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Incorporating Sport into the Business Ethics Segment of the Course

Adam Epstein*

ABSTRACT

The purpose of this article is to demonstrate a way to teach ethics by incorporating sport into the ethics segment of a business law, introduction to business or other law-related course. Utilizing sport is one way to engage students when teaching law, especially at the undergraduate level. At the conclusion, I emphasize how ethics directly applies to them as students by showing them excerpts from the student code of conduct. More specifically, my learning objectives in this lesson are as follows: 1) To introduce the role and importance of ethics and codes of ethics within an organization; 2) To offer that ethics can be utilized via a contract-based approach to allow an employer to terminate the employment relationship if necessary or appropriate; 3) To provide examples of real-world contract clauses which demonstrate how ethics can be memorialized in the employment contract; 4) To increase an awareness and understanding from an historical perspective of the failure of ethics in business; and 5) To identify specific examples from a student bulletin and student code of conduct that demonstrate ethics permeates the university-student relationship.

KEY WORDS: teaching, pedagogy, business law, ethics, Enron, whistleblowers, code of ethics, sport, sportsmanship, coaching contracts, Jim Harbaugh, morals clause, loyalty clause, termination clause, contract-based approach, social media, fraud, tanking, academic dishonesty, student code of conduct

I. INTRODUCTION

The purpose of this article is to demonstrate how a few sport-related examples can be used when reaching the ethics portion of your course, whether it is a Business Law, Legal Environment of Business Law, Introduction to Business or any other law-related course primarily at the undergraduate level. I have found that utilizing sport-specific contract clauses built into the employer-employee relationship discussion can be effective pedagogically. This article focuses on the one-class lecture presentation.¹

More specifically, my learning objectives in this lesson are: 1) To introduce the role and importance of ethics and codes of ethics within an organization; 2) To offer that ethics can be utilized via a contract-based approach to allow an employer to terminate the employment relationship if necessary or appropriate; 3) To provide examples of real-world contract clauses which demonstrate how ethics can be memorialized in the employment contract; 4) To increase an awareness from an historical perspective of the failure of ethics in business; and 5) To identify specific examples from the student bulletin and student code of conduct that demonstrate ethics permeates the university-student relationship.

I use sport to demonstrate termination, loyalty and morals clauses. Put differently, I offer that a theoretical discussion of ethics can be made more real by using a contract-based approach which our students-future employees, managers and leaders-could institute and enforce within an organizational policy, employee handbook or individual employment agreement. Additionally, I employ a brief discussion of the role and importance of social media in sport and its relationship to ethics before providing examples of fraud. Finally, closing the presentation with an emphasis on how all of this relates to the students is vital to ensure that you

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¹ I can use this presentation in a 50-minute or a 75-minute lecture. However, depending upon the length of the class and the course, this presentation could certainly be offered in back-to-back lectures if the instructor feels rushed to cover this subject as presented in this article.

bridge the gap from the academic discussion to the reality of the student's relationship with the college or university.

II. LAYING THE GROUNDWORK AND FUNDAMENTALS

At the outset, I reinforce that an organization's code of ethics is more than just a formal written document that defines the ethical standards of an organization.² In fact, my goal is to demonstrate to my students that their current or future status as an employee, employer or manager can be crafted in a contract itself which might define ethical conduct or reference ethics within an employee handbook or elsewhere. Thus, I emphasize the contractual nature of an enforceable code or contract at the outset.

By using my own PowerPoints, I outline how incorporating a discussion of having a code of ethics ("code") helps to shape and define the ethical standards of an organization which could give guidance to members of the organization as situations present themselves.³ This can be established by integrating the discussion into employee mandatory ethics training, for example.⁴ The training would be designed for all levels of the organization and to "build and maintain a clear, trusted reporting structure for ethical concerns and violations"⁵ to enforce the code of ethics so it is not just empty words.⁶

Additionally, I briefly mention the role (and plight) of whistle-blowers, employees who report their employer's illegal or unethical (wrongful) behavior to either the authorities or the media, and I encourage students to consider how a whistle-blowing policy could be incorporated into their own workplace or in their future employment.⁷ Thus, my initial discussion focuses on a contract-based approach involving codes that create rules and boundaries.⁸ More specifically, the relationship can be affected by the contract with specific ethics-based clauses such as a termination clause, a morals clause and a loyalty clause, discussed further, *infra*.⁹

During this introduction, I then offer that given Instagram, Twitter, Facebook, YouTube and other forms of social media, even a small business can have a global "impact" as an organization. Therefore, the employer and employee might establish an external code of ethics which could be regional, national and global in nature as customers and consumers can come from all over the (virtual) world. No doubt, an organization which chooses to emphasize its commitment to social responsibility and ethics could easily demonstrate that on its Facebook page with virtual, world-wide access. Of course, the organization might consider establishing a social media policy as well to set ethical guidelines and possibly avoid liability.¹⁰

² MARCELLA KELLY & CHUCK WILLIAMS, *BUSN8 55* (8th ed. 2016) (defining code of ethics as, "A formal, written document that defines the ethical standards of an organization and gives employees the information they need to make ethical decisions across a range of situations.").

