

# Glossary

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**Academic progress**—a student-athlete’s movement toward the timely completion of a baccalaureate or equivalent degree measured by several variables, including an evaluation of the student’s cumulative grade point average (GPA), earned academic credit, and the maximum time necessary for the student-athlete to complete his or her declared major.

**Academic Progress Rate (APR)**—a metric created by the National Collegiate Athletic Association (NCAA) that gives a real-time snapshot of the academic progress of individual teams at member institutions, accounting for the eligibility and retention of each student-athlete for each academic term.

**Adhesion contract**—a contract, usually between two parties of unequal bargaining power, offered on a take-it-or-leave-it basis that limits another party’s acceptance to the terms written therein, all of which must be accepted for a contract to be formed.

**Agent**—a party acting in the interest and under the direction of another, the principal.

**Amicus curiae**—someone who is not a party to the case, but who offers expertise, insight or advice to the court regarding issues to be decided in the case. This information is usually provided as an amicus brief.

**Anticompetitive effects**—for the purposes of antitrust law, an adverse effect on market competition (which usually affects the price, quantity, or quality of goods or services) caused by the reduction or elimination of competition among entities that otherwise would engage in economic competition absent an agreement not to do so.

**Anticybersquatting Consumer Protection Act of 1999 (ACPA)**—a federal law to prevent cybersquatting, the unauthorized act of registering another’s trademark as an internet domain name; the act provides a trademark owner with the right to bring suit against a defendant for bad-faith registration or for use of an identical or confusingly similar domain name.

**Arbitrary and capricious**—a standard of review used by courts in

determining whether the decision of a private association, such as a sports governing body or a league commissioner, should be invalidated; generally requires showing that the body or individual acted in an unreasonable or irrational manner.

**Assault**—a tort in which an actor intends to cause harmful or offensive contact or an imminent apprehension of such contact with the person of another and the other is actually put in such imminent apprehension.

**Assumption of risk**—a tort law doctrine whereby an individual who voluntarily participates in an activity assumes the risk of any injury that occurs as a result of such participation.

**Athletic events not copyrightable**—the Copyright Act of 1976 provides that only “original works of authorship fixed in any tangible medium of expression” within one of eight statutory categories of “works of authorship” are subject to copyright protection; athletic events are not within any of these categories, and, unlike movies, plays, or television programs, they are not “authored” because they are not predetermined or scripted events.

**Attempted monopolization**—a violation of §2 of the Sherman Act whereby an entity with 50 percent or more of the relevant market has engaged in unlawful predatory conduct intended to exclude a rival business entity from the market through means other than fair competition on the merits.

**Boosters**—any representative with an interest in the athletic success of a university; generally, these people have made some financial donation to the school, employed student-athletes, or volunteered time to the athletic program.

**Breach of contract**—a legal claim premised on the assertion that a party to a contract has failed to sufficiently fulfill its contractual obligations or promises such that the aggrieved party has or will suffer damages as a result of the breach.

**Buyout**—a provision of a coaching contract designed to dissuade a coach from prematurely terminating his or her employment at an institution by requiring the coach to pay a specified amount, determined in pre-contract negotiations, in the event that the coach breaches an existing employment contract with a team.

**CAS Anti-doping Division (ADD)**—resolves anti-doping rule

violations as a first instance tribunal for International Federations that have agreed to its jurisdiction as well as an on-site process used to resolve anti-doping rule violations occurring during the Olympic Games.

**CAS Ad Hoc Division** — an on-site process used to resolve legal issues and disputes that arise within ten days prior to or during the Olympic Games and other international or transnational sports events on an expedited basis.

**CAS appeals arbitration** — an alternative dispute resolution process used to resolve appeals from the final decisions of sport federations, usually involving competition results or doping, disciplinary, or eligibility issues, and competition results.

**CAS ordinary arbitration** — an alternative dispute resolution process used to resolve disputes relating to legal relations between parties such as contractual disputes involving sponsorships, media rights, and agent contracts.

**Catastrophic injury insurance program** — an insurance compensation program developed by the National Collegiate Athletic Association (NCAA) that provides for the payment of insurance benefits to student-athletes, student coaches, student managers, student trainers, and student cheerleaders who are catastrophically injured while participating in certain activities that are defined as covered events in the program.

**Charitable immunity** — a tort law doctrine under which an educational facility may be absolved from liability for the negligent actions of its employees because of its charitable purpose.

**Civil Rights Restoration Act** — an act passed by Congress in 1987 designed to restore certain civil rights that have been limited by the courts or others.

**Class action** — a legal action involving a large group or class of people; a few individuals initiate a court case becoming representatives of the group.

**Class certification** — a requirement under federal law to maintain a class action lawsuit; the initiating party must prove that the proposed class is a type of class permitted to bring such an action and that the class is “ascertainable.”

**Clearly erroneous** — a standard of review where an appellate court will only reverse a trial court’s factual determination if the appellate court firmly

and unquestionably determines the trial court mistakenly found that a particular fact was present.

**Clustering** — the intentional concentration of student-athletes in a specific field of study.

**Code of Sports-Related Arbitration** — codified rules that govern the operations and procedures of the International Council of Arbitration for Sport (ICAS) and the Court of Arbitration for Sport (CAS).

**Collective bargaining agreement (CBA)** — the agreement reached between the players' labor union and a professional sports league clubs' multiemployer bargaining unit concerning wages, hours, and other terms and conditions of employment; the CBA is binding on all parties to the agreement, including the league, its member clubs, and current and future players.

