ANTI-TRUST LAW:

- ○Anti-trust laws were created to prevent monopolies
- ○Monopolies are unfair to consumers and workers
  - ● Encourage economic competition
    - **Economies of Scale**: notion that a business has to be so big to be profitable
    - Rockefellars of the world argue that monopolies create price stability

1919: black sox scandal
Policy interest in baseball because it was bringing people together

Federal Baseball Club of Baltimore v. National League (1922)

- ○ Anti-trust suits are aimed anti competitive behavior
  Π bring suits pursuant to Sherman Anti-trust act which provides for up to treble damages for a business seeking to obtain a monopoly in a given industry and the means employed by that company to achieve its monopoly.

- ○ Π won in district court and was awarded treble damages. Court of Appeals reversed holding that National League did not fall within Sherman Anti-Trust Act.

- ○ Baseball is an intra state activity that is exempt from the Sherman anti-trust act because congress cannot reach those industries that are not related to inter-state commerce.

- ○ Judgment of the Court of Appeals Affirmed

Flood v. Kuhn (1972)

- ○ Flood was a baseball player who achieved much success and fame through out the league during the 50's and 60's. He was trade in a multi-player deal to the National league and asked the commissioner to make him a free agent. His request was denied and he brought an anti-trust suit in Federal District Court in NY.

- ○ Flood wants out of the reserve clause which does not allow you to be a free agent and wedges you to your team, players changing teams almost every year is bad overall for the league.

- ○ Baseball is fully acknowledged as having an effect on interstate commerce,

Other sports are looking for the same exemption but the courts are unwilling to acknowledge it

- Assumes the congress cares enough to act

Never reaches the per se or rule of reason analysis because baseball has an exemption and can engage in anti-trust behavior
1998 Congress passes a law that says that this exemption does not apply to the leagues relation to its players, nobody cared because of the strength of the players union.

→ Full Congress has looked at the baseball exception and endorsed it.

Mackey v. NFL

- NFL allowed for free agents – with one small exception, if you wanted to leave your team, the two teams had to agree on the proper compensation
- Free agent procedure was in place to overall economic stability of the league
- **Per se**: any conspiracy to restrain free trade is a violation of the Sherman Act and the justification for the restraint is in no way analyzed
- **Rule of reason**: Totality of the circumstances analysis that determines whether the restraints imposed on trade are outweighed by the economic benefits to society or that industry and that the restraints on trade are as narrowly tailored as possible. *Very little case law, each situation is very fact driven.*

  - ●Requires Judge/Jury to become economists
  - ●Very little stare decisis because each analysis is so fact based

  3 Prong Test

  1. Is the act/conduct a conspiracy to restrain trade?
  2. If it is, do the economic pro-competitive benefits out way the restraints on trade?
  3. Are the restraints as narrowly tailored as possible to address your concern?

- Burden on P show anti-competitive practice, D has to show narrowly tailored and pro-competitive

  Everyone agrees players and owners that there cannot be unfettered free agency,

- **Holding:** Roselle rule unreasonably restricts trade

Smith:

- Serious restraint on player movement and ability to negotiate his own salary
  Ct considers the idea of whether or not it is a per se violation
  NO it's not a Per Se violation – always say that

- NFL draft is not a per se violation

- This draft fails and Smith wins, not as narrowly tailored as is possible

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LABOR LAW:

American league Professional Baseball v. Umpires

- Do not want the umpires to unionize

- Supervisors are exempt from being able to join unions

- Appeal of this argument that umpires by their nature are supervisors of the game and thus are not allowed to join and or form a union Umpires argue that the team managers are in fact the supervisors of the league, they are the ones in charge of employment; the hiring and firing of the players, direct the terms of conditions of employment

Wright-line case:

Two problems:

1st- as a union boss he is immune from being fired from the company

2nd Guy is working hard, doing all the right things, believes that people have the right to unionize and gets involved in unions, management does not

Case trys to balance out these two competing interests

Test for determining if a person was fired for being involved with a union:

- Union employee must demonstrate by a preponderance of the evidence that there is some anti-union animus behind the firing

- Employer can avoid a violation even if there is anti-union animus behind the firing if they can prove by a preponderance of the evidence that the employee would have been fired anyway