³ *Id.* at 55.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 56.

⁷ *Id.* In the context of general business, I often employ various examples of whistle-blowing including Karen Silkwood (Kerr-McGee), Jeffrey Wigand (Brown & Williamson), Sherron Watkins (Enron), Cynthia Cooper (WorldCom), Coleen Rowley (Federal Bureau of Investigation), and Harry Markopolos (Bernard Madoff Ponzi scheme). In the context of sport, I mention prominent whistleblowers such as Floyd Landis (Lance Armstrong performance-enhancing drug allegations), Jan Kemp (academic fraud at the University of Georgia), Roderick Jackson (reporting of Title IX violation at his school in Birmingham, Alabama), Mike McQueary (reporting of child sex crimes involving former coach Jerry Sandusky at Penn State University), and others. Regarding Jackson, his case reached the Supreme Court of the United States. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005) (holding that one can file a complaint [a private right of action] for an alleged Title IX violation even though they were not directly impacted or subject to the discrimination if they were retaliated against for filing the complaint and reasoning was that Title IX mirrors Title VII even though it is not explicit in the Title IX statute. "Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action."). *Id.* at 173.

⁸ I reference the words of American poet Robert Frost, "good fences make good neighbors." I compare business relationships in general to a fence and offer that solid relationships between employer and employee can be established via a contract, similar to the fence Frost mentions in his poem. *See* ROBERT FROST, *MENDING WALL*, <https://www.poets.org/poetsorg/poem/mending-wall> (authoring twice in the poem when a neighbor states, "Good fences make good neighbors.").

⁹ *See generally*, Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS OF SPORT 1-41 (2011).

¹⁰ I ask my students the following questions: 1) Why would a business organization want to have one? 2) Does an organization have the right to monitor social media outside the workplace? 3) Could there be vicarious liability related to posted pictures and statements online, including the use of the Internet, email and social media to engage in cyberbullying and inter-office harassment as well? *See, e.g.*, Univ. of Ky., *Social Media Policies and Guidelines*, <https://www.uky.edu/regis/sites/www.uky.edu/regis/files/files/ar/AR10-4.pdf> (stating, "Social media are powerful

Finally, I briefly list “classic” yet modern examples of ethics-gone-wrong in corporate America. The purpose of providing these examples is to demonstrate, particularly for those students who might feel disinterested in sport-related discussion, that the importance of exploring ethical examples reaches far beyond the boundaries of sport. This includes a brief summary of the 2001 scandal involving Enron Corporation and how it led to the dissolution of Arthur Anderson and the adoption of Sarbanes-Oxley in 2002.¹¹ I then mention contemporary examples of infamous misdeeds at the large-scale corporation including the phony accounts scandal by Wells Fargo and its high-pressure sales culture revealed in 2016.¹² Other recent corporate scandals worthy of mentioning include Mylan’s EpiPen price-gouging,¹³ Samsung’s battery recall,¹⁴ Volkswagen’s emissions misrepresentation,¹⁵ Toshiba’s accounting misdeeds,¹⁶ Turing Pharmaceuticals and so on.¹⁷

III. The Heart of the Matter

Having laid the groundwork, I proceed to emphasize how having a contract-based approach to ethics within an organization can establish boundaries between employer and employee. I then move from contracts examples to social media and finally to fraud in sport, thereby dividing the heart of my lecture into three parts, as follows.

