Adjudicative technology 208–22
   CAS, and 216–19
courts and sports adjudication 215–19
Hawk-Eye 213
juridification 210–11
jurimetrics 215
national law courts 215–16
robo-judge
   jurisprudence 215
robo-ref 211–13
standardisation of play 209–10
use of video technology 220–22
Age 290–93
equal treatment 292
Europe 291
limits 291
peer group 292–3
United States 290–91
Allocation of resources
   fairness, and 23
Alternative dispute resolution see also
Mediating sports disputes 65–7
   advantages 69–71
background 69–71
definition 69
expert determination 67
forms 71
Internet, and 67
med-arb 67
Ambush marketing 422–8
   association 424
background 422–3
British perspective 422–8
Germany, and 427
intrusion 424
legal protection 425
legal situation in UK 425–7
sponsorship, nature of 423
tactics 424
Anti-discrimination law and policy 258–93
   age see also Age 290–93
disability see also Disability 271–9
ethnic origin Ethnic origin
gender identity see Gender identity
grounds of discrimination in contest of
   sport 260–93
nationality see also Nationality 279–84
race see Race
religion see Religion
sex discrimination see also Sex
discrimination 260–68
sexual orientation see Sexual orientation
sport, equality, difference and elusive level
   playing field 258–9
Apartheid 288–9
international agreement against apartheid in
   sports 289
Athlete eligibility requirements 223–57
   CAS 227–34
      emerging principles of CAS
      jurisprudence 229–32
lex sportiva, and 235
   procedure 228–9
Swiss Federal Tribunal review of
   awards 232–4
   collective bargaining, primacy of 242–52
contract, primacy of 242–52
dispute resolution process 227–34
   fundamental principle of Olympism 225–7
global competition 224–42
   golden rule 252–7
   intercollegiate athletic competition 252–7
   international competition 224–42
   international legal framework 224–5
   interscholastic athletic competition 252–7
   legal issues 223–57
   limited applicability and effectiveness of
      public laws 253–4
   Olympic competition 224–42
   practice of sport as human right 225–7
   professional individual performer
      sports 250–51
      disciplinary sanctions 251
      dispute resolution processes 251
initial requirements 250–51
professional sports 242–52
   legal framework 243–4
   professional team sports 244–50
      disciplinary sanctions 249–50
      dispute resolution 249–50
initial requirements 244–9
   labor law principles 244–9
United States legal framework 236–42
   AAA arbitration 240–42
dispute resolution process 238–42
Ted Stevens Olympic and Amateur Sports
   Act 237–8
Austria 417–21
short reporting, right to...

criticism 421
delivery of signals 421
duration of right 419–20
fee 420
highest degree of exclusiveness 418–19
nature of right 420
permitted broadcasting format 420
prospect 421
quality 421
waiting period 420

Broadcasting new media 404–14
Broadcasting output restrictions in 404–14

Caster Semenya
discrimination, and...

Charleroi 105–6
Chinese gymnasts
fairness, and 18–19

Commercialism 9–10

Competition law 311–38
abusing dominance by labour restraints that...
exclude rivals 331–4
common law restraint of trade doctrines 333
EU law 332–3

Bosman 317
broad black letter standards 318
Canada 317–18
coping with open-ending analysis 334–7

corporate law 334
not-for-profit federations 336
US courts 335

Eastham case 315

English courts 314–15
EU Treaty 317
international convergence 314–18

labor markets, and 311–38
legality of agreements lessening competition among clubs 314–18
legitimate goals justifying labor market restraints 318–30

Bosman 327–8
common law courts 324
competitive balance 318–21

Eastham 320
European approach 328

Greig v. Insole 323–4

Heart of Midlothian 329
increased parity 319–20
integrity of competition 321
maintenance of fiscal solvency 322

protecting organization and administration of game 322–6
recoupment of clubs’ investment 326–9
restraints in collective bargaining agreements 329–30
United States 322, 325
market power requirement 312
NFL, and 316
NFL reserve clause 322
nuanced, need for 313–14
objectives rejected by courts as justifications for labor market restraints 330–31

