

Full Court Vision: Analyzing Free Agency in the Philippine Basketball Association (PBA) Through the Lens of Foreign Precedent

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I. INTRODUCTION

In the Philippines, basketball lies at the heart of the country's identity,¹ often serving as a stage on which spectacles of struggle against colonialism, underdevelopment, and injustice are played out.² Public obsession with the "tall man's game"³ has transformed the Filipino athlete into a hero, an icon, and an idol among the masses, with the underdog becoming a symbol of triumph in the face of adversity and a testament to the power of the human spirit.⁴

However, in a developing country, there is no separating basketball from the atmosphere of politics and patronage in which it is situated.⁵ As a source of entertainment, livelihood, and national pride,⁶ basketball takes on an undeniably multi-dimensional character that tells a deeper story than the final score. Local athletic history indeed suggests that the game represents the crossroads of business, law, and development, often forcing the professional athlete to operate on a playing field that transcends the referee's whistle.

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1. IGNATIUS MICHAEL D. INGLES, *SPORTS LAW IN THE PHILIPPINES* 2 (2022).
 2. Lou Antolihao, *Rooting for the Underdog: Spectatorship and Subalternity in Philippine Basketball*, 58 PHIL. STUD. 449, 449 (2010). See also LOU ANTOLIHAI, *PLAYING WITH THE BIG BOYS: BASKETBALL, AMERICAN IMPERIALISM, AND SUBALTERN DISCOURSE IN THE PHILIPPINES* 6 (2015) ("Sporting cultures highlight some of the distinctive marks of nations. They are often seen as symbols that reveal important aspects of a country's history, traditions, and values.").
 3. Antolihao, *supra* note 2, 449.
 4. See ANTOLIHAI, *supra* note 2, at 6; Nelson Beltran, *Triumphant Gilas Accorded Heroes' Welcome*, PHIL. STAR, Feb. 26, 2019, available at <https://www.philstar.com/sports/2019/02/26/1896898/triumphant-gilas-accorded-heroes-welcome> (last accessed July 31, 2023) [<https://perma.cc/2TPH-LWW3>]; & Marisse Panaligan, *Why Jimmy Alapag Changed His Mind About Retiring from Gilas Pilipinas*, GMA NEWS, Sept. 12, 2014, available at <https://www.gmanetwork.com/news/sports/basketball/378899/why-jimmy-alapag-changed-his-mind-about-retiring-from-gilas-pilipinas/story> [<https://perma.cc/V532-CANL>].
 5. See, e.g., Dexter Cabalza, *PBA Players Tapped as New Faces of Drug War*, PHIL. DAILY INQ., Apr. 19, 2023, available at <https://newsinfo.inquirer.net/1758218/pba-players-tapped-as-new-faces-of-drug-war> (last accessed July 31, 2023) [<https://perma.cc/FRK2-XGAA>].
 6. See generally ANTOLIHAI, *supra* note 2, at 3.

Established in 1975, the Philippine Basketball Association (PBA) enjoys distinction as the world's second-oldest professional basketball league after the National Basketball Association (NBA).⁷ Like its American forerunner, the PBA is no stranger to controversy, with recent criticism directed towards league policies that have allegedly prioritized commercial interests at the expense of player welfare.⁸ This conflict stems from the notion that sports are ultimately a business,⁹ a perspective that inevitably throws the rights of athletes, team owners, league officials, and other stakeholders into the equation.

This interplay has attracted greater attention in recent seasons. The league's response to an increasing number of departures by local athletes has left the PBA exposed to a significant degree of scrutiny with respect to several policies governing the movement of players between local franchises and across leagues overseas.¹⁰ These have included the "draft dodger"¹¹ rule and the widespread use of uniform players contracts (UPCs),¹² among others, both of which have become the hallmarks of a rigid

7. RAFF BARTHOLOMEW, *PACIFIC RIMS* 27 (2010).

8. See, e.g., Ignatius Michael D. Ingles & Katrina Bianca Louise S. Diploma, *Strength in Unity: Reviving the PBA Union*, 63 *ATENEO L.J.* 689, 699–700 (2019).

9. See W. Clyde Robinson, *Professional Sports and the Antitrust Laws*, 38 *SW. SOC. SCI. Q.* 133, 133 (1957) & *Philippine Basketball Ass'n v. Gaite, et al.*, G.R. No. 170312, 591 *SCRA* 149, 151 (2009).

The PBA is an association of various basketball clubs owned by business companies[.] ... It conducts basketball games that the public can watch live upon purchase of admission tickets. The games are also broadcasted over television and radio by a franchisee which pays the PBA franchise fees based on the actual proceeds from advertisements, less airtime costs, production expenses, and sales commissions.

Philippine Basketball Association, 591 *SCRA* at 151.

10. Jonas Terrado, *Overseas-Playing Filipinos, A Problem Haunting PBA*, *PHIL. DAILY INQ.*, Jan. 3, 2023, available at <https://sports.inquirer.net/491977/overseas-playing-filipinos-a-problem-haunting-pba> (last accessed July 31, 2023) [<https://perma.cc/TDX2-7UK7>].

11. See Spin.ph, 'Draft Dodger' Rule, Other Contentious PBA By-Laws Now Under Review, available at <https://www.spin.ph/basketball/pba/draft-dodger-rule-among-provisions-in-pba-by-laws-under-review-a791-20210523> (last accessed July 31, 2023) [<https://perma.cc/K7XR-9Q4M>].

12. See Richard Dy, *The PBA's Uniform Players' Contract Explained, and What It Covers*, *ESPN*, available at https://www.espn.ph/basketball/pba/story/_/id/31

system of free agency.¹³ Such measures have been met with strong dissatisfaction from fans and athletes alike, with backlash directed primarily towards the tendency of such policies to put the needs of the league before those of the player.¹⁴

For example, the “draft dodger” rule, in its earlier formulations, required Filipino players to declare for the PBA Draft, within a particular window of time from their college graduations, the lapse of which would bar them from entering the league for a certain period.¹⁵ Uniform players contracts (UPCs) have similarly been employed as a mode of legitimizing restrictions on player movement,¹⁶ and most recently fell into the national spotlight following the attempted exodus by several PBA players to greener pastures overseas.¹⁷

Both the “draft dodger” rule and UPCs have contributed greatly to the strict nature of free agency in the PBA. In its restricted form, free agency requires players to secure the consent of their mother teams before

551552/contract-all-pba-players-sign (last accessed July 31, 2023) [<https://perma.cc/8PAD-NRP2>].