A. Contract Clauses and Ethics

1. Termination Clauses

I mention that an organization’s code, or an employee contract for that matter, might give the employer-organization the right to terminate an employee “for cause.” I mention the termination for cause involving Indiana University’s (IU) former head basketball coach Kelvin Sampson, and I show several key provisions in his contract which IU used to force Sampson to resign in 2008:

(1) “a significant, intentional, repetitive violation of any law, rule (or) regulation” of the NCAA; (2) “failure to maintain an environment in which the coaching staff complies with NCAA ... regulations”; and (3) in IU’s “sole judgment” Sampson’s conduct “reflects adversely upon the university and its athletic program.”¹⁸

I emphasize how “sole judgment” is a well-crafted example in which the employer has the upper-hand with regard to a subjective assessment of its high-profile employee. Other examples of the use by a university to terminate an employee for an ethics violation might include former Bowling Green State University head

communications tools that have a significant impact on organizational and professional reputations. Because the use of social media may blur the lines between personal voice and institutional voice, the University of Kentucky (“University” or “UK”) has established the following policies to clarify how best to enhance and protect the University, as well as personal and professional reputations, when participating in social media.”)

¹¹ KELLY & WILLIAMS, *supra* note 2, at 57.

¹² See Michael Corkery, *Wells Fargo Struggling in Aftermath of Fraud Scandal*, N.Y. TIMES (Jan. 13, 2017), <https://www.nytimes.com/2017/01/13/business/dealbook/wells-fargo-earnings-report.html>.

¹³ See Daniel Kozarich, *Mylan’s EpiPen Pricing Crossed Ethical Boundaries*, FORTUNE (Sept. 27, 2016), <http://fortune.com/2016/09/27/mylan-epipen-heather-bresch/>.

¹⁴ See Paul Mozur, *Galaxy Note 7 Fires Caused by Battery and Design Flaws, Samsung Says*, N.Y. TIMES (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/business/samsung-galaxy-note-7-battery-fires-report.html>.

¹⁵ See Guilbert Gates, Jack Ewing, Karl Russell & Derek Watkins, *How Volkswagen’s ‘Defeat Devices’ Worked*, N.Y. TIMES (Mar. 16, 2017), <https://www.nytimes.com/interactive/2015/business/international/vw-diesel-emissions-scandal-explained.html>.

¹⁶ See Sophia Yan, *Toshiba CEO Resigns over \$1.2 Billion Accounting Scandal*, CNN MONEY (July 21, 2015), <http://money.cnn.com/2015/07/21/investing/toshiba-ceo-resigns/index.html>.

¹⁷ See Reuters with CNBC, *Turing Names New CEO to Replace Shkreli*, CNBC (Dec. 18, 2015), <http://www.cnbc.com/2015/12/17/turing-pharmaceuticals-ceo-shkreli-arrested-by-fbi-reuters.html>.

¹⁸ See Epstein, *supra* note 2, at 19-20.

basketball coach Chris Jans for post-season misconduct in a local bar¹⁹ and Rutgers men's basketball coach Mike Rice, Jr. for mistreatment of players,²⁰ both of which were substantiated by video evidence.

Though time pressure can be challenging while delivering the lecture, it is equally important to show that just because there is an ethical violation or a technical, contractual breach by a coach does not necessarily mean that the employer must terminate the employee. For example, University of Louisville (U of L) head basketball coach Rick Pitino has been involved in several curious situations at U of L, in one case a sexual encounter in a restaurant with a woman who was not his wife which led to an extortion attempt by her as well,²¹ and more recently a situation in which an assistant basketball coach was coordinating the use of strippers at U of L during the basketball recruiting process.²² Not only does Rick Pitino remain the head coach, but his team won the National Championship in 2013 despite moral misdeeds involving himself or members of his coaching staff.²³

2. Morals Clauses

I then move to morals clauses, another cause for termination and sometimes called "moral turpitude" or "morality" clause, "public image clauses" or "good-conduct clauses."²⁴ Morals clauses allow one party to terminate, suspend or otherwise punish an athlete for engaging in criminal or reprehensible behavior or conduct that may negatively impact his or her public image and, by association, the public image of the team, league or company.²⁵ Rick Pitino's contract could have been used to ask for his resignation or an outright termination, but U of L chose not to exercise the morals clause and instead keep him, resulting in huge success on the court in 2013.²⁶

¹⁹ See SI Wire, *Fired Bowling Green Coach Chris Jans Apologizes for 'Inappropriate' Actions*, SI.COM (Apr. 10, 2015), <https://www.si.com/college-basketball/2015/04/10/bowling-green-chris-jans-fired-video-apology>. See also Steven J. Gaither, *Termination Letters, Video Show Why Bowling Green Fired Chris Jans*, SPORTING NEWS (Apr. 2, 2015), <http://www.sportingnews.com/ncaa-basketball/news/chris-vans-bowling-green-fired-video-public-misconduct-drunk-bar-video-college-basketball/1dgzyoih4rwi1sbwbo0i4lq3j> (offering the termination letter from Bowling Green athletics director D. Christopher Kingston).