US Sherman Act 315–16

Conduct of competition
fairness, and 24–7

Corruption
fairness, and 21

Council of Europe
‘Good governance in Sport – A European survey’ 112

Court of Arbitration for Sport (CAS) 14–16, 32–64
applicable law 40
enforcement of awards 40
functions 39
history 32–4

jurisdiction 36–9

lex arbitri 45

lex ludica 43–4

lex mercatoria 42–3

lex specialis 45

lex sportiva see also Lex sportiva 40–42

overview 32–47

structure 34–5

Cronje scandal
South Africa 169–71

Determinations of eligibility
fairness, and 24–7

Disability 271–9
degree, classification by 279
excluding athletes because of risk of self-injury 277–8
fundamental alterations 273–6
participation of able-bodied in competitions for disabled 278–9

special accommodation 272–7
type, classification by 279

Discrimination 26–7
Caster Semenya 27
fairness, and 26–7

Oscar Pistorius 26
women ski-jumpers 27

Dispute resolution 12–16
Court of Arbitration for Sport 14–16

James A.R. Nafziger and Stephen F. Ross - 9780857936301
Downloaded from Elgar Online at 03/11/2019 12:56:00PM
via free access
fairness in see Fairness
international federations 13
International Olympic Committee 13
lex sportiva 14–15
national courts 13–14
national governing bodies 12
National Olympic Committees 13
network of administrative decisions 12–13
Doping 11–12, 133–62
AAF non-specified substance 158
AAF specified substance 159
accredited laboratories 143–4
appeals 152–5
burden of proof 146
definition 139–40
development of rules 133–4
dispute resolution 152–5
disqualification of results due to
in-competition adverse analytical
finding 157
drug testing 134
exculpatory defences 146–7
fair hearing, right to 152
incorporation of WADC into internal sport
rules 139
ineligibility issues 150–51
LOC, and 134–5, 136
monitoring function 155
multiple ADRVs 161
non AAF anti-doping rule violations 160
overview 133–5
presumptions 147–8
professional sport leagues 155–6
prohibited list 140–41
results management 144–5
rule-making 137
rules as sport rules 137–9
sanction decision matrices 157–61
sanctions for rule violations 148–50
scientific agenda 134
second ADRV 161
specified substances 141
standard of proof 146
strict liability 145–6
structural issues in international sport
135–7
team sports 151–2
testing 142–3
therapeutic use exemptions 144
WADA 135, 138
WADC 135, 137–9
whereabouts system 142
Doping issues
fairness, and 24–6
Eligibility 10–11
Ethnic origin 287–90
European regulation of media rights 398–428
European Sports Model 89–94
grassroots involvement 92–3
international competitions 93
North American Sports Model
compared 99–111
Bosman 104–5
broadcasting rights 109–11
Charleroi 105–6
commonalities 99–103
ends 99–100
Granada 74 SAD 106–7
growth participation and
leadership 102
institutional differences 103–7
international competitions 102–3
means 101–3
Meca-Medina 105
national identities 102–3
negative aspects 102–3
promotion 101
pyramid structure 101
regulation 101
regulation under anti-trust/competition
laws 107–11
specific legal issues 107
national identity 93
negative aspects 94
origin 89–90
promotion 91–2
pyramid structure 90–91
regulation 91–2
European Union 5–7, 112–30
discrimination 115
free movement of workers 112–13
home-grown players rule 113
infringement proceedings 113
interventionist sports legislation
model 115–17
models of sport governance within 112–30
national umbrella organisations 117–18
non-interventionist sports legislation
model 115
organisation and functioning of sports
authorities 114–15
organisation of professional sport
activities 114
pyramid structure 129
sports legislation framework and sports
financing 130
state control, extent of 118–19
state influence on financing professional
sport activities 119–29
state influence on legal organisation of professional sport activities 115–19
Austria 120
Belgium 120
Bulgaria 120–21
Czech Republic 121
Denmark 121–2
Estonia 122
Finland 122
France 123
Germany 123
Greece 123
Hungary 123
Ireland 123–4
Italy 124
Latvia 124
Lithuania 125
Luxembourg 125
Malta 125
Netherlands 125–6
Poland 126
Portugal 126
Romania 126
Slovakia 128–9
Slovenia 127
Spain 127
Sport England 128
Sweden 127–8
UK Sport 128
United Kingdom 128

Fairness 17–31
allocation of resources 23
Chinese gymnasts 18–19
conduct of competition 24–7
corruption 21
definition 19–20
determinations of eligibility 24–7
discrimination see Discrimination
dispute resolution 27–31
  non-interference rule 28–30
taint of money 30–31
doping issues 24–6
institution structures 21–4
leadership in organizing competition 23–4
match-fixing 21
Mercury Bay case 17–18
organisational structures 21–4
principle of 17–31
selection of sports and sports events 21–3
three contexts 20
Football media rights 404–14
application of competition law 404–14
collectivity 410–12
Competition Act 1998 405–6
Crown Jewels 409–10
European Commission White Paper 405
exclusivity 410–12
future regulatory issues 412–13
IPTV 412–13
Murphy 406–7
Ofcom 407–9
QC Leisure 406–7
Setanta, collapse of 405

