

# Legal Concepts in Sport

## A Primer

Fourth Edition

Linda Jean Carpenter

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# Dedication

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## *For Duane Douglas Carpenter*

His life was gentle, and the elements so mixed in him, that Nature might stand up, and say to all the world, “This was a man!”

— William Shakespeare, *Julius Caesar*, Act 5

## *For Michael Anthony Carpenter*

A brother who leads and cares, protects and inspires, and who gives insight and perspective is a pearl of great price.

— Lil’ Sis

# Appreciation

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## *For John Nursall*

The obligation to acknowledge and thank, even if unuttered, is an obligation without a statute of limitations. Years do not diminish the quality of the contribution of John Nursall to this book nor my gratitude for it.

# Introduction

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## The Book's Approach

If you are a teacher, coach, or administrator of a sport program, or a student preparing for one of these professions, this book is written for you. Material that would be of use only to attorneys is omitted, as is material that would be of use only to those concerned with professional athletes. You should spend your time and energy efficiently, so the topics have been selected carefully, and the depth and breadth of discussions are based on what is useful to you as a teacher, coach, and administrator.

The title, *Legal Concepts in Sport: A Primer*, was not chosen lightly. Rather, the title represents the strong belief that an effective book on law and sport must deal with concepts. Once you understand a legal concept, you can apply it to evaluate a situation in your school or program. If you only received rules gleaned from past cases (“don’t put a chair under the basketball backboard or you might be sued for negligence” or “always put a contract in writing”), you wouldn’t gain an understanding of the law. Without a conceptual understanding of the law, you would be less able to evaluate the legal implications involved in the differing sets of circumstances you face in your school.

This book is committed to the conceptual approach. When a case is presented, it is not provided as a rule but as an illustration or a scenario with which to practice your newly acquired conceptual understanding.

The importance of the conceptual approach goes beyond its ease of application to your situation. The “rules” (precedents) found in court cases apply within the jurisdiction of the court but not beyond; thus, a rule in Oregon may not be the rule in Pennsylvania. But a conceptual view of the law is more universal and will apply wherever you are. And although the book is written in a light style, the author takes seriously her task of helping you learn and retain important legal concepts that you need to know.

# The Book's Scope

When most people think of legal issues in sport they think about negligence. However, in your professional life, you will face a much broader range of issues. For instance, topics such as sexual harassment, corporal punishment, drug testing, transportation, and hazing are of special importance today. Also anti-discrimination laws and the concepts involved in contracting to buy equipment or deciding to fire a coach are important for today's teacher, coach, and administrator. You'll find these legal concepts and many others developed on the pages of this book.

## How to Use the Book

The first two chapters deal broadly with concepts of our legal system. Chapters 3 through 13 discuss specific concepts in detail, Chapter 14 deals with managing the risks of potential imposition of legal fault and unwanted legal obligation. The final chapter uses current issues and events as fodder with which to test your conceptual grasp of legal issues.

Practice scenarios, memory ticklers, reviews, and memory testers with discussions are liberally added throughout the chapters to help you understand the concepts more easily. The practice scenarios present an opportunity for you to test your understanding of a principle. The memory ticklers are short outlines of the elements or main points of certain concepts.

Reviews appear after explanation and discussion of a specific concept and summarize the significant facts and theories; some reviews are in the middle of a chapter (interim reviews) and some are at the end. The memory testers are provided in a form that allows you to check whether or not you understand the major points presented. These sections include mostly true/false questions, but may also contain a few short answer questions. Following the questions, you will find a brief discussion of the true/false answers, but no discussion of the short answer questions. You will need to refer to the text to confirm your understanding of the short answer questions.

At the end of most chapters, there is also a list of legal cases to which you may wish to refer for additional insights. Some of these cases are classics because of their value as precedents or because of their clear and complete explanation of a particular legal issue. Others are current, cutting edge cases which have value because they provide insight into the changing nature of the law. The cases cited are available in print through law and academic libraries, as well as online through internet sites which require no special access provisions. So whether or not you are lucky enough to have access to a law library or specialized proprietary electronic libraries, you will have access to the cases used.



# About the Author

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Lawyers have written in the area of sports law. Physical educators have written in the area of sports law. Linda Jean Carpenter brings a universality to her treatment of sports law because she has both a PhD degree in physical education and administration and a JD degree. Carpenter is a professor emerita from the Department of Physical Education and Exercise Science, Brooklyn College of the City University of New York, and an attorney and member of the New York State Bar and the U.S. Supreme Court Bar.