13. *Wood v. National Basketball Association*, 809 F. 2d 954, 961 (C.A. 2d Circ. 1987) (U.S.) (“The issues of free agency and entry draft are at the center of collective bargaining in much of the professional sports industry.”).
14. See, e.g., Ariel Ian Clarito, *PBA ‘Draft Dodger’ Rule: Addressing Symptoms Instead of Infections*, RAPPLER, May 14, 2021, available at <https://www.rappler.com/sports/pba/draft-dodger-rule-players-address-symptoms-instead-infections> (last accessed July 31, 2023) [<https://perma.cc/2SVH-RAN9>].
15. Bong Lozada, *Thirdy Expresses Respect for PBA Amid ‘Draft Dodger’ Issue*, PHIL. DAILY INQ., May 14, 2021, available at <https://sports.inquirer.net/423155/amid-draft-dodger-issue-thirdy-expresses-respect-for-the-pba> (last accessed July 31, 2023) [<https://perma.cc/NA9Q-KBVP>].
16. See Denison Rey A. Dalupang, *PBA Board Stays Firm: No Japan Stint for Ravena*, PHIL. DAILY INQ., June 6, 2021, available at <https://sports.inquirer.net/425101/pba-board-stays-firm-no-japan-stint-for-ravena> (last accessed July 31, 2023) [<https://perma.cc/82H2-P3CK>].
17. Ariel Ian Clarito, *Asian Basketball Exodus: Why It’s Actually a Good Thing*, RAPPLER, Aug. 21, 2022, available at <https://www.rappler.com/sports/reasons-asian-basketball-exodus-good-thing> (last accessed July 31, 2023) [<https://perma.cc/EW6T-E68N>].

transferring to another local franchise upon the lapse of their contracts.¹⁸ Effectively, teams could keep such players on their rosters by matching offers from other franchises, thereby potentially holding their players' rights in perpetuity.¹⁹ In the absence of buyout clauses and other stipulations to level the playing field, individual opportunities seem to yield to business discretion, at the tragic cost of collective athletic progress.²⁰

As contemporary developments in Philippine sports have demonstrated, the conflict between the prerogative of enterprise, on one hand, and the rights of athletes to dictate their careers, on the other, adds a layer of depth to the game far beyond highlights and statistics. At the intersection of commerce and professional athletics, the influence of the law cannot be ignored.

Free agency in the PBA — from the perspective of relations between and among the league, the team, and the players²¹ — can be and has been justified as a valid means by which a business guarantees its interests.²² Similarly, Philippine jurisprudence has identified the PBA as an association of basketball clubs,²³ characterized such basketball clubs as entities owned by businesses,²⁴ and deemed basketball players as employees of such franchises.²⁵ Each layer of professional basketball in the Philippines is thus governed by

18. JOHN J. MILLER & KRISTI L. SCHOEPFER, *LEGAL ASPECTS OF SPORTS* 187 (2d ed. 2018). See also Jonas Terrado, *PBA Agent: Upcoming Rule on Unrestricted Free Agency a Win-Win for Teams, Players*, *MANILA BULL.*, Jan. 10, 2021, available at <https://mb.com.ph/2021/01/10/pba-agent-upcoming-rule-on-unrestricted-free-agency-a-win-win-for-teams-players> (last accessed July 31, 2023) [<https://perma.cc/A7XQ-AGWN>].

19. Dodo Catacutan, *By 2021, PBA Will Finally Have 'Real' Unrestricted Free Agents*, available at <https://www.spin.ph/life/guide/in-two-years-pba-will-finally-have-unrestricted-free-agency-a791-20190702> (last accessed July 31, 2023) [<https://perma.cc/DPF5-UNCD>].

20. *Id.*

21. See generally *Negros Slashers, Inc. v. Teng*, G.R. No. 187122, 666 SCRA 629, 642 (2012).

22. See *San Miguel Corporation v. National Labor Relations Commission*, G.R. Nos. 146121-22, 551 SCRA 410, 426 (2008) (citing *Gustilo v. Wyeth Philippines, Inc.*, G.R. No. 149629, 440 SCRA 67, 75 (2004)); *Philippine Basketball Association*, 591 SCRA at 149; & Clarito, *supra* note 14.

23. *Philippine Basketball Association*, 591 SCRA at 149.

24. *Id.*

25. *Negros Slashers, Inc.*, 666 SCRA at 642.

individual but interconnected frameworks of law, such that the right of one layer to effect a policy in promotion of its own interests must be tempered by the rights of another (typically in the fields of corporate, labor, and contract law).²⁶ Figuring out where the rights of one end and where the rights of the other begin has been a challenge, and a source of well-publicized contention.

Applied to the league in the present, free agency is indeed a mode by which the PBA has policed its ranks,²⁷ while UPCs have likewise been used to concretize the rights, obligations, and prohibitions between employer and employee on local franchises.²⁸ While the power and discretion wielded by the league and its member teams in calling the shots seem to be undisputed, the dynamic raises an unavoidable question — how much power and freedom are given to the players themselves?

More specifically, in the context of the drama that has unfolded since Filipino basketball's best and brightest have begun to test the waters of the international scene, when league and team policies seem to restrict movement and deny opportunity, where do the players stand in terms of their contractual rights? Such is the subject of this Article.

The Author thus seeks to elaborate on the legal framework governing player movement in the Philippine Basketball Association by focusing on two aspects thereof: (1) the concept of free agency in its restricted and unrestricted forms, and (2) the widespread use of UPCs across the league. While disputes have arisen between and among players, team owners, league

26. See Ignatius Michael D. Ingles, *Playing for Wages: Defining the Legal Relationship Between Professional Athlete and Team, a Sports Law Perspective on Philippine Labor Law*, 59 ATENEO L.J. 783, 808-09 (2014).

27. See, e.g., Dodo Catacutan, PBA's First Free Agent Class Rolls Out in 2021, But Fajardo, Romeo, Abueva Won't Be in It, available at <https://www.spin.ph/basketball/pba/meet-the-first-real-free-agent-class-of-the-pba-2021> (last accessed July 31, 2023) [<https://perma.cc/N44A-ZAKH>].

28. Ingles & Diploma, *supra* note 8, at 699. See generally Reynald I. Magallon, *NLEX Terminates Quiñahan's Contract After 'Ligang Labas' Violations*, MANILA BULL., May 6, 2023, available at <https://mb.com.ph/2023/5/6/nlex-terminates-quinahan-contract-for-ligang-labas-violations> (last accessed July 31, 2023) [<https://perma.cc/2ATH-5TFT>] & Bill Velasco, *Honoring Commitments*, PHIL. STAR, Apr. 29, 2023, available at <https://www.philstar.com/sports/2023/04/29/2262519/honoring-commitments> (last accessed July 31, 2023) [<https://perma.cc/8P7L-F7DU>].

officials, and other stakeholders,²⁹ what is worth noting is that such controversies have yet to be threshed out before or adjudicated by a judicial body. Although the lack of Philippine jurisprudence on this clash of interests in professional basketball is one thing, the rate at which up-and-coming Filipino names have been taking their talents from the local hardwood to bigger stages overseas is another reality that warrants an analysis of the conflict.