Gambling on sports 162–207
BFWF 199–200
European Union 201–7
  CAS 205–7
  Council of Europe 205
  European Court of Justice 203–5
  European Parliament 202–3
  treaties 201–2
FIFA 200
Germany, legal regulation 185–8
  conflicts between legal regimes 186–7
  court decisions 187–8
  state and national regulations 185–6
ICC 200–201
IOC 198–9
international federations 199–201
international sports organizations 198–201
legal regulation 172–194
New Zealand, legal regulation 188–91
opinions of sports bodies 163–7
  European sports bodies 165–7
  international sports organizations 165
  national sports bodies 165–7
  United States 164–5
prevalence 167–8
  Europe 168
  New Zealand 168
  United States 167
recent controversies 168–72
  collegiate athletics 168
  Cronje scandal in South Africa 169–71
  European football/soccer 171–2
  Japan 172
  NBA referee scandal 169
  regulation, need for 162–3
  United States 168–9
South Africa, legal regulation 191–4
  sports organisations, regulation by 194–207
United Kingdom legal regulation 182–4
Gambling Act 2005 183
Gambling Commission 182–3,184
United States legal regulation 172–80
  Bank Records and Foreign Transactions Act 180
  Bribery in Sporting Contests Act 179

James A.R. Nafziger and Stephen F. Ross - 9780857936301
Downloaded from Elgar Online at 03/11/2019 12:56:00PM via free access
Federal Anti-Lottery Act 180
Gambling Devices Transportation Act 180
Illegal Gaming Business Act 175–6
Illegal Money Transmitters Act 179
Indian Gambling Regulatory Act 180
Interstate Horseracing Act 180
Interstate Transportation of Wagering Paraphernalia Act 180
Money Laundering Control Act 179
Professional and Amateur Sports Protection Act 177
Racketeer Influenced and Corrupt Organizations Act 176–7
Travel Act 174–5
Unlawful Internet Gambling Enforcement Act 178–9
Wire Act 173–4
United States sports organizations 194–8
NCAA 194–5
NGBs 198
professional leagues 196–7
USOC 197
Gender identity see also sexual orientation 269–71
competitive sports 270
equal protection claims 269–70
Hawk-Eye see Adjudicative technology
Image rights 497–517
common law and statutory protection 515–17
common law protection 501–10
comparative analysis 500–517
Dutch law 511–13
English law 501
French law 501–2
German measures 510–11
historical development 498–500
protection 497–517
South Africa 507–9
statutory protection 510–15
United States 513–15
US jurisdiction 502–6
First Amendment 506
Image rights in sports 436–9
David Beckham 437–8
football clubs 438
Italy 437
United Kingdom 436–7
United States 436, 437
Wimbledon Tennis Club 438
Intellectual property rights 429–59
American cases 447–9
Berne Convention 432
comparative overview of USA, UK and Italy 429–59
copyright 429, 435–6, 449
critical role of 456
current status 458
Football Dataco Ltd 450
importance in sports 430–31
industrial property 429
international discipline 431–4
Internet, and 457–8
Italian cases 453–6
personality rights 455
trademarks 453–5
judicial cases 447–56
Paris Convention 431
powers of football clubs 459
privacy right 447
publicity right 446–8
registration of marks 435
secondary infringement 450–51
sport, and 434–42
‘sport move’ 458
sports industry, and 457–9
SROC 434–5
trademarks 451–3
TRIPS Agreement 433
UK cases 449–53
UK Trade Marks Act 1994 451
unauthorised use of trademark 449
WIPO, and 457
Inter-governmental organizations 4–5
International event sponsorship 518–44
advantages 524–5
ambush marketing 538–43
athletics, position of 541–2
dangers 543
definition 538–9
examples 541
exclusivity 540–41
legal protection 539–40
licensing, and 542–3
background 519–20
cases in practice 533–43
categories 520
commercial obligations of athlete 535–6
contact, definition 526–8
contract, elements under civil law 528–30
different possibilities 525–36
endorsement 521–2
example of Olympic Games Contract of NOC 534–5
564  *Handbook on international sports law*

