both Gregg and Lucifer would be banned indefinitely from baseball, without pay.

Both Gregg and Lucifer were livid by this announcement, especially in light of the fact that no player or pitching coach had ever before been banned from the game for similar misconduct. During the course of Commissioner Badelli's investigation, William Gregg met with Badelli on three occasions to try to reason with him. Gregg pleaded with Commissioner Badelli for mercy, explaining that he had nine children at home under the age of 14 and very little savings in the bank. If he lost this job, he was precluded from working in the FBL, and he would have no way to support his family. Gregg's lawyers also argued that their client suffered from a psychiatric disorder called "Borderline Personality Disorder," in which he suffers from long-term patterns of unstable or turbulent emotions. Gregg explained that all of the bounty payments took place during a period of time in which his regular medication was unavailable to him due to problems with his medical insurance coverage.

Commissioner Badelli also met with Jonathan Lucifer, without an attorney. Lucifer told Badelli that he was very nervous as a recently called up rookie and was trying his best to do his job. Lucifer denied hitting Smith in the head on purpose but admitted to intentionally throwing his first pitch in that general direction because "the pitching coach said to pitch Smith up-and-in." Lucifer told Badelli that he was afraid that if he did not follow orders he would not be on the big-league roster the following season.

A few weeks after the ruling was rendered, both Gregg and Lucifer announced plans to pursue any legal remedy possible to get reinstated into the game. Thereafter, both Gregg and Lucifer took a wide range of legal action seeking to overturn Commissioner Badelli's decision. This legal action included proceeding with claims that Commissioner Badelli exceeded the scope of his authority, as well as claims that the suspension violated Section 1 of the Sherman Act.

General Instructions

In a well-written, objective memorandum, discuss each of the following three issues:

- (A) Did Commissioner Badelli exceed the scope of his authority by indefinitely suspending Sinners pitching coach William Gregg from FBL? (15 points)**
- (B) Did Commissioner Badelli exceed the scope of his authority by indefinitely suspending Sinners pitcher Jonathan Lucifer from FBL? (15 points)**
- (C) Did the indefinite suspension of Gregg and/or Lucifer violate Section 1 of the Sherman Act (45 points)?**

Specific Memo-Writing Instructions

1. Your objective memorandum should be written using the following global structure (with point values for each topic listed below in parentheses).

- William Gregg's claims that Commissioner Badelli exceeded his authority (15 points).

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- Jonathan Lucifer's claims that Commissioner Badelli exceeded his authority (15 points).
 - Gregg and Lucifer's claims that the suspension violated Section 1 of the Sherman Act (45 points).
2. Your objective memorandum should break into a more detailed discussion of each area, using further headings if and where helpful.
 3. For each issue (as well as each element of each issue), you should do the following: (1) state the applicable rule of law; (2) apply the law to the facts; and (3) reach a conclusion. **For each issue, be sure to discuss every single element of that issue.**
 4. **For the antitrust section of the memorandum, it is expected that you will address all elements of any antitrust claim that may be raised, as well as all potentially applicable defenses.**
 5. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
 6. Always spend the most time on the most relevant arguments, as well as on those arguments where your conclusion requires the most analysis.
 7. If you discuss what you believe to be a remote argument, make sure to express your belief that the argument is remote, as well as why you believe it to be so.
 8. If your answer warrants discussing a split in the circuits, explain that split.
 9. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
 10. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.
 11. Have fun! (This is, after all, Sports Law)

END OF EXAMINATION

FALL 2011 BARRY LAW SCHOOL FACT PATTERN QUESTION:

Part II: Fact Pattern: Please respond to the following question (1 question with 5 subparts; worth 55 points total). For purposes of the following questions, presume these facts to be true:

Presume the year is now 2050.

The National Ice Hockey League (“NIHL”) is the one of three professional ice hockey leagues in the United States, and one of five professional ice hockey leagues in the world. The league was founded in 2012 and consists of 40 ice hockey teams that are located in major worldwide cities. The NIHL currently has league revenues of approximately \$25 Billion.

