EXAM #_____

SPORTS LAW
FINAL EXAMINATION

Commissioner Foley December 17, 1999

INSTRUCTIONS

Greetings beloved students. I'll keep this short, but please read these instructions and the exam questions, carefully.

The exam consists of two parts. Part One is one Essay Question. Part Two is five "Short Answer" Questions. There is also a 5 point extra-credit question for your enjoyment.

Feel free to refer to your casebook and statutory materials, as well as any notes you took in class or in preparation for this exam. The essay fact pattern, **alone**, contains sufficient information for you to respond to the essay question. If you feel it is necessary to assume any additional facts to respond, please identify all such assumed facts.

Part #1 is valued at 75%.

Part #2 is valued at 25%.

Write your responses in the bluebooks provided. Don't forget to write your exam number on each bluebook. You may write as much as you wish on the essay question but you will receive **no** credit for mere verbosity. Your essay response will be evaluated based upon:

1. Your demonstrated ability to identify and analyze disputed issues (including providing "major" **case** and **statutory** citations where appropriate); and

2. Your demonstrated knowledge of the legal processes to be used to resolve these disputes or otherwise protect the interests of the parties.

Good luck and Happy Holidays!

PART ONE
ESSAY QUESTION

I. Assume the Following Facts:

The League

The World Indoor Football League ("WIFL") is a professional indoor football league, currently consisting of 10 Clubs which, like the league's name says, play football "indoors" -- inside 10,000 plus seat multipurpose arenas located in 10 "medium-sized" cities strategically located throughout the United States. WIFL was founded in 1992 by indoor football visionary and WIFL Commissioner Billy Joe Belrung. Belrung recruited the "owner-operators" of the 10 WIFL Clubs and sold them exclusive WIFL franchise rights to 10 "medium-sized" U.S. cities for $1,000,000 per franchise.

Belrung and his WIFL Staff also recruited 200 ex-college football players who had recently failed National Football League tryouts. WIFL negotiated one year contracts with these players, all of whom agreed that "WIFL may not pay much but it sure beats being a correctional officer!" With the consent of all Clubs, and in accordance with the terms of WIFL's Constitution and its Uniform Player Contract, WIFL then allotted 20 players to each Club. Under the WIFL Constitution, once WIFL signs a Player and he is accepted by a Club, that Club becomes responsible for that Player's contracted-for salary.

WIFL opened its first season on February 1, 1992, playing a 10 game schedule plus playoffs. After every season from 1992 through 1995, WIFL, operating under its Player Allotment/Compensation System, would negotiate 200 Player contracts and allot those contracts to WIFL Clubs.

Each WIFL Club's primary source of income is ticket revenue which is divided on 60% - 40% basis between the "home" and "visiting" Clubs. In addition, each Club gets to keep all the revenue it receives from leasing luxury suites in its "home" arena.

WIFL has a limited national television contract, 50% of the revenue of which goes directly to WIFL. The remaining 50% is divided evenly between the League's Clubs. The WIFL Constitution allows each Club to keep 100% of all local TV and radio revenue which to date has been negligible.

WIFL also has some private licensing agreements with sports apparel manufacturers. WIFL Clubs can and do enter into their own licensing agreements but are restricted by the WIFL Constitution from having an agreement with any business competitors of WIFL's licensees. WIFL and the Clubs each keep 100% of their respective licensing revenue.

In each year that WIFL has been in operation there have been significant differences in gross revenue and profits among the 10 WIFL Clubs. Although, initially, each of the10 Clubs lost money its first season, 5 out of 10 of the Clubs are currently profitable. In addition, the recent success of two WIFL players in the more established National Football League had increased fan interest in the WIFL such that two "expansion" franchises are to be added to WIFL next season. The agreed upon $2,000,000 franchise fee for each of these two new Clubs is, under the WIFL Constitution, to be divided evenly among the original 10 WIFL Clubs and WIFL.

Although still very much a "small time" economic force in the world of sports, marketing surveys indicate that WIFL has each year attracted small, but increasing, numbers of fans away from U.S. sports like professional baseball and basketball.

The 1995 Agreement

In 1995 the "World Indoor Football Players Association" ("Players Association"), became the authorized bargaining representative of WIFL players and entered into a Collective Bargaining Agreement with WIFL. As a fledgling union in a fledgling League, the Players didn't have much bargaining power. The Agreement adopted WIFL's Player-Allotment/Compensation System, with the only modification being that the WIFL Collective Bargaining Agreement amended the WIFL Constitution to allow each WIFL Club to sign, on its own with no restrictions from WIFL, one "Star" player per season. Other than adding this "Star Player Exception", which had been previously proposed by a minority of WIFL owner-operators at the 1994 WIFL annual meeting, the Players considered themselves lucky to secure a minimum salary of $20,000 per season and a "Clause V" which provided that "Each Player shall have the right to individually negotiate the compensation to be received under his Uniform Player Contract". The 1995 Collective Bargaining Agreement expired on October 1, 1998.

At the time the Agreement expired each WIFL Club had one "star" player who was being paid more than $100,000. The average salary for all other WIFL Players, although it had been increasing slightly each year, was still less than $50,000 per season.