**Commissioner "best interests of the game" authority** — an often-broad contractual grant of authority from league clubs to their commissioner to make decisions and take appropriate action to further the league's best interests and integrity of the game; this power may give the commissioner sole discretion in certain aspects of league governance (e.g., investigation of game fixing, other forms of corruption, and other disciplinary matters).

**Committee on Infractions (COI)** — a group of individuals drawn from National Collegiate Athletic Association (NCAA) member institutions and other sources that hears cases involving major violations of NCAA rules.

**Common law** — case law or legal precedent developed by decisions of judges rather than by legislation.

**Compensable event** — a Workers' Compensation Act requirement stipulating that, for an injured employee to receive available benefits, the injury sustained by that employee must be an accidental injury that arises out of and in the course of employment.

**Competition on the merits** — for the purposes of federal antitrust law, the lawful ability of all business entities, including those with monopoly power (e.g., the nation's only major professional league for a sport), to compete fairly against other producers of a similar product for the patronage of consumers.

**Competitive advantage** — a theory under which certain athletes will be

prevented from participating in interscholastic or intercollegiate athletics because their participation will give them an unfair (or competitive) advantage over other competitors.

**Competitive balance or luxury tax**—a tax, established by the league collective bargaining agreement (CBA), that is paid to the league by a team that exceeds a maximum amount with its annual aggregate player salaries; the tax is intended to maintain competitive balance among league clubs through creating an economic disincentive for wealthier clubs to acquire the best players by paying them salaries that lower revenue clubs cannot afford to pay.

**Competitor's privilege**—the allowable level of competition within the law (e.g., one agent is allowed and expected to compete for another agent's clients).

**Complainant**—a person or organization that takes legal action against another; a person that files a complaint with an administrative or enforcement agency.

**Compliance**—generally, the following of or conforming with legal requirements or rules; in the context of sports law, the following of rules set forth by the National Collegiate Athletic Association (NCAA), such that each member institution has a compliance department whose main purpose is to make sure each athletic program is following NCAA rules.

**Confidentiality**—a decree or agreement to keep discussions or rulings out of the public; any information that needs to stay private will be deemed confidential.

**Conflict of interest**—a situation where an individual is confronted with a scenario that may provide personal gain while causing detriment to another, to whom a duty is owed.

**Consideration**—something of legal value that is exchanged between the parties to a contract; an essential element of an enforceable contract.

**Contract**—a promise or set of promises, either made by one party that another party agrees to or where two or more parties make promises to each other, the performance of which the law in some way recognizes as a duty; the law provides a remedy for a breach of such promise or set of promises.

**Contract law**—a body of state law that governs the agreed terms of the legal relationship between parties (e.g., terms and conditions of

employment between a club and player).

**Contract of hire** — a contract that binds an employer to pay compensation to an employee who performs services, sets forth the place to perform such services and work to be performed, and sets the compensation for the performance of the work.

**Contract rationale** — a theory advanced by student-athletes in Fourteenth Amendment litigation asserting that the athlete's university scholarship constitutes a contract that gives rise to a property interest of which the athlete cannot be deprived without due process of law.

**Contributory negligence** — a tort law doctrine whereby a plaintiff may be barred from recovering for damages resulting from the defendant's negligence if the plaintiff has contributed in any way to his or her own harm.

**Cooperation** — a determining factor used by the National Collegiate Athletic Association (NCAA) when imposing sanctions; schools that cooperate with the NCAA in its investigation tend to receive lesser punishments than those schools that choose not to cooperate.

**Copyright Act of 1976** — a federal law that grants the copyright owner the exclusive right to use and authorize others to use copyrighted material in one of five statutorily defined ways, including the right to publicly perform an audiovisual work such as the broadcast of a sports event.

**Copyright infringement** — the infringing use of another's copyrighted work without consent of the copyright owner; for example, by the unauthorized public performance of the broadcast of a sports event.

**Court of Arbitration for Sport (CAS)** — a Lausanne, Switzerland-based private international arbitration tribunal that adjudicates sports-related disputes, primarily those involving Olympic sports.

**Curt Flood Act of 1998** — a federal statute that limits the broad scope of baseball's common law antitrust immunity by providing Major League Baseball (MLB) players with the same rights as other professional athletes such as football, basketball, hockey, and soccer players to challenge anticompetitive restraints affecting the terms and conditions of their employment on antitrust law grounds.

**Decertification** — a formal process requiring at least fifty percent of a professional sports league's players to vote to decertify the union in a National Labor Relations Board (NLRB)-supervised election.

**Declaratory and injunctive relief** — an early resolution of the rights of the parties under a contract or statute.

**Defamation** — a false statement of fact about a person with the requisite level of fault (at least negligence) made to a third party that harms one's reputation; can be either an oral (slander) or a written (libel) statement.

**Deference** — a term often used by courts to describe their belief that professional determinations by educational institutions and sports governing bodies should be given significant weight in determining whether those acts should be found to violate the law.

**De novo arbitral or judicial review** — a form of review pursuant to which a court or arbitration tribunal resolves a legal dispute on its merits without providing any deference to resolution by a sports governing body, league, or commissioner; this differs from traditional judicial review, whereby a court will invalidate an action or decision by a sports governing body, league, or commissioner only if it is arbitrary, capricious, or irrational.

**Dictum** — a view expressed by a judge in a decision that is not necessary to deciding the issue before the court.

**Disassociation** — an action taken by a university to end a booster's ties to a university; usually occurs after a booster is found to have committed a National Collegiate Athletic Association (NCAA) violation.

**Discretionary function** — a function or task that requires an individual to exercise his or her own personal deliberation or judgment (e.g., examining facts, weighing options, or reaching an independently reasoned conclusion).