The author's expertise and experience in both sport and the law give her a unique combination for writing this book. Her ability to focus on the truly important legal issues in sport arises from her roots in physical education and sport. Her ability to discuss those issues in a legally accurate, up-to-date context arises from her full legal background. Her ability to put knowledge and experience into a concise and useful framework with which you can evaluate the legal issues in your own situations arises from her perspective as a teacher and coach.

# Chapter 1

## Our Legal System: The Basics

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The purpose of this book is to give the reader a conceptual foundation for understanding the law and its relationship to sport and physical education programs. The book will attempt to place the kinds of legal problems faced in the day-to-day operations of a physical education or athletic/sport program into a common-sense perspective that is easily understood and remembered. It is not intended to teach all there is to know about the law, but instead to serve as an introduction to the areas of law that most often have an impact on administrators, teachers, and coaches.

### What Is Law?

#### **Relationships**

The law is many different things. It may be thought of as a system for defining relationships between people. For example, if a person is hurt because another person has been careless, the injured person may assert a right to be compensated for injuries. If the injured person takes the case to court, the court will decide whether or not the careless person had a duty to protect the injured person from being hurt. If the court finds that the careless person had no duty to look out for the safety of the injured person, then the injured person's claim for compensation will fail. There may be many reasons why the court would make such a determination, but by not finding such a duty the court/jury is saying that the "relationship" between the parties was not of the type that would require the payment of compensation.

#### **Prohibited Behavior**

Another way of answering the question "What is law?" is to regard it as a system of principles that tells us how to behave. For example, the law tells us that we cannot commit crimes. A criminal act is one that is defined by the law as being

evil, or that creates such undesirable consequences that it should be prohibited. Our system of criminal laws tells us how to behave and the punishment that we must suffer for misbehaving.

### Reasonableness of Behavior

The law also tells us that we must behave in a reasonable manner even when we are not committing crimes. For example, one should not drive a car at the speed limit if the road is covered with ice. It may not be reasonable to drive that fast, and the court would probably say that the driver was legally at fault should an accident occur. Again, the law is telling us how to behave.

#### What is Law?

Law defines relationships  
 Law prohibits behavior  
 Law defines reasonableness of behavior  
 Law creates and limits freedom

### Creation and Limitation of Freedom

Yet another way to answer the question “What is law?” is to regard it as a system that both creates and limits freedom. The law, principally through our Constitution, ensures that we will enjoy the basic freedoms of being a citizen of our state and nation. However, our freedoms are not unlimited. For example, the right to free expression does not

guarantee to us the right to slander our neighbor without consequence. Our rights as citizens are extensive, but they are limited by the law so that we may realize the greatest degree of freedom consistent with the freedom of our fellow citizens.

## Why Do We Have Laws?

Once we have tentatively answered the question “What is law?” we may ask, “Why do we need laws?” To a certain degree these questions are very similar. The law’s reason for being seems to be given when we describe what it is. But there is more to the question of why we have laws than first appears.

### Goodness

When a court decides a case, its decision is closely tied to the reason for the existence of laws.

For example, the court’s decision may be based on issues of good versus evil. Our laws prohibit the killing of one person by another. However, if someone were to attack you using deadly force, then the law allows you to defend yourself, even to the extent of killing your attacker. The evil intent of your attacker is considered when determining whether you are guilty of the crime of murder.

#### Why Do We Have Laws?

Law defines:  
 Goodness  
 Fairness  
 Consistency  
 Enforcement mechanisms  
 Compensation  
 Ownership

## **Fairness**

In addition to considerations of good and evil, the law may take into account what is fair. The law may be said to be a great equalizer, leveling the playing field so that the wealthiest or strongest does not always prevail. Our federal Constitution guarantees each of us equal protection of the laws. This means that we are each able to assert our rights under the law, without our race, sex, national origin, or other irrelevant factors being weighed against us. Fairness is the main consideration when laws are created to eliminate discrimination in schools or in the workplace.

## **Consistency**

The law also takes into consideration the need for consistency. If the law were not consistent, people would not know what kinds of activities were illegal. Furthermore, it would be almost impossible to conduct business. Laws are generally created to see to it that there is consistent enforcement of an underlying policy. To illustrate the theme of consistency in the law, take the situation in which two people enter into a written contract for the sale of softball uniforms. If the contract fails to state the price of the uniforms, it does not necessarily mean that the contract is unenforceable. The law will require merely that a “reasonable” price should be paid for the uniforms. In this way the law tells people who engage in the sale of goods that even though they may fail to state all the terms of their bargain, their contracts will still create legal obligations if the term they have failed to state may be ascertained. In this situation, a “reasonable price” is ascertainable, and the transaction must be completed. In the overall scheme of things, it is in the best interests of society to enforce contracts that are close to being complete. The laws’ uniform adherence to this policy of enforcing contracts brings consistency to the marketplace and allows the engines of commerce to run smoothly.