Each year, the NIHL regular season begins on October 29 and ends around Memorial Day. Thereafter, the top eight NIHL teams play in a playoff bracket, known as the World Cup of Ice Hockey. The championship game of the World Cup of Ice Hockey is held annually at the Bird’s Nest in Beijing China, pursuant to a ten-year agreement between the NIHL and the Chinese government. Specifically, that agreement states, “the NIHL will play its national championship game at the Bird’s Nest on June 30 of each year in exchange for sharing all proceeds of the game 50-50 with the Chinese government.”

Each NIHL team roster includes 15 players. Since the NIHL’s inaugural season, new players have been allocated to teams based on a league-wide draft. The league draft is scheduled each year for early July.

Several years ago, the NIHL players voted to form a union: the National Ice Hockey League Players Association (“NIHLPA”). Since then, the NIHL teams and the NIHLPA have bargained over all major terms of employment. Among the current terms, the league’s revenues are currently split in the following manner: 60% to team-owners and 40% to players.

After the great stock market crash of 2049, several NIHL team-owners decided that they wanted to increase their share of league revenues from 60% to 70%. Their plan was to wait until the end of their current collective bargaining agreement with the NIHLPA and then take a very tough stance with the NIHLPA in collective bargaining negotiations on revenue sharing. According to many reports, the NIHL commissioner promised “to lockout the players and cancel hockey for as long as necessary to achieve our goals.”

On July 1, 2050—just hours before the NIHL collective bargaining agreement was set to expire—the NIHLPA’s 600 members held a vote, and 520 of them (86.7%) voted to disband the union. The 80 players that opposed disbanding the NIHLPA were the league’s 40 starting and 40 reserve goalies.

The NIHLPA then immediately filed a press release, as well as paperwork with the National Labor Relations Board, indicating their plan to no longer function in its current capacity. Then, on July 2, 2050, the 520 NIHL players who favored deunionizing filed a class-action antitrust lawsuit against the NIHLPA. In this lawsuit, the NIHL players sought a court order preventing the NIHL teams from collectively locking out the players, or, in the alternative, ordering the payment of monetary damages in the event such a lockout occurred.

Shortly after the 520 NIHL players filed their class action lawsuit against the NIHL teams, four other parties filed lawsuits stemming from the recent series of events. First, a group of

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prospective NIHL players who were planning to participate in the July draft sought monetary damages against the league in the event the NIHL proceeded with its draft as a means of allocating players. The prospective NIHL entrants believed that the NIHL league draft, as currently enforced, violated antitrust laws.

Second, a group of NIHL player agents sought a court declaration that, given the NIHLPA was no longer functioning a union, neither NIHL teams nor players could cap player agent salaries. These NIHL player agents sought to challenge their cap on salaries by any means possible.

Third, the 80 NIHL goalies who opposed decertifying the NIHLPA brought a tort suit against the former officers of the NIHL for disbanding the union in the heart of the collective bargaining process.

Finally, the Chinese government sought to sue the NIHL under contract law based on the NIHL's statements that the World Cup of Ice Hockey might get cancelled for the 2051 season.

General Instructions

In a well-written memorandum, address the following legal claims:

- (A) The current NIHL players' antitrust claims against the NIHL lockout (25 points)**
- (B) The prospective new NIHL players' antitrust claims against the NIHL league draft (10 points)**
- (C) The NIHL player agents' claims, of any type, against restraints on their salaries (10 points)**
- (D) The 80 NIHL goalies' tort claims against the former officers of the NIHLPA (5 points)**
- (E) The Chinese government's contract claims against the prospective cancellation of the 2051 World Cup of Ice Hockey (5 points)**

Specific Memo-Writing Instructions

1. Your objective memorandum should be written using the following global structure (with point values for each topic listed below in parentheses).

- **I. NIHL Players' Claims (25 points)**
- **II. Prospective NIHL Players' Claims (10 points)**
- **III. NIHL Player Agents' Claims (10 points)**
- **IV. The 100 NIHL Players' Tort Claims (5 points)**
- **V. The Chinese Government's Contract Claims (5 points)**

2. Your objective memorandum should break into a more detailed discussion of each area, using further headings if and where helpful.