**Disparate impact** — indirect discrimination by a rule or law against a group or class of people.

**Disparate treatment** — direct or intentional discrimination against a person, group, or class of people.

**Due process** — the principle that the courts must procedurally and substantively respect the legal rights of parties before them.

**Duty of care** — the responsibility legally assigned to one for the protection of another against some harm or injury because of the nature of the relationship that exists between them or because the actor engaged in some risk-creating conduct that brought the harm into existence.

**Duty of good faith** — a term implied in all contracts that requires honesty in

fact and the observance of reasonable commercial standards of fair dealing.

**Economic rationale** — a theory advanced by student-athletes in Fourteenth Amendment litigation asserting that the athlete retains a property interest, which arises from training for a lucrative career as a professional athlete, of which the athlete may not be deprived without due process of law.

**Educational malpractice** — professional negligence premised on an educator or institution's failure to provide the educational services that are reasonably expected of such educator or institution.

**Eighth Amendment (cruel and unusual punishment)** — language in the Eighth Amendment to the U.S. Constitution that has been interpreted to prohibit imposing a punishment on a condemned person that is considered to be unacceptable because of the excessive measure of pain, suffering, and humiliation inflicted on that person.

**Employment at will/at-will employment** — an employment contract that allows the employer to discharge the employee without cause, for any or no reason, and without a hearing allowing the employee to contest the termination; the employee may also leave his or her employment relationship for any or no reason and not be held in breach of contract.

**Entwinement** — a legal theory expounded by the Supreme Court to determine whether a private actor or association is sufficiently engaged in public activity or with government entities to be deemed a state actor for constitutional purposes.

**Equal accommodation** — under Title IX, changes made to allow equal athletic participation opportunities, treatment, and benefits for men and women.

**Equal protection** — the commitment to equal treatment by the states (i.e., government) of persons within their jurisdiction, as embodied in the Fourteenth Amendment to the U.S. Constitution.

**Equal treatment** — having the same privileges, opportunities, and burdens as others (under Title IX, the opportunity for male and female athletes to have the same quantity and quality of athletic participation opportunities, equipment, training, competition, etc.).

**Exclusive bargaining representative** — after the players have selected a union that is certified by the National Labor Relations Board (NLRB),

the union has the exclusive authority to collectively bargain with the league's multiemployer bargaining unit on the players' behalf.

**Exculpatory agreement** — a contractual provision in which one party agrees to fully or partially absolve another from a legal liability that could potentially arise from the use of products or services offered by the party seeking to be absolved from liability.

**Express contract** — a contract where the mutual assent arises from the words exchanged between the parties to the contract.

**Faculty athletics representative (FAR)** — a faculty member of a National Collegiate Athletic Association (NCAA) institution who acts as the liaison between the academic and athletic departments of the university and as the university's representative for the NCAA and athletic conference; the faculty member may not serve in any capacity in the athletic department.

**Failure to bargain in good faith** — the breach of a statutory duty imposed by the National Labor Relations Act (NLRA) on both the league's multiemployer bargaining unit and the players' union to meet at reasonable times and to confer in good faith regarding wages, hours, and other terms and conditions of employment; it is not an unfair labor practice or an act of bad faith for either side to take a hard-line stance in collective bargaining.

**Fair Labor Standards Act (FLSA)** — a federal law that is administered by the U.S. Department of Labor, which requires employers to pay covered employees, who are not otherwise exempt, at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay; it provides exemptions for employees of certain seasonal and recreational establishments.

**Felony reckless manslaughter** — a form of manslaughter where a person was aware that his or her conduct created a substantial and unjustifiable risk that another person's death would result, but consciously disregarded such risk in a manner constituting a gross deviation from the conduct of a reasonable person in the same situation.

**Fiduciary** — a person who is invested with rights and powers to be exercised for the benefit of another person.

**Fiduciary duty** — a legal duty of allegiance and loyalty that a party in a position of trust owes to another person or entity (e.g., principal-agent,

member of board of directors-corporation), which requires the former to make decisions and put the interests of the other above one's own personal interests.

**First Amendment**—a provision of the U.S. Constitution that protects freedom of religion, speech, association, and expression; it limits the scope of federal and state law creation and protection of intellectual property rights (e.g., trademarks, copyrights, right of publicity).

**Foreseeability**—the likelihood that some discernible future consequence will result from present conduct, behavior, or events.

**Fourteenth Amendment**—a provision of the U.S. Constitution that prohibits the states from making or enforcing any law that abridges the privileges or immunities of U.S. citizens or deprives such citizen of life, liberty, or property without due process of law.

**Free agency restrictions**—collective bargaining agreement (CBA) terms that establish when and how a player whose contract has expired becomes a “free agent,” which typically means the player may sign a contract with another league club; in most leagues, a player must have played in the league for an agreed minimum number of seasons before becoming eligible to be a free agent.

**Full and effective accommodation**—under Title IX, an educational institution's provision of a sufficient number and range of athletic participation opportunities that fully satisfies the interests and abilities of the disfavored gender.

**Gender equity**—managing an athletics program in a manner that treats male and female athletes fairly by providing similar benefits and burdens for both.

**Good faith and fair dealing**—a requirement that the parties, in contracting and related contexts, deal with each other in a forthright and honest manner.

**Hearsay**—a common objection made by a lawyer to a witness's testimony that is based on what that witness has been told by another, not based on his or her own knowledge.

**Horizontal restraint**—for purposes of antitrust law, an agreement among direct competitors that reduces economic competition among them (e.g., agreeing to fix prices or to limit output of goods or services that are purchased or produced).