²⁰ See Kelly Heyboer & Ted Sherman, *Rutgers Reaches Settlement with Mike Rice; Former Coach to Receive \$475K*, NJ.COM (Apr. 22, 2013), http://www.nj.com/news/index.ssf/2013/04/barchi_mike_rice_rutgers_unive.html (offering that Rutgers quickly settled with Rice and agreed that he was not technically fired "for cause," but nonetheless his contract stated that he "could be fired "for cause" for bringing shame to Rutgers." The authors also provide that there was more fallout from the termination/resignation settlement stating, "The president later accepted the resignations of Tim Perneti, the school's athletic director, and John Wolf, Rutgers' top lawyer, who signed off on the decision to suspend and not fire Rice.").

²¹ See ADAM EPSTEIN, *SPORTS LAW 85* (2013) (offering, "Pitino, for example, had a provision in his contract

that allowed U of L to terminate his contract "if such publicity is caused by Employee's willful misconduct that could objectively be anticipated to bring Employee into public disrepute or scandal, or which tends to greatly offend the public." His involvement with a woman who later attempted to extort him and was sent to prison was not enough, in the U of L's eyes, to terminate his contract (or they were simply not willing to exercise that right.").

²² See Kevin Trahan, *The NCAA's Handling of Louisville's Sex Scandal Proves its Sanctions Hypocrisy*, VICE SPORTS (Oct. 21, 2016), https://sports.vice.com/en_us/article/the-ncaas-handling-of-louisvilles-sex-scandal-proves-its-sanctions-hypocrisy; see also Mark Schlachach, *Rick Pitino, Louisville Find New Ways to Fail in Response to Sex Scandal*, ESPN (June 15, 2017), http://www.espn.com/mens-college-basketball/story/_/id/19645627/louisville-cardinals-rick-pitino-fail-once-again-response-ncaa-punishment-sex-scandal ("For hiring strippers and prostitutes to attend more than a dozen sex parties with recruits and players at an on-campus dormitory over a five-year period, Louisville was placed on four years' probation by the NCAA, and Pitino was suspended from coaching in the first five ACC games this coming season.").

²³ See Chris Korman, *The NCAA's Punishment of Louisville is Really No Punishment at All*, USA TODAY SPORTS (June 16, 2017), <http://ftw.usatoday.com/2017/06/louisville-cardinals-mens-basketball-prostitutes-strippers-ncaa-violation-sanctions-rick-pitino-2013-national-championship>.

²⁴ See Epstein, *supra* note 9, at 22-24.

²⁵ *Id.* (offering that a morals clause may, in some instances, serve more as a deterrent to misconduct if in fact it is not exercised by the non-breaching party, for whatever the reason).

²⁶ Rick Pitino's 2007 contract extension with the University of Louisville Athletic Association had morals clauses provisions which allowed for termination: "6.1.2 Disparaging media publicity of a material nature that damages the good name and reputation of Employer or University, if such publicity is caused by the Employee's willful misconduct that could objectively be anticipated to bring Employee into public disrepute or scandal, or which tends to greatly offend the public, or any class thereof on the basis of invidious distinction."; "6.1.4 Employee's dishonesty with Employer or University; or acts of moral depravity; or conviction of a felony or employment or drug related misdemeanor; or intoxication or being under the influence of a psychoactive substance when performing duties under this contract, when students athletes are present, when attending scheduled public events or appearances, or during media contacts." See, e.g., Cari Stern, *Rick Pitino and the 'Cardinal' Morals Clause*, FORDHAM SPORTS L. FORUM (May, 2013), <http://fordhamsportslawforum.com/wp-content/uploads/2013/05/Rick-Pitino-and-the->

I use examples including golfers John Daly²⁷ and Tiger Woods,²⁸ NFL quarterback Michael Vick,²⁹ and swimmers Michael Phelps³⁰ and Ryan Lochte.³¹ Given the recent issues that have been exposed involving domestic abuse by professional athletes, one might explore football player Ray Rice's elevator incident video if time allows.³² I find that examples of moral misdeeds involving alcohol, drugs and domestic violence are so common that students will usually provide other recent examples at this point.