In laying down the tale of the tape, this Article seeks neither to condemn nor justify the implementation of free agency and other contractual mechanisms between the PBA and its players, but only to shed light on the possible motivations behind the actions of the various parties in Philippine professional basketball, and on the legal ground upon which they root their defense of individual or collective interests. By taking a more expository than explicit stance, the Author hopes to explain that internal developments in professional sports carry an external impact that supersedes the scoreboard. When rules and regulations seek to serve only one layer of the basketball ecosystem without due regard for the rights of the others, such policies confine not only aspiring Filipino athletes, enterprises, and professional leagues but, on a wider scale, the growth of Philippine basketball.

II. THE CONCEPT OF FREE AGENCY IN PROFESSIONAL SPORTS

Free agency in professional sports typically refers to the system by which players become eligible to sign with a team, club, or franchise within or outside of a league.³⁰ It has further been described as “the right of self-determination for athletes in professional team sports to choose the professional club for whom they would like to work.”³¹ A free agent is a professional who is not bound by contract to remain on a particular team, which generally permits him or her to solicit offers for recruitment and to move from one team or league to another.³² Stated otherwise, free agency implies “the right of a player to sign with any team that offers him a contract.”³³

29. See, e.g., Dalupang, *supra* note 16.

30. See Michael A. Hunt, *Free Agency*, in *ENCYCLOPEDIA OF INTERNATIONAL SPORTS STUDIES* 553 (Roger Bartlett, et al. eds., 2010).

31. *Id.*

32. MILLER & SCHOEPFER, *supra* note 18, at 187.

33. MICHAEL A. LEEDS & PETER VON ALLMEN, *THE ECONOMICS OF SPORTS* 301 (5th ed. 2016).

Moreover, free agency consists of two forms: (1) restricted or (2) unrestricted.³⁴ An unrestricted free agent is a professional athlete with “no strings attached” to his previous club, team, or franchise,³⁵ which grants him or her the liberty to entertain different opportunities and offers, and to “receive fair market value for [his or her] services.”³⁶ Thus, unrestricted free agents can both solicit and accept offers coming from outside their original teams “without restriction.”³⁷

In contrast, while a restricted free agent is likewise at liberty to entertain offers from outside his or her home team,³⁸ acceptance thereof is subject to the exercise of the “right of first refusal” by the free agent’s home team,³⁹ which holds the option to “retain the player by matching the other team’s offer.”⁴⁰ Under such restrictions, while a free agent may receive offers from other teams within and outside of the league in which he or she currently plays, consent of the home team is necessary to grant that player’s release. In any case, if the home team so desires, it need only match the offer made by another team to restrict the free agent’s movement,⁴¹ which potentially permits that team to hold its player’s rights in perpetuity.⁴²

It is crucial, however, to note that whether player movement is contingent on the unconditional release and approval by a mother team is

34. See, e.g., ROGER D. BLAIR, *SPORTS ECONOMICS* 443 (2012).

35. LEEDS & VON ALLMEN, *supra* note 33, at 301.

36. MILLER & SCHOEPFER, *supra* note 18, at 187.

37. BLAIR, *supra* note 34, at 443.

38. LEEDS & VON ALLMEN, *supra* note 33, at 301 & MILLER & SCHOEPFER, *supra* note 18, at 187.

39. LEEDS & VON ALLMEN, *supra* note 33, at 301 & BLAIR, *supra* note 34, at 443. See also *Polytechnic University of the Philippines v. Golden Horizon Realty Corporation*, G.R. No. 183612, 615 SCRA 478, 491 (2010) (citing *Rosencor Development Corporation v. Inquiring*, G.R. No. 140479, 354 SCRA 119, 129 (2001)) (“[A] right of first refusal is a contractual grant, not of the sale of a property, but of the first priority to buy the property in the event the owner sells the same.”).

40. LEEDS & VON ALLMEN, *supra* note 33, at 301.

41. MILLER & SCHOEPFER, *supra* note 18, at 187.

42. See, e.g., Reuben Terrado, *Slaughter Denies Making Any Demands or Knowledge of Trade, available at* <https://www.spin.ph/basketball/pba/slaughter-says-he-didn-t-receive-any-offer-from-ginebra-or-made-demands-a795-20200213> (last accessed July 31, 2023) [<https://perma.cc/G33K-ZEJ8>].

just one aspect of the framework in any professional sports association. Indeed, “free agency does not function in a vacuum[.]”⁴³ with questions on salary caps and contractual options historically saturated by deeper issues related to labor policy and antitrust law.⁴⁴ Each professional sports entity thus employs its own unique set of rules and regulations, not only to govern the movement of players,⁴⁵ but also to guarantee the rights and interests of franchises and the league.

A. Free Agency in the National Basketball Association

1. History

The sophisticated web of policies composing the free agency framework in the NBA, for instance, is largely rooted in its corporate origins.⁴⁶ Born out of a merger between two rival basketball leagues in 1946, the NBA maintains its historic status as “an entirely independent and fully self-managed organizational body (a limited corporation) whose members, the teams, are franchises operating as businesses that are independently owned.”⁴⁷ The merger, however, that led to the formation of the NBA, was itself the product of another conflict premised on both antitrust and labor law, the

43. Hunt, *supra* note 30, at 553.

44. *Id.*

The issue of free agency continues to be an issue of contention between [labor] and management in all collective bargaining negotiations.

...

Although free agency does not function in a vacuum (salary caps; designation of players as franchise, restricted, or unrestricted players; arbitration; union negotiation of minimum salaries — all affect salaries), the literature supports the idea that free agency has helped to greatly inflate players’ salaries and deflate franchise values. Much of the remaining literature regarding free agency involves economics modelling, statistical analysis on the value and production of free agent athletes, and antitrust law.

Id.

45. MILLER & SCHOEPFER, *supra* note 18, at 187.

46. See generally RICH MINTZER & ERIC MINTZER, *THE NBA STORY: HOW THE SPORTS LEAGUE SLAM-DUNKED ITS WAY INTO A GLOBAL BUSINESS POWERHOUSE 2* (2020).