- Unions are by their very nature are a monopoly, goal is to reduce competition for services and be able to protect the rights of the workers

Joint employer: is the idea of NFL, NBA,

- Individual corporations competing or working under the umbrella for collective gain

Appropriate standard of review when what was determined to be the appropriate bargaining unit: is it the way that a reasonable person could have bargaining unit

- Indirect consequences of their business decisions are not things that the employee can sue over

Terms/conditions of employment:

Work through and figure what are terms of conditions of a workplace

To what extent do joint activities between a union and a commercial actor is that a violation of the Sherman Act:

Alan Bradley

- Electrical union that is joining with manufacturers in NY to drive out all other competition by just using each others services Union shields the manufacturers from being analyzed as being in violation of the Sherman Act, and they are allowed to picket the stores that refuse to buy the goods that are made from only union workers, ways to put pressure on the store

- Goods are costing more because you can't shop around and find the best price, lack of competition

- **Price elasticity**: as the price raises the amount purchased decreases (sales decrease)

→Manufacturers and the workers get more money in this type of conspiracy
→Consumers are the looser because they pay a higher price at the store

- Companies cannot conspire to restrain trade, unions by their very nature conspire to constrain trade.

- Court said that when that basic companies are not entitled to the same exemption from the Sherman Act, when a business conspires with a union to exempt themselves from Sherman Act restrictions such a conspiracy is not valid.

Local Union 189 v. Jewel Tea

- Issue in the case relates to the hours that butchers are required to work. Union tried to step and make limit the hours for butchers to 9-6. Union for the butchers came together and decided to work certain hours on certain days and worked this out with manufacturers.

- Two butchers did not like the agreement and the constraints on the hours they could work. If we are required to set up self serve meat counters as opposed to cutting and handing the meat individually to each customer, less work for the butcher.

- Court decides that the action of the union in making this agreement is not an anti-trust violation, when the butchers are going to be available is not outside the scope of the collective bargaining agreement. Union was solely trying to improve the terms and conditions of employment, *not financial gains as in the last case, major difference*

American v. Pennington

- Big company conspires against the small company to increase their revenue, and the union was a co-conspirator and the benefit to them is that the union sees the future on the horizon which is less coal workers, automation of coal mining. Trying to find a creative way to save the jobs that they have and in return for saving those jobs the union agrees to help basically take down the little coal companies.

- Union looses because this type of conspiracy is not valid as in the electrical case, conspiracy between management and employers to put other companies out of business which is what the Sherman act is trying to avoid.

Mackey

Anti-trust laws that look at

Is the act/conduct a conspiracy to restrain trade
If it is, do the economic pro-competitive benefits out way the restraints on trade
Are the restraints as narrowly tailored as possible to address your concern

Two tests that are applied:

Per se: any conspiracy to restrain free trade is a violation of the Sherman Act and the justification for the restraint is in no way analyzed

Rule of reason: Totality of the circumstances analysis that determines whether the restraints imposed on trade are outweighed by the economic benefits to society or that industry and that the restraints on trade are as narrowly tailored as possible.

There is a statutory exemption that extends to legitimate labor activities unilaterally undertaken by a union in furtherance of its own interest. Such activities include group boycotts, picketing, as being exempt from anti-trust (Sherman-act) regulation.

The Supreme Court has also identified a limited non-statutory exemption that applies to certain union-employer agreements

Court holds that both employers and employees can benefit from this exemption and identified three factors:

1. labor policy favoring collective bargaining may potentially be exempt from anti-trust laws where the restraint on trade primarily only effects the parties to the collective bargaining relationship
2. Federal labor policy is implicated sufficiently to prevail only where the agreement sought to be exempted involves a mandatory subject of collective bargaining (wages, hours, and other terms of employment)
3. The agreement that is sought to be exempted is the product of bona fide arms length collective bargaining

Application of those factors by Appellate Court in the instant case:

1. Agreement only effects the parties sought to be exempted, players and coaches
2. Rozelle rule on its face is not mandatory subject, but because the effect of the rule inhibits players movement around the league, which depresses their salaries it is a mandatory subject.
3. No real arms length negotiations because the rule has been made a part of the collective bargaining agreement since it was unilaterally promulgated by the owners, owners defense that the rule actually increased players benefits and ability to negotiate was not persuasive to the district court and that finding is not clearly erroneous.

