

LEX SPORTIVA

ARTICLE

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I. WHAT IS SPORTS LAW?

L*ex Sportiva*, a phrase composed of the latin word *lex* meaning the law, and the italian word *sportiva*, meaning related to sport. It is the phrase created and popularly used to describe the practice of *sports law*, which is the term coined to describe the combination of legal disciplines that interact within the framework of sports. Some experts regard *Lex Sportiva* as a sui generis legal discipline, while others regard it as a simple permutation of specific legal disciplines, with no independence from them.

Sports law combines nearly all legal disciplines, from contracts, labor and antitrust, to torts, criminal law, and even constitutional law.¹ Sports law is truly an amalgam of legal practices.² Consequently, a good sports lawyer is by all means a complete general practitioner,³ with knowledge of all legal practices, a jack of all trades, who applies this general knowledge in the specific context of sports. The practice of sports law begins with broad understanding of both national and international law. Sports law, therefore, is no different from other emerging fields of law, like computer law,⁴ in that it begins with the study of the general legal concepts before applying to a sporting context. Some might argue that: “Sports law, with its wide variety of legal aspects, probably encompasses more areas of the law than any other legal discipline.”⁵

There are numerous debates regarding sports law, with the most common being, if there is such a thing as sports law or if it is just one application of specific areas of law (e.g. contracts as applied to sports). While it would be easy to dismiss sports law as just one application of national and international laws, not analyzing the context correctly, and ignoring the counterarguments, can prove to be a mistake.

In general terms, there are three arguments regarding the existence of sports law.⁶ The first one being that sports law does not exist. The second argument is that sports law may develop into a field of law, possibly soon. While the third contends that sports law is already a separate field of law.⁷

A. *Sports Law Does Not Exist*

“I have often said there is no such thing as sports law. Instead, it is the application to sport situations of disciplines such as contract law, [and] administrative law”⁸

According to this perspective, sports law is simply the use of other legal disciplines in the sports industry. This perspective argues that sports law is nothing more than the ap-

¹ Timothy Davis, *What is Sports Law?*, in *LEX SPORTIVA: WHAT IS SPORTS LAW?* (Robert C. R. Siekmann & Janwillem Soek eds., 2012), <https://link.springer.com/content/pdf/10.1007%2F978-90-6704-829-3.pdf>.

² *Id.* at 6.

³ *Id.* at 28.

⁴ *Id.* at 7.

⁵ *Id.* at 9.

⁶ *Id.* at 3-7.

⁷ *Id.*

⁸ SIMON GARDINER ET AL., *SPORTS LAW* 83 (2012).

plication of basic legal precepts to one specific industry.⁹ In saying this, the proponents of this view argue that “no separately identifiable body of law exists that can be characterized as sports law.”¹⁰ Sports law is then just fancy terminology for the law when actors in the sports industry are involved.

B. *Sports Law May Develop into a Field of Law*

In the area of amateur sports, for example, the proscription against sex discrimination is based on the same political and sociological notions which have led to statutes and court decisions outlawing sex discrimination in employment, housing, and public benefits. However, none of these areas raise the issues (and tensions) which are posed by the significant differences in the revenue-generating potentials of traditional men’s and women’s sports . . . Sections 1 and 2 of the Sherman Act do not contain different language to be applied in sports cases. In that sense, then, the law relevant to the sports industry is the same as will be applied to other areas of commerce. A glance at the cases, however, will suggest that there is a good deal of judicial reasoning in the sports areas, which is not very conventional.¹¹

According to the proponents of the second perspective regarding sports law, “the unique application of legal doctrine to the sports context and the factual uniqueness of sports problems that require the need for specialized analysis, support the notion that a body of law called sports law might exist.”¹² In this regard, Sports law is not yet a fact, but it is a possibility. While the proponents of this view do not argue that sports law exists or it doesn’t, they state that if it does not exist, it will in the future.

C. *Sports Law is Already a Separate Field of Law*

[I]t is true to say that [sports law] is largely an amalgam of interrelated legal disciplines involving such areas as contract, taxation, employment, competition and criminal law but dedicated legislation and case law has developed and will continue to do so. As an area of academic study and extensive practitioner involvement, the time is right to accept that a new legal area has been born—sports law.¹³

This final perspective points to the possibility of sports law, as not only being a growing field but already a separate and unique field of law. Thus, “[r]eferences to sports law as merely an amalgamation of various other substantive areas of the law ignores an important present day reality—very few substantive areas of the law fit into separate categories that

⁹ Davis, *supra* note 1, at 3.

¹⁰ *Id.*

¹¹ Davis, *supra* note 1, at 5.

¹² *Id.*

¹³ *Id.* at 6.

are divorced from and independent of other substantive areas of the law.”¹⁴ It is a reality that sports law contains elements of various other legal disciplines, however, Sports law is not the only legal field with such a ‘doctrinal overlap.’ Dismissing sports law as unique for having doctrinal overlap, as so many other fields do, is a narrow-sighted attempt to dismiss the emergence of a new legal field.

II. ELEMENTS OF SPORTS LAW

Is sports law a separate and unique field of law? Is it just a collection of other laws applied to the sporting context? When discussing sports law, considering certain elements is essential. This fact is exceptionally accurate if sports law is to survive as a *sui generis* independent field of law. It is not enough to look at the law and determine if it applies to sports. Elements of sport have to be considered to correctly determine if it is, in fact, a field of its own or just an application of already existing fields of law. Before reaching a conclusion regarding the existence of sports law, it is important to determine: (1) what is a field of law?, (2) the difference between international law and global law, (3) what is a sport?, and (4) the elements of sports law that separate it from other legal fields.

A. *What makes a discipline of Law?*

The idea of recognizing a field as a new discipline of law is often met with resistance. This process is usually slow because it signifies a “fundamental change in society.”¹⁵ Society has seen fields of law like labor, health, and environmental go through this slow process before being widely accepted as stand-alone areas of law. Several factors can be considered when evaluating if a specific field is independent or a mere application of existing law; as such, these factors may indicate whether a field is, in fact, new and unique.

The process by which legal areas are identified, constituted and named is a complex one and often to some extent arbitrary. There is no official recognition procedure. It is a process of legal practitioners and academics recognizing the growing application of the law to a new area of social life.¹⁶

There is no formula for recognition. The process follows a typical path around society’s necessities that, to this day, remains undefined.

