

SPORTS LAW BAKER/VIERRA FALL 2009
PART I: ESSAY QUESTION (2/3 of final grade)

The National Football League (the “League”) continues to be the most popular team sport in America, enjoying a lucrative television and media package, and relative labor peace over the past 4 years since the last Collective Bargaining Agreement (CBA) was negotiated between the League and the players’ union, the NFLPA. The existing CBA, which expires at the end of the 2010 League Year, provides that the cap on players’ salaries shall NOT be in effect for the 2010 season. The “salary cap” limits the amount each team can spend on player salaries. Without the salary cap in 2010, players whose contracts expire at the end of the 2009 season could arguably demand more money as free agents for the 2010 season since teams vying for their services are not limited by the artificial cap.

In late 2009, the team owners became concerned that players’ salaries would escalate too dramatically and too many players would move to new teams without a salary cap for the 2010 season. Coincidentally during this same time period, the League, through the Commissioner, amended its By-Laws as follows:

1. For any player whose contract expires at the end of the 2009 League Year and who shall thereafter become a Free Agent, the team with whom said player was under contract during the 2009 season (the “original team”) shall have the right to match any offer made to player by any other team (“other team”), but if the original team does not elect to match any such offer from another team, the original team shall NOT be entitled to compensation of any kind.
2. As used in the standard player contract, the term “Conduct Detrimental” to the team shall specifically include (a) derogatory statements made by a player concerning game officials, and (b) any conduct which may reasonably reflect negatively on his team in the eyes of the viewing public. [NOTE: The existing CBA authorizes any team to discipline a player guilty of “Conduct Detrimental” to the team by suspending said player, without pay, for a maximum of 4 games].
3. A player must have **passed** the equivalent of two (2) full years of college courses at an accredited college or university in order to become eligible for the 2010 NFL Draft [NOTE: The existing CBA requires only that a player be 3 years removed from high school in order to be draft eligible].

You have been approached by Rhett Faver, a longtime NFL quarterback and probable Hall of Famer whose contract expires at the end of the 2009 season. Faver, who is currently enjoying a fantastic season but who is 39 years old, wants to end his career in a major market and is concerned that under the new Rule #1 above, his current team, which is in a small market, will match any significant offer he may get from a major market club for the 2010 season. Faver is also a frequent critic of game officials.

Continued on next page

You have also been approached by Michael Crabgrass, a highly touted college wide receiver who graduated from high school in 2007 and wants to enter the 2010 NFL Draft. Unfortunately, Crabgrass could only accumulate at most the equivalent of 1.75 years worth of college credits by the time of the 2010 draft.

These players have come to you for advice and want to challenge the three new “rules” recently implemented by the League. Faver wants to challenge the first two changes identified above, and Crabgrass is concerned about his eligibility for the 2010 Draft. You have consulted the NFLPA, the players’ collective bargaining representative, about these new “rules” and have been advised that it never agreed to any of the new “rules”, and never discussed any of those specific rule changes in any previous negotiations with the League. However, the existing CBA contains a general provision incorporating by reference the NFL’s Bylaws “as may be amended from time to time by the Commissioner”.

These players would like to know upon what legal theory(s) you will challenge the NFL’s new “rules”, what the League’s likely defenses are, and the probable outcome of that litigation.

END OF PART I