history of  520
IOC Eligibility Code, and  536–8
legal aspects  518–44
legal characteristics of contract  531
legal nature of contract  532
legal questions  519–20
media, importance of  522–4
media, rule of  530
modus of exercising rights of contract  530–31
Olympic Programme (TOP)  533–4
other obligations of athlete, and  534
public, importance of  530
substantive legal elements  529–30
TV advertisement  523–4
International sports law
contemporary regime, nature of  3
European region  5–7
history  3
inter-governmental organizations  4–5
issues  8–12
commercialism  9–10
doping  11–12
eligibility  10–11
politics  8–9
meaning  4
Olympic Movement  7–8
structure  4–8

Jurimetrics see Adjudicative technology
*Granada 74 SAD*  106–7

Leadership in organizing competition
fairness, and  23–4
*Lex arbitri*
CAS, and  45
*Lex ludica*
CAS, and  43–4
*Lex mercatoria*
CAS, and  42–3
*Lex sportiva*  14–15
CAS, and  40–42, 45, 52–61
criminal law  59–60
degree of review  60–61
fairness of procedures  54–7
fairness of rules  54–7
field-of-play decisions  58–9
manipulation of rules  60
non-interference with technical decisions  59
rules for resolving jurisdictional disputes  57
rules governing CAS's power of review  57
rules pertaining to doping offences  55–7
CAS-driven  52–3
CAS-emerging jurisprudence  54–61
CAS-rules  54–61
concept  45–7
corporate interests  51
desirability  47–51
development to date  52–63
efficiency of legal process  48–9
equal treatment of similarly situated persons  50–51
key factors in future development  62–3
national interests  51
predictability of expectations  49–50
stability of expectations  49–50
WADA Code, and  61–2
Licensing in sports  442–4
benefits  442–3
sports personality licensing  444

Match-fixing
fairness, and  21
*Meca-Medina*  105
Mediating sports disputes see also Alternative dispute resolution  65–87
advantages  72
alternative dispute resolution  65
appropriate, when  74–5
CAS  82–5
CAS mediation costs  86
caveats  87
common concerns about  73–4
England  66
how to start  75
how working in practice  79–81
idea of  73
meaning  73
negotiating  68–9
preparation for  78–9
procedural aspects of CAS mediations  85–6
process  73
qualities required by mediator  76–8
sports bodies, by  82
standards  77–8
strategy  78–9
United States  66–7
when referring dispute to  75
Woodhall/Warren dispute  81–2

Merchandising  444–7
football clubs  445
globalization, and  446
Manchester United  445–6
possibilities  444
visibility of club  446
*Mercury Bay* case  17–18

---

James A.R. Nafziger and Stephen F. Ross - 9780857936301
Downloaded from Elgar Online at 03/11/2019 12:56:00PM
via free access
Nationality 279–84
athlete migration 282–4
Bosman 281–3
changes in 280
differentiation by 280
discrimination 281
multiple 280
national sports associations 280
permissibility of restrictions 281–2
Negotiating
art of 68–9
North American Sports Model 94–8
Americanization of sport, and 94
closed system of competition 95–7
collective bargaining system 98
colleges, role of 95
commercialization of sport 97
distinction between amateur and professional sports 95
European Sports Model compared see also European Sports Model 99–111
extensive system of labor market restraints 97–8
schools, role of 95
Ofcom 407–9
Olympic movement 7–8
Oscar Pistorius
discrimination, and 26
Players’ agents 545–56
EFAA 550–52
European Commission Agent Study 553–4
FIFA Regulations 546–7
59th Annual FIFA Congress 552–3
future developments 555–6
EU directive on agents 555–6
no regulation 555
regulation by governing bodies 556
self-regulation 556
social dialogue 556
PIAU challenge to FIFA Regulations 547–8
regulation 548–50
regulation; recent developments 552–5
rise of 545–6
social dialogue in European professional football 554–5
Politics 8–9
Race 287–90
Europe 290
Jewish athletes 287
reverse discrimination 290
South Africa 288–9
United States 288
Religion 284–7
obligations 284
regulation of clothing 285–6
ritual 286–7
Robo-ref see Adjudicative technology
Selection of sports and sports events
fairness, and 21–3
Setanta
collapse of 405
Sex discrimination 260–68
constitutional guarantees 262–5
contact sport exception 262
possible approaches to 261–7
reach of law 267–8
separate-but-equal approach 265–6
sports, and 260
Sexual orientation see also Gender identity 269–71
equal protection claims 269–70
European Union 269
United States 269–70
Sports organizations 88–111
European model 88–111
North American model 88–111
Tampering prohibition 339–97
AALS policy 351
agreements with foreign leagues 365–7
anticompetitive effect of basketball agreement 378
antitrust actions 392
antitrust assessment 358–65
baseball’s rule 355–6
Bergey 364
Brown v. Pro Football, Inc 374–5
conflict of interest, and 346
covenant not to compete 350–51
disruption, and 343–4
effects of communication 345
employee mobility 340–42
employment policy 340–42
Foreign Trade Antitrust Improvements Act 1982 369
identification of relevant market 377
image of league contents 363–4
in personam jurisdiction 370–72
international dimension 365–7
intersection of labor law and antitrust law 374
Japanese limits on foreign players 393–7
Joe Kapp 358–9
justifications 342–9
566  Handbook on international sports law