But what makes a field a field? The answer is that a field becomes a field not because it is inherently so but because in our public legal dealings we shape it as such, defining the concepts and legal norms that will prevail uniquely in that context. It becomes a field because enough people with power on all sides are so affected by it to require some special treatment of

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ GARDINER ET AL., *supra* note 8, at 100.

it in the law. For many years, sports law has been somewhat removed from the things that make a field a field—the litigation that establishes a common law specific to the concerns of the participants, the scholarship that provides conceptual and theoretical guidance (and sometimes misguidance), and the legislative and administrative action that creates a statutory and regulatory base.¹⁷

The recognition of sports law as a new field of law will be influenced in great part by lawyers, professors and academic institutions. Their perception, treatment and willingness to refer to it as sports law is what will define the issue. It is not a black and white answer, since as with most new fields, sports law currently falls in a grey area.¹⁸

B. *Global Sports Law vs. International Sports Law*

International law deals with the relationship between nation-states, international sports law is, therefore, when the principles of international law are made applicable to sport.

International sports law is, however, wider than those principles that can be deduced from public international law alone and includes additional ‘rule of law’ safeguards that are significant in sport. These include the principles underpinning constitutional safeguards in most western democracies. A provisional list would include clear unambiguous rules, fair hearings in disciplinary proceedings, no arbitrary or irrational decisions, and impartial decision-making. These are general legal principles that can be deduced from the judgments of national courts in sports law cases.¹⁹

By way of comparison, global sports law is an autonomous legal field that functions transnationally and is created by private global institutions that govern international sport. These institutions form what is known as the pyramid of sport. The pyramid, by way of contractual agreements, grants authority, and jurisdiction to the international sporting federations.²⁰ Global sports law, is not governed by national legal systems.²¹ These two characteristics form what is known as global sports law, a unique set of doctrines created from the principles and rules of these international sports organizations. “This is a separate legal order that is globally autonomous.”²² In global sports law, self-regulation is the

¹⁷ Davis, *supra* note 1, at 9 (quoting W. Burlette Carter, *Introduction: what makes a “field” a field?* 1 VA. J. SPORTS & L. 235, 244-45 (1999)).

¹⁸ *Id.* at 7-9.

¹⁹ Ken Foster, *Is There a Global Sports Law?* in LEX SPORTIVA: WHAT IS SPORTS LAW? 37 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

guiding principle that allows international federations to enjoy an autonomous status in front of national courts, whereby they do not technically fall under any court's jurisdiction.

C. *Specificity of Sport*

The crucial argument regarding sports law as a *sui generis* independent field is that sports are different from society as a whole.²³ Even if we are to believe that sports are a reflection of society, some of its aspects are unique to the sporting context and are absent from society in general.²⁴ This is what most experts consider the 'specificity of sport'.²⁵ This element is what defines sports law as *sui generis*. Due to the specificity of sport, the same laws cannot be applied to the sporting context as society in general, because this would fail to consider the elements that constitute the sport and would be an unfair application of the law.

The best way to visualize this element is by thinking of inherently aggressive sports. Some sports are dependent on their players being aggressive, a type of aggression typically punished in civil and criminal law (e.g. American Football, Ultimate Fighting Championship, Boxing, or Rugby). If the civil and criminal laws were applied strictly in the sporting context, the element of aggression that defines the sport would cease to exist, and the sport, consequently, would no longer be the same. Similarly, for athletes the purity of the sport requires them to play to the best of their abilities, but if athletes are afraid to play rough, due to possibly facing civil or criminal prosecution, the purity of the sport would be compromised, leading to the sport losing its essential elements.

This is not to say that all types of aggression should be allowed, or go unpublished, even in the sporting context. The argument is that aggression should be looked at taking into consideration the essential elements that make up the sport. Maybe courts could be well equipped for this analysis, but more often than not, the regulatory bodies of the sport (e.g. associations, federations, Olympic Committees, among others) are best equipped to know when elements of a sport need to present, and to what extent, in order to preserve this purity, or specificity, of the sport.

The specificity of sport means that laws should not be applied to sports the same way as they are to society because this would fail to take into consideration how individual elements that might be contrary to laws in society need to be present in a sport. The specificity of sport is usually the main argument when attempting to prove that sports law is indeed a *sui generis* independent field of law, and also probably the strongest one.

23 KATRIEN LEFEVER, *Specificity of Sport: The Important Role of Sport in Society*, in *NEW MEDIA AND SPORT* 31-53 (Oct. 4, 2012), https://www.researchgate.net/publication/303654205_Specificity_of_Sport_The_Important_Role_of_Sport_in_Society.

24 Gianni Infantino, *Meca-Medina: a step backwards for the European Sports Model and the Specificity of Sport?*, UEFA, 1 (Oct. 10, 2006), https://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/480391_DOWNLOAD.pdf.

25 Ravi Mehta, *Boxing case underscores courts' reluctance to interfere in decisions of national sporting bodies*, *LAWINSPORT* (July 2, 2014), <https://www.lawinsport.com/blogs/item/boxing-case-underscores-courts-reluctance-to-interfere-in-decisions-of-national-sporting-bodies>.

D. *What is Sport?*

It would be impossible to define sports law without first defining ‘sports,’ and therein lies one of the biggest problems. The definition of sport is fluid at best; some people do not even believe there is a distinction between sports and games. In most dictionaries, sport is “recreation”,²⁶ nothing more. This is particularly problematic when it comes to defining sports law since recreation would include anything that entertains, including actions not generally associated with sports. Sports law is meant to protect and define actions within sports, which is why finding an appropriate definition becomes particularly important. The Global Association of International Sports Federations (GAISF) has defined *sport*, in order to determine whether an applicant federation to their Association, qualifies as an international sports federation. To the GAISF, a sport is one that; (1) includes the element of competition; (2) does not rely on any element of luck integrated explicitly into the sport; (3) is not judged to pose an undue risk to the health and safety of its athletes or participants; (4) is in no way harmful to any living creature; and (5) does not rely on equipment that is provided by a single supplier.²⁷ If we take this definition as a starting point, considering the great respect the GAISF has globally, especially within the sporting industry, we have at least a way to limit the scope of sports law.