**Illegal exclusionary conduct with anticompetitive market effects** — for the purposes of §2 of the Sherman Act, an anticompetitive action other than fair competition on the merits by a business entity intended to exclude or prevent a business rival from competing in the market for the patronage of consumers.

**Illegal per se** — for the purposes of antitrust law, an agreement that has clear anticompetitive effects without any offsetting procompetitive justifications, which is deemed to be an unreasonable restraint of trade as a matter of law that violates §1 of the Sherman Act.

**Impasse** — a deadlock in the collective bargaining process that is usually temporary; prior to impasse, the courts have determined that a league is required to adhere to the terms of the expired collective bargaining agreement (CBA), and after impasse, the league's multiemployer bargaining unit may unilaterally implement new mandatory terms of employment if the proposals have been offered to the players' union and bargained in good faith prior to impasse.

**Impermissible benefits** — any benefit provided to a prospective student-athlete, current student-athlete, or student-athlete's friends and relatives that is not also available to the general public or general student body.

**Implied contract** — a contract where the mutual assent or apparent agreement arises from the conduct of the parties to the agreement.

**Implied-in-fact** — terms of a contract or promise, which are gleaned from the parties' words or conduct, even though not literally expressed by them.

**Indefinite duration** — a contractual relationship without a specified length of time.

**Informed consent** — a tort law doctrine under which a physician will be held liable for an intentional or negligent failure to provide a patient with full disclosure of material information regarding the patient's medical condition or potential consequences of proposed treatments for such condition.

**Infraction** — any violation of a National Collegiate Athletic Association (NCAA) rule.

**Infractions Appeals Committee (IAC)** — a group of individuals drawn from National Collegiate Athletic Association (NCAA) member institutions and other sources that hear appeals of decisions rendered by

the Committee on Infractions (COI).

**Inherently distinctive mark**— a mark that is coined in connection with the goods or services that it identifies (e.g., “Miami Dolphins” for a National Football League (NFL) team).

**Initial eligibility standards**— National Collegiate Athletic Association (NCAA) academic requirements that an entering freshman must have attained to be eligible for athletics-related financial aid, practice, and intercollegiate competition during the student’s first year; pursuant to such standards, the freshman must have registered with the NCAA Initial-Eligibility Clearinghouse, completed a minimum grade point average (GPA) in a defined number of “core courses,” and attained a certain minimum score on either the SAT or ACT.

**Injunctive relief**— a court order requiring a party to do or refrain from doing some act.

**Injury by accident**— a Workers’ Compensation Act requirement that an injured employee provide proof that the injury that he or she sustained was caused by an identifiable yet unexpected event.

**Input market**— for the purposes of antitrust law, products or services (e.g., players, coaches, and playing facilities) necessary to produce a product or service sold to consumers (e.g., athletic competition such as National Collegiate Athletic Association (NCAA) football or National Basketball Association (NBA) basketball).

**Intentional injury exception**— when an employee suffers a work-related injury as a result of an intentional tort perpetrated by the employer or at the employer’s direction; the applicable state workers’ compensation law is not a bar to a common law tort action for damages.

**Intentional tort**— a civil wrong that results in harm to another by an act knowing, willfully, or purposefully committed by the actor.

**Inter alia**— legal Latin translated as “among other things.”

**Intermediate scrutiny**— a standard of review that requires gender-based distinctions to be substantially related to and in furtherance of important government objectives.

**International Convention Against Doping in Sport**— an international treaty based on the World Anti-Doping Code, in which countries commit to fight against sports doping by becoming signatories to the treaty.

**International Council of Arbitration for Sport (ICAS)**— a Lausanne, Switzerland–based organization that consists of 20 international jurists whose role is to oversee the Court of Arbitration for Sport (CAS), including appointment of its members and promulgation of the Code of Sports-Related Arbitration (which governs the operations of the CAS).

**International Federation (IF)**— a nongovernmental organization (NGO) recognized by the International Olympic Committee (IOC) that functions as the worldwide governing body for a single sport or group of sports.

**International Olympic Committee (IOC)**— an international, not-for-profit, nongovernmental organization (NGO) based in Lausanne, Switzerland, which serves as the supreme governing body of the Olympic Movement.

**Investigation**— an evidentiary inquiry that occurs once the National Collegiate Athletic Association (NCAA) enforcement staff has become aware of a possible major infraction of rules at an institution; it involves conducting interviews both on and off campus to determine if there is enough evidence to move forward with a full investigation or if the investigation should be dropped because no major violation has occurred or there is a lack of information.

**Invitee**— an individual who enters another’s premises for the purpose directly or indirectly connected with the business dealings of the possessor or an individual invited to enter or remain on the land as a member of the public for a purpose for which the land is held open to the public.

**Jock majors**— fields of study that allow student-athletes to more easily satisfy institutional and National Collegiate Athletic Association (NCAA) academic requirements without substantially interfering with their eligibility to compete in intercollegiate athletics.

**Just cause**— a reasonably legitimate reason for engaging in certain conduct such as terminating an employee.

**Lack of institutional control**— a finding by the Committee on Infractions (COI) that an institution engaged in a major violation that occurred in part because of a failure on the part of the member institution to exercise adequate oversight of or control over its intercollegiate athletics program.

**Lanham Act**— a federal law that prohibits infringement of trademarks and

service marks by their unauthorized usage that creates a likelihood of consumer confusion.