3. Loyalty Clauses

The final contract-based ethics clause I discuss is the loyalty clause in which an athlete must wear or use a particular brand during competition due to an individual or league sponsorship arrangement.³³ For example, in 2005 Atlanta Falcons (NFL) cornerback DeAngelo Hall wore Nike shoes during a Monday Night Football game.³⁴ Unfortunately for Hall, he was endorsed by Reebok which did not appreciate the gesture.³⁵ In 2000, NBA player Shawn Kemp told the Akron Beacon Journal that his favorite pair of shoes was Nike's Air Force II's.³⁶ Again, the problem was that he, too, was under contract with Reebok.³⁷

Having discussed these three types of clauses, I then provide the students, via Blackboard on my PowerPoint slides, a copy of part of current University of Michigan head football coach Jim Harbaugh's contract with the university. This display on the overhead screen via my PowerPoints displays how the clauses I just covered work their way into the real world. I bold certain words or expressions related to the contract clauses discussion. Appendix A offers a provision taken directly from Coach Harbaugh's contract.³⁸

My point of emphasis is to demonstrate that contract clauses which address breaches, violations and terminations are real and can be incorporated into an organization's contract with its employees.³⁹

%E2%80%9CCardinal%E2%80%9D-Morals-Clause-.pdf (providing excerpts of the Pitino contract and, *inter alia*, a discussion of the sexual encounter with Karen Sypher which led to a published decision, *United States v. Sypher*, 684 F.3d 622 (6th Cir. 2012)).

²⁷ See Leonard Shapiro, 'Exhausted' Daly Makes Abrupt Exit, WASH. POST (June 14, 1997), https://www.washingtonpost.com/archive/sports/1997/06/14/exhausted-daly-makes-abrupt-exit/98ba057f-b6e9-4981-96c7-702939d5f2ab/?utm_term=.29721ac8df58 (offering that Daly's drinking problems led to the termination of his \$30M contract sponsorship contract by Wilson); see also Clifton Brown, *Callaway Ends Sponsorship of Daly*, N.Y. TIMES (Sept. 16, 1999), <http://www.nytimes.com/1999/09/16/sports/golf-callaway-ends-sponsorship-of-daly.html>.

²⁸ See Scott Gleeson, *Tiger Woods' Sponsors Silent After DUI Arrest*, USA TODAY (May 30, 2017), <https://www.usatoday.com/story/sports/golf/2017/05/30/tiger-woods-sponsors-silent-after-dui-arrest/102306584/> (referencing Wood's 2009 sex scandal in which he lost several sponsors including two of his biggest with Gatorade and AT&T-though Nike stood with him and querying whether his other sponsors might (or might not) abandon him for a May 29, 2017 DUI arrest.).

²⁹ See ESPN.com News Services, *Agent: Vick, Nike Sign Deal*, ESPN.COM (Oct. 1, 2009), <http://www.espn.com/nfl/news/story?id=4520896> (providing the Nike renewed sponsorship of Vick after it had rescinded ties due to serving 18 months in federal prison for his involvement in a dogfighting ring).

³⁰ See Tracy Connor, *Kellogg's to Drop Michael Phelps from Endorsements over Bong Photo*, DAILY NEWS (Feb. 9, 2009), <http://www.nydailynews.com/news/money/kellogg-drop-michael-phelps-endorsements-bong-photo-article-1.389702>.

³¹ See Chris Isidore & Jackie Wattles, *Ryan Lochte Ditched by Four Major Sponsors*, CNN MONEY (Aug. 22, 2016), <http://money.cnn.com/2016/08/22/news/companies/ryan-lochte-speedo/index.html>.

³² See Daniel Roberts & Benjamin Snyder, *Ray Rice and 11 Other Athletes Who Lost Their Endorsements*, FORTUNE (Sept. 20, 2014), <http://fortune.com/2014/09/20/ray-rice-adrian-peterson-tiger-woods-athletes-dropped-endorsements/>.

³³ See Epstein, *supra* note 9, at 30.

³⁴ *Id.*

³⁵ *Id.* (citing Darren Rovell, *Reebok Dumps Hall for Wearing Nikes*, ESPN (Oct. 26, 2005),

<http://sports.espn.go.com/nfl/news/story?id=2204711>).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See EMPLOYMENT AGREEMENT, *University of Michigan and James J. Harbaugh*, <http://www.toledoblade.com/attachment/2016/04/10/Michigancontract-1.pdf> (also on file with the author).

³⁹ Of course, utilizing the University of Michigan's head football coach contract makes sense given that I live and work in Michigan and most of my students grew up in the state.

In sum, the examples of sport contract clauses as a representation of a memorialized contract that deals with ethics abound. I have found that students tend to appreciate how I tie contract clauses to the real world and high-profile individuals and how the contract-based approach to ethics exists. I remind the students that as future employees, managers, lawyers, etc., they too can appreciate the role of ethics in employment agreements. I then move from contract clauses to examples of social media and ethics.