Determining what is considered a sport and what is considered a game is particularly important when deciding what field sports law will govern and what field will be governed by traditional law, such as contracts. Recently, a debate surfaced regarding esports, whether they are sports or just the underlying videogame.²⁸ Indeed, they do not fit the GAISF definition or most international federation’s definitions, but there are elements to esports that could entitle them to be considered sports. If esports are to be considered sports, then sports law rules reign supreme; if they are not considered sport then national courts have jurisdiction. Thus, it is important to define a sport in order to determine if sports law will have precedence over national laws.

III. AREAS OF LAW AS THEY RELATE TO SPORTS

A. *Antitrust*

Ever since the 1970s “antitrust law and in particular, the Sherman Act, have severely impacted the structure of relationships in professional sports.”²⁹ Other than baseball,³⁰ antitrust has diminished the limiting rules and policies that gave team owners more power

²⁶ *Sport*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/sport> (last visited Apr. 14, 2020).

²⁷ GAISF, <https://worldlacrosse.sport/worldlacrosse/gaisf/> (last visited Apr. 14, 2020).

²⁸ Daniel Kane & Brandon D. Spradley, *Recognizing ESports as a Sport*, THE SPORT JOURNAL (May 11, 2017), <https://thesportjournal.org/article/recognizing-esports-as-a-sport/>.

²⁹ Davis, *supra* note 1, at 17 (quoting MARTIN J. GREENBERG & JAMES T. GRAY, SPORTS LAW PRACTICE (2nd ed. 1998)).

³⁰ *Flood v. Kuhn*, 407 U.S. 258 (1972) (The case details how baseball was exempt from antitrust laws by congress and how the courts cannot change the exemption and/or remedy any *inconsistency* and/or *illogic* it might produce).

in their dealings with players. In 1976, a United States court found that the NFL's restriction on player mobility was an unreasonable restraint of trade in violation of the *Sherman Act*.³¹ In *Mackey v. National Football League*,³² the court recognized a three-prong test for defining when federal labor policy should preempt antitrust laws: (1) the restraint affects, first and foremost, only the parties to the CBA, (2) when the restraint is regarding matters that are compulsory subjects of collective bargaining, and (3) the CBA came as a result of a good faith 'arm's length' bargaining.³³

In 1984, a United States court found that the NFL was not a single entity, and a rule requiring three-fourths of its members to approve a team moving to another team's territory could be considered as the league conspiring in restraint of trade.³⁴ Another critical moment in the antitrust-sports law intersection was the 1992 United States court decision that the NBA is not a single entity.³⁵ It is sort of a joint venture, based on the agreements reached by the parties, and thus violated antitrust laws when limiting the number of games that a TV station could carry, and although the decision does not definitively categorize the NBA as a joint venture, the Court does decide to treat the NBA as such for the effects of the case at hand.³⁶ This case law illustrates how much of an influence antitrust law has on sports law and how closely tied together these two fields of law are.

B. Contract Law

When discussing sports law, it is of utmost importance to understand the role that contracts play. Contracts are involved in all aspects of sports law and can be seen as one of its most affected. Labor law governs most of the employment relationships, whether by way of contract or Collective Bargaining Agreements (CBA).³⁷ However, the interpretation of these CBA's or labor contracts remains tied to contract law principles.³⁸ Freedom of contract is one of the fundamental principles underlying CBAs,³⁹ much like it is in the European context (e.g. FIFA), and there are usually underlying federations' regulations on contracts (e.g. FIFA).

Athletes contracts are probably the first thought of anyone who attempts to understand how contract law and sports law interact. However, contract law interacts in more ways with sports law. Sports law has utilized contract law, not only in employment contracts, but also in sponsorship contracts, scholarship agreements, endorsement contracts, arena lease agreements, coaching contracts, and even letters of intent.⁴⁰ Contract law is,

31 *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976).

32 *Id.*

33 *Davis*, *supra* note 1, at 18 (Referencing the "Rozelle Rule" which required compensation for signing of free agents).

34 *Los Angeles Memorial Coliseum Com'n v. N.F.L.*, 726 F.2d 1381 (9th Cir. 1984).

35 *Chicago Pro. Sports Ltd Partnership v. N.B.A.*, 961 F.2d 667 (7th Cir. 1992).

36 *Id.*

37 *See Davis*, *supra* note 1, at 10.

38 *Id.*

39 *Id.*

40 *Id.*

definitely, the most widely used legal field in sports law.

One more element that is often overlooked when discussing the intersection of contract law and sports law is the way federations gain their autonomy from national courts.⁴¹ While it is true that most courts offer deferential treatment to federations' dispute resolution systems, these systems were not born on their own.⁴² Federations have gained their autonomy by way of contract; players sign contracts with clubs, which in turn, sign contracts with leagues, who then sign contracts with federations, and so on, until it reaches the top of the *pyramid*, the international federations.⁴³ This *pyramid* functions by way of direct and indirect contracts whereby players, for example, have signed a contract with the team obligating themselves to abide by the team's rules, and the team has signed a contract with the association stating that they abide by the association's rules, therefore making the player an indirect party to the contract with the association and making the association the competent body governing the player, as well as the team. This chain of direct and indirect contracts occurs from the bottom of the pyramid to the top, and this is the reason why international federations have gained such autonomy and recognition, all by way of contracts.

C. Labor Law

During the last thirty years "active union representation in professional sports . . . has produced decisions that illustrate virtually all the important doctrinal spheres in contemporary labor law."⁴⁴ Labor law in sports has been a significant catalyst for sports law. Primarily in the United States, labor law is seen as a strong force particularly regarding sports law. All major team sports in the United States are represented by labor unions; the National Basketball Association (NBA) has the National Basketball Players Association (NBPA), the National Football League (NFL) has the National Football League Players Association (NFLPA), Major League Baseball (MLB) has the Major League Baseball Players Association (MLBPA), and so on. These player associations negotiate the league's CBA with the players and must observe all the principles of traditional labor law.

D. Tort Law

Sports, however, pose a unique problem to the law of personal injury. The aim of a sporting event is to produce spirited athletic competition on the field or floor. In sports such as boxing, football, and hockey, a central feature of the contest is the infliction of violent contact on the opponent. In other sports, such as basketball and baseball, such contact is an expected

⁴¹ LEX SPORTIVA: WHAT IS SPORTS LAW? 241 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

⁴² *Id.*

⁴³ Margareta Baddeley, *The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn*, 20 THE INTERNATIONAL SPORTS LAW JOURNAL 3, 3-17 (2019), <https://link.springer.com/article/10.1007/s40318-019-00163-6>.