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3. For each issue (as well as each element of each issue), you should do the following: (1) state the applicable law; (2) state the relevant facts (or the additional facts you would need); (3) apply the law to the facts; and (4) reach a conclusion. **For each issue, be sure to discuss every single element of that issue.**
4. **For each of the antitrust sections of the memorandum, it is expected that you will address all elements of any antitrust claim that may be raised, as well as all potentially applicable defenses. However, to the extent that part of your antitrust analysis in later sections overlaps with your analysis in Section I, feel free to indicate that in your answer, rather than addressing those particular elements again.**
5. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
6. Always spend the most time on the most relevant arguments, as well as on those arguments where your conclusion requires the most analysis.
7. If you discuss what you believe to be a remote argument, make sure to express your belief that the argument is remote, as well as why you believe it to be so.
8. If your answer warrants discussing a split in the circuits, explain that split.
9. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
10. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.
11. Have fun! (This is, after all, Sports Law)

SUMMER 2011 FORDHAM LAW SCHOOL FACT PATTERN QUESTION:

Part II: Fact Pattern: Please respond to the following question (1 question with 3 subparts; worth 75 points).

For purposes of the following questions, presume these facts to be true:

The National Hand-ball League (“NHBL”) is the one of two professional hand-ball leagues in the United States, and one of four professional hand-ball leagues in the world. The league consists of 32 hand-ball teams, located throughout the United States and Canada. The NHBL was founded in 1921. Its current league-wide revenues are approximately \$9 Billion.

Each year, the NHBL season begins on November 1 and ends on February 1. Since the early 1940s, new players have been allocated to NHBL teams based on a league-wide draft, which always takes place the first week of April.

In 1968, the NHBL players voted to form a union: the National Hand-ball League Players Association (“NHBLPA”). Since 1968, the NHBL teams and the NHBLPA have bargained over all major terms of employment. Among the current terms, the league’s revenues are split in the following manner: 50% to team-owners and 50% to current players. In addition, players that seek to join the NHBL must submit to the league draft. NHBL players are only eligible for free agency after five years in the league.

In recent years, several NHBL team-owners decided they wanted to increase their share of league revenues from 50% to 54%. Their plan was to wait until the end of their current collective bargaining agreement and then take a very tough stance with the NHBLPA in collective bargaining negotiations on revenue sharing.

On March 9, 2011—just hours before the NHBL collective bargaining agreement was set to expire—the NHBLPA’s 500 members held a vote, and 400 of them (80%) voted to disband the union. The NHBLPA then immediately filed a press release, as well as paperwork with the National Labor Relations Board, indicating their plan to no longer function as a union.

Then, on March 10, 2011, the 400 NHBL players who favored deunionizing filed a class-action antitrust lawsuit against the NHBLPA. In this lawsuit, the NHBL players sought a court-ordered declaration preventing the NHBL teams from collectively locking out the players, or, in the alternative ordering the payment of monetary damages in the event such a lockout occurred.

Thereafter, on March 11, two other parties filed lawsuits stemming from the events that transpired on March 9-11. First, a group of prospective NHBL players who were planning to participate in the April draft sought monetary damages in the event the NHBL proceeded with its draft. Second, a group of NHBL player agents sought a court declaration that, given the NHBLPA was no longer functioning a union, neither NHBL teams or players could cap player agent salaries.

In a well-written memorandum, address (I) the current NHBL players’ antitrust claims against the NHBL lockout; (II) the prospective new NHBL players’ antitrust claims against the NHBL league draft; and (III) the NHBL player agents’ claims against restraints on their salaries.

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Memo-Writing Instructions

1. Your objective memorandum should be written using the following global structure (with point values for each topic listed below in parentheses).
 - I. NHBL Players' Claims (*45 points*)
 - II. Prospective NHBL Players' Claims (*25 points*)
 - III. NHBL Player Agents' Claims (*5 points*)
2. Your objective memorandum should break into a more detailed discussion of each area, using further headings if and where helpful.
3. For each issue (as well as each element of each issue), you should do the following: (1) state the applicable law; (2) state the relevant facts (or the additional facts you would need); (3) apply the law to the facts; and (4) reach a conclusion. **For each issue, be sure to discuss every single element of that issue.**
4. **For each of the antitrust sections of the memorandum, it is expected that you will address all elements of any antitrust claim that may be raised, as well as all potentially applicable defenses.**
5. To the extent that part of your antitrust analysis in Sections II or III overlaps with your analysis in Section I, feel free to indicate that in your answer, rather than addressing those particular elements again.
6. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
7. If your answer warrants discussing a split in the circuits, explain that split.
8. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
9. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.