## **Enforcement**

A similar reason for having laws is the desire to provide a means by which promises can be enforced. In the example previously mentioned, two people entered into a contract for the sale of softball uniforms. A contract is a promise that creates a legal obligation to perform. When two or more parties contract to perform certain duties, for example, to deliver money for uniforms, their promises become enforceable by a court of law. Of course, this is provided all the legal requirements of a contract are met. Contracts will be discussed later, but it is important to remember that certain promises will be enforced by the law, and this is one of the reasons for having laws.

## **Compensation**

Another important reason we have laws relates to the idea that if one person causes injury to another, then the injured person should be compensated. The ob-

jective of the law is to “make the injured person whole.” For example, if a careless person has caused another person to break a leg, then the careless person should pay the cost of medical expenses, lost wages, and for the pain and suffering that have resulted. This is the basic conceptual theme underlying the law of “torts,” which will be discussed later.

## Ownership

An important reason for having laws concerns the ownership of property. Property may be things such as books, shoes, cars, or basketballs; property may also be land. Objects such as books are called “personal property,” while land is called “real property.” Both kinds of property require many different kinds of laws in order for people to enjoy and make use of their property. For example, a person who enters onto the land of another without permission is said to be a “trespasser,” and the land owner can file a lawsuit against the intruder. If a person takes your radio and sells it to someone else, the taker has committed “larceny” and may be prosecuted for committing a crime. Because the larcenist has taken your personal property, the taker may also be sued by you for “conversion” and be required to pay you the value of the radio. In a conceptual way, ownership applies also to the more esoteric notion of property interest. For instance, if you are a tenured teacher, you have an interest in the “property” of your continued employment. Your ownership of that property interest (i.e., your continued employment), is stronger than a similar property interest of a teacher in the middle of a one-year contract. Your connection to the property interest of your continued employment as a tenured teacher is greater than the untenured teacher in the middle of a one-year contract, but both of you have some degree of property interests that are in many ways similar to the land owner or the owner of a basketball. Each of these situations involves the use and enjoyment of property. When people interfere with your use and enjoyment of your property, the law provides a means by which you may recover your losses.

## Where Does the Law Come From?

After considering the reasons for having laws, we should now consider the sources of laws. There are, in fact, several sources of laws. When we look to the beginnings of our civilization, we realize that whether our ancestors lived in a time of order or a time of chaos has depended on whether there was regular enforcement of a system of laws. When there was law, there was order. It has been suggested that certain laws existed among our ancestors before the development of courts, or what we consider our modern system of law. This so-called natural law focused on respect for the individual person and for the ownership of “private” property. These laws have been referred to, among other things, as “certain unalienable rights” and include the right to life, liberty, and the pursuit of happiness.

Natural law is therefore the foundation upon which all other law is based. It represents the first step humankind took away from the uncivilized notions that “might makes right.” When people first created unity and order in tribal communities, they made the conscious decision that certain individual freedoms would necessarily have to be curtailed for the good of the community.

The interrelationship of individual freedoms and the community’s interests became the focus of more sophisticated societies as they developed legal systems. Mesopotamian, Egyptian, Greek, and Roman laws reflected the concern that the rights of citizens should be accorded value and be respected by the state.

#### Law Comes From:

- Powers distributed by the Constitution
- Congressionally enacted laws
- Executive power to regulate and enforce
- Executive power to order

### Distribution of Power via the Constitution

The evolution of law eventually led to the creation of constitutional documents. A constitution is a statement that causes certain powers possessed by the people to be delegated to the government in order that the people may benefit from an ordered system of liberty. The U.S. Constitution begins with the words “We the People.” By beginning in this manner, it states clearly that the people possess the ultimate power in this nation.

In its Preamble, our Constitution states its intention of ensuring domestic tranquility, providing for the common defense, promoting the general welfare, and securing the blessing of liberty to the people. The Preamble also states that it is the intention of the Constitution to “establish Justice.”

More than a statement of intentions, the Constitution actually states how the power given to government is to be used. It establishes the Congress, the presidency, and the Supreme Court. It gives power to Congress to make laws to accomplish certain objectives, and it gives the president authority to command the military and to administer the government by creating regulations. The Supreme Court is given the power to review the laws made by Congress and the regulations made by the president to determine if they are consistent with the Constitution’s original intent. The Court is therefore a very important check on the Congress and the president in a system that has many checks and balances.

### Congressional Power to Enact Laws

The U.S. Constitution may be the most important source of law in the United States, but the laws enacted by Congress are also very important. The laws created by Congress, also known as statutes, must be consistent with the Constitution. Because the people are the source of the power in this nation, and the Constitution is a delegation of that power to the government, any attempt to create a law that

goes beyond the Constitution's delegation takes power away from the people. Such a law is said to be unconstitutional, and it cannot be enforced.