⁴⁴ *Id.* at 15 (citations omitted).

risk, if not a desired outcome, of intense competition. Even sports such as golf that are intrinsically non-violent for their participants may inflict harmful contacts upon the spectators. This characteristic feature of sports requires the law to undertake a delicate balancing act when it tailors for use in sports litigation the standards of liability developed to govern relationships in very different aspects of life.⁴⁵

Sports law needs to intersect with torts, but the specificity of sports always has to be considered. The courts have set the parameters for civil liability in sports by saying that in the sports context, “a player is liable for injury in a tort action if his conduct is such that it is either deliberate, willful or with a reckless disregard for the safety of the other player. . . .”⁴⁶

E. *Criminal Law*

Sports law and criminal law also intersect significantly. There are situations in sports that lead to the following question: Who must be responsible for these actions and how they should respond? Courts tend to be reluctant in imposing criminal liability for actions occurred on the field of play. In 1978, English courts, regarding the case of a rugby player injured during a game, said that rugby is a physical game in which force is necessary, and players are presumed to consent to the use of force during the game. Although this does not give the players an unlimited license to use force, but demonstrates where the line is drawn, is up to the jury to decide.⁴⁷

Even with courts being hesitant to prosecute athletes for actions that occurred on the field of play, criminal law still plays a big part in sports law, as stated below:

While it is rare for a sport's violence case to reach the criminal court . . . , it is necessary to be prepared either on the prosecuting side or the defense. It is important to be able to distinguish between a foreseeable conduct and one that is not. An athlete that consents to play a sport can foresee acts that are reasonably common to that sport. On the other hand, if there is excessive bodily contact that has the qualities of an unsportsmanlike conduct, and a reasonable person could not foresee it as a normal action in the sport, it should be remediable through criminal sanctions.⁴⁸

Violence in sports is a reality, one that is mostly dealt internally, either by teams, leagues, federations, or in the most extreme cases, arbitral courts. For a criminal case to be prosecuted, the circumstances must be so blunt that the action cannot be deemed as

45 *Id.* at 20 (citations omitted).

46 *Nabozny v. David Barnhill*, 334 N.E.2d 258, 261 (Ill. App. Ct. 1975).

47 *R v. Billingham*, Crim LR 553 (1978).

48 Gretchen M. Colón Fuentes, *What's the game plan? Developing criminal defenses in sports violence*, UNIVERSITY OF PUERTO RICO LAW REVIEW INREV (Nov. 7, 2019), <http://revistajuridica.uprrp.edu/inrev/index.php/2019/11/07/whats-the-game-plan-developing-criminal-defenses-in-sports-violence/>.

a sporting one. Although, violence is not the only criminal matter associated with sports law. Criminal cases in sports law can be seen in a variety of fields. Recently, we have seen multiple cases involving sports personalities. We have seen the Nassar-USA Gymnastics Case,⁴⁹ the Oscar Pistorius trial,⁵⁰ and the Aaron Hernández trial,⁵¹ among many others. These cases were handled in national courts, as the actions being punished did not occur on the field of play, and there was no question of the criminality of their actions if proven guilty. The national courts retained jurisdiction and sentenced each of these sporting personalities accordingly. This, however, proves that criminal law is not entirely separated from sports law, and there is a link. Sporting personalities might be involved in criminal cases, and although the facts and the law remain the same, criminal law and sports law will be overlapped, due to the media attention, the evidence presented, and the people involved.

F. Constitutional and Public Law

It might be challenging to envision constitutional law playing a role in sports law, seeing as how most aspects of sports law are regulated by private law; however, constitutional law plays a huge role. Several concepts from public law govern legal relationships in sports, such as federal legislation (e.g. Americans with Disabilities Act, Title IX, and Title VI).⁵² Constitutional law principles have been asserted to claim rights of parties in the sports field, such as mandatory drug testing violating First and Fourth Amendment rights,⁵³ although the court has held that even some more than minimally intrusive instances of invasion of privacy are not enough to violate the Fourth Amendment.⁵⁴ Several cases have gone to trial, and court decisions have proven that constitutional law plays a significant role in sports law. It is impossible to talk about sports law without, in some regard, bearing in mind the importance of constitutional law.

In *Mercer v. Duke University*,⁵⁵ Heather Sue Mercer filed a claim against Duke University for discriminatory treatment in violation of Title IX of the Education Amendments of 1972 (Title IX).⁵⁶ Title IX essentially prohibits discrimination on the basis of sex by educational institutions receiving federal funding, such as Duke University. Title IX reads, “no person in the United States shall, on the basis of sex, be excluded from participation in,

49 Christine Hauser & Karen Zraick, *Larry Nassar Sexual Abuse Scandal: Dozens of Officials Have Been Ousted or Charged*, N. Y. TIMES (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/sports/larry-nassar-case-scandal.html> (updated July 30, 2019).

50 BIOGRAPHY, *Oscar Pistorius Biography* (Apr. 2, 2014), <https://www.biography.com/athlete/oscar-pistorius> (updated Aug. 22, 2019).

51 Tim Daniels, *Aaron Hernandez Trial: Key Takeaways from Closing Arguments*, BLEACHER REPORT (April 7, 2015), <https://bleacherreport.com/articles/2422546-aaron-herandez-trial-key-takeaways-from-closing-arguments>.

52 Davis, *supra* note 1, at 24.

53 *Id.*

54 *Veronia School District 47J v. Wayne ACTON*, 515 U.S. 646 (1995).

55 *Mercer v. Duke University*, 190 F.3d 643 (4th Cir. 1999).