Based on this analysis the Rozelle rule does not qualify for the non-statutory labor exemption. Thus the rule is non-exempt from Sherman act analysis.

Court employed the reason of rule analysis and disagreed with the Dsitrict Court as to a per se violation but otherwise affirmed the ruling which granted the injunction in favor of the Π's and found the league liable for damages.

McCourt:

It's hard to reconcile to these two cases as they are factually very similar

Ron likes the McCourt analysis because collective bargaining negotiations involved sophisticated parties that certainly involve at bare minimums arms length negotiations

Wood case:

- Wood objects to the NBA draft because he believes its inherently anti-competative, League responds that sure it is anti-competative but we did collective bargaining Wood responds that he was not party to that bargaining agreement

- Sucks for your wood, you are bound by an agreement that exists prior to your involvement

Oldfield (610)

A guy who is an athlete preparing for the 1980 summer Olympics.

How do you determine if there is a private cause of action if the statute is silent on that point: (requires uncertainty)

Court factors (page 6.3) 4 factors
Most important factor in this case
- Whether Congress intended to create by express or implication a private cause of action

Midget

Eligibility for HS FB players, can transfer from another school, but if you transfer back you have to sit out 2 semesters
Encourage diversity – want to encourage mixing the races for sports
BUT can't come back

It's the school board's right to make this rule, in the absence of fraud or unreasonableness, the school is free from interference

You can be arbitrary and capricious if you are not a state actor
- Rules can be sexist or stupid

State actor limited at every turn by Due Process Clause
As long as the decision is not arbitrary, capricious, or done with ill intent, it is free from interference

Court is not going to substitute it's judgment

Tarkanian

- Most serious charge against Tarkanian was that he obstructed the NCAA investigation question in case comes down to the fact that is the NCAA exerting pressure on UNLV to act in a certain manner, does that make NCAA a *de facto* state actor.

- Framework under which the court decides the case

- Just because you don't like the options available to you does not mean you don't have other options, UNLV did have other choices they could have made

Dissent:
Look at Denis case under substantially same facts, the private parties were state actors because they were willful participants with the state actors.

Know the Denis case on page 624 in Dissent 4th paragraph down case and why it is different from Tarkanian

Louisiana high school assoc.-

The actions of this group cannot be considered private actors, they are very much in the public realm and thus subject to the requirements of the 14th amendment. This is a very fact based analysis.

- Public actors due process
- Private actors no due process required

Brand case (628)

- Wrestler who has sex with a two women who were in high school off school grounds and the community became aware of it.

- Education is not a right under the constitution
- Moral policy of the school that resulted in the student being suspended was extremely vague, and some of the conduct might not be immoral to some people.
- Even though Brand was a lock for a college scholarship there is no property interest legally available to sue for until such time as that scholarship has been awarded, mere expectation no matter how certain is not a valid property claim.
- Can't substitute your judgment for the decision makers judgment in terms of substantive due process analysis- must have been arbitrary and capricious

Agents:

- Recruiting is the hardest part of being an agent
- 10% of agents represent 90% of players

Kish v. Iowa Central Com. College –Review

- Contractual dispute revolving around an at will employment a basketball coach who also had another administrative job at the school. Coach believed that he had a one year contract
- Π sues for breach of contract and the court grants summary judgment for the school Δ

Elements:

Damages for discharge that is in violation of public policy:

→ engagement in a protected activity

- actually fired, casual connect between firing and improper motive
- Identify a clear definable public basis for why you should not have been discharged

Due Process test:

Is the asserted interest protect by Due process

What kind of process were you entitled to in the 1st place

11th amendment and state immunity, states can cap their tort liability

Affirmative defenses must be raised in the answer or they are deemed waived

Defranz v. U.S. Olympic Com.