**Law of private associations**—a body of state law governing the legal relationship among members of a private association (e.g., National Collegiate Athletic Association (NCAA) universities and professional sports league clubs), which requires the parties to comply with the terms of the association’s charter and bylaws, provide procedural due process, act in a rational and consistent manner, and comply with applicable public laws; courts generally will only intervene in the affairs of a private association if it fails to comply with these requirements.

**Law of the shop**—in the context of a professional sports collective bargaining agreement (CBA), the requirement that a player disciplinary system provide players with advance notice of prohibited conduct and potential discipline.

**Lex sportiva**— the developing body of Olympic and international sports law jurisprudence created by sports arbitration awards rendered by the Court of Arbitration for Sport (CAS).

**Liberty interest** — an interest, such as free speech or the right to vote, that is well recognized and protected regardless of how it is defined by a state; liberty interests may also include interests created by state statutes, regulations, and ordinances.

**Likelihood of confusion** — the unauthorized use of a trademark or service mark in a manner that creates likely consumer confusion regarding the source, affiliation, endorsement, or sponsorship of a product or service; such conduct violates the Lanham Act and similar state laws.

**Limited duty rule** — a tort law doctrine that holds that if a spectator at a sporting event or a sports participant voluntarily partakes in an inherently dangerous activity, there is no legal duty to protect or warn such spectator or participant about the common, frequent, and expected inherent risks of that activity.

**Liquidated damages provision** — a provision of a contract that includes a good-faith estimate of the loss to a nonbreaching party in the event of the other party’s breach of their contract.

**Lockout** — a lawful means of economic pressure that a professional sports league may use in an effort to convince the players’ union to agree to its proposed collective bargaining agreement (CBA) terms; during a

lockout, the league's players are precluded from playing games or participating in other club activities and are not paid their respective salaries.

**Major infraction**—any violation of National Collegiate Athletic Association (NCAA) rules that is not secondary in nature; these violations usually give a school a substantial advantage, either through recruiting or on the field, and can subject a school to severe punishment.

**Malpractice**—a tort in which a professional such as a doctor or lawyer is held civilly liable for his or her failure to render proper services as a result of negligent, reckless, or criminal conduct constituting a deviation from an established industry standard of care.

**Mandatory subjects of bargaining**—wages, hours, and other terms and conditions of employment; if either the players' union or the league's multiemployer bargaining unit requests bargaining on these issues, the other side must bargain in good faith, and the National Labor Relations Board (NLRB) resolves disputes regarding whether particular issues constitute a mandatory subject of collective bargaining.

**Manslaughter**—the unlawful killing of one person by another without malice aforethought.

**Ministerial function**—a function or task that becomes mandatory given the circumstances and does not allow for personal discretion or judgment (e.g., reporting an athlete's use of performance-enhancing drugs or benching a player who is no longer eligible because of poor academic performance).

**Misappropriation**—the unauthorized use of another's intellectual property for commercial or other gain that causes harm to its owner.

**Monitoring**—a National Collegiate Athletic Association (NCAA) member institution's responsibility to be aware of possible violations occurring on its campus; a gross lack of monitoring can lead to a "lack of institutional control" charge and severe penalties.

**Monopolization**—a violation of §2 of the Sherman Act whereby an entity with 70 percent or more of the relevant market has engaged in unlawful predatory conduct intended to exclude a rival business entity from the market other than by fair competition on the merits.

**Monopoly power**—in economic terms, the ability to charge a supracompetitive price (i.e., pricing higher than what can be sustained in

a competitive market) or to exclude competitors through predatory conduct; for practical purposes, control of 70 percent or more of the relevant market (properly defined in terms of product or service and geography) based on consumer demand constitutes monopoly power.

**Multiemployer collective bargaining unit**—the exclusive collective bargaining representative for the league’s member clubs, which has the authority to bind all clubs to the terms of agreements reached with the players union.

**Mutual assent**—the objective willingness of parties to be bound by the terms of an agreement usually manifested through the process of offer and acceptance.

**National Collegiate Athletic Association (NCAA)**—a national association of public and private universities that promulgates and enforces rules designed to regulate intercollegiate athletic competition among its members.

**National governing body (NGB)**—the national governing body for a particular sport recognized by the country’s national Olympic committee and that is a member of the corresponding International Federation (IF) for the sport.

**National Labor Relations Act (NLRA)**—also known as the Wagner Act, the NLRA was enacted by Congress in 1935 and establishes the basic legal framework that governs the relationship between labor and management; it provides workers with the ability to unionize, collectively bargain, and engage in strikes and picketing to advance and protect their interests.

**National Labor Relations Board (NLRB)**—a federal administrative agency that enforces the federal labor laws by policing the process of unionization and collective bargaining, including adjudication of claims of unfair labor practices.

**National Letter of Intent (NLI)**—an agreement between a student-athlete and an institution in which the athlete agrees, for a minimum of one year, to attend the institution named in the document.

**National Olympic Committee (NOC)**—the governing authority for Olympic sports within a country, which is recognized by the International Olympic Committee (IOC).

**Negative injunction/negative injunctive relief**—an equitable remedy that a

court has the discretion to grant for breach of contract when money damages are not an adequate remedy to compensate the nonbreaching party for harm suffered; although a court generally will not order a party to render the contractually agreed services, it may order the breaching party (e.g., a player) not to provide services to another club until the existing contract expires.

**Negligence** — a tort law cause of action that requires the plaintiff to prove by a preponderance of the evidence that (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty by failing to exercise reasonable care under the circumstances; (3) the defendant's failure to exercise reasonable care is the actual and proximate (foreseeable) cause of the plaintiff's injury; and (4) the plaintiff has suffered some compensable damage, such as a loss of wages, as the result of the defendant's negligent conduct.