56 Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (2018).

be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”⁵⁷ According to *Mercer*: “Soon after enacting Title IX, Congress charged the Department of Health, Education, and Welfare (HEW) with responsibility for developing regulations regarding the applicability of Title IX to athletic programs.”⁵⁸ The HEW Regulations read:

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, *a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.* However, *where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport.* For the purposes of this part, *contact sports include* boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.⁵⁹

Mercer was an all-star football player in High School who tried out for Duke University’s only football team and made it. Mercer spent 2 seasons on the team, but, according to her, got fewer opportunities than the rest of the players.⁶⁰ Following the 1995 season she was cut from the team in favor of what she refers to as less qualified players. Mercer alleges that this decision was based on her sex, in violation of Title IX.⁶¹

The District Court found that under the relevant regulation “contact sports, such as football, are specifically excluded from Title IX coverage.”⁶² The Circuit Court, however, does not agree. The Circuit Court held that, even with the HEW Regulations excluding contact sports such as football from Title IX application, once the Institution allows members of both sexes to try out for a single contact sport team, the HEW Regulations paragraph b exception no longer applies.⁶³

⁵⁷ *Id.* § 1681(a).

⁵⁸ *Mercer*, 190 F.3d at 645 (citations omitted).

⁵⁹ Athletics, 34 C.F.R. § 106.41 (2019).

⁶⁰ *Mercer*, 190 F.3d at 644-45.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

[T]his reading of the regulation is perfectly consistent with the evident congressional intent not to require the sexual integration of intercollegiate contact sports. If a university chooses not to permit members of the opposite sex to try out for a single-sex contact-sports team, this interpretation respects that choice. At the same time, however, the reading of the regulation we adopt today, unlike the one advanced by appellees, ensures that the likewise indisputable congressional intent to prohibit discrimination in all circumstances where such discrimination is unreasonable—for example, where the university itself has voluntarily opened the team in question to members of both sexes—is not frustrated.⁶⁴

Thus, the Court's decision in *Mercer* has major constitutional implications in regard to sports law and Title IX's application in sports.⁶⁵

G. Intellectual Property

Sports Law's interaction with intellectual property has been recently put on display to the public with the recent *2k Tattoo Case*.⁶⁶ The question surrounding this case was whether players licensing their images to video game makers violates any copyrights held by tattoo artists.⁶⁷ This question can then be subdivided into two more: *who owns the copyrights to a tattoo* and *can athletes license their images or do they need artists' permission before doing so?* This tattoo issue had been emerging for some time, with previous attempts at claiming ownership of intellectual property rights over tattoos, always ending in out of court settlements.⁶⁸ This circumstance has made Judge Laura Taylor Swain's March 2020 decision,⁶⁹ novel and extremely relevant. The case revolves around popular video game NBA 2K, produced by 2K Games and Take-Two Interactive Software ("Take Two"), and Solid Oak Sketches, which is a company that holds copyright license agreements with tattoo artists who have worked on NBA players.⁷⁰

NBA players, through the NBPA, license their images and likeness to different companies, including Take-Two. Take Two agreed to terms with the NBA on \$1.1 billion over seven years deal, that would allow them to continue making the popular video game.⁷¹

64 *Id.*

65 See also *Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996); *Communities for Equity v. Michigan High School Athletic Association*, 80 F. Supp.2d 729 (W. D. Mich. 2000); *Neal v. Board of Trustees of California State Universities*, 198 F.3d 763 (9th Cir. 1999); *Cureton v. National Collegiate Athletic Association*, 198 F.3d 107 (3rd Cir. 1999).

66 *Solid Oak Sketches, LLC v. 2K Games, Inc.*, No. 16CV724-LTS (S.D.N.Y. Aug. 2, 2016).

67 *Id.*

68 Ida Laakkonen, *Athletes v Artists: Who Owns the Ink?*, LEX SPORTIVA (Dec. 10, 2019), <https://lexsportiva.blog/2019/12/10/tattoos/>.

69 *Solid Oak Sketches, LLC v. 2K Games, Inc.*, No. 16CV724-LTS-SDA (S.D.N.Y. Mar. 26, 2020).

70 *Id.*

71 Sarah E. Needleman, *NBA Inks Billion-Dollar Deal With Maker of 2K Videogame*, THE WALL STREET JOURNAL (Jan. 15, 2019), <https://www.wsj.com/articles/nba-take-two-ink-licensing-deal-of-up-to-1-1-billion-11547550001>.

This deal, however, does not pay the tattoo artists anything, even though, as Take Two argues, the deal includes the right to depict the tattoos as part of the players' images.⁷² Solid Oak Sketches argues that Take Two's depiction of five tattoos on three different NBA players, LeBron James, Eric Bledsoe, and Kenyon Martin, violates their copyrights over those works.⁷³

Judge Swain agrees with Take Two by saying that “[Take Two Interactive Software and 2K Games] are entitled as a matter of law to summary judgment dismissing Plaintiff's copyright infringement claim because no reasonable trier of fact could find the Tattoos as they appear in NBA 2K to be substantially similar to the Tattoo designs licensed to Solid Oak.”⁷⁴ In the Court's view, the use of the tattoos is *de minimis* and “the display of the Tattoos is small and indistinct” due to the nature of the video game.⁷⁵ Judge Swain adds that “the tattooists necessarily granted the Players nonexclusive licenses to use the Tattoos as part of their likenesses, and did so prior to any grant of rights in the Tattoos to Plaintiff”, meaning that Take Two and 2K games had an implied license to use the tattoos, through its deal with the NBA.⁷⁶ Finally, the Court's decision focuses on the fact that the use of the tattoos, although copyrighted, in the context of video games, constitutes fair use.⁷⁷

[U]ndisputed evidence demonstrates that Defendants' use of the Tattoos is transformative. First, while NBA 2K features exact copies of the Tattoo designs, its purpose in displaying the Tattoos is entirely different from the purpose for which the Tattoos were originally created. The Tattoos were originally created as a means for the Players to express themselves through body art. Defendants reproduced the Tattoos in the video game in order to most accurately depict the Players, and the particulars of the Tattoos are not observable. The uncontroverted evidence thus shows that the Tattoos were included in NBA 2K for a purpose —general recognizability of game figures as depictions of the Players —different than that for which they were originally created.⁷⁸

This case is the latest demonstration of Sports Law interacting with Intellectual Property. This decision will likely have ripple effects in both the intellectual property field and sports law.

H. *Other Substantive Areas of Law*

Sports law interacts with almost all, if not all, legal areas. It is essential to understand the forgoing interactions, as well as other substantive areas of law such as: administrative,

⁷² *Solid Oak Sketches, LLC*, No. 16CV724-LTS-SDA at 9.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

tax, real estate, and entertainment law.⁷⁹ Some of these interactions occur in a private setting while others lead to case law and regulations.