B. Social Media and Ethics

A common expression I share with my students is that in life, I believe it is important to “Say what you mean, and mean what you say.” However, I also then tell my students to be careful how they truly feel on social media because words can come back to bite you, especially in the employment context via email or various social media outlets in which words can last forever! Thus, I segue this brief yet important philosophical soliloquy to transition the discussion of sport contracts to social media. More specifically, I use social media-related examples to demonstrate how athletes and others have lost scholarships and other opportunities because of what they have said on Facebook, Twitter and so on.

One of the first examples to explore includes how Louisiana State University swimmers were dismissed from team in 2005 for Facebook postings related to ridiculing their coach.⁴⁰ In 2006, Northwestern University’s women’s soccer program was suspended and given mandatory education sessions for hazing after postings were discovered on Facebook showing underage drinking.⁴¹ In 2010, University of Oregon football player Jamere Holland was kicked off the team in 2010 for Facebook postings littered with expletives.⁴²

More recent, in early January 2016, Wisconsin Hilbert High School athlete April Gehl, a three-sport star, was informed by her school athletic director that she would be suspended for five basketball games due to one of her public tweets concerning the Wisconsin Interscholastic Athletic Association (WIAA).⁴³ A month earlier, a memo was sent to WIAA member schools in to remind the “ban” on common chants at basketball games that WIAA deemed inappropriate.⁴⁴ The WIAA’s “Sportsmanship Reference Guide” says that chants such as “air ball” and “scoreboard” are “inappropriate” and should be discouraged, among many others.⁴⁵ I post her tweet on the overhead screen with the bad language redacted.

⁴⁰ EPSTEIN, *supra* note 21, at 6.

⁴¹ *Id.*

⁴² See Associated Press, *Oregon Football Player Jamere Holland Dismissed from Team After Racially-charged Facebook Post*, DAILY NEWS (Feb. 22, 2010), <http://www.nydailynews.com/sports/college/oregon-football-player-jamere-holland-dismissed-team-racially-charged-facebook-post-article-1.198941>.

⁴³ See Tobia Salinger, *Wisconsin High School Athlete Suspended for Her Tweet Protesting Sportsmanship Policy that Sparked National Debate*, DAILY NEWS (Jan. 13, 2016), <http://www.nydailynews.com/news/national/wisc-hs-athlete-suspended-tweet-protesting-chant-policy-article-1.2494894> (offering the tweet itself).

⁴⁴ *Id.*

⁴⁵ See Juliet Spies-Gans, *A Complete List of Things Wisconsin HS Students Have Been Told Not to Do at Games*, HUFFINGTON POST (Jan. 14, 2016), http://www.huffingtonpost.com/entry/wisconsin-high-school-chant-ban_us_56965df3e4b09dbb4bad5923 (including booing of any kind; “Over-rated” chant; “Scoreboard” cheer; “Air ball” chant; “Nuts n’ Bolts...” chant; “You, You, You,” “You can’t do that,” “fund-a-mentals,” “We can’t hear you,” “Warm up the bus” chants; “Sieve, sieve, sieve” chant; “Nah, nah, hah, nah...hey-eyy goodbye” song; “Season’s Over” chant; “Push it, push it, push it” chant; “U-S-A, U-S-A, U-S-A” or any acronym of derogatory language or innuendo; any chants/comments that are disrespectful to an opponent or official, including school mascot, school nickname, school population, opponent’s town or community or that is derogatory to an individual because of race, gender, creed, body type or ability; holding up papers or props during opponent introductions; turning backs to court/field during opponent introductions; dressing in attire that is not associated with school spirit or is inappropriate; waving arms or making movements or sudden noises in an attempt to distract an opponent; fan participation activities while the game is actually being played (i.e. roller coaster, the wave, etc.); competitors not shaking hands after a contest; competitors “trash-talking” before, during or after a contest; competitors celebrating a play excessively by beating on chest; pointing to the crowd; dancing; or a movement perceived to be drawing attention to one’s self; competitors celebrating a play by prolonged staring at an opponent, or standing over an opponent; criticizing or diminishing the efforts or abilities of an opponent or official in the media before, during or after a contest; criticizing teammates or coaches; not standing at attention during the National Anthem or excessive talking, chanting, yelling or movement during the playing/singing of the anthem; throwing of any object by fans or competitors throwing/hitting equipment (pucks, balls, bats, helmets, etc.); body passing; damaging any property (bleachers, hotel rooms, locker rooms, etc.) associated with a sporting event; attending an event inebriated or under the influence of mood altering substances; and bare-chested fans and body paint at indoor events.).