END OF EXAMINATION

SUMMER 2010 FORDHAM LAW SCHOOL FACT PATTERN QUESTION:

Part II: Fact Pattern: Please respond to the following question (1 question worth 75 points).

Specific Task and Directions:

Today was your first day as an associate at the law firm Pluck, Wonder and Chicken LLP. The firm's senior partner, Mr. Pluck, just called you into his office and explained to you that he is looking to represent Major League Baseball ("MLB") in the context of their labor negotiations. He would like you to draft an objective memorandum addressing the following:

The Major League Baseball Collective Bargaining Agreement is set to expire in late 2011. Several of the Major League Baseball owners have indicated a desire to propose adding the following three terms to a new collective bargaining agreement, which would begin in 2012:

TERM A: A salary cap on individual player salaries at \$15 Million per year

TERM B: An agreement that players under the age of 19 are ineligible for the annual league draft

TERM C: An agreement that all of the intellectual property for both the clubs and the players association will be allocated to Major League Baseball Properties (an entity owned jointly by all 30 MLB clubs), and that any maker of either video games or fantasy sports games wishing to license this intellectual property must purchase the rights directly from Major League Baseball Properties

Major League Baseball plans to implement these three terms, even knowing full well that the players association will probably never agree. While Major League Baseball is willing to give on other areas, Major League Baseball indicated that it will unilaterally implement each of these terms upon impasse, irrespective of how vigorously the players association objects.

In a well-written, objective legal memorandum, assess the antitrust law, labor law and intellectual property issues that your client will face if it proceeds with the following strategy.

1. Your objective memorandum should be written using the following global structure (with point values for each topic listed below in parentheses).

- I. Labor Issues Related to Implementing Terms A, B & C (15 points)
- II. Antitrust Issues Related to Implementing Term A (15 points)
- III. Antitrust Issues Related to Implementing Term B (15 points)
- IV. Antitrust Issues Related to Implementing Term C (15 points)
- V. Intellectual Property Issues Related to Implementing Term C (15 points)

2. Your objective memorandum should break into a more detailed discussion of each area, using further headings if and where helpful.
3. For each issue (as well as each element of each issue), you should do the following: (1) state the applicable law; (2) state the relevant facts (or the additional facts you would need); (3) apply the law to the facts; and (4) reach a conclusion. **For each issue, be sure to discuss every single element of that issue.**
4. For each of the three antitrust sections of the memorandum (sections II, III, and IV), it is expected that you will address all elements of any antitrust claim that may be raised, as well as all potentially applicable defenses.
5. To the extent that part of your antitrust analysis in Sections III and Section IV overlap with your analysis in Section II, feel free to indicate that in your answer, rather than addressing those particular elements again.
6. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
7. If your answer warrants discussing a split in the circuits, explain that split.
8. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
9. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.

END OF EXAMINATION

SPRING 2010 BARRY LAW SCHOOL FACT PATTERN QUESTION:

Today was your first day as an associate at the law firm Pluck, Wonder and Chicken LLP. The firm's senior partner, Mr. Pluck, just called you into his office, and explained to you that he is looking to represent both the Facsimile League Volleyball ("FLV") and the Facsimile League Volleyball Players Association ("FLVPA"). Thus, he would like you to draft an objective legal memorandum addressing each of the following four claims:

- I. FLV's claim that Hotcards is violating FLV trademark rights. (5 points)
- II. FLVPA's claim that Hotcards is violating their players' publicity rights. (15 points)
- III. Hotcards's counterclaim that FLV is violating Section 1 of the Sherman Act. (30 points)
- IV. Hotcards's counterclaim that the FLVPA is violating Section 1 of the Sherman Act. (10 points)

As with any well-written, objective legal memorandum, here is a general format that Mr. Pluck wants you to follow:

1. For each potential claim, label the claim with the appropriate Roman numeral (beginning with I). For subtopics, feel free to use sub-headings such as A., B., C., as well as 1, 2, 3. That way, it is very clear where each claim begins, as well as where each particular argument begins.
2. With respect to each issue of each claim, you should do the following: (1) state the applicable law; (2) state the relevant facts (those facts are limited to what is provided herein); (3) apply the law to the facts; (4) reach a conclusion; and (5) address potential damages if relevant. **For each claim, be sure to discuss every single element of that claim.**
3. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
4. Presume Mr. Pluck has not yet decided where, if at all, to file suit. If there is a split in the circuits about applicable law, explain that split.
5. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
6. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.