Administrative Law interacts with sports law because sport associations typically fall under the scope of governmental administrative agencies. These agencies govern licenses and permits for sports organizations to be able to function and operate within a territory.⁸⁰

Tax Law's interaction with sports was clearly visible recently in the cases of Lionel Messi,⁸¹ and Cristiano Ronaldo.⁸² Both international sports icons were found guilty of tax evasion. Sports Law interacts with Tax Law because an understanding of different countries' tax laws is crucial to professional athletes. An athlete that moves from one country to another needs to have knowledge of how the move will affect him tax-wise since generally they have to pay taxes in every country (or state) they play in.⁸³ While the Ronaldo and Messi cases were linked to fraud, this is just an example of how crucial an understanding of tax law is in the sports industry.

Real estate is essential to sports. Sports organizations need Real Estate to operate, either by purchasing arenas or leasing them. Real Estate is also essential for athletes, professional athletes move around frequently, this means that they require frequent real estate experts to advise them on their living arrangements. A knowledge of real estate law is then essential in order to properly advise an athlete.⁸⁴

Sports Law and Entertainment Law are always linked together. Some educational programs even teach both as part of a single program because of how similar they are.⁸⁵ Professional athletes are involved in entertainment law frequently, especially after their athletic careers are over, which makes an understanding of entertainment law ideal for advising these athletes.

IV. GOVERNANCE

The autonomy of sports law is premised on a system of self-regulation, whereby issues occurring within the system are managed internally within the same system. The system

⁷⁹ Davis, *supra* note 1, at 28.

⁸⁰ See Departamento de Recreación y Deporte de Puerto Rico, *Sobre el DRD*, <http://www.drdpuertorico.com/sobre-el-drd/> (last visited Apr. 14, 2020).

⁸¹ BBC NEWS, *Lionel Messi tax fraud prison sentence reduced to fine* (July 7, 2017), <https://www.bbc.com/news/world-europe-40534761>.

⁸² Isla Binnie, *Ronaldo accepts fine for tax evasion, avoids jail*, REUTERS (Jan. 22, 2019), <https://www.reuters.com/article/us-soccer-taxation-ronaldo/ronaldo-accepts-fine-for-tax-evasion-avoids-jail-idUSKCNiPGoR2>.

⁸³ For example, famous Basketball player LeBron James plays for the Los Angeles Lakers but not all his games are in California. Therefore, when the Lakers play another team out of state (say the Denver Nuggets), if James is paid for the game against the Nuggets, he would then also owe income tax to the state of Colorado. See K. Sean Packard, *Income Taxes for Pro Athletes Are Reminder of How Complicated U.S. Tax Code Is*, FORBES (Apr. 18, 2017), <https://www.forbes.com/sites/kurtbadenhausen/2017/04/18/income-taxes-for-pro-athletes-are-reminder-of-how-complicated-u-s-tax-code/#13004dd441e>.

⁸⁴ See LOS ANGELES TIMES, *Hot Property newsletter: There's plenty of sport in real estate* (Mar. 21, 2020), <https://www.latimes.com/business/newsletter/2020-03-21/hot-property-newsletter-sports-real-estate-action-hot-property>.

⁸⁵ UNIVERSITY OF MIAMI, LL.M. in Entertainment, Arts and Sports Law, <https://www.law.miami.edu/academics/llm/entertainment-arts-sports-law> (last visited Apr. 14, 2020).

is born from contracts that form a pyramid, where the two closest parties in the pyramid have direct contracts between them. The other parties that are at least one block away, have an indirect contract with the others. This system relies on the assumption that contracts are the governing rule of law, and courts will respect them, trusting that the process follows certain universal legal principles.

A. *Governing Bodies*

Sports law is governed by the sports pyramid. Although it varies from sport to sport, at the bottom of the pyramid are usually the athletes and the coaches who sign a contract with a club. The club, being the next step in the pyramid, then signs a contract with the regional federation, this contract ties them directly to the clubs but indirectly to the coaches, athletes, and coaches. The next step in the pyramid would be a National Association, who signs a contract with both the regional federation and, the next step in the pyramid, the continental federation, thus creating a system of direct and indirect contracts. At the top of the pyramid sits the international federation, who signs a contract with the continental federation, but indirectly has a contract with all the bottom parties.⁸⁶

The most important aspect of the pyramid is to understand that contracts create the system and give it its autonomy. Courts have understood this pyramid as a system of contracts regulated by *pacta sunt servanda* and have decided to respect it, since contracts govern the relationship between the parties.⁸⁷ It is not merely about the contracts, however, since courts will always examine whether universally recognized principles are in place to safeguard all parties' rights, such as due process, the right to be heard, and an independent body to judge disputes. Once all these elements have been accounted for, contracts are the rule of law, and international federations, like FIFA or FIBA, have the final word.

This system is the rule of law in most countries in the world, except the United States.⁸⁸ The United States does not adhere to a pyramid system that follows international federations like FIBA, for example. In the United States the leagues, like the NBA, NFL, MLB, among others, regulate the tournaments directly and have the final say.⁸⁹ The remarkable thing is that even though they do not adhere to the pyramid system, the system functions by way of contracts as well. These leagues agree on CBAs with the players, who are then tied to the league's system of rules and dispute resolution.⁹⁰ The courts will respect these rules and contracts, such as the rules on doping, as long as they follow specific procedural

⁸⁶ André Oliveira, *The "Pyramid System"*, LEX SPORTIVA (Mar. 22, 2019), <https://lexsportiva.blog/2019/03/22/the-pyramid-system/>.

⁸⁷ Margareta Baddeley, *supra* note 43.

⁸⁸ J.S., *Why is there no promotion and relegation in the United States?*, THE ECONOMIST (Nov. 23, 2016), <https://www.economist.com/game-theory/2016/11/23/why-is-there-no-promotion-and-relegation-in-the-united-states>.

⁸⁹ Luigi Buzzacchi et al., *Equality of Opportunity and Equality of Outcome: Open Leagues, Closed Leagues and Competitive Balance*, JOURNAL OF INDUSTRY, COMPETITION AND TRADE, 3:3, 167-186 (2003), <http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2014/04/JICT.pdf>.