47. *Id.*

conclusion of which led to the downfall of the “reserve” system and the birth of modern free agency.⁴⁸

In the 1960s, the American Basketball Association (ABA) made a name for itself as a direct competitor of the NBA, offering spectators a flashier and faster-paced game through the introduction of novel rules such as a 30-second shot-clock and the three-point field goal.⁴⁹ While fans were provided with an alternative (and arguably more entertaining) source of professional basketball,⁵⁰ the players were blessed with another avenue upon which to make a living on the court.⁵¹ Naturally, competition thrived between the two leagues in recruiting players to fill the seats, sparking a rise in player salaries, much to the advantage of professional athletes.⁵²

When the NBA decided to absorb four ABA teams in 1976, fear arose that the merger (and the resulting loss of a competing professional league) would drive down the demand for basketball players and “bring an end to escalating pay scales[.]”⁵³ The threat soon compelled several NBA players to attempt to block the merger on anticompetitive grounds in what would eventually become a landmark legal decision.⁵⁴

In *Robertson v. National Basketball Association*,⁵⁵ the NBA faced charges of restraining “competition for the services and skills of professional basketball players” through means such as the UPCs’ “reserve” clause, the compensation plan attached thereto, and “various boycott and blacklisting techniques.”⁵⁶ The complaint, over which litigation began as early as 1970,

48. Victor A. Matheson, *Sports and the Law: Using Court Cases to Teach Sports Economics*, in *TEACHING SPORTS AND ECONOMICS USING SPORTS TO TEACH ECONOMICS* 116 (Victor A. Matheson & Aju J. Fenn eds., 2022).

49. FRANK P. JOZSA, JR., *NATIONAL BASKETBALL ASSOCIATION STRATEGIES: BUSINESS EXPANSIONS, RELOCATIONS, AND MERGERS* 83-84 (2015).

50. *Id.*

51. *See* Matheson, *supra* note 48, at 116.

52. Matheson, *supra* note 48, at 116. *See also* MARK CONRAD, *THE BUSINESS OF SPORTS: OFF THE FIELD, IN THE OFFICE, ON THE NEWS* 202 (3d ed. 2017).

53. Matheson, *supra* note 48, at 116.

54. Sarah K. Fields, *Legal Decisions*, in *AMERICAN SPORTS: A HISTORY OF ICONS, IDOLS, AND IDEAS* 704 (Murry R. Nelson ed., 2013).

55. *Robertson v. National Basketball Association*, 389 F. Supp. 867 (S.D.N.Y. 1975) (U.S.).

56. *Id.* at 873.

further alleged that the NBA sought “to effectuate a non-competition agreement, merger[,] or consolidation.”⁵⁷

Led by then NBA Players’ Association President and future Hall of Famer Oscar Robertson, the plaintiffs specifically argued that the NBA had (i) controlled, regulated, and dictated professional basketball; (ii) allocated and divided the market for professional players; and (iii) solidified its position by engaging in “boycotts, blacklists[,] and concerted refusals to deal.”⁵⁸ Moreover, the league’s ultimate objective in doing so was to eliminate all competition in acquiring, allocating, and employing the services of professional basketball players through several means, one of which was “reserve” clause.⁵⁹

The complaint in *Robertson* identified the “reserve” clause as one cog in a machinery of “unilaterally implemented” restrictions in the NBA.⁶⁰ According to the “reserve system” then in place (which was modeled after that which was used in professional baseball),⁶¹ if a player refused to sign a UPC, his team would be permitted to renew and extend the agreement for one year on the same terms.⁶² As such, this “reserve” clause gave NBA teams the “express and unilateral right” to renew the contract on a yearly basis, so long as the player refused to sign, practically keeping a player bound to one club for his entire career.⁶³

Although precedent was cited to support “the standing of players to assert antitrust violations” similar to those in the subject case,⁶⁴ the dispute ended with a settlement providing for “substantial modifications” to the NBA’s employment arrangements.⁶⁵ “[I]n exchange for the players dropping

57. *Id.*

58. *Id.* at 873-74.

59. *Id.* at 874.

60. *Id.* at 874. See also LEANNE O’LEARY, EMPLOYMENT AND LABOUR RELATIONS LAW IN THE PREMIER LEAGUE, NBA AND INTERNATIONAL RUGBY UNION 251 (2017).

61. O’LEARY, *supra* note 60, at 251.

62. *Robertson*, 389 F. Supp. at 874.

63. *Id.*

64. *Id.* at 883.

65. Matheson, *supra* note 48, at 116; O’LEARY, *supra* note 60, at 251; CONRAD, *supra* note 52; & Stephen R. McAllister, *The Nonstatutory Labor Exemption and Player Restraints in Professional Sports: The Promised Land or a Return to Bondage?*, 4 U. MIAMI ENT. & SPORTS L. REV. 283, 306 (1987).

the suit[.]”⁶⁶ the NBA agreed to create a new system of free agency that permitted “veterans to sell their services to the highest bidder[.]” subject to the further rule that a player’s original team could match the highest offer given.⁶⁷ *Robertson* thus resulted in the invalidation of the “reserve” clause, and a new limited form of free agency,⁶⁸ which included the “institution of the right of first refusal.”⁶⁹

Although the settlement in the aftermath of the *Robertson* ruling was embodied in the NBA’s collective bargaining agreement (CBA) of 1980,⁷⁰ official labor relations between the league and the players would undergo multiple changes over the next few years.

In 1983, near financial ruin led the NBA to become the first professional sports league to introduce a salary cap, which was similarly assailed by the players in *Lanier v. National Basketball Association*.⁷¹ The 1980 CBA was later modified to extend to the conclusion of the 1986–1987 season when the players unsuccessfully presented an antitrust challenge to the “college draft, the right of first refusal, and the salary cap[.]”⁷²

Working on the momentum generated by these developments in the late 70s to early 80s, the first major breakthrough for free agency transpired in 1988,⁷³ when all-star forward Tom Chambers inked a quiet but monumental

66. Matheson, *supra* note 48, at 116.

67. McAllister, *supra* note 65, at 306.

68. Jonathan C. Latimer, *The NBA Salary Cap: Controlling Labor Costs Through Collective Bargaining*, 44 CATH. U. L. REV. 205, 226 (1994) (citing JOHN C. WEISTART & CYM H. LOWELL, *THE LAW OF SPORTS* 508 (1979)).

69. Michelle Hertz, *The National Basketball Association and the National Basketball Players Association Opt to Cap Off the 1988 Collective Bargaining Agreement with a Full Court Press: In Re Chris Dudley*, 5 MARQ. SPORTS L.J. 251, 252 (1995) (citing *National Basketball Association v. Williams*, 857 F. Supp. 1069, 1072 (S.D.N.Y. 1994) (U.S.)).

70. CONRAD, *supra* note 52, at 202 & McAllister, *supra* note 64, at 306.

71. CONRAD, *supra* note 52 & Hertz, *supra* note 69, at 253 (citing *National Basketball Association*, 857 F. Supp. at 1072).

72. Hertz, *supra* note 69, at 253 (citing *Bridgeman v. National Basketball Association*, 675 F. Supp. 960, 963 (D.N.J. 1987) (U.S.)).