Background:

On June 1, 1995, twelve professional volleyball teams based in the United States came together to form Facsimile League Volleyball (“FLV”). Currently, FLV is one of three professional volleyball leagues in the United States—each of approximately equal size and profitability. FLV maintains its league offices in Orlando, FL.

On October 29, 1998, all 120 FLV volleyball players came together and voted to form a union—the Facsimile League Volleyball Players Association (“FLVPA”). The union then incorporated itself in Kansas City, Missouri, and placed its headquarters in St. Louis, Missouri.

In January 2000, two different companies began to make and sell trading cards of volleyball players: (1) Hotcards; and (2) Serves. Both card companies secured rights to use the FLV team logos from each of the 12 FLV franchise owners. Both card companies also purchased the rights to use the players’ identities from the FLVPA.

In 2000 and 2001, both Hotcards and Serves made volleyball cards of all players in the league. During this period, each company grossed approximately \$200,000 in baseball card sales each year.

In 2002, Hotcards continued to make volleyball cards of all players in the league. However, Serves only made volleyball cards for players on 11 of the 12 teams. One team, the San Francisco Setters, declined to sell rights to use their trademarks to any card company. That year, Hotcards grossed \$300,000 in sales and Serves grossed just \$50,000.

In 2003, the twelve FLV teams decided to take their individual trademark rights and assign them to the FLV commissioners’ office in Orlando, FL. Thereafter, from 2003-2007, the FLV commissioners’ office (rather than the individual clubs) sold the rights to use all team logos to both Hotcards and Serves. During this period, the FLVPA also continued to license the rights to use the players’ identities to both companies. During these years, Hotcards and Serves each grossed approximately \$200,000 in sales per year.

In 2008, FLV decided that moving forward it would only license the rights to use its logos in trading cards to one of the two existing companies. That season, FLV held a blind auction. Serves won the auction, and proceeded to sell cards using all FLV team logos—grossing \$275,000 in card sales that year. Meanwhile, Hotcards lost the auction, made cards of volleyball players without team logos, and only grossed \$75,000.

On January 15, 2009, Hotcards then received a letter from the FLVPA stating that “given that FLV was no longer allowing Hotcards to use its logos, the FLVPA has voted to also not renew Hotcards rights to use players’ identities on cards. Given all FLV players are bound by the union’s ruling, you thus will not be able to use any players’ identity on cards in the upcoming season.”

Despite the FLVPA’s letter, Hotcards decided to continue making trading cards. However, Hotcards replaced the official team logo and official player picture with a hand-drawn team logo and a hand-drawn sketch of each player. Both the hand-drawn logos and player sketches strongly resembled the actual team logo and official player pictures.

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On June 15, 2009, the FLV and FLVPA jointly brought suit against Hotcards. They alleged that Hotcards had violated FLV's trademark rights and the FLVPA's player publicity rights—both claims that Hotcards vigorously denies.

On July 15, 2009, Hotcards countersued, contending that the FLV policy not to license any teams' trademarks to Hotcards violates Section 1 of the Sherman Act, and that the FLVPA's policy prohibiting Hotcards from seeking permission to use individual players' identities in trading cards (separate and apart from the union group license) also violates Section 1 of the Sherman Act.

Discuss pursuant to the specific instructions above.

Remember, not all claims are worth equal point values.

SUMMER 2009 RUTGERS SCHOOL OF LAW-CAMDEN FACT PATTERN QUESTION:

Today was your first day as an associate at the law firm Pluck, Wonder and Chicken LLP. The firm's senior partner, Mr. Pluck, just called you into his office, and explained to you that he is looking to represent the Major League Baseball Players Association ("MLBPA") in its quest to prevent certain changes to the Major League Baseball Constitution that would affect the rights of players seeking to enter the 2010 league draft.

Since 1965, the MLB clubs have held an annual draft of all prospective first-year players. The draft consists of all players with residence in the United States and its territories.

According to Major League Baseball's Constitution, American-born players are allowed to enter the league draft upon their class's graduation from high school, or alternatively upon earning a high school diploma.

