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BOOK REVIEW

FUNDAMENTALS OF SPORTS LAW, by WALTER T. CHAMPION, JR., Lawyer's Co-operative Publishing Co., Rochester, New York 1990, 535 pp.

*Fundamentals of Sports Law*¹ is written so that it is equally understandable to both attorneys and non-attorneys, and the result is a work that leans heavily toward the non-attorney. The elements of negligence are often repeated, leaving readers with the feeling that they have already read the section. This feeling also holds true with the case law sections, where the same cases are used repeatedly in an effort to explain the different elements of negligence and the different types of liability (*i.e.* a school's, a coach's, or a referee's liability). While this repetition detracts some from overall readability when the book is read straight through, it will probably not be a problem when the book is used primarily as a reference and each chapter is read individually. When the book is used in this manner, its organization is advantageous, because only a single chapter has to be read in order to gain an understanding of a particular aspect of liability.

This review of *Fundamentals of Sports Law* will be done chapter by chapter, emphasizing the areas covered in each chapter. The first half of the book deals with torts in sports, beginning with chapter one, which discusses the elements of negligence and applies these elements to case law. This chapter is easily understood by the non-attorney, and provides a good review for the attorney. The next chapters divide liability into areas such as school, coach, referee, medical, and facility. In these chapters, many of the same cases are used to show more than one type of liability. Also, each chapter restates and re-explains the elements of negligence.

School administrators will be interested in the chapter on school liability, especially the section on failure to hire competent coaches.² As the number of coaches leaving the coaching ranks increases, requiring administrators to go outside the school system to recruit new coaches, the potential for hiring an incompetent coach increases as well. Professor Champion gives a list of recommendations for school administrators to follow in order to limit

1. W. CHAMPION, FUNDAMENTALS OF SPORTS LAW, at vii (Lawyer's Co-op 1990).

2. *Id.* at § 2.5.

school liability.³ However, a school administrator forced to hire uncertified personnel will have a hard time following the recommendations for hiring competent coaches.

Chapter three deals with coaches' liability, with an emphasis on the need for proper preparation of the athlete to avoid liability for injury to that athlete.⁴ An interesting development in this area is exemplified by a New Jersey statute that limits liability for negligent acts committed by coaches.⁵ At first glance, this statute appears to limit coaches liability. However, only volunteer coaches are protected, and not those coaches that are hired.⁶

Chapter four recognizes an increase in litigation over the years involving referees and other officials.⁷ An interesting area of an official's liability is the duty to anticipate reasonably foreseeable dangers.⁸ While dangers such as slippery courts, electrical storms, and metal spikes protruding from the ground are discussed,⁹ the book mentions nothing about foreseeable injuries that result from physically mismatched opponents. Liability for officials could be a special problem in this area when the coach is a volunteer and has been given immunity by statute. Conceivably, an official trying to avoid liability in this kind of situation could decide that one team is so much stronger than its opponent that the game cannot be played. A discussion of this potential type of liability would have been interesting.

The chapter on medical liability discusses concepts such as duty of care and duty to disclose.¹⁰ The chapters on products liability,¹¹ participant injuries,¹² spectator injuries,¹³ and facility liability¹⁴ discuss the concerns particular to those areas. Much of the case law in the area of participant injury overlaps with that of school liability, coach liability, and referee liability. Also, there is overlap in the areas of spectator injury and facility liability.

Chapter ten discusses two of the defenses commonly used in liability cases: assumption of risk and contributory negligence.¹⁵

3. *Id.* at § 2.9, at 55-56.

4. *Id.* at § 3.4.

5. *Id.* at § 3.6, at 72. See N.J. STAT. ANN. § 2A: 62A-B (West 1987 & Supp. 1990).

6. N.J. STAT. ANN. § 2A: 62A-6 (West 1987 & Supp. 1990).

7. CHAMPION, *supra* note 1, at § 4.1.

8. *Id.* at § 4.4.

9. *Id.*

10. *Id.* at §§ 5.2, 5.3.

11. *Id.* at §§ 6.1-6.4.

12. CHAMPION, *supra* note 1, at §§ 7.1-7.6.

13. *Id.* at §§ 8.1-8.5.

14. *Id.* at §§ 9.1-9.7.