73. Neil Longley, *An Introduction to Personnel Economics and Its Application to Sport*, in *PERSONNEL ECONOMICS IN SPORTS* 18 (Neil Longley ed., 2018).

deal with the Phoenix Suns.⁷⁴ Despite putting up steady numbers as a scorer and a rebounder on the then Seattle Supersonics, Chambers anticipated that his role would likely diminish following Seattle's acquisition of two new bodies for its frontcourt on draft day.⁷⁵

While Chambers was extended a qualifying offer by the Sonics (whom he expected would keep him around until a good trade deal came along),⁷⁶ he was advised not to accept the same by Larry Fleisher, the founder and then general counsel of the NBA Players' Association.⁷⁷ What Chambers did not know then was that he was about to make history as the first NBA player to sign with a franchise as an unrestricted free agent.⁷⁸

Prior to 1988, "an NBA player's destiny [lay] with the whims of his team."⁷⁹ However, the groundbreaking CBA of April 1988 between the league and the players union would eventually break the shackles of restricted free agency by allowing players to become unrestricted free agents if they met certain criteria, namely: (i) that they had previously completed two NBA contracts; and (ii) that they had been in the league for at least seven seasons.⁸⁰

Although the elimination of "option clauses" in 1976 liberalized potential player movement to a certain degree,⁸¹ these new rules were a catalyst for greater change, setting precedent that would have an

74. MINTZER & MINTZER, *supra* note 46, at 2 & Matt Petersen, Tom Chambers: The First Unrestricted Free Agent, *available at* <https://www.nba.com/suns/history/impact-tom-chambers-and-unrestricted-free-agency> (last accessed July 31, 2023) [<https://perma.cc/6CMW-FNPG>].

75. Petersen, *supra* note 74.

76. *Id.*

77. Ben Pickman, *The First NBA Free Agent to Sign Never Expected This Kind of Movement*, SPORTS ILLUSTRATED, July 5, 2019, *available at* <https://www.si.com/nba/2019/07/05/basketball-free-agency-tom-chambers> (last accessed July 31, 2023) [<https://perma.cc/CP5-EM2V>].

78. Curtice R. Mang, *Thomas Doane "Tom" Chambers*, in BASKETBALL: A BIOGRAPHICAL DICTIONARY 80 (David L. Porter ed., 2005).

79. Petersen, *supra* note 74.

80. MINTZER & MINTZER, *supra* note 46, at 2; Petersen, *supra* note 74; & Pickman, *supra* note 77.

81. See MINTZER & MINTZER, *supra* note 46, at 64. See generally *Inquiry into Professional Sports: Hearings Before the H. Select Committee on Professional Sports*, 94th Cong. 611 (1976) (statement of Lawrence O'Brien, Commissioner, National Basketball Association) (U.S.).

unprecedented impact on contractual freedom heading into a new era of professional basketball.⁸²

In Chambers' case, unrestricted free agency permitted him to take his chances in a city where he would be a better fit and on which he would receive better pay.⁸³ Unsure about his spot in the rotation on a loaded Seattle frontcourt, Chambers opted to try his luck with Phoenix, where he would eventually be paid nine million dollars over a span of five years.⁸⁴ The Suns, however, during those five seasons, would go on to reach the Western Conference Finals thrice, with Chambers setting a franchise scoring record after dropping sixty (60) points against his former team in 1990.⁸⁵

In hindsight, Chambers took a risk, and it paid off. Apprehensive as to his future fighting for minutes with other forwards in Seattle, Chambers surveyed the situation and evaluated his options. More importantly, however, he made the most out of what was relatively unheard of prior to 1988 — the freedom to choose where he wanted to play and who he wanted to sign with.

Unrestricted free agency opened a “Pandora’s box” for professional basketball then, as over 30 players qualified as unrestricted free agents in the offseason,⁸⁶ becoming the pioneers of the eventual “wheeling and dealing” that characterizes the market for talent in the NBA today.⁸⁷ The background of Chambers' signing, however, was highly indicative of a shift in the power balance between player and team. Specifically, the lifting of restrictions on free agency in 1988 implied that players were no longer perpetually at the mercy of their franchises; that they had a right to escape their current

82. MINTZER & MINTZER, *supra* note 46, at 64 & Pickman, *supra* note 77.

83. Sam Gardner, Tom Chambers' Jump from Seattle to Phoenix Pioneered Unrestricted Free Agency in the NBA, *available at* <https://www.foxsports.com/stories/nba/tom-chambers-jump-from-seattle-to-phoenix-pioneered-unrestricted-free-agency-in-the-nba> (last accessed July 31, 2023) [<https://perma.cc/X7A9-658U>].

84. *Id.*

85. ANDRES YBARRA, PHOENIX SUNS 24 (2012). The franchise record for the most points scored by a Phoenix Suns player in a single game has since been broken by Devin Booker, who dropped 70 against the Boston Celtics on March 24, 2017. March 24th: The Most Iconic Scoring Day in Suns History, *available at* <https://www.nba.com/suns/features/march-24th-most-iconic-scoring-day-suns-history> (last accessed July 31, 2023) [<https://perma.cc/P65R-7KZH>].

86. Pickman, *supra* note 77.

87. *Id.*

predicaments in pursuit of better pay and play on the professional basketball court; and that they should have the right to chase down opportunities that came their way.

2. Free Agency in the NBA Today

While the NBA still follows the general dichotomy between restricted and unrestricted free agency in the present,⁸⁸ league rules have since been tweaked as to when restrictions exist and when they do not.

For example, free agency in the NBA is restricted in the following cases:

- (1) Following the fourth year of rookie scale contracts for former first-round draft picks;
- (2) For all veteran free agents who have been in the NBA for three seasons; and
- (3) A player coming off a two-way contract who was on an NBA active or inactive roster for at least 15 days in the season beforehand.⁸⁹

Moreover, a restricted free agent in the NBA is generally limited to six basic options.⁹⁰ He can:

- (1) Accept his team's prior qualifying offer, play out the season, and become a free agent the next summer;
- (2) Accept his team's maximum qualifying offer (where applicable) and play under that long-term deal;
- (3) Negotiate a new contract with his original team that is independent of the qualifying/max qualifying offer;
- (4) Sign an offer sheet with another team through March 1, which his original team has an opportunity to match;

88. NBA, Free Agency Explained, available at <https://www.nba.com/news/free-agency-explained> (last accessed July 31, 2023) [<https://perma.cc/5GVS-3TFG>] [hereinafter NBA Free Agency Rules].