One traditionally acceptable form of high school diploma has been the General Equivalency Diploma ("GED"), which is earned based on taking a series of tests rather than completing traditional high school coursework.

In June 2009, Bryce Harper, a 16-year old high school sophomore from Las Vegas, NV, announced that he is planning to drop out of high school after this school year and will enroll in junior college with the hopes of earning his GED by December. Harper's goal will be to then enter the MLB draft next year at age 17—one year sooner than he would have been allowed under the MLB Constitution if he remained in traditional high school. If Harper is deemed eligible for the 2010 MLB Draft, most speculate he will be selected with a No. 1 overall pick.

Not all Major League Baseball club owners are pleased by the possibility of Harper earning his GED for purposes of entering the league draft a year early. Some baseball club-owners purport to be concerned about his maturity, others about his skill, and still others the economic ramifications of him potentially becoming free-agent eligible at a younger age than most of his peers.

In response to Harper's announcements, some MLB club owners have proposed voting on the addition of the following rule to their league constitution:

Proposed Amendment to MLB Constitution: Any player under the age of 18 who seeks to enter the MLB draft must first submit to a character and fitness interview, conducted by the league commissioner in conjunction with either a league-certified social worker or psychologist. Upon the conclusion of each interview, the Major League Baseball Commissioner shall make a determination on a case-by-case basis as to whether that particular player shall be granted a "special exemption" to enter the league prior to turning 18. If no exemption is granted, that player may not enter the MLB draft until the year following his 18th birthday—irrespective of whether that player has already earned a high school diploma or GED equivalency.

Specific Task and Directions:

Mr. Pluck would like you to assess the strength of the potential arguments under which the Major League Baseball Players Association could challenge the proposed amendment, if approved by the MLB clubs.

As with any well-written, objective legal memorandum, here is a general format that Mr. Pluck wants you to follow:

1. For each potential claim, label the claim with a Roman numeral (beginning with I). For subtopics, feel free to use sub-headings such as A., B., C., as well as 1, 2, 3. That way, it is very clear where each claim begins, as well as where each particular argument begins.
2. With respect to each issue of each claim, you should do the following: (1) state the applicable law; (2) state the relevant facts (those facts are limited to what is provided herein); (3) apply the law to the facts; (4) reach a conclusion; and (5) address potential damages if relevant. **For each claim, be sure to discuss every single element of that claim.**
3. Presume the reader has no knowledge of the relevant law. It is important to explain everything from scratch, in intricate detail.
4. Presume Mr. Pluck has not yet decided where, if at all, to file suit. If there is a split in the circuits about applicable law, make sure to explain that split.
5. Cite to statutes and case law, as well as past arbitration opinions, wherever appropriate.
6. If certain necessary facts are either unavailable or unclear, explain what additional information you would need, as well as how this information would impact your conclusion.

FALL 2008 RUTGERS LAW SCHOOL FACT PATTERN QUESTION:

Part II: Fact Pattern:

Today was your first day as an associate at the law firm Pluck, Wonder and Chicken. The firm's senior partner, Mr. Pluck, just called you into his office, and mentioned that he is looking to represent former Atlanta Falcons quarterback Michael Vick in his quest to reenter the National Football League ("NFL"). Mr. Vick is currently suspended from the NFL by Commissioner Roger Goodell, pursuant to the NFL Personal Conduct Policy.

Mr. Pluck has left you with a folder of materials that provide what he believes to be a fair understanding of the facts in this matter (Appendices A-1, A-2, A-3 and A-4). He wants you to read these materials thoroughly and then write him a detailed, objective memorandum analyzing what claims, if any, Mr. Vick may have. He also wants an honest assessment of the strength of each potential claim.

As with any well-written, objective legal memorandum, here is a general format that Mr. Pluck wants you to follow:

1. For each potential claim, label the claim with a Roman numeral (beginning with I). For sub-topic headings, feel free to use sub-headings such as A., B., C., as well as 1, 2., 3. That way, it is very clear where each claim begins, as well as where each particular argument begins.
2. Start your memo with what you believe is the strongest claim. You should spend the most time on claims that you believe are the strongest. That way Mr. Pluck will know where to focus his attention when drafting a complaint.
3. If a claim is worth mentioning, make sure to discuss each and every element of that claim, as well as who the claim should be filed against.
4. This is an objective memorandum. State the law. State the relevant facts. Apply the law to the facts. Reach a conclusion.
5. Presume Mr. Pluck has not yet decided where to file his Complaint. If there is a split in the circuits about applicable law, make sure to explain that.
6. Cite statutes and case law whenever possible.
7. If certain necessary facts are either unavailable or unclear, in the provided materials, explain what additional information you would need, and how that would impact your conclusion.