15. *Id.* at §§ 10.1, 10.2, 10.4.

As Professor Champion notes, these defenses are being replaced in many jurisdictions by a comparative negligence standard.¹⁶ What is not discussed is whether the application of this new standard will change liability, or lack of it, from past case law. An example is the understanding that a spectator at a baseball game assumes the risk of being hit by a foul ball.¹⁷ Another example is when an athlete assumes the risk of injuries incident to the sport.¹⁸ In both cases, there is no recovery because of the assumption of risk doctrine. The question is whether a comparative negligence standard also yields no recovery. If the answer is no, a comparative negligence standard could have a tremendous impact in the area of sports law—an issue that is not discussed by the author.

Other defenses are discussed in chapters 11 and 12, including waivers, releases, and sovereign immunity. The main concern with waivers is that the wording must be specific enough to cover the particular liability being denied.¹⁹ It should also be noted that a release is usually not binding against a minor, which is significant, since many schools routinely use releases in an effort to limit liability.²⁰ The defense of sovereign immunity does not have the certainty it once enjoyed. Professor Champion emphasizes that an attorney is well advised to be sure of the current status of the sovereign immunity in the jurisdiction in which the attorney is practicing.²¹

Chapter 13, dealing with defamation and invasion of privacy, is of interest to a sportswriter or sportscaster who deals with these concerns on a day-to-day basis. Chapter 14 deals with workers compensation and the effect it may have on recovery by an injured professional athlete. Chapter 15 involves the calculation of damages and includes a hypothetical situation involving damages for an injury sustained by a fourteen-year-old athlete.

The next section of the book involves constitutional implications of sports law. The analysis of the constitutional issues may be beyond the understanding of the average non-attorney, but those readers should still be able to apply the conclusions. Chapter 16 addresses the general issues involved in athlete eligibility requirements. The key in this area appears to be whether participation in

16. *Id.* at § 10.3.

17. *Id.* at § 10.6, at 200.

18. *Id.* at § 7.6, at 141.

19. *Id.* at § 11.2.

20. *Id.* at § 11.5.

21. *Id.* at § 12.1, at 222.

sports is a right or a privilege.²² Some courts have found a property interest in participation when it can be shown that eligibility requirements might affect the athlete's chances of obtaining a college scholarship or of being drafted by a professional team.²³ Professor Champion discusses the difference between fundamental rights and non-fundamental rights and the different levels of scrutiny that the court will apply.²⁴ A non-attorney, even if confused by the concepts of strict scrutiny or rational basis review, would still be able to tell, from the examples given, what types of requirements are examined more closely by the courts. One other note of interest to a person involved in college sports is the idea that NCAA action is not state action, and, therefore, does not invoke the protection of the fourteenth amendment.²⁵

Chapter 17 discusses NCAA Proposition 48 and proposed Proposition 42, which concern academic eligibility requirements for NCAA member schools.²⁶ Professor Champion concludes that Proposition 42 will be found constitutional (as 48 already has been), even though it has been attacked as being racist.²⁷

Chapter 18 discusses the "no pass, no play" rule. Here, Professor Champion concludes that this type of rule, while having certain flaws, only requires rational basis scrutiny, since it does not involve a fundamental right.²⁸

Chapter 19 describes sex discrimination in the world of sports. Professor Champion gives a brief discussion of the arguments concerning women competing directly against men in athletic competition.²⁹ He details three proposed programs involving female athletes, ranging from completely separate teams to teams where the only criterion is skill.³⁰ Professor Champion notes that the standard of review used in sex-based classifications is intermediate scrutiny, which requires an important governmental purpose and a classification that is substantially related to the achievement of that purpose.³¹

Chapter 20 deals with discipline and penalties, and notes the

22. *Id.* at § 16.4.

23. *Id.*

24. CHAMPION, *supra* note 1, at § 16.6.

25. *Id.* at § 16.5.

26. *Id.* at § 17.1.

27. *Id.* at § 17.4.

28. *Id.* at § 18.2, at 341-42.

29. *Id.* at § 19.1.

30. *Id.* at § 19.2.

31. *Id.* at § 19.6, at 361.

differences in how they are applied at the high school, college, and professional levels.

