**O’Bannon v. NCAA: It’s Time to Re-Conceptualize Rule of Reason Application to NCAA Athletics**

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Synopsis:
Study analyzes new theoretical approach to rule of reason analysis application to NCAA athletics in light of O'Bannon v. NCAA.

Abstract:
Few issues are more critical for the state of intercollegiate sport in the United States (US) than the antitrust claims at controversy in O’Bannon v. NCAA. O’Bannon is an antitrust action challenging the National Collegiate Athletic Association (NCAA) restrictions governing student-athlete compensation. The stakes are high in that the outcome of this litigation could result in a sweeping change in the way intercollegiate sports are governed in the US as well as a substantial increase in the cost of operation for NCAA athletic programs. The timeliness of this issue is also significant in that this abstract was submitted for consideration on a day in which oral arguments in O’Bannon were made before the Ninth Circuit Court of Appeals. By the time of presentation, the results from the appellate court will be well-known, but the controversy will be far from over. No matter the decision, the losing side will almost certainly request a writ of certiorari from the Supreme Court of the United States to have the case heard and resolved by this court of last resort. Thus, the controversies at the center of O’Bannon will remain relevant.
Antitrust law is the term given to the body of law developed from the application of the Sherman Antitrust Act. “[E]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce” is illegal under Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1, 2011). The primary purpose of the Act is to prohibit businesses from combining to interfere with the free market (Sullivan & Harrison, 1998). Yet, not all contracts or conspiracies that restrain trade violate Section 1. The central issue in Section 1 analysis is whether the restraint is unreasonable (Board of Trade of Chicago v. United States, 1918). Section 1’s application to sport is complicated because regulations imposed by sports leagues, including the NCAA, that restrict competition for the services of athletes and coaches represent horizontal

agreements. Naked horizontal agreements that restrain trade are inherently anticompetitive and unreasonable under a per se application of antitrust law. However, the unique nature of sport, an industry in which organizations compete with and against each other, requires a unique approach in applying antitrust law (NCAA v. Board of Regents of the University of Oklahoma & University of Georgia Athletic Ass'n, 1984). The differential treatment sport receives in this nature requires a sport-specific analysis of Section 1 in that the reasonableness of sport industry restraints are analyzed under rule of reason analysis, even though similar restraints from any other industry would be deemed as inherently unreasonable.

Furthermore, the perceived differences between the business of college and professional sport in the US has resulted in differential antitrust treatment for the former (Board of Regents, 1984). Specifically, the theories supporting rule of reason analysis have been used by courts to formulate a dichotomous approach to Section 1 for the business of college athletics in which antitrust law is applied to regulations that are labeled as commercial and not applied to regulations that are viewed as necessary for the creation of the collegiate sport product. The problem is that this dichotomous approach leads to arbitrary distinctions and ignores the obvious commercial aspects of restrictions on the compensation of student-athletes, the necessary "inputs" for the product of college sport (In re Walk-on Football Players Litigation, 2005, p.1150).

The current study relies on legal research methodology to examine the problems at play in O'Bannon by analyzing them based on trends that have emerged in the application of rule of reason analysis to intercollegiate sport. Specific to this investigation is the growing trend involving the recognition of a relevant market for student-athlete services under rule of reason analysis (Baker, Maxcy, & Thomas, 2011). The current study asserts a new theoretical framework for a re-imagination of relevant market theory and how it applies to student-athlete regulations. The framework for this study supports a foundational shift in the way intercollegiate sport is governed by the NCAA. However, the study will also include practical analysis on the constraints that may protect the continued existence of the dichotomous approach for NCAA-related cases.

While this study focuses on the application to US law to intercollegiate sport in the US, the ramifications of O'Bannon will reach athletes from around the world. Every year, student-athletes from all areas of the globe are provided athletic scholarships to compete for NCAA member institutions. Thus, O'Bannon and the subject of this presentation are very relevant for a European and international audience.

References:

15 U.S.C. § 1, 2015.

Baker, T. A., Maxcy, J. G., & Thomas, C. (2011). Whether the NCAA will continue to circumnavigate antitrust regulation in the wake of White v. NCAA. Journal of Legal Aspects of Sport 21, 74-99.

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National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma & University of Georgia Athletic Ass'n, 468 U.S. 85 (1984).