⁹⁰ See e.g. NATIONAL BASKETBALL ASSOCIATION, *Collective Bargaining Agreement* (July 1, 2017), <https://nbpa.com/cba>.

guidelines, similar to the ones in the pyramid system.

The governing bodies in sports are born out of contracts and gain their autonomy by way of contracts. As long as certain procedural safeguards are met, courts will not interfere with these governing bodies and will respect their autonomy, in both the pyramid system and the United States' system.

B. *Court of Arbitration for Sport (CAS)*

The Court of Arbitration for Sport was created out of the need to have an impartial arbitration body, expert in sports matters, to adjudicate disputes.⁹¹ “In competitive sport, particularly the Olympic Games, it is vital both for athletes and for the smooth running of events that disputes are resolved quickly, simply, flexibly and inexpensively by experts familiar with both legal and sports related issues.”⁹² The problem with taking matters to national courts, when they could not be resolved within the federations, was that (1) national courts would typically lack sport's specific knowledge, (2) national courts tend to be expensive and slow in resolving matters, and in sports law-related matters time is usually crucial, (3) resorting to national courts usually created inconsistent rules of law, and (4) enforcing national law judgements was complicated internationally.

At the beginning of the 1980s, the regular increase in the number of international sports-related disputes and the absence of any independent authority specializing in sports-related problems and authorized to pronounce binding decisions led the top sports organizations to reflect on the question of sports dispute resolution.

In 1981, soon after his election as [President of the International Olympic Committee (IOC)], H.E. Juan Antonio Samaranch had the idea of creating a sports-specific jurisdiction. The following year at the IOC Session held in Rome, IOC member H.E. Judge Kéba Mbaye, who was then a judge at the International Court of Justice in The Hague, chaired a working group tasked with preparing the statutes of what would quickly become the ‘Court of Arbitration for Sport.’

The idea of creating an arbitral jurisdiction devoted to resolving disputes directly or indirectly related to sport had thus firmly been launched. Another reason for setting up such an arbitral institution was the need to create a specialized authority capable of settling international disputes and offering a flexible, quick and inexpensive procedure.

The initial outlines for the concept contained provision for the arbitration procedure to include an attempt to reach a settlement beforehand. It was also intended that the IOC should bear all the operating costs of the court. Right from the outset, it was established that the jurisdiction of the

⁹¹ Court of Arbitration for Sports, *History of the CAS*, COURT OF ARBITRATION FOR SPORTS, <https://www.tas-cas.org/en/general-information/history-of-the-cas.html> (last visited Apr. 14, 2020).

⁹² Michael J. Beloff, *Is There a Lex Sportiva?* in *LEX SPORTIVA: WHAT IS SPORTS LAW?* 72 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

CAS should in no way be imposed on athletes or federations, but remain freely available to the parties

In 1983, the IOC officially ratified the statutes of the CAS, which came into force on 30 June 1984. The Court of Arbitration for Sport became operational as of that time.⁹³

CAS was born in 1984 and was composed of sixty members appointed by the IOC, the International Federations (IF), the National Olympic Committees (NOC), and the IOC President. In a March 15, 1993 judgment, the Swiss Federal Tribunal recognized the CAS as a genuine arbitral tribunal.⁹⁴

In 1994, CAS reformed to become more independent from the IOC, something needed to remain a true arbitral tribunal. The reform also brought about the creation of the “International Council of Arbitration for Sport (ICAS) to look after the running and financing of the CAS, thereby taking the place of the IOC”.⁹⁵ Even though some still question it, CAS is now a fully independent and impartial judge on matters regarding sports law.

There are two types of disputes that may be submitted to CAS: (1) those of commercial nature, and (2) those of disciplinary nature.

The first category essentially involves disputes relating to the execution of contracts, such as those relating to sponsorship, the sale of television rights, the staging of sports events, player transfers and relations between players or coaches and clubs and/or agents (employment contracts and agency contracts). Disputes relating to civil liability issues also come under this category (e.g. an accident to an athlete during a sports competition). These so-called commercial disputes are handled by the CAS acting as a court of sole instance.

Disciplinary cases represent the second group of disputes submitted to the CAS, of which a large number are doping-related. In addition to doping cases, the CAS is called upon to rule on various disciplinary cases (violence on the field of play, abuse of a referee).

Such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and subsequently become the subject of an appeal to the CAS, which then acts as a court of last instance.⁹⁶

Therefore, CAS is and has been recognized by national courts, the competent arbitral tribunal for sports-related matters. The Swiss Federal Tribunal (SFT) is the competent body to review CAS decisions on appeal, but will only hear appeals on a limited number of cases, mainly: (1) if the sole arbitrator was not correctly appointed or if the arbitral tribunal was not properly constituted; (2) if the arbitral tribunal wrongly accepted or declined ju-

93 Court of Arbitration for Sports, *supra* note 91.

94 *Id.*

95 *Id.*

96 *Id.*

isdiction; (3) if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim; (4) if the principle of equal treatment of the parties or the right of the parties to be heard was violated; (5) if the award is incompatible with public policy.⁹⁷ All of this, especially the treatment by the courts, validates CAS as the competent sports arbitral tribunal internationally.

Arbitral awards are normally binding only in the cases and on the parties to which they are addressed. Unlike judicial decisions in common-law systems, arbitral awards therefore have no currency as *stare decisis*. At the most, they may sometimes constitute a *lex specialis*.

In practice, however, the awards and opinions of the CAS provide guidance in later cases, strongly influence later awards, and often function as precedent. Also, by reinforcing and helping elaborate established rules and principles of international sports law, the accretion of CAS awards and opinions is gradually forming a source of that body of law. This source has been called the *lex sportiva*.⁹⁸

CAS has a strong influence on the development of sports law, and although CAS awards are not law, they are persuasive arguments in anything sports *law-related*, giving sports law more legitimacy as a *sui generis* field of law.

One of the claims made for the work of the Court of Arbitration for Sport is that it is developing a *lex sportiva*. This jurisprudence, it is argued, is an international sports law. It is more than the application of international law, or of general legal principles, to the arbitration of sporting disputes. A distinct jurisprudence is emerging, it is claimed: a unique set of universal legal principles used by the Court of Arbitration for Sport in its adjudications.⁹⁹

The jurisprudence CAS is developing legitimizes sports law and gives past and future decisions strength. CAS, with its work, has found a way to help establish sports law as a separate field of law that is recognized by national courts worldwide.