Posting the tweet on the large screen provides a solid, visual and relatable example for my students-many of whom just graduated high school-over the pros and cons of social media, freedom of speech associated with the First Amendment, and how and why employers and employees outside the context of sport might establish a workable and enforceable social media policy. In this way, the interests of the organization can be preserved while establishing the authority for discipline or termination if necessary related to inappropriate social media postings.⁴⁶

Finding examples in which student-athletes, professional athletes and others use social media in a way that could be perceived to be unethical or inappropriate is not difficult. Emphasize that the impact of an inappropriate tweet, posting or comment could affect many more than just the individual who posted it. This poses questions for supervisors, administrators and coaches in addition to colleges and universities and employers in general. Specifically addressing the collegiate environment, I mention that some athletic departments are now monitoring what is posted on social networking sites using UDiligence, a software program that monitors key words and key phrases that might damage a student or institution.⁴⁷ In fact, Ohio State University's Department of Athletics spent \$360,500 for the JumpForward software thereby monitoring social media usage by OSU's coaches and players.⁴⁸

C. Fraud

The last major section of the lecture presentation addresses fraud, and the types of fraud that one could discuss related to sport is substantial whether characterized as academic fraud, resume fraud, or participation fraud.⁴⁹ However, when participants or coaches intentionally lose a sport contest (also known as tanking), I find that students see the wrongdoing rising to a higher level of misconduct.

⁴⁶ In no way, however, am I trying to embarrass Ms. Gehl. Posting the tweet is educational in nature and I do emphasize that anyone could have made an error in judgment on social media. I find that most of my students concur, though they are equally amused.

⁴⁷ See Pete Thamel, *Tracking Twitter, Raising Red Flags*, N.Y. TIMES (Mar. 30, 2012), <http://www.nytimes.com/2012/03/31/sports/universities-track-athletes-online-raising-legal-concerns.html>.

⁴⁸ See Justin Boggs, *In Digital Age, Athletes' Social Media Usage Being Monitored*, GUARDIAN (Sept. 20, 2013), <http://www.theguardianonline.com/sports/2013/09/20/in-digital-age-athletes-social-media-usage-being-monitored/>.

⁴⁹ See EPSTEIN, *supra* note 21, at 138-140.

For example, in Tennessee, both Riverdale High School and Smyrna High School (Rutherford County, Tennessee) girls' teams intentionally tried to lose a consolation basketball game on February 23, 2015.⁵⁰ The loser of the game would be placed on the opposite side of the regional tournament bracket from Blackman High School, the highest ranked team in the state.⁵¹ With the coaches' support, this game became so bad that the referees stopped the game and admonished the coaches for their misconduct.⁵² In fact, the school district's code of ethics states in part, "The coach must be aware that he or she occupies a position of great influence on the education of a student-athlete and therefore should never place the value of winning above the value of instilling the highest ideals of character."⁵³ Further, "Coaches must uphold the honor and dignity of their position. In all contacts with student-athletes, officials, school administrators, competitors and the public, coaches shall set an example of the highest ethical and moral conduct."⁵⁴ The coaches were suspended for the rest of the season.⁵⁵

D. The Closing

At this point I am usually pressed for time, but I see my final task to relate all of this to their campus-based universe in a more tangible way. I pose the question, "How does this apply to you?" So, I turn my attention to the university bulletin which provides a "Code of Student Rights, Responsibilities and Disciplinary Procedures."⁵⁶ I offer that they, too, are bound by a code of ethics, whether they realize it or not, which specifically mentions "morals," "personal ethics," "dishonesty" and "ethical and professional standards." I share with them excerpts including,

"1.2 Even though there is a diversity of opinion regarding many ethical and moral standards, each person should endeavor to maintain self conduct in a manner consistent with respect for others and thoughtful consideration for the needs of society. In social relationships generally, including relations involving the civil, property, and personal rights of others, each individual has an obligation to act in a manner consistent with these fundamental values."⁵⁷

"1.5 The university community recognizes the need for the development of personal ethics and philosophies. The members of this community should be committed to broad personal growth and development in society, realizing that each individual has both the freedom and obligation to make ethical choices and to accept the attendant responsibilities."⁵⁸

"3.2.1 Academic Dishonesty. Written or other work that a student submits in a course shall be the product of his/her own efforts. Plagiarism, cheating, and all other forms of academic dishonesty are prohibited. Students are expected to adhere to the ethical and professional standards associated with their programs and academic courses. Alleged violations of this section shall be adjudicated in accordance with CMU's Policy on Academic Integrity..."⁵⁹