digital copyright issues 489–96
difficulty of enforcement 494–6
emerging technology 492–6
guerilla websites 494–6
live nation motor sports 491
P2P 494–6
Slingbox 492–3
unauthorized broadcast of sporting
events 489–96
US copyright law 490–91
media access 483–9
blogging, and 488–9
contract law, and 485–6
copyright law, and 484
Morris v. PGA Tour 486–7
NBA v. Motorola 484–5
NBA v. NY Times 488
publicity, right of 468–74
early case law 470–71
First Amendment, and 471–3
general principles 468–70
licensing 469–70
overview 468
recent developments 471–4
state variations 468–9
videogames 474
recent legislation 460
recent sport-related issues 460–96
sports trade dress/uniform cases 464–7
team colors 464–6
uniforms 466–7
team colors and uniforms 460–68
trade dress liability 463
trade dress protection 461–3
WADA Code
lex sportiva, and 61–2
Women ski-jumpers
discrimination, and 27
Young athletes 294–307
abuse and harassment 296–300
child labor 299–300
child trafficking 300
definition 296
emotional abuse 298
neglect 296–7
physical abuse 297–8
sexual abuse 298–9
approaches and legislation of leading
countries 303–6
ASA, and 303
Australia 305
Canada 305
Canadian ice hockey 302–3

maintenance of competitive balance 361–2
Major League Baseball Rule 339–40
MLB-NPB Agreement 382–9
multiple uses of term 355–8
NBA-FLBA agreement 367–73
nonstatutory labour exemption 373–7
pecularity 349–51
permission, need for 347–8
posting system 389–90
practices in employment settings 330
protection beyond contract and tort law 352–4
protection of investment 361–2
remedial issues 392
‘role of reason’ 357–8
rule of reason assessment on the merits 377–81
ties between leagues 380–81
Ticket sales arrangements 399–403
exclusive distribution agreements 399–401
payment methods 402–3
territorial restrictions 401–2
TV rights in sports 439–42
EU competition rules 441–2
football 439
legal issues 440–41
United States 439

Ukraine
collective sales of football broadcasting
rights 414–17
current football unions 414–15
current situation with media rights 415

US intellectual property law 460–96
ambush marketing 475–83
advertising 476
advertising at venue 477
broadcast sponsorship 476
commercial promotions 476–7
disclaimers 481
fair use 480–1
false advertising 479
First Amendment 480
legal significance 478–80
meaning 475
potential defenses 480–81
proactive measures to prevent 482–3
sponsorship of individual teams and athletes 477
Ted Stevens Olympic and Amateur Sports
Act 481–2
trademark claims 478
unfair competition 479–80
color as trade dress 464
<table>
<thead>
<tr>
<th><strong>Index</strong></th>
<th>567</th>
</tr>
</thead>
<tbody>
<tr>
<td>child abuse, and</td>
<td>professionalism, and 294</td>
</tr>
<tr>
<td>conditions conducive to abuse</td>
<td>proposed agenda 306</td>
</tr>
<tr>
<td>exploitative relationships</td>
<td>protection of 294–307</td>
</tr>
<tr>
<td>International Charter of Physical Education and Sport</td>
<td>rights of children 295</td>
</tr>
<tr>
<td>Paul Hickson case</td>
<td>sexual relationships 301</td>
</tr>
<tr>
<td>prevalence of abuse</td>
<td>South Africa 305–6</td>
</tr>
<tr>
<td></td>
<td>United Kingdom 304</td>
</tr>
</tbody>
</table>