C. Deferential Treatment

There appears to be no viable alternative to this institution, which can resolve international sports-related disputes quickly and inexpensively. [T]he CAS, with its current structure, can undoubtedly be improved. [H]

⁹⁷ Umbricht Attorneys, *Switzerland's Federal Code on Private International Law (CPIL)*, (Dec. 18, 1987), [https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20B%20ред.%202007%20\(англ.\).pdf](https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20B%20ред.%202007%20(англ.).pdf).

⁹⁸ James A. R. Nafziger, *Lex Sportiva*, in *LEX SPORTIVA: WHAT IS SPORTS LAW?* 53, 54 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

⁹⁹ Ken Foster, *Lex Sportiva and Lex Ludica: the Court of Arbitration for Sport's Jurisprudence*, in *LEX SPORTIVA: WHAT IS SPORTS LAW?* 123, 124 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

aving gradually built up the trust of the sporting world, this institution which is now widely recognized and which will soon celebrate its twentieth birthday, remains one of the principal mainstays of organized sport.¹⁰⁰

Arbitral decisions by competent sports tribunals have been recognized by national courts as legitimate, and courts have begun to abide by their decisions unless there is a risk of an injustice being caused due to the tribunal not abiding by international legal principles. The SFT reviews the decisions of the CAS, and the CAS is the primary arbitral body internationally for sports matters. Therefore, SFT decisions have to be observed when looking at the court's deferential treatment towards CAS. In its judgment of 15 March 1993, SFT recognized CAS as a proper court of arbitration, recognizing the CAS' independence and autonomy as an arbitral body for sports.¹⁰¹

It was not until 27 May 2003 that the Federal Tribunal assessed the Court's independence in detail, having heard an appeal by two Russian cross-country skiers, Larissa Lazutina and Olga Danilova, against a CAS award disqualifying them from an event at the Olympic Winter Games in Salt Lake City. In a remarkably detailed and exhaustive judgement, the Federal Tribunal dissected the current organization and structure of the ICAS and CAS, concluding that the CAS was not 'the vassal of the IOC' and was sufficiently independent of it, as it was of all other parties that called upon its services, for decisions it made in cases involving the IOC to be considered as true awards, comparable to the judgements of a State tribunal.

The Federal Tribunal also noted the widespread recognition of the CAS amongst the international sporting community, showing that the CAS was meeting a real need.¹⁰²

Courts, more specifically SFT, have historically recognized CAS, and other arbitral bodies, as competent, regarding sports law matters. This points to the fact that arbitration works by way of contracts, and, as long as the court respects the international principles regarding a due process, a contract is law between the parties and should be respected.

V. IS THERE REALLY A SPORTS LAW?

It is difficult to argue against the existence of sports law; whether it is law as applied to sports or a completely independent sports law, *Lex Sportiva* is a true phenomenon. The arguments then seem to turn on the point of self-regulation. Are self-regulation measures in sports law enough to guarantee just proceedings, fair rules and governing bodies?

Sports law is an amalgam of laws applied to the sporting context. This does not mean that sports law is not in itself a *sui generis* field of law; all this means is that the general

100 Court of Arbitration for Sports, *supra* note 91.

101 *Id.*

102 *Id.*

principles of law are present in sports law. Whether sports law is already an independent field of law or developing into one, it is an undeniable fact that sports law has been alive for quite some time and is a growing field. Sports law depends on the principle of self-regulation, and autonomy to survive, principles already recognized by national courts, mainly due to the establishment of the CAS. Currently, the CAS has provided sports law with the element of an independent, impartial, expert judging body to resolve disputes within the sporting context, an element which gives sports governing bodies & the parties they govern a 'safety net' on their decisions and regulations

Whether sports law continues to develop or remains static will ultimately depend on the people who are directly involved in the field. Lawyers need to continue to believe in the system, schools need to continue to develop programs around it, and scholars need to continue to study the sports law phenomenon. This will be the only way to truly and firmly establish sports law as a *sui generis* independent field of law worldwide.

In the United States, sports law has plenty of differences to the rest of the world, especially when compared to Europe. The rest of the world views sports law as a series of contracts that create a hierarchical pyramid. In the United States, there is no such pyramid. There is a governing body that sets the rules for the league and enforces them. This is where the differences mostly come to an end since, in both of these systems, autonomy and power are granted via contracts. Courts will tend to look at contracts among the parties and determine if the league, or association, has sufficiently presented the parties in dispute with the safeguards provided by the general principles of law, such as a fair hearing, due process, independent judging body, and a right to be heard. Once the court determines that these safeguards are being observed, national courts would, most likely as they historically have, defer to the internal sports dispute resolution procedure, due mainly to the fact that it was agreed upon in a contract.

Sports law is not a new phenomenon; however, it is still a developing field. It's not a question of *is sports law a field of law*, but rather *how soon will it be formalized and recognized as its own field of law?* The specificity of sport calls for sports law to be an independent field of law, and national courts have recognized this element. CAS has only strengthened the idea of sports law as an independent field, providing the sports law field with an independent arbitral body capable of analyzing sports-related disputes, an element which only strengthens the notion that sports law is already here to stay.

[I]t can be concluded that: (1) sports law exists, (2) according to the 'sources theory' which in fact is presented in this address, it comprises a public and a private part, (3) it is proposed to name the public part *lex sportiva* (sporting law) and the private part *lex ludica* (sportive law), and (4) the 'hard core' of sports law is chiefly 'judge-made law': of the European Court of Justice (now: Court of Justice of the EU) as the public judge—at least from a European (EU) perspective, or court (regional), and of the Court of Arbitration for Sport as the private court (global).¹⁰³

103 Robert C.R. Siekmann, *What is Sports Law? A Reassessment of Content and Terminology*, in LEX SPORTIVA: WHAT IS SPORTS LAW? 359 (Robert C. R. Siekmann & Janwillem Soek eds., 2012).

So then, what is sports law? Sports law is a combination of laws, applied to the sporting context, taking into consideration the specificity of sport. Does sports law exist? Sports law has developed and will continue to develop into a *sui generis* field of law, capable of utilizing the principles of other fields of law and applying them to the sporting context. It is already undeniable that sports law exists, and it is not just a mere application of other laws, it exists independently and autonomously.