⁵⁰ See Tom Kreager & Mealand Ragland, Riverdale, *Smyrna Coaches Suspended for 2015-16 Season, District Says*, DNJ.COM (Feb. 25, 2015), <http://www.dnj.com/story/sports/high-school/2015/02/25/odom-suspends-smyrna-riverdale-coaches/24000277/>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Code of Student Rights, Responsibilities and Disciplinary Procedures, CENTRAL MICHIGAN UNIV. (Mar. 16, 2015), <https://www.cmich.edu/ess/studentaffairs/Pages/Code-of-Student-Rights.aspx>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

Naturally, my point of emphasis is that whether they realize it or not, their relationship with the university is ethics-driven and contract-based and that there is a system in place to address violations of the rules just as in the “real-world.”

V. CONCLUSION

As this article demonstrates, offering sport-related examples to teach ethics can be effective. Combining these examples and other contemporary sport-related ones that will undoubtedly reveal themselves can bridge the gap between the academic exercise of the discussion of ethics and its relationship to the real-world. The article is designed to provide one way to communicate the study and concept of ethics to your students.

I have found that utilizing various contract clauses such as the termination, morals and loyalty clauses is a simple yet clear way to broadcast that employment contracts and organizational codes of ethics can be instituted and enforced when there is a violation. Relating ethics to social media is engaging and vital to demonstrate that the ease of posting comments in the virtual world might come with a price. Finally, I tie these concepts, including various forms of fraud, into the universe that all my students reside, memorialized in the student bulletin, in which violations for improprieties are subject to review and possible punishment for a breach.

Appendix: Provision from Coach Jim Harbaugh’s Contract (bold for emphasis only)

4.02 **Termination for cause.** The University has the right to **terminate** the employment of the Head Coach **for cause** in the event of any of the following:

(a) Failure of the Head Coach in any material respect to perform the material services required under this Agreement, or **breach** in any material respect of any of the Head Coach's material duties or obligations under this Agreement, and such failure continues for a period of thirty (30) days following receipt of a written notice from the University of such failure or **breach**. The University shall not be required to provide written notice and an opportunity to cure under this section if the **breach** cannot be cured or if the University has provided notice and an opportunity to cure a substantially similar material **breach** within the prior three hundred sixty five (365) days.

(b) Head Coach’s conviction of or a plea of nolo contendere to any felony or any criminal offense involving fraud, harassment, substance abuse, or **moral turpitude**.

(c) Conduct by Head Coach that substantially offends public decency or **morality, as shall be determined by standards prevailing in the community**, or which results in, or in the reasonable determination of the University could result in, material injury to the reputation, interests or obligations of the University or the Program.

(d) The NCAA or the Conference determines, **or the University reasonably determines** (following any notice and cure period required by Section 4.02(a)), that (i) the Head Coach has committed a material violation of a material provision of the Governing Rules (including, without limitation, a Level I or Level II violation of NCAA Rules); or (ii) that a **material violation** of a material provision of the Governing Rules has occurred within the Football Program during the Term of this Agreement and such **material violation** occurred as a result of the Head Coach's failure to appropriately supervise the Program in a reasonable and customary manner.

(e) There occurs any violation of Governing Rules during the Term of this Agreement that results in the Football Program being placed on probation, having to forfeit scholarships or games, or having to pay a material fine.

(f) Failure to promptly report to the Athletic Director a violation of the Governing Rules by himself, an assistant football coach, football staff member, student athlete who is a member of the football team, or other representative of the University’s athletic interests of which the Head Coach had actual knowledge.

(g) **Fraud** or willful malfeasance in the performance of any material duties or responsibilities under this Agreement.

4.03 If the University **terminates** the Head Coach's employment for cause as specified in Section 4.02, it shall be without liability to the Head Coach, or any other penalty, except the Head Coach shall be paid any Annual Base Salary and Additional Compensation accrued but unpaid (and any performance bonuses earned but unpaid) prior to **termination**. All other obligations of the University to make further payments and/or to provide any other consideration under this Agreement or otherwise shall cease as of the date of **termination**. Except as provided in the first sentence of this section, in no case shall the University be liable to the Head Coach for the loss of any Base Salary, Additional Compensation, bonus payments, deferred compensation, collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, television or radio shows, apparel or shoe contracts, consulting relationships or from any other sources that may ensue as a result of the University's **termination for cause** of the Head Coach's employment under this Agreement.