89. *Id.* In the case of first-round draft picks after their second or third season, the failure of their teams to exercise the option to extend their rookie-scale contracts for the following season results in such players becoming unrestricted free agents. *Id.*

90. *Id.*

- (5) Negotiate a sign-and-trade if he has not signed an offer sheet with another team; or
- (6) If there is no qualifying offer, contract, or offer sheet signed for one year, the original team can submit a new qualifying offer, and the player will be a restricted free agent the next summer.⁹¹

A qualifying offer is understood as a “standing offer for a one-year guaranteed deal, which becomes a regular contract if the player decides to sign it.”⁹² The NBA interestingly imposes a timeline on when such qualifying offers must be made and when they expire.⁹³ A team must submit any qualifying offer between the last day of the NBA Finals and 29 June of the same year, with the offer expiring on 1 October, though extendible until 1 March.⁹⁴ Should the period lapse without withdrawal or acceptance thereof, the player continues to be a restricted free agent.⁹⁵ If the period does expire, negotiation towards a new contract is nevertheless permitted between team and player, considering that the deadline is imposed only with respect to the qualifying offer submitted.⁹⁶

The qualifying offer’s guarantee of a one-year deal “ensures that the team does not gain the right of first refusal without offering a contract themselves.”⁹⁷ Players, however, “can always accept the qualifying offer and play the following season under its terms[,]” which is “sometimes done to ensure unrestricted free agency in the following offseason.”⁹⁸

If a restricted free agent is offered a contract with another team, then the player and the new team sign an offer sheet that must stipulate at least a two-season deal.⁹⁹ The restricted free agent’s original team then has two days to match the terms of the offer sheet.¹⁰⁰ If it does, the player remains under contract with his original team, but under the same principal terms in the

91. *Id.*

92. *Id.*

93. NBA Free Agency Rules, *supra* note 88.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. NBA Free Agency Rules, *supra* note 88.

100. *Id.*

offer sheet with the other team.¹⁰¹ If the original team fails to match the offer, the restricted free agent is under contract with the new team.¹⁰²

Logically, any team that makes an offer to a restricted free agent must have sufficient room under its salary cap for the terms of the offer sheet and “must maintain that room until the offer sheet becomes official or the original team exercises the right of first refusal.”¹⁰³ In the same vein, no team can match an offer that exceeds the space under its salary cap.¹⁰⁴

B. Free Agency in Major League Baseball

I. History

As in the NBA, free agency in Major League Baseball (MLB) emerged in the latter half of the 20th century, likewise as the hard-earned product of collective bargaining between the league and the players union.¹⁰⁵ America’s pastime has been anything but immune from the impact of the law, with professional baseball in the United States (U.S.) representing a historical meeting point of both labor and antitrust policy, particularly where the controversial “reserve clause” was concerned.¹⁰⁶

The “reserve clause” was a testament to the dominance in bargaining power enjoyed by baseball clubs as early as the late 1800s,¹⁰⁷ serving as “the cornerstone of baseball’s labor system for a century.”¹⁰⁸ Under the “reserve system” then in place, baseball players were bound by contract to remain on “their teams permanently if they wanted to remain in the sport.”¹⁰⁹

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. See generally Sumner J. La Croix, *Curt Flood Tests Baseball’s Reserve Clause*, in 2 CHRONOLOGY OF TWENTIETH CENTURY HISTORY: BUSINESS AND COMMERCE 1004-06 (Frank N. Magill ed., 1996).

106. See generally Scott A. Dunn, *The Effect of Collective Bargaining on the Baseball Antitrust Exemption*, 12 FORDHAM URB. L.J. 807, 807-11 (1984).

107. Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS SPORT 5, 6 (2011) (citing Ryan T. Dryer, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effect on Competition*, 2008 J. DISP. RESOL. 267, 268 (2008)).

108. ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 118 (1998).

109. Epstein, *supra* note 107, at 6.

Effectively, a player was restricted “throughout his baseball life to negotiate with only one club at any one time[,]” either the club with whom he started his career or the club to whom his contract was assigned.¹¹⁰ As such, “the club that first signed a player [held] the right to sell, trade, or release him without his consent.”¹¹¹

Naturally, baseball clubs wielded unmatched power to restrict their players’ salaries,¹¹² which granted team owners significant leverage at the negotiating table.¹¹³ However, the dynamic in dictating wages was just one consequence of the monopsony.¹¹⁴ Options for movement (or the near non-existence thereof) were a different side of the story, given that “[o]ther clubs could not compete for or tamper with a reserved player by offering him a more attractive salary.”¹¹⁵ Players were similarly prohibited from offering their services to interested clubs, which deprived them of opportunities for potentially higher pay and “fringe benefits[,]” such as playing in a city closer to home.¹¹⁶

The shackles of the “reserve system,” “which forever bound a player to his employer[,]” were embodied in the UPC,¹¹⁷ an excerpt of which read

—

If prior to the [1] March [] next succeeding said [20] December [], the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said [1] March [], the Club shall have the right ... to renew this contract for the period of *one year*.¹¹⁸

As author Paul Hensler noted, the failure of the baseball club and the player to agree on the terms of a new contract would nevertheless allow the club to retain the player on its roster through successive renewals of the

110. Flood v. Kuhn, 309 F. Supp. 793, 796 (S.D.N.Y. 1970) (U.S.).

111. STUART L. WEISS, THE CURT FLOOD STORY: THE MAN BEHIND THE MYTH I (2007).

112. Epstein, *supra* note 107, at 6.

113. *Id.* at 6-7.

114. ABRAMS, *supra* note 108, at 118.

115. *Id.*

116. PAUL HENSLE, THE AMERICAN LEAGUE IN TRANSITION, 1965-1975: HOW COMPETITION THRIVED WHEN THE YANKEES DIDN'T 223 (2013).

117. *Id.*

118. *Id.* (citing Stew Thornley, *The Demise of the Reserve Clause*, 35 BASEBALL RES. J. 115, 115 (2006)).

contract year after year, and season after season.¹¹⁹ Even if the parties did see eye to eye, the “reserve clause” was included in any new contract entered into, keeping the cycle of perpetuity in motion.¹²⁰

It was this severe imbalance that would eventually constitute the subject of both collective bargaining and litigation over what American jurisprudence has labeled the antitrust exemption to professional baseball.¹²¹

In 1970, outfielder Curt Flood sought a preliminary injunction to restrain the enforcement of the “reserve system,” pursuant to which several baseball clubs had refused to offer him employment.¹²² Flood premised his suit on labor and antitrust statutes,¹²³ arguing that the “reserve system” constituted “an unreasonable restraint of trade” in violation of the Sherman Act,¹²⁴ and that the “reserve system” imposed a “condition of involuntary servitude[.]”¹²⁵

The injunction case, however, was not the first time the legality of the “reserve system” had been assailed in an American court of law. In 1922, the U.S. Supreme Court, in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,¹²⁶ decided that the “professional baseball

119. HENSLER, *supra* note 116, at 223.

120. *Id.*

121. See generally Dunn, *supra* note 106, at 807-11 & Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 JEFFREY S. MOORAD SPORTS L.J. 213, 216-17 (1995).

122. *Flood*, 309 F. Supp. at 795.

123. *Id.* at 796.

124. *Id.* See also The Sherman Antitrust Act, 15 U.S.C. §§ 1 & 2 (1890).

Sections 1 and 2 of the Sherman Act penalize “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce[;]” and “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations,” respectively.