Appendix A-1

NFL NEWS



Vick (left) - now faces state charges.

VICK SET TO PLEAD GUILTY

Former NFL star Michael Vick plans to plead guilty to state dog-fighting charges in Virginia, according to paperwork filed on Tuesday in Surry County Circuit Court.

A circuit court administrator said Vick will plead guilty via a video-conference call from federal prison in Leavenworth, Kansas, where he currently is serving a two-year sentence for dog-fighting.

According to the *Virginian-Pilot of Norfolk*, Vick will plead guilty to the state charges in an attempt to receive an early release from his federal sentence and enter a halfway house.

Vick, 28, pleaded guilty in August 2007 to a federal dog-fighting charge, admitting that he bankrolled the operation known as 'Bad Newz Kennels' which was based on his property in rural Virginia.

Court papers revealed disturbing details of the operation, including the execution of under-performing dogs by electrocution, drowning, hanging and other means.

Vick was sentenced on December 10, 2007 to spend 23 months in jail.

With good behavior, the former Atlanta Falcons quarterback could have his sentence reduced to 18 months, which would result in a release from prison in the summer of 2009.

Tuesday, April 10, 2007

Goodell unveils new conduct policy

Associated Press

NEW YORK -- NFL teams will be disciplined when their employees, including players, violate the league's personal conduct policy.

Moments after announcing the one-year suspension of Tennessee Titans cornerback Adam "Pacman" Jones, and an eight-game ban for [Cincinnati Bengals](#) receiver [Chris Henry](#), NFL commissioner Roger Goodell released his strengthened conduct policy Tuesday. Along with longer suspensions and larger fines for individuals who violate the policy, Goodell will hold teams responsible, as well.

He did not say how he would punish those teams, although stripping them of draft choices is considered one of the most effective ways to do so.

"It is important that the NFL be represented consistently by outstanding people as well as great football players, coaches, and staff," Goodell said. "We hold ourselves to higher standards of responsible conduct because of what it means to be part of the National Football League. We have long had policies and programs designed to encourage responsible behavior, and this policy is a further step in ensuring that everyone who is part of the NFL meets that standard. We will continue to review the policy and modify it as warranted."

The strengthened standards apply to all NFL employees: players, coaches, officials, owners, front-office and league personnel. And Goodell emphasized in the new policy that those standards will be considerably tighter than outside the league.

"It is not enough to simply avoid being found guilty of a crime," the new policy says. "Instead, as an employee of the NFL or a member club, you are held to a higher standard and expected to conduct yourself in a way that is responsible, promotes the values upon which the league is based, and is lawful.

"Persons who fail to live up to this standard of conduct are guilty of conduct detrimental and subject to discipline, even where the conduct itself does not result in conviction of a crime."

The new policy comes in the wake of a series of off-field issues involving several players, notably Jones, Henry and Chicago Bears defensive tackle Tank Johnson.

There were 10 occasions in which Jones was interviewed by police, the most recent during the NBA All-Star weekend in Las Vegas. Police there recommended felony and misdemeanor charges against Jones after a fight and shooting at a strip club left one man paralyzed.

Henry was arrested four times in a 14-month span, and received a two-game league suspension last year. He was one of nine Bengals arrested in nine months. Johnson currently is in jail, serving four months for violating probation in a 2005 gun case.

Two of Henry's teammates, along with NFL Players Association executive director Gene Upshaw, recognized the need for stronger league guidelines for player conduct.

"You would think it's necessary just because of the negative publicity the NFL is beginning to receive because of what's happening," Bengals receiver [T.J. Houshmandzadeh](#) said. "It was going on for an extended period of time. Each day, each week, something was happening."

Bengals quarterback [Carson Palmer](#) suspects the new policy will help. "With all of the things that have been happening recently, I think it will be good and hopefully give the league a little better image. I hope that it works and that guys abide by the rules and do what's right."