- Athletes suing for the ability to participate in the 1980 Olympics
  Π first argue that under the applicable statute the USOC cannot ban participation in the Olympics

- Court says that pursuant to the statutory scheme while it does not give the USOC expressly the right to take such action it does says that the USOC shall exercise exclusive jurisdiction over the U.S teams participation in the games

  → Π then argue that the USOC is a state actor that has denied the athletes due process of law

- Court rejects this and identifies the sufficient entanglement test which would not allow you to separate the state actor and the private actor, however these two entities are not so sufficiently entangled so as to not be able to distinguish between them. The only technical power that the U.S. government had over the USOC is the power of persuasion *(This reasoning is somewhat weak as in this case the President as well as the House and the Senate made it clear that the U.S. would not participate in the Olympics)*

Harding v. U.S. Figure Skating

- Private associations must adhere to their own stated rules and by-laws, violation of those rules and by-laws will result in judicial intervention

- Judicial intervention in administrative disciplinary hearings that the court will rarely get involved in, but if it is so fundamentally unfair then the Courts will intervene

Bloom Case:

- Amateur athlete wants to still receive endorsements after having had matriculated to a University which is not allowed under the NCAA rules. Bloom asks for a waiver from the NCAA which is denied.

- He then asks the NCAA to interpret its rule in a way that does not implicate him. NCAA again denied this request.

- He foregoes the endorsement deal and plays football at the University. He then sues in Federal District seeking an injunction and declaratory judgment.

- Third party beneficiaries can bring a claim under a K

Same test used as in the Shaw case in terms of getting a preliminary injunction, they did add in this case that preliminary injunctions should not often be granted by Courts

Find test for obtaining preliminary injunction

Cohen v. Brown University:

- Brown demoted some woman's sports programs
- Can't have a university that receives public funding that does not have some sort of equality between men's and women's sports pursuant to Title IV, relief sought is not monetary damages or a specific injunction, the remedy basically allows Brown to go back and fix it and then the Court will re-examine
- Very broad test to see if a school is in compliance with Title IV,
  Possible exception would be granted to football easiest way to comply is to simply eliminate a men's team

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EXAM REVIEW

Sherman Anti-trust act: Prevent K's, combinations, or conspiracies in restraint of trade, thus a single entity would not be regulated by this act.

Anti-Trust – Umpires aren't supervisors because supervisors cannot unionize, in order to be a supervisor you must have authority to control and direct the work force

is baseball interstate commerce (YES), logical behind it overturned, but not the holding
Legislative Intent – impact of the legislature looking at or not looking at an issue, ruling on a tangent of an issue – Curt Flood Act, how that impacts baseball exemption (strong or weak)
Precedent – is noteworthy

Mackey rule w/ respect to the Rule of Reason, when that should be applied over Per Se – ROR always trumps

- Per Se: Any violation of Sherman act is invalid on its face, so plainly anti-competitive
- Rule of Reason: Restraint on trade is justified by legitimate business purposes and is no more restrictive than necessary
  Labor exemption to the Sherman Anti-Trust
  → Parties to the CB
  → Terms and conditions of employment
  → Good faith negotiation

Rozelle – arm's length negotiation as it relates to the Labor exemption

- Rozelle Rule: When a player's K expires with one team in the NFL, and the player signs with a new team, the signing team must compensate the former team- Was struck down as being not as narrowly tailored as possible

McCourt – hockey case after Rozelle, different analysis – note differences, historical

- Labor exemption does apply because there was bonafide negotiations at the time of the signing of the CBA

Molinas: Banning players for betting is a restraint on trade but is justified based upon the negative implications that player betting could have on the stability of the league.

Blaylock: Players in the league cannot ban one of their own when they are also competitors in that league that are economically adverse to the interests of the banned player.

NASL vs. NFL –

- Whether the NFL can ban its majority owners from owning an interest in another major sport, District Court found the Sherman Act in applicable because the NFL was seen as a single entity, however appellate court rejected this analysis. Purpose of the ban was to harm the NASL which is unacceptable and thus under ROR is invalid.

Rule of Reason – LA, SD, owners vs. franchisors

- 4.3 of the NFL constitution required all the teams in the league to approve before a single team could relocate to another city. It was amended so that only 75% of teams had to approve

- Balance the positive and negative impacts on competition created by the rule or policy at issue
  → third and most important element is proof that the Δ;s activities actually had an impact upon competition in the market, not just that it may
- Justification for the rule is that the NFL is one entity competing in the overall entertainment market, as opposed to 28 entitites competing among each other for the specific football product, sub-market.