The Sherman Antitrust Act, §§ 1 & 2.

125. *Flood*, 309 F. Supp. at 796.

126. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922).

industry was exempt from the application of [] antitrust [statutes,]¹²⁷ thus laying the foundation for what has become a narrow but long-standing exemption from competition law in the present.¹²⁸

In an opinion delivered by Justice Oliver Wendell Holmes, the U.S. Supreme Court found that “the baseball industry was not amenable to antitrust attack[,]” with the decision holding that “baseball games were purely *intrastate* activities” and not within the commonly accepted definition of “commerce.”¹²⁹ Justice Holmes characterized the business of “giving exhibitions of [baseball]” as “purely state affairs[,]” and further stated that the arrangement of games “between clubs from different cities and States[,]” as well as the movement of players between state lines, was insufficient to “change the character of the business.”¹³⁰ As such, not being *interstate* commerce under the Sherman Act, professional baseball in 1922 could not be subject to antitrust attack.¹³¹

The inapplicability of the Sherman Act to professional baseball was later reaffirmed in *Toolson v. New York Yankees*,¹³² after a 31-year lapse during which the sport had been left to develop “on the understanding that it was not subject to existing antitrust legislation.”¹³³ However, despite allegations that “organized baseball, through its illegal monopoly and unreasonable restraints of trade, exploits the players who attract the profits for the benefit of the clubs and leagues[,]” *Toolson* nevertheless held that if the “business of baseball” was to fall within the scope federal antitrust laws, the question of its inclusion lay with Congress through legislation.¹³⁴

127. Dunn, *supra* note 106, at 807 (citing *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. at 208-09).

128. See generally Ronald Blum, *Justice Department: MLB Antitrust Exemption Should Be Narrow*, available at <https://apnews.com/article/us-supreme-court-mlb-sports-new-york-yankees-manchattan-d894e0fff7be59617544f127c6579309> (last accessed July 31, 2023) [<https://perma.cc/TV7W-MR3E>]. But see McMahon, Jr. & Rossi, *supra* note 121, at 214-15.

129. Dunn, *supra* note 106, at 812-13 (citing *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. at 208-09 (emphasis supplied)).

130. *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. at 208-09.

131. Barton J. Menitove, *Baseball's Antitrust Exemption: The Limits of Stare Decisis*, 12 B.C. L. REV. 737, 740 (1971).

132. *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

133. *Id.* at 357.

134. *Id.* at 375 & 363 (J. Burton, dissenting opinion).

Fast forward to *Flood v. Kuhn*, which was decided in 1972, 50 years after *Federal Baseball Club of Baltimore, Inc.*, the U.S. Supreme Court changed its tune, finding that professional baseball was indeed a business and that it was in fact engaged in interstate commerce.¹³⁵ However, the length of time during which professional baseball had been allowed to enjoy immunity from federal antitrust law had cultivated its identity as both “an exception and an anomaly.”¹³⁶ This “aberration,” though “confined to baseball[,]” was established by five judicial decisions over the course of half a century, and was therefore “entitled to the benefit of *stare decisis*,” especially considering the sport’s “unique characteristics and needs[,]”¹³⁷ as well as the potential risks of a systemic overhaul of the majors.¹³⁸

Given that organized baseball had been permitted to grow within an atmosphere of “positive inaction” on the part of the U.S. Congress, the absence of any remedial legislation was clear evidence of the lack of legislative intention to subject the “reserve system” to antitrust evaluation.¹³⁹ Thus, the issue on whether professional baseball teams could impose restraints on their employees through the reserve clause could not be addressed on the basis of competition law.¹⁴⁰ Ultimately, the question lay with the U.S. Congress.¹⁴¹

With player movement at the mercy of baseball teams by virtue of the “reserve clause” in a player’s contract, and with the power of the courts to provide relief to disgruntled athletes seemingly tempered by judicial precedent and congressional inaction,¹⁴² change had to be made through alternative means: contract negotiation and arbitration.¹⁴³

135. *Flood v. Kuhn*, 407 U.S. 258 (1972).

136. *Id.* at 282.

137. *Id.*

138. BENJAMIN G. RADER, *BASEBALL: A HISTORY OF AMERICA’S GAME* 211 (4th ed. 2018).

139. *Flood*, 407 U.S. at 283.

140. Roger D. Blair & Wenche Wang, *Rethinking Major League Baseball’s Antitrust Exemption*, 30 J. LEGAL ASPECTS SPORTS 18, 29 (2020).

141. *Flood*, 407 U.S. at 285. See also Samuel G. Mann, *In Name Only: How Major League Baseball’s Reliance on Its Antitrust Exemption Is Hurting the Game*, 54 WM. & MARY L. REV. 587, 594 (2012).

142. Mann, *supra* note 141, at 594 (citing *Flood*, 407 U.S. at 283–84). See also ABRAMS, *supra* note 108, at 117.

143. RADER, *supra* note 138, at 211 & ABRAMS, *supra* note 108, at 117.

During the 1975 season, pitchers Andy Messersmith and Dave McNally from the Los Angeles Dodgers and the Montreal Expos, respectively, refused to sign their contracts.¹⁴⁴ The grievance was rooted on divergence over the interpretation of the “option clause” then stipulated in the negotiated UPC, which granted the baseball club the right “to renew this contract for the period of one year on the same terms[.]”¹⁴⁵ On one hand, the franchise owners were adamant that the said clause “bound players to their clubs in perpetuity[.]”¹⁴⁶ Otherwise stated, each renewal of the player’s contract resulted in a renewal of the “one-year option clause[.]”¹⁴⁷ On the other hand, the players argued that the “option clause” should permit the club to renew the contract “for one year only.”¹⁴⁸

With the construction of the “option clause” at an impasse, the dispute was submitted to a three-member arbitration panel¹⁴⁹ composed of Marvin Miller, as Executive Director of the Major League Baseball Players Association (MLBPA);¹⁵⁰ John Gaherin, as negotiator of the MLB Player Relations Committee;¹⁵¹ and Peter Seitz, a trained lawyer with a distinguished career as a “labor neutral” whom both the owners and the MLBPA had elected as their “permanent” labor arbiter.¹⁵²

More than 50 years after the first lawsuit that challenged the injustice of baseball’s “reserve system” on the basis of federal antitrust law, the “reserve clause” met its undoing at the hands of collective bargaining, negotiation, and arbitration in the field of labor.¹⁵³ Seitz, serving as the independent chair,¹⁵⁴ eventually ruled that the “reserve clause” allowed a team “only one additional year of service from a player,”¹⁵⁵ officially ending a “system of servitude” that had stood as a pillar of professional baseball relations since

144. RADER, *supra* note 138, at 211 & ADAM EPSTEIN, SPORTS LAW 351 (2013).

145. ABRAMS, *supra* note 108, at 118–19.

146. *Id.* at 118.

147. *Id.* at 119.

148. *Id.*

149. RADER, *supra* note 138, at 211.

150. *Id.* at 208.

151. *Id.* at 208–09.

152. ABRAMS, *supra* note 108, at 119.

153. *See id.* at 117.

154. RADER, *supra* note 138, at 211.

155. EPSTEIN, *supra* note 144, at 351.

1879.¹⁵⁶ Although the franchise owners removed Seitz from his role as “baseball’s arbitrator,”¹⁵⁷ they later struck out on appeal,¹⁵⁸ marking the beginning of free agency that eventually found its way into other professional sports in the U.S.¹⁵⁹

2. Free Agency in the MLB Today

As the dust settled in the aftermath of a battle that was fought both on and off the diamond, professional baseball players were gifted with a significant degree of contractual freedom unheard of for almost a century, notwithstanding the subsistence of the sport’s exemption from the application of federal antitrust law.¹⁶⁰ Thus, while *Federal Baseball Club of Baltimore, Inc.* remains effective precedent as the foundation of professional baseball’s unique development in the U.S.,¹⁶¹ free agency therein has since expanded significantly.

In the present, MLB players become free agents after reaching six years of service in the league, or when they are released by their clubs before hitting the six-year mark.¹⁶² If a player with less than six years under his belt signs with a club, he remains under that club’s control until he serves the number of years required for him to become a free agent, even if the contract does not cover the total number of years needed for him to reach such point.¹⁶³

Like the NBA, the MLB follows a particular schedule that determines when during the year free agency sets in. While MLB players become free agents the day following the end of the World Series, they are prohibited

156. HENSLER, *supra* note 116, at 223.

157. EPSTEIN, *supra* note 144, at 351.

158. *Id.* & RADER, *supra* note 138, at 212.

159. EPSTEIN, *supra* note 144, at 351.

160. *See generally* Blair & Wang, *supra* note 140, at 39-40 & Mann, *supra* note 141, at 625-26.

161. *See generally* Joseph Gordon Hylton, *Why Baseball’s Antitrust Exemption Still Survives*, 9 MARQ. SPORTS L.J. 391, 391 (1999).

162. Major League Baseball, Free Agency, available at <https://www.mlb.com/glossary/transactions/free-agency> (last accessed July 31, 2023) [<https://perma.cc/R2ZF-ZPG6>].

163. *Id.*

from signing with new clubs until five days thereafter.¹⁶⁴ Although teams are not barred from approaching potential signings, the five-day window is a period during which “teams can retain their departing free agents.”¹⁶⁵

Similarly, distinctions exist in professional baseball with respect to “options,” “opt-outs,” and “offers.” An “option” is a “potential extension to a player contract,” which is negotiated at the time of the signing thereof.¹⁶⁶ Failure to exercise that “option” within five days from the conclusion of the World Series turns the player into a free agent.¹⁶⁷

The option to extend a contract may be contingent on either the player or the club, or on the mutual decision of both parties.¹⁶⁸ A “player option” affords the player the right to determine “whether [or not] to exercise the option year.”¹⁶⁹ A “club option” refers to authority on the part of the team “to decide whether the option will be exercised.”¹⁷⁰ Should the team opt not to extend the player’s contract, having deemed the player’s performance to be unworthy of the value of the option, it is often required to “pay the player a negotiated fraction of the value of the option year.”¹⁷¹ In the middle of the spectrum, “mutual options” may be exercised, provided there is consent between the team and the player.¹⁷²

Should a player seek to “opt out of his remaining contract and become a free agent[,]” negotiated contract provisions permit him to cash in, depending on his performance during the early years of the agreement.¹⁷³ Effectively, a player who dominates the statistics sheet has the contractual right to opt out of an existing contract, which forces his current team to

164. Anthony Castrovine, Full Guide to Offseason Dates, Rules, Terms, *available at* <https://www.mlb.com/news/mlb-offseason-dates-rules-and-terms> (last accessed July 31, 2023) [<https://perma.cc/VDG9-2FZX>].

165. *Id.*

166. *Id.*

167. *Id.*

168. *See id.*

169. *Id.*

170. Castrovine, *supra* note 164.

171. *Id.*

172. *Id.*

173. *Id.*

decide whether the numbers justify keeping him on the roster with a corresponding increase in pay.¹⁷⁴

Naturally, “opt out clauses” have been criticized for unfairly tipping the scales in favor of the player at the expense of the rights of the club.¹⁷⁵ On one hand, players who deliver on the diamond can depart mid-contract for another club where they may potentially strike greater gold.¹⁷⁶ The team’s ultimatum is to either pay the player or lose him.¹⁷⁷ On the other hand, players who do not perform as well nevertheless reap the salary benefits of the full term of their agreements, despite not meeting performance expectations.¹⁷⁸

Finally, a “qualifying offer” refers to a “one-year offer worth the mean salary of the MLB’s 125 highest-paid players[,]” which is a value that changes yearly.¹⁷⁹ A “qualifying offer” must likewise be made “within five days of the conclusion of the World Series,” with the offerees given until 14 November of that year to accept or reject the offer made.¹⁸⁰

Acceptance of the “qualifying offer” binds the player to his current team for another season.¹⁸¹ Rejection thereof permits the player to explore free agency.¹⁸² If the player signs with another team prior to the succeeding amateur draft, the team from which the player departed is granted a

174. Jacob Shafer, Will the ‘Rise of the Opt-Out’ in MLB Be a Win-Win Scheme or Future Regret, *available at* <https://bleacherreport.com/articles/2601297-will-the-rise-of-the-opt-out-in-mlb-be-a-win-win-scheme-or-future-regret> (last accessed July 31, 2023) [<https://perma.cc/RD6U-FZNH>].

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Castrovince, *supra* note 164. See generally Mike Axisa, *MLB Qualifying Offer: How the One-Year, \$19.65M Deal Works and Candidates to Receive QO this Offseason*, CBS SPORTS, Nov. 7, 2022, *available at* <https://www.cbssports.com/mlb/news/mlb-qualifying-offer-how-the-one-year-19-65m-deal-works-and-candidates-to-receive-qo-this-offseason> (last accessed July 31, 2023) [<https://perma.cc/5MTD-G4LG>].

180. Castrovince, *supra* note 164.

181. *Id.*

182. *Id.*

compensatory draft pick.¹⁸³ The team with whom the departing player signed, however, is forced to lose one or more draft picks.¹⁸⁴

C. Free Agency in the National Hockey League

1. History

The terms of free agency in the National Hockey League (NHL) have been described as particularly restrictive and among the least generous in professional sports.¹⁸⁵ In contrast to baseball history, free agency in professional hockey was earned through the courts after a legal battle between two rival leagues: the World Hockey Association (WHA) and the NHL.¹⁸⁶ Like baseball, