

**CURRENT ETHICAL ISSUES IN SPORTS LAW**  
***MARQUETTE UNIVERSITY SCHOOL OF LAW***

**SCOTT A. ANDRESEN, ANDRESEN & ASSOCIATES, P.C.**

***Morals Clauses in Sports Contracts: A Look at the  
Past and Future Use of Morals Clauses in Player  
Contracts and Sponsorship/Endorsement  
Agreements***

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## **MORALS CLAUSES- BACKGROUND**

September 1921- Universal Film Company

- As a direct result of the “Fatty” Arbuckle alleged rape/murder scandal, Universal implemented a “morality clause” into their contracts, permitting the company to discontinue payments to actors, directors, etc. who “forfeit the respect of the public”

## UNIVERSAL MORALS CLAUSE

The Universal “morals clause” read:

“The actor (actress) agrees to conduct himself (herself) with due regard for public conventions and morals and agrees that he (she) will not do or commit anything tending to degrade him (her) in society or bring him (her) into public hatred, contempt, scorn, or ridicule, or tending to shock, insult, or offend the community or outrage public morals or decency, or tending to the prejudice of (Universal) or the motion picture industry...”

## UNIVERSAL MORALS CLAUSE

Cont...

“...In the event that the actor (actress) violates any term or provision of this paragraph, then (Universal) has the right to cancel and annul this contract by giving five (5) days notice to the actor (actress) of its intentions to do so.”

## **BABE RUTH- A PIONEER IN MANY WAYS....**

The first morals clause for a professional athlete may be a November 11, 1922 contract addendum for Babe Ruth.

The standard language in the Yankees' agreement stated that  
"The Player must keep himself in first-class physical condition and must at all times conform his personal conduct to standards of good citizenship and good sportsmanship"

...But the Bambino's (rightly deserved) reputation for being someone who "enjoyed life", made the inclusion of the following language:

## BABE RUTH

"It is understood and agreed by and between the parties hereto that the regulation above set forth...shall be construed to mean among other things, that the player shall at all times during the term of this contract...refrain and abstain entirely from the use of intoxicating liquors and that he shall not during the training and playing season in each year stay up later than 1 o'clock A.M. on any day without the permission and consent of the Club's manager, and it is understood and agreed that if at any time during the period of this contract, whether in the playing season or not, the player shall indulge in intoxicating liquors or be guilty of any action or misbehavior which may render him unfit to perform the services to be performed by him hereunder, the Club may cancel and terminate this contract and retain as the property of the Club, any sums of money withheld from the player's salary as above provided."

# BABE RUTH

## REGULATIONS

1. The Playing Season for each year covered by this contract and all renewals hereof shall be as fixed by the American League of Professional Baseball Clubs, or, if this contract shall be assigned to a club in another league, then by the league of which such assignee is a member.
2. The player must keep himself in first-class physical condition and must at all times conform his personal conduct to standards of good citizenship and good sportsmanship.
3. The player, when requested by the Club, must submit to medical examination at the expense of the Club and, if necessary, to treatment by a regular physician in good standing at the player's expense. Disability directly resulting from injuries sustained in playing baseball for the Club while rendering service under this contract shall not impair the right of the player to receive his full salary, but any other disability may be ground for suspending or terminating this contract at the discretion of the Club.
4. The Club will furnish the player with two complete uniforms, exclusive of shoes, the player making a deposit of \$30.00 therefor, which deposit will be returned to him at the end of the season or upon the termination of this contract, upon the surrender of the uniforms by him to the Club. And the Club will provide and furnish the player while "abroad" or traveling with the Club in other cities with proper board, lodging, and pay all proper and necessary traveling expenses, including Pullman accommodations and meals en route.
5. The player shall not without the consent of his Club engage during the term of this contract or any renewal thereof in any game or exhibition of baseball, football, basket ball or other athletic sport except for the Club or for an assignee of this contract.
6. For violation by the player of any regulation the Club may impose a reasonable fine and deduct the amount thereof from the player's salary or may suspend the player without salary for a period not exceeding thirty days, or both, at the discretion of the Club. Written notice of the fine or suspension or both and of the reasons therefor shall in every case be given to the player.
7. In order to enable the player to fit himself for his duties under this contract, the Club may require the player to report for practice at such places as the Club may designate, and to participate in such exhibition contests as may be arranged by the Club for a period of ~~seven~~ <sup>seven</sup> days prior to the playing season without any other compensation than that herein elsewhere provided, the Club, however, to pay the traveling expenses, including Pullman accommodations, and meals en route of the player from his home city to the training place of the Club, whether he be ordered to go there direct or by way of the home city of the club. In the event of the failure of the player to report for practice or to participate in the exhibition games, as provided for, a penalty by way of fine may be imposed by the Club, the same to be deducted from the compensation stipulated herein.

It is understood and agreed by and between the parties hereto that the regulations hereinabove set forth numbered "2" shall be construed to mean, among other things, that the player shall during the ~~term of this contract~~ <sup>term of this contract</sup> and any renewals thereof refrain entirely from the use of intoxicating liquors and that he shall not during the training and playing season in each year stay up later than 1 o'clock A.M. on any day without the permission and consent of the Club's manager.

AMERICAN LEAGUE BASE BALL CLUB OF NEW YORK

By *John Ruppert*

.....L.S.

## MORALS CLAUSES IN STANDARD PLAYER CONTRACTS- NFL

### *National Football League SPC*

Par. 2: EMPLOYMENT AND SERVICES. Club employs Player as a skilled football player. Player accepts such employment. He agrees to give his best efforts and loyalty to the Club, and **to conduct himself on and off the field with appropriate recognition of the fact that the success of professional football depends largely on public respect for and approval of those associated with the game.**

Par. 11: SKILL, PERFORMANCE AND CONDUCT. ...If at any time, in the sole judgment of Club,...if Player has engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club, then Club may terminate this contract.

Par. 15: INTEGRITY OF GAME. Player recognizes the detriment to the League and professional football that would result from impairment of public confidence in the...integrity and good character of NFL players. Player therefore acknowledges his awareness that if he...is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which he may be represented by counsel of his choice, to fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or to terminate this contract.



# LEGISLATING “MORALITY” VIA PERSONAL CONDUCT POLICIES

## *National Football League*

(April 10, 2007) NFL introduces a new **Personal Conduct Policy** (updating a policy in place since 1997) to help control off-field behavior by its players and preserve the league's public image. The policy implemented a tougher, new personal-conduct policy, and only applies to the player's personal lives and image in the public spotlight. The NFL conducts separate investigations for drug and alcohol abuse and performance enhancement.

(December 10, 2014) NFL has releases an updated version of the 2007 Personal Conduct Policy. It has added more infractions to the 2007 policy, which include violence against others and domestic violence. The disciplinary process is more detailed in terms of its investigative progress and consequences for infractions than its 2007 counterpart. The new policy includes counseling and treatment services for the offender and their victims.

## **LEGISLATING “MORALITY” VIA PERSONAL CONDUCT POLICIES**

*NFL Personal Conduct Policy (2014)*

“If you are convicted of a crime or subject to a disposition of a criminal proceeding (as defined in this Policy), you are subject to discipline. But even if your conduct does not result in a criminal conviction, if the league finds that you have engaged in any of the following conduct, you will be subject to discipline. Prohibited conduct includes but is not limited to the following:

# LEGISLATING “MORALITY” VIA PERSONAL CONDUCT POLICIES

## *NFL Personal Conduct Policy (2014) Cont.*

- Actual or threatened physical violence against another person, including dating violence, domestic violence, child abuse, and other forms of family violence;
- Assault and/or battery, including sexual assault or other sex offenses;
- Violent or threatening behavior toward another employee or a third party in any workplace setting;
- Stalking, harassment, or similar forms of intimidation;
- Illegal possession of a gun or other weapon (such as explosives, toxic substances, and the like), or possession of a gun or other weapon in any workplace setting;
- Illegal possession, use, or distribution of alcohol or drugs;
- Possession, use, or distribution of steroids or other performance enhancing substances;
- Crimes involving cruelty to animals as defined by state or federal law;
- Crimes of dishonesty such as blackmail, extortion, fraud, money laundering, or racketeering;
- Theft-related crimes such as burglary, robbery, or larceny;
- Disorderly conduct;
- Crimes against law enforcement, such as obstruction, resisting arrest, or harming a police officer or other law enforcement officer;
- Conduct that poses a genuine danger to the safety and well-being of another person; and
- Conduct that undermines or puts at risk the integrity of the NFL, NFL clubs, or NFL personnel.

## **NON-LEAGUE MORALS CLAUSES**

*Arise more frequently in the context of private company endorsement or promotional agreements with athletes than in the league/team scenarios discussed previously*

*Traditionally involves a company's right to terminate an agreement based on some immoral or disreputable conduct by the endorser; but "reverse morals clauses" that protect an endorser from a company also coming into play more often*

## **NON-LEAGUE MORALS CLAUSES**

Examples:

- Adrian Peterson, 2014 (Castrol, Nike, Hyperice)
- Tiger Woods, 2009 (Gatorade, EA Sports, Tag H)
- Michael Vick, 2007 (Rawlings, Reebok, Nike\*, UD)
- Ben Rothlisberger, 2010 (PLB Sports)
- Lance Armstrong, 2010 (Nike, A-B, Trek, Oakley)
- Kobe Bryant, 2003 (McDonalds, Nutella)
- Michael Phelps, 2009 (Kellogg's)
- Barry Bonds, 2007 (KFC, MC, Charles Schwab)
- Mike Tyson, 2008 (Kodak, Pepsi, Nintendo)
- Donald Trump, 2015 (Everyone....)

## **NON-LEAGUE MORALS CLAUSES**

Following Clause taken from NFL player deal (2014):

Company shall have the right to terminate this Agreement for any of the following reasons: ...If the publicized (through national, responsible media) alleged or actual conduct of Talent is illegal or otherwise grossly offensive to generally accepted standards of behavior (including, but not limited to, illicit drug use or public intoxication) so as to lead Company to reasonably believe that public association with Talent would tend to subject Company to ridicule, contempt, controversy, embarrassment, or scandal;

## **NON-LEAGUE MORALS CLAUSES**

Following Clause taken from Mendenhall-Hanesbrands:

“If Mendenhall commits or is arrested for any crime or becomes involved in any situation or occurrence (collectively, the “Act”) tending to bring Mendenhall into public disrepute, contempt, scandal or ridicule, or tending to shock, insult or offend the majority of the consuming public or any protected class or group thereof, then we shall have the right to immediately terminate this Agreement. [Hanesbrands’] decisions on all matters arising under this Section 17(a) shall be conclusive.”

## NON-LEAGUE MORALS CLAUSES

Considerations (Company):

- One athlete vs. a “team” of athletes
- Spending big \$\$\$\$
- Negotiation “leverage”
- Need to hedge against risk of unknown or unforeseen via careful drafting of provisions and payments (e.g., ‘sole discretion’ termination, duration, payment schedule, claw-back provisions)
- Harm done at publicity, not conviction
- Termination vs. quiet expiration; “pay or play”



## **NON-LEAGUE MORALS CLAUSES**

### Considerations (Player/Endorser)

- Past (un)known history. Skeletons?
- Prior history/image of company
- Narrow drafting; Termination for conviction only
- Payments upfront or as quickly as possible
- Reverse morals clause
- Stay out of trouble!

## NON-LEAGUE MORALS CLAUSES

### Enforceability

- Most endorsement agreements subject to confidential arbitration rather than public record litigation- leaving relatively little “case law”
- *Nader v. ABC Television, Inc.* (2d Cir. 2005) in upholding right to terminate actor for breach of morals clause for criminal activity, stated “morals clauses have long been held valid and enforceable”

## NON-LEAGUE MORALS CLAUSES

Enforceability Cont.

- *Mendenhall v. Hanesbrands* (2011) an exception, but resolved via confidential settlement after MTD denied b/c of “good faith and fair dealing” issues
- *Team Gordon, Inc. v. Fruit of the Loom* (WDNC 2009) stated sponsor not able to recover payments after termination as there was no provision permitting such.
- Draft well, put your client in the best position, and hope for the best

## **NON-LEAGUE MORALS CLAUSES**

Ultimately, comes down to a “business decision” for a company.

- Severity of transgression/ company audience
- Company investment in campaign
- Options to replace campaign
- Likelihood of litigation

## NON-LEAGUE MORALS CLAUSES

Options for a company generally come down to: quiet expiration; termination; do nothing.

### Example

Nike: Stood behind Kobe Bryant (rape charges), Ben Rothlisberger (multiple sexual assault charges) Tiger Woods (excessive 'dating'), and re-signed Michael Vick (dogs), but dropped Lance Armstrong (doping). Why???

# QUESTIONS?

Scott A. Andresen

Andresen & Associates, P.C.

3025 N. California Avenue, Suite 4SE

Chicago, Illinois 60618

(773) 572-6049

[scott@andresenlawfirm.com](mailto:scott@andresenlawfirm.com)