**No fault or negligence** — a defense that justifies imposing no sanction for a doping violation it requires proof that an athlete did not know or suspect, and could not reasonably have known or suspected even with the exercise of the utmost caution, that he or she used or was administered a banned substance.

**Nondisclosure** — a failure to relay information that may be required because of the legal nature of some relationships.

**Nonstatutory labor exemption** — a broad, judicially created exemption, which immunizes the terms of a collective bargaining agreement (CBA), as well as all restraints on the labor market for players' services from antitrust challenge, so long as there is an ongoing collective bargaining process between the players' union and a professional sports league.

**No significant fault or negligence** — a defense that justifies a reduced sanction for a doping violation, which requires proof that an athlete's fault or negligence in connection with a doping violation, when viewed in the totality of the circumstances, was not significant in relation to the doping violation.

**Offer** — a promise to do or not to do something conditioned on the other party's promising to do or to refrain from doing something in return.

**Olympic Charter** — the codified principles, rules, and bylaws that govern the Olympic Movement and Olympic Games.

**One academic year in residence** — a National Collegiate Athletic

Association (NCAA) regulation whereby a student-athlete is required to spend one academic year (usually one contiguous fall and spring semester) enrolled full time at a specified institution in order to participate in the institution's intercollegiate athletics.

**Order to show cause** — a determination by the National Collegiate Athletic Association (NCAA) that a coach or staff member should be prevented from fulfilling coaching or other responsibilities for a designated period of time.

**Organizing Committee for the Olympic Games (OCOG)** — the legal entity responsible for conducting and funding the Olympic Games in the host city.

**Output market** — for purposes of antitrust law, products or services produced and sold to consumers (e.g., athletic competition such as National Collegiate Athletic Association (NCAA) football or National Basketball Association (NBA) basketball).

**Patent law** — a federal law that grants exclusive intellectual property rights to inventions that satisfy the statutory requirements of novelty, nonobviousness, and utility (e.g., the Arena Football League (AFL) obtained a patent for its unique system of playing indoor professional football).

**Penalties** — punishments that are generally determined on a case-by-case basis to fit the violation that occurred; in the sports law context, schools will often get scholarship reductions or public reprimands but rarely bowl and television bans; the most severe penalty is the “repeat offender” punishment, also known as the “death penalty,” in which the National Collegiate Athletic Association (NCAA) orders the complete shutdown of a program for a given period of time.

**Performance-enhancing drug** — any drug used to improve performance during a sporting event; in many cases, drugs used for the purpose of improving performance that create health risks to the user or others are deemed a violation of antidoping rules.

**Performance incentive** — a benefit in excess of salary or wages promised to an individual and conditioned upon the individual's achievement of an expressed goal of the institution or organization promising the benefit.

**Perquisites** — a privilege, gain, or profit incidental to employment (in addition to regular salary or wages); especially one expected or

promised.

**Prima facie** — the basic elements necessary to prove a legal point or to find that a violation of the law has occurred.

**Principal** — the party whose interests are paramount in the principal-agent relationship (e.g., the athlete in the athlete–sports agent relationship).

**Principle of proportionality** — a legal principle requiring that the sanction for a doping violation be proportionate to the violation, taking account of all of the relevant circumstances, particularly an athlete’s degree of culpability.

**Privacy interest** — under the Fourth Amendment limitation on searches and seizures, courts often seek to protect parties from having their person or belongings searched without establishing sufficient cause for doing so.

**Procedural due process** — a constitutional limitation on government or state power which mandates that a certain amount of process or procedure (notice and hearing) must be afforded to a party.

**Procompetitive effects/justification** — for purposes of antitrust law, a defense claiming that a challenged restraint’s positive economic effects (e.g., the production or maintenance of a brand of athletic competition desired by consumers, or the enhancement of its quality) offsets its anticompetitive effects and is a reasonable restraint that does not violate the Sherman Act.

**Promise** — a commitment by a person to do or not to do something in the future.

**Promissory estoppel** — a doctrine that provides for the enforceability of a promise based on the promisee’s justifiable and detrimental reliance on such promise, despite the nonexistence of an otherwise enforceable contract.

**Proper supervision** — the use of ordinary care as a reasonable person under the circumstances by one to whom an authoritative role is assigned, especially in the management of others.

**Property interest or right** — a legal entitlement to ownership in tangible property such as money, personal property, and real estate, or intangible property such as intellectual property, a special skill, etc.

**Qualified immunity** — a tort law doctrine under which an employee may be absolved from negligence occurring in the scope of his or her employment if such negligence results from the exercise of a

discretionary act rather than a ministerial act.

**“Quick look” rule of reason** — in comparison to the per se rule of illegality, a case-by-case, fact-specific method of antitrust analysis used to weigh the anticompetitive and procompetitive effects of a restriction to determine whether on balance it is predominately anticompetitive (unreasonable and illegal under the Sherman Act) or predominately procompetitive (reasonable and legal under the Sherman Act); in contrast to the full rule of reason, the “quick look” rule of reason is applied when a restraint has clear anticompetitive effects (usually evidenced by adverse effects on price or output) that are not offset by procompetitive justifications that cannot be achieved by other, less restrictive means.

**Reckless conduct** — conduct by an actor that creates a substantial and unjustifiable risk of harm or injury to another.

**Repeat offender** — any school that commits a major infraction within five years of having committed another major infraction; the violations do not have to occur in the same sport at a school for that school to be deemed a repeat offender, and a repeat offender is subject to severe penalties, including the “death penalty.”

**Reserve clause** — a contractual term that restrains the labor market for a player’s services by giving his or her current club perpetual rights to a player’s services, even after the expiration of his or her contract.