Labor
Wright Line Rule – what is it – Definitely on there

- Employee must show by a preponderance of the evidence that there anti-union animus behind the firing

- Employer can avoid liability if he can show by preponderance that the employee would have been fired anyway

Mandatory CBA – Terms and conditions of employment

Permissive CBA – tickets, uniform colors, etc.

Allen Bradley – collusion of union and labor creating anti-trust conspiracy

- Electrical union that is joining with manufacturers in NY to drive out all other competition by just using each others services Union shields the manufacturers from being analyzed as being in violation of the Sherman Act, and they are allowed to picket the stores that refuse to buy the goods that are made from only union workers, ways to put pressure on the store

- Goods are costing more because you can't shop around and find the best price, lack of competition

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Wood Case:

Fundamental precept - the court says we are not going to make a difference between basketball, football and the guys steel mine workers.
- Woods says I was not a party to the agreement, so the teams are negotiating away might rights before I am even in the picture.

- This does not fly, because it is impossible for every player to bargain for every bone of their rights, every time. AND it is meant to protect players already in the NFL, not hurt the new player coming in.

- Wood was trying to cherry pick all the things that he did not benefit from.he didn't want to touch the things that he was benefiting from. This was not allowed.

Amateur Sports:

Oldfield
Court factors – whether or not implied cause of action, if there is a cause of action don't apply factors – it'll say whether you have a CofA – On THE EXAM

1. whether the plaintiff is a member of a class for whose special benefit the statute was enacted
2. whether there is an indication of congress's intent to create or deny a private remedy
3. whether a private remedy would be consistent with the statutes underlying purpose
4. Whether the cause of action traditionally is regulated by the state law.

Midget Case, other Cases – standard by which you look at decisions made by a private or a public associations

- Voluntary associations are required to follow there own constitution or bylaws, the Court will not substitute its own judgment, so long as there was not bad faith and no violation of the laws of the land

- Additional problem arises when the rule or policy in question is vague or subject to multiple interpretations

Cal State – There is a substantial interest in the expectation of post-season play for a college to justify judicial intervention based upon a ruling of the NCAA that has not followed its own constitution and by-laws

NCAA vs. Tarkanian –

Dichotomy between state and private action

- State action are subject the protections of the 14th amendment → Equal protection & Due Process

- Private action no matter how unfair is not subject to 14th amendment→ *Shelly v. Kramer*

- Private action that applies pressure to a state actor can become a *de facto state actor* subject to 14th amendment

- Careful adherence to what is state action is very important to the Court to prevent federal law from interfering in areas of personal liberty. The court will construe for the most part state action narrowly

Tarkanian:

- NCAA told UNLV to remove Tarkanian as head coach or face more sanctions

- UNLV delegated no power to the NCAA to take action against individual employees, NCAA enjoyed no governmental powers to facilitate investigations, subpoena witnesses, and impose contempt sanctions, etc. The greatest authority it had was to expel UNLV from the NCAA

- Bottom line is whether the conduct allegedly causing deprivation of a federal right can be fairly attributed to the state. In this case the answer must be in the negative.

Denis:

- Private parties can be considered state actors when the final or decisive act is carried out by a state official so long as the state and private parties were jointly engaged in the challenged action
  → Were the parties willful participants in the challenged action, if so then both parties are state actors for the purposes of 14th amendment analysis

Brand – no property interest in the expectation of an NCAA scholarship

Bloom – lots of good law in it – different tests and standards to use
Abuse of discretion – Bloom, Injunctive Relief – used sparingly in that Jur.

Test for obtaining a preliminary injunction: (All criteria must be satisfied for an injunction to be properly issued)

1. Π must show likely success on the merits
2. Π must show irreparable injury if injunction is not granted
3. Will the interest of the other party be substantially impaired by the issuance of the injunction
4. how will be the public interest be affected

- Injunctions should rarely be issued
- Appellate Courts will review the district courts issuance or refusal to issue an injunction under an abuse of discretion standard. The judgment of the district court

will be affirmed unless the judge's decision was based on an erroneous application of the law

- Third party beneficiaries can bring a claim under a K

Intellectual Property
On the exam, the answer will be obvious be literally and figuratively
Multiple Choice

Everything Eddie said is on there – but don't stress it