So does Upshaw, of course. He consulted with Goodell before the commissioner, now in his seventh month on the job, revised the conduct policy. Goodell also established a panel of players to offer advice on such matters.

"The NFL Players Association and the Player Advisory Council have been discussing this issue for several months," Upshaw said. "We believe that these are steps that the commissioner needs to take and we support the policy. It is important that players in violation of the policy will have the opportunity and the support to change their conduct and earn their way back."

Tony Dungy said placing responsibility on the teams for their players and employees makes sense, even if it results in penalties that affect more than the wallet.

"That seems to be the thing that gets everyone's attention," the coach of the Super Bowl champion Indianapolis Colts said of potentially lost draft picks and player availability. "We talked about fines at the league meetings, and that may not do the trick. But when you start talking about playing time and draft picks, that seems to get your attention."

Appendix A-3 -- NFL Personal Conduct Policy (Printed from NFLPA Website)

- **General Policy**

- Engaging in violent and/or criminal activity is unacceptable and constitutes conduct detrimental to the integrity of and public confidence in the National Football League. Such conduct alienates the fans on whom the success of the League depends and has negative and sometimes tragic consequences for both the victim and the perpetrator. The League is committed to promoting and encouraging lawful conduct and to providing a safe and professional workplace for its employees.

[Top](#)

- **Persons Covered by Policy**

- The following persons ("Covered Persons") shall be considered subject to this Policy: (i) all players under contract; (ii) all full-time employees of the National Football League, its Member Clubs and related entities; (iii) all rookie players once they are selected in the NFL College Draft; and (iv) all undrafted rookie players, unsigned veterans and other prospective employees once they commence negotiations with a Club concerning employment.

[Top](#)

- **Prohibited Conduct**

- It will be considered conduct detrimental for Covered Persons to engage in (or to aid, abet or conspire to engage in or to incite) violent and/or criminal activity. Examples of such Prohibited Conduct include, without limitation: any crime involving the use or threat of physical violence to a person or persons; the use of a deadly weapon in the commission of a crime; possession or distribution of a weapon in violation of state or federal law; involvement in "hate crimes" or crimes of domestic violence; theft, larceny or other property crimes; sex offenses; racketeering; money laundering; obstruction of justice; resisting arrest; fraud; and violent or threatening conduct. Additionally, Covered Persons shall not by their words or conduct suggest that criminal activity is acceptable or condoned within the NFL.

[Top](#)

- **Persons Charged With Criminal Activity**

- Any Covered Person arrested for or charged with conduct prohibited by this policy will be required to undergo an immediate, mandatory clinical evaluation and, if directed, appropriate counseling. Such evaluation and counseling must be performed under the direction and supervision of the NFL Vice President of Player and Employee Development. Failure to cooperate with evaluation and counseling (including being arrested for or charged with additional criminal activity during the evaluation and counseling period) shall itself be conduct detrimental to the National Football League and shall be punishable by fine or suspension at the discretion of the Commissioner.

[Top](#)

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- **Persons Convicted of Criminal Activity**
 - Any Covered Person convicted of or admitting to a criminal violation (including a plea to a lesser included offense; a plea of no lo contendere or no contest; or the acceptance of a diversionary program, deferred adjudication, disposition of supervision, or similar arrangement) will be subject to discipline as determined by the Commissioner. Such discipline may include a fine, suspension without pay and/or banishment from the League. Any Covered Person convicted of or admitting to a second criminal violation will be suspended without pay or banished for a period of time to be determined by the Commissioner.

[Top](#)

- **Persons Engaged in Violent Activity in the Workplace**
- Every employee is entitled to a safe and professional workplace free of criminal behavior, violence and threats against personal safety. Criminal conduct in the workplace or against other employees is prohibited. Any Covered Person who commits or threatens violent acts against coworkers, regardless of whether an arrest is made or criminal charges are brought, shall be subject to evaluation, counseling and discipline, including termination of employment.

[Top](#)

- **Appeal Rights**
- Any person disciplined under this policy shall have a right of appeal, including a hearing, before the Commissioner or his designee. Except for the enforcement of discipline, no other requirements set forth in the policy will be stayed pending the completion of the appeal.

[Top](#)

Appendix A-4 -- References to the NFL Personal Conduct Policy in the Current Collective Bargaining Agreement

[NONE AVAILABLE]