The 1998-1999 Negotiations

Since October 1, 1998, negotiating committees for WIFL and the Players Association have held monthly meetings at which they have attempted to agree upon a new collective bargaining agreement. No agreement has been reached, however, primarily because WIFL negotiators, insisted that any new agreement modify the Player Allotment/Compensation System by: 1. eliminating the Star Player Exception 2. requiring a mandatory Salary Scale - where **all** Player salaries would be automatically determined solely by the position played and the number of years of WIFL experience; and 3. providing for a $1000 cash bonus to each Player for each game his Club wins during the season. For example under WIFL's most recent proposal a Player who was a "starting" Quarterback and had 5 years WIFL experience would be paid a base salary of $75,000 per season plus up to $10,000 in "Win Bonus" Money.

According to WIFL negotiators the Salary Scale/ Win Bonus provision would initially result in **lower** overall salaries while the League continued to gain a foothold in the sports entertainment business. But as Players gained more years of WIFL experience aggregate salaries under the Salary Scale/Win Bonus provision were projected to meet or exceed current levels within 2 years. As WIFL's negotiator told the Players Association a Salary Scale is a good idea because, "As a start-up league it's too early for us to be able to afford to pay these Star players so much money" and the Win Bonus provision "insures that the Players play hard and that we can give our fans the best Indoor Football product possible".

For one year Players Association negotiators unqualifiedly rejected any type of Salary Scale/Win Bonus provision and insisted on continuing the Star Player Exemption Rule. Meanwhile, the parties decided to focus on other less contentious issues while continuing to follow the terms of the expired agreement. By October 1, 1999, these "Player Compensation" issues were the only issues left for the parties to resolve. WIFL negotiators threatened to impose a lockout on the Players if an agreement was not reached by November 1, 1999.

On November 1, 1999, with no new proposal from the Players Association, WIFL locked the Players out of pre-season training camp. On December 15, 1999 the Players Association, for the first time, proposed as a compromise a "rookie" Salary Scale that applied only to first year players. Players Association negotiators stated that they could perhaps agree to extend it to second year players but first formally requested disclosure of all of WIFL's current revenues. Players Association negotiators also told WIFL that they might be willing to do away with the Star Player Exemption provision if WIFL increased some of the Salary Scale and Win Bonus dollar amounts.

On December 16, 1999, WIFL rejected all aspects of the Players Association counter-proposal and announced that WIFL had decided to end the lockout immediately but that all Year 2000 Player contracts would be in accordance with WIFL's Salary Scale/Win Bonus proposal. WIFL negotiators have also just realized that to keep profits at appropriate levels, WIFL also will need to immediately impose a "no exceptions", Maximum Salary Limitation of $100,000 per Player, per season and that the Year 2000 regular season would have to be extended from 10 to 12 games per Club.

II. Your Task

It is December 17, 1999. Current WIFL Players Association Executive Director A.C. Eltair, calls you at home wondering if there is "anything we can do legally to fight all this?"

A Player strike is out of the question so write a memo (with appropriate case and statutory citations) in response to Executive Director Eltair advising him, **in detail**, of the following:

1. What **legal action or actions** could the Players Association take against WIFL?

2. What **arguments** could the **Players Association** use in **support** of its legal action or actions?

3. What **arguments** could **WIFL** use in its **defense**?

4. What would be the **likely outcome** of the Players Association's legal action or actions?

PART TWO
SHORT ANSWER SECTION

(answer in one or two sentences - maximum)

Question 1
A noted sports law commentator once observed that management and employee attitudes about collective bargaining in the world of professional sports are "upside-down" . What must this astute observer have meant by this statement? Please explain.

Question 2

From a **legal procedure** standpoint what is the biggest difference between the *Syracuse Nationals v. Dick Barnett* contract dispute and the *Boston Celtics v. Brian Shaw* contract dispute? Please be specific and explain why.

Question 3

Describe three different types of unfair labor practices and for each unfair labor practice cite, as an example, a case where that particular unfair labor practice was found to have occurred.

Question 4

What is the most significant sports law issue left open by the U.S. Supreme Court's opinion in *Brown v. Pro Football, Inc.*?

ANSWER ONE OF THE FOLLOWING (or both for 5 points extra credit)
Question 5A

The recently created National Football League Assistant Coaches Association arguably represent a group of NFL employees who can not form a certified bargaining unit under federal labor law. Please explain the one simple reason why this legal conclusion is probably correct.

Question 5B

The Commissioner of Baseball had exclusive, non-reviewable, jurisdiction over the gambling charges brought against Pete Rose but, in Steve Howe's drug case, the Commissioner's suspension order was reviewable by an independent arbitrator. What is the specific **factual** reason that explains this jurisdictional distinction?

TURN PAGE FOR EVEN MORE SUPER BONUS EXTRA CREDIT QUESTIONS!

EVEN MORE SUPER BONUS EXTRA CREDIT QUESTIONS **(5 more points)**

Fill in the blanks:

An easy way to describe the Supreme Court's holding in *Brown v. Pro Football* is _____ law _____.

If that one stumps you try this:

Antitrust law in sports, initially, was used as a _____and, now, is used as a ____.