Chapter 21 discusses the numerous issues involving drug testing. Professor Champion accepts the reasonableness of drug testing, stating that since participation in athletics is not a fundamental right, the standard of review used by courts is that of rational basis.³² While it may be true that participation in high school athletics is not a fundamental right, being free from unreasonable searches is fundamental.³³ Professor Champion, in his analysis of the lesser expectation of privacy held by a high school student, equates being in high school with being in jail.³⁴ The Supreme Court has not made this equation.³⁵ Professor Champion states that the legality of such a search must be justified at its inception, and appears to feel that the interest of maintaining a drug-free athletic program provides this justification.³⁶ The Supreme Court has stated that, for a search to be justified at its inception, there must be "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."³⁷ It could certainly be argued that a school must show that a drug problem exists, not only in the country, but in that school, before the school can set up a random drug testing program based upon suspicionless searches. Of course, once this showing has been made, the balancing test discussed by Professor Champion³⁸ would probably allow reasonable testing.

The next section of the book deals with sports contracts. In chapter 22, Professor Champion suggests that a basic understanding of contract law should be sufficient to negotiate a professional contract.³⁹ The basis for this opinion is the availability of information concerning the monetary worth of comparable athletes and the existence of the Standard Player's Contract (SPK).⁴⁰ Professor Champion then discusses the SPK, what the contract contains, and the possibilities of modifying it.⁴¹ The chapter ends with helpful

32. *Id.* at § 21.6, at 389.

33. *See* U.S. CONST. amend. IV

34. CHAMPION, *supra* note 1, § 21.5, at 387.

35. *See* *New Jersey v. T.L.O.*, 469 U.S. 325, 338 (1985); *Tinker v. Des Moines*, 393 U.S. 503, 512 n.6 (1969).

36. CHAMPION, *supra* note 1, § 21.5, at 386-87.

37. *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985).

38. CHAMPION, *supra* note 1, § 21.5, at 386.

39. *Id.* at § 22.1, at 395.

40. *Id.*

41. *Id.* at §§ 22.2, 22.3.

hints for the prospective negotiator.⁴²

Chapter 23 deals with representation of the athlete, including the Standard Representation Contract and the function of agents. Registration of agents is also discussed.

The last three sections of the book deal with financial considerations, labor law, and antitrust in sports. The two key concepts in the area of financial planning are the realization that an athlete's career is usually limited in duration, yet must provide a lifetime of financial security, and that expert financial help is usually advisable.⁴³ In the area of labor law, Professor Champion focuses on Major League Baseball.⁴⁴ He discusses collective bargaining, the "reserve clause," mediation, and arbitration.⁴⁵ The chapter on antitrust notes the unique arrangement in sports where teams are in competition with each other but, at the same time, must cooperate in order to succeed.⁴⁶ Professor Champion's view seems to be that the key to determining whether labor restrictions will be seen as a violation of antitrust law is whether the restriction was reached as "a result of bona fide arms-length negotiation between management and labor," or simply promulgated by management.⁴⁷ If the former, the restriction will probably be allowed.⁴⁸ Other antitrust aspects of sports law are also discussed, including disputes among NFL teams and the regulation of amateur athletics.⁴⁹

Also included in the book is an index containing various standard contracts, a sample tort release, a drug testing consent form, and various employment contracts.

As previously noted, Professor Champion's apparent intent was to write a book that is equally readable by attorneys and non-attorneys. To that end, he has been successful. Although there is some repetition, it is difficult to conceive of a way to avoid that problem and still make the concepts understandable to non-attorneys. The organization of the book demands repetition, because much of the case law is applicable to more than one area of liability. This writer's main criticisms are aimed at the book's failure to address the effect that the comparative negligence standard would

42. *Id.* at § 22.5.

43. *Id.* at §§ 24.1-24.4.

44. *Id.* at §§ 25.1-25.5.

45. *Id.*

46. *Id.* at § 26.1.

47. *Id.* at § 26.3, at 472-73.

48. *Id.*

49. *Id.* at §§ 26.4-26.6.

have on already settled legal concepts, based upon an assumption of risk standard, and the ready acceptance of drug testing of high school students without some protest. Otherwise, Professor Champion does a good job of covering a relatively new and expanding area of the law in a way useful to his intended audience.

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