One of the most significant areas in which Congress creates laws is the area of interstate commerce. The Interstate Commerce clause of the Constitution has been read very broadly, and Congress often uses it to create laws covering a very wide range of our daily lives. The Constitution specifically grants to Congress the power to regulate commerce between the states. Curiously enough, this power has been the source of many of our laws that address issues of discrimination and equal employment opportunity. Because discrimination can have an impact on interstate commerce, Congress has the power to require employers to comply with laws that prohibit the making of employment-related decisions based on an employee's race, color, sex, religion, national origin, age, or handicapping condition. We will discuss employment discrimination later, but it is important to remember that just as these laws are derived from the power of Congress to regulate interstate commerce, so too Congress must have a constitutionally derived power in order to create any law.

### **Executive Power to Regulate and Enforce**

The president, as the chief executive, has the power to create regulations through various agencies in the executive branch of the federal government. Because the President is the chief executive of the government, the president has the responsibility of overseeing all the administrative agencies of the government. These agencies include the Departments of Defense, Treasury, Interior, Education, and many others. The regulations created to administer these agencies to a great extent determine how the laws created by Congress are put into effect.

For example, Congress may create a broad statement of law that generally prohibits employers from discriminating against employees based on race. The Department of Labor might then be the administrative agency designated to create detailed regulations to achieve this objective. These regulations are given the same force and effect as law, and are followed by courts in deciding whether an employer is guilty of employment discrimination.

It is important to remember that the president tells the administrative agencies what policies should be emphasized. The regulations and activities of the agencies generally reflect the philosophy of the president. However, Congress retains the power to create a law that is specific, not merely a general statement of law. It thereby ultimately retains the power to accomplish specific objectives.

### **Executive Power to Order**

The president also has the power to create executive orders. Such orders have the force and effect of law. For example, President Nixon ordered that businesses that had contracts with the government would be required to engage in programs of "affirmative action" to give racial minorities a special hiring status, thereby in-

creasing the number of minorities hired by these employers. An executive order can be used by the president to address many problems, but it is still subordinate to a constitutional statute enacted by Congress. (We have been talking about federal law generally. However, state laws are formed in much the same manner.)

## Memory Testers

1. True/False      The president of the United States has the power to make laws.
2. True/False      Congress can create regulations to enforce laws which it has previously enacted.
3. True/False      Regulations issued by the executive branch of government in response to a Congressional statute have less power than the statute itself.
4. True/False      Congress enforces its own laws.
5. True/False      The U.S. Constitution gives specific powers to the states, but anything else is reserved for the Congress.

## Memory Tester Discussion

If you decided that all six Memory Testers were false, you get a gold star. Well done! Check the explanations below for each question though so you will be certain about why the answers were false.

1. False      The president has the power to issue orders but not to make laws. Executive orders are subordinate to a statute or law enacted by Congress.
2. False      Congress enacts laws, but the executive branch develops regulations for enforcement and enforces laws. The federal courts have the task of determining if a given law is constitutional, but neither passes laws nor enforces them.



3. False Regulations issued by the executive branch in response to a law or statute passed by Congress will have the full force of law once they are adopted by Congress. Title IX, discussed in Chapter 13, is a good example of a law being passed by Congress, followed by the creation of regulations by the executive branch, followed by the adoption of those regulations by Congress, thus giving the regulations the force of law.
4. False Congress does not have the power to enforce its own laws. Only the executive branch can enforce laws passed by Congress.
5. False The people are the source of the power and through the Constitution have given a portion of that power to the federal government. Whenever the federal government enacts a law which tries to take more power from the people than the people have given via the Constitution, the law is unconstitutional, although might not be so declared until the judiciary acts.

### Memory Testers—Short Answer

1. What are four reasons why society has laws?
2. Discuss and give an example which illustrates the statement “Our rights as citizens are extensive, but they are limited by the law so that we may realize the greatest degree of freedom consistent with the freedom of our fellow citizens.”

### Additional Reading

The study of the source of law is intertwined with history, sociology, and political tides. For more information on the topic, you might want to look at some of these classic references:

Cardozo, B. N. (1921). *The nature of the judicial process*. New Haven, CT: Yale University Press.

Friedman, L. M. (1984). *American law*. New York: W. W. Norton Co.

Holmes, O. W. (1923). *The common law*. Boston, MA: Little, Brown and Co.

Pound, R. (1922). *An introduction to the philosophy of law*. New Haven, CT: Yale University Press.

Wormser, R. A. (1962). *The story of the law*. New York: Simon and Schuster.