**Restitution rule** — a measure of damages, sometimes referred to as *unjust enrichment*, that requires the breaching party to restore any benefits received to the party conferring those benefits.

**Retaliation** — to deliberately harm a person in response to some action that person has taken (or something that person is perceived to have done).

**Right of publicity** — a state law right created by either statute or common law that protects an individual’s name, likeness, and persona from unauthorized commercial use.

**Right to control** — a test employed by courts to determine the nature of an employment relationship; it examines whether the employer possessed the right to control the manner, means, and details of the worker’s performance.

**Rule of reason** — in comparison to the per se rule of illegality, a case-by-case, fact-specific method of antitrust analysis used to weigh the

anticompetitive and procompetitive effects of a restriction to determine whether on balance it is predominately anticompetitive (unreasonable and illegal under the Sherman Act) or predominately procompetitive (reasonable and legal under the Sherman Act); in contrast to the “quick look” rule of reason, the full rule of reason requires a jury to determine disputed issues of material fact and the plaintiff to plead and prove that the relevant market (e.g., National Collegiate Athletic Association (NCAA) football or National Basketball Association (NBA) basketball) is restrained by the challenged conduct and to consider more complex economic analysis.

**Salary cap** — the annual maximum amount that a club may spend for aggregate player salaries, which is determined by the league’s collective bargaining agreement (CBA).

**Satisfactory progress** — a National Collegiate Athletic Association (NCAA) regulation that requires student-athletes to declare a major early during their college tenure and complete a substantial amount of the coursework for their major within a specified period of time.

**Scholarship rationale** — a theory advanced by student-athletes in litigation asserting that a loss of an athletic scholarship deprives the athlete of benefits that result from being awarded a scholarship in exchange for athletic participation.

**Search and seizure** — a Fourth Amendment term covering an examination or search of a premises (business, residence, or vehicle) or person.

**Secondary infraction** — any violation of National Collegiate Athletic Association (NCAA) rules that is inadvertent or accidental and does not provide the school with a substantial recruiting or competitive advantage; while secondary violations merit less severe penalties, a culmination of several secondary violations may constitute a major violation, creating exposure to potentially more severe penalties.

**Secondary meaning** — acquired when the consuming public associates a descriptive trademark or service mark with a particular product or service (e.g., “Warriors” as the name of a National Basketball Association (NBA) franchise).

**Self-incrimination** — exposing personal liability through personal statement.

**Sexual harassment** — unwelcome words or actions of a sexual nature, or on the basis of gender, that bother or threaten a person or the quality of the

person's experience in school or the workplace.

**Sherman Act §2**—a provision of federal antitrust law prohibiting monopolization and attempted monopolization.

**Single economic entity defense**—a defense to an alleged violation of §1 of the Sherman Act asserted by a professional sports league, which asserts that the league and its member clubs collectively constitute a single economic entity that creates a single product that none of them could make separately; therefore, their collective decisions and conduct is not covered by §1, which encompasses only concerted action between and among economic competitors.

**Sovereign immunity**—a tort law doctrine that precludes a party from bringing a suit against the sovereign government without the government's consent; thus, a public educational institution acting as a subsidiary agency of the state may be absolved from tort liability for negligent acts of its employees, such as coaches, athletic trainers, and administrative personnel, who cause injury to an athlete.

**Special relationship**—an affiliation between two or more individuals, premised on trust and confidence, that gives rise to a legal duty of care owed to the subservient or dependent members of the affiliation (e.g., between a coach and his or her student-athletes).

**Speech rights (freedom of speech)**—those rights of speech and expression protected by state and federal (and international) constitutions and declarations of rights.

**Standing**—the requirement in constitutional law that a party demonstrate sufficient connection with or harm from the action challenged to justify that party's participation in the case.

**State action/state actor**—for the purposes of the Fourteenth Amendment to the U.S. Constitution, a concept that is used by courts to determine whether the rules and decisions of a private entity or organization (e.g., a sport's governing body) is sufficiently governmental in nature to be subject to federal constitutional limitations and requirements.

**State constitution**—state constitutions and declarations of rights limit government power within the individual states and provide specific rights to persons within those states.

**Statement of Financial Assistance**—an agreement between a student-athlete and a college or university in which the granting institution

agrees to extend financial aid to the student in exchange for the student-athlete's agreement to participate in intercollegiate athletics on behalf of the institution; financial assistance may cover costs, including tuition, fees, room, board, and books, associated with enabling a student-athlete to participate in the educational process of the institution.

**Statutory labor exemption** — an antitrust exemption created by two federal labor statutes that provides a labor union with immunity from antitrust liability for its unilateral efforts to further its members' (e.g., players) economic interests by unionizing, engaging in the collective bargaining process, and striking or picketing; it also immunizes the activities of multiemployer collective bargaining units (e.g., the representative of a league's clubs) from antitrust challenge.

**Strict liability** — liability without any personal fault; for doping offenses, this means that an athlete is liable for a doping violation based on the mere presence of a banned substance in his or her body, regardless of whether he or she intended to take a banned substance or was negligent (i.e., failed to use reasonable care to prevent a doping violation).

**Strike** — a lawful means of economic pressure that a players' union may use in an effort to convince a professional sports league to agree to its proposed collective bargaining agreement (CBA) terms; during a strike, the players refuse to provide services to their respective clubs, which forces the clubs not to play games or to hire replacement players (most of whom are not major league caliber).

**Subpoena** — a writ issued by a court or government agency requiring a party to testify or produce certain evidentiary material.

