SPORTS AND THE LAW
Professor Harper

For the first class, please read in the main text, Weiler and Roberts, Sports and the Law, Third Edition, pp. 1-48 and Raiders v. NFL, which will be posted on the course web site. Please also consider the following questions.

SESSION ONE, QUESTIONS FOR DISCUSSION

What should be the legal status of professional sports leagues like MLB or the NFL? Are they private partnerships or joint ventures? Or private voluntary associations governed by a matrix of contractual agreements? Should they be treated as public trusts with various constituencies such as fans and employees as well as owners?

On what legal grounds might the internal actions of professional sports leagues be reviewed in court? Is constitutional law relevant? What statutory law might be relevant? What common law? Only the law of contracts? Was any other common law applied in Finley v. Kuhn (p.18)? Did the California court in the Raiders v. NFL case (posted in the Course Documents folder) correctly conclude that fiduciary law is not relevant?

How much deference should the courts give the actions of a professional sports league when challenged under governing common law by one of its member clubs? Do you agree with the court’s application of the California abstention doctrine in Raiders v. NFL? What standard of review did the Finley v. Kuhn court apply? Would that standard have been any different had the “waiver of legal recourse” clause not been included in the Major League Agreement? Was the standard appropriate?

If the constitutions and by-laws and other agreements between the clubs in a professional sports league are contracts between the clubs, can they be changed without the agreement of each contracting party? Without further consideration? Can league constitutions and by-laws be invoked by employees in disputes with a league or a member club?

How are the legal obligations of commissioners of professional sports leagues defined? Might they have obligations to other constituencies than the owners of the clubs, even though they are chosen by only the owners? Might there be legal restraints on the authority of owners to dismiss a commissioner? Consider Note 2 on page 33. Might Vincent have been able to use Article IX to block his
dismissal? If the Article had unambiguously protected him from dismissal, could he have obtained an injunction keeping him in the job?

Why do sports leagues typically provide commissioners with broad powers to not only set schedules and enforce playing rules, but also to discipline players and other personnel and to control the movement of players? For instance, why do individual teams not have ultimate authority to determine discipline for an offense like gambling as in the case of Pete Rose? Or for misconduct such as that of Latrell Sprewell (p. 35)? Why not allow individual teams complete discretion to determine the assignment of players, at least within any limits imposed by contracts with the players or their union representative? Even if there are good reasons for the league to be involved in disputes like those raised by Rose’s gambling or Sprewell’s attack or Finley’s sale of impending free agents, why not use executive committees of owners instead of a commissioner to settle disputes between owners? Why not use arbitrators?