**Substantial proportionality** — under Title IX, a very close (within 1 to 2 percent) relationship between the ratio of male and female students in the undergraduate student body and the ratio of male and female student-athletes.

**Substantive due process** — a constitutional limitation on government or state power to enact or enforce substantive legislation or regulation that infringes on a general or unenumerated (not specifically included constitutional) right.

**Suspicionless** — a term used to describe searches (drug tests) permitted by courts even when there was no individualized suspicion of wrongdoing (drug use).

**Swiss Federal Tribunal (SFT)** — Switzerland’s highest court, which has the jurisdiction to review Court of Arbitration for Sport (CAS) arbitration awards, which is rendered on very narrow procedural and substantive grounds.

**Ted Stevens Olympic and Amateur Sports Act (Amateur Sports Act, or ASA)** — a federal law that provides the legal framework for regulating Olympic sports in the United States and grants the United States Olympic Committee plenary governing authority; it also provides the United States Olympic Committee with the exclusive right to use and license others to use all of the Olympic marks within the United States and prohibits their unauthorized usage “for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition.”

**Temporary restraining order** — a short-term order designed to protect a party while the court is considering whether it should issue an injunction in a case.

**Termination for cause** — the justifiable discharge of an employee that is based on certain provisions or terms of the contract existing between the employer and the discharged employee.

**Therapeutic use exemption (TUE)** — an exemption granted by an antidoping organization that permits an athlete to take prescribed medication containing a banned substance for legitimate health reasons.

**Third-party beneficiary** — a party in contract law who may assert rights under the contract, even though she or he was not a party to the original contract, on the ground that the party was an intended beneficiary of the contract.

**Trademark Counterfeiting** — the intentional and unauthorized use of a mark on a product that is known to be “identical with, or substantially indistinguishable from,” a federally registered mark, which creates a likelihood of consumer confusion regarding its source, affiliation, endorsement, or sponsorship.

**Trademark Dilution Revision Act of 2006 (TDRA)** — a provision of the Lanham Act that protects the unauthorized use of a “famous mark” (e.g., “America’s Cup”) from dilution by blurring or tarnishment.

**Trademark/service mark** — a name, logo, or other symbol that identifies a product or service.

**Trademark/service mark infringement** — the unauthorized use of a name, logo, or other symbol that creates a likelihood of consumer confusion regarding the source, affiliation, endorsement, or sponsorship of a product or service.

**Transfer rules** — regulations promulgated and enforced by athletic associations to limit the ability of a student-athlete to participate in interscholastic athletics after the student moves from one school to another.

**Unauthorized public performance of copyrighted work** — the violation of federal copyright law by the unauthorized display of a copyrighted work “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and its social acquaintances are gathered” (e.g., the interception of a broadcast sports event and its unauthorized streaming over the internet).

**Unethical conduct** — a finding by the National Collegiate Athletic Association (NCAA) that a coach, administrator, or staff member failed to act with honesty and integrity.

**Unfair competition** — the unauthorized use of another’s intellectual property (e.g., a trademark) that causes a likelihood of consumer confusion.

**Unfair labor practice** — conduct by either a league multiemployer collective bargaining unit or a players’ union during the collective bargaining process or otherwise that violates the obligations or rights established by the National Labor Relations Act (NLRA).

**Uniform Domain Name Dispute Resolution Policy (UDRP)** — a policy that provides a trademark owner with the right to arbitration as a means of remedying the unauthorized use of its trademark as an internet domain name.

**Uniform or standard player contract (UPC)** — the standard form agreement between a player and his or her team, the terms of which (as well as the parties’ contractual freedom to amend or modify them) are established by the league’s collective bargaining agreement (CBA).

**United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201 (New York Convention)** — an international treaty, to which the United States is a party, that provides a procedure for national courts to recognize and confirm valid foreign arbitration awards; a national court is empowered to vacate a

foreign arbitration award only on very limited grounds.

**United States Anti-Doping Agency (USADA)**—an independent, nongovernmental antidoping agency for Olympic sports in the United States, which provides drug education, conducts drug testing of U.S. athletes, investigates positive results, and prosecutes doping violations.

**United States Olympic Committee (USOC)**—the organization that governs the Olympic Movement in the United States; it has exclusive authority over all Olympic sports and athletes in the United States.

**Vacation of records**—a punishment levied by the National Collegiate Athletic Association (NCAA) against schools for using ineligible players, whether they were deemed ineligible at the time of the game or retroactively determined to be ineligible; the institution or coach may not be credited with any victories during the time frame of using an ineligible player (though any losses are still counted), and all the player's stats and accomplishments are also no longer credited.

**Voluntary participation**—the willful, knowing, and purposeful involvement of an individual in an activity without the coercion or influence of another.

**Waiver rule**—a process by which an interscholastic or intercollegiate athlete may seek to be relieved from limitations on participation on the grounds of fairness (to the athlete).

**Warrant**—a judge's order acknowledging sufficient cause to permit law enforcement officers to engage in a reasonable search.

**Workers' compensation law**—a statutory system of administrative benefits established by state law that provide a method whereby workers are able to obtain compensation and medical expenses for work-related injuries or diseases.

**World Anti-Doping Agency (WADA)**—an international agency based in Lausanne, Switzerland, that is the product of a collaborative effort between governments and international sports organizations to combat sports doping, which promulgates the World Anti-Doping Code (WADA Code).

**World Anti-Doping Code (WADA Code)**—antidoping regulations and rules created by the World Anti-Doping Agency (WADA) that aim to create a uniform system of rules and sanctions for doping violations applicable to all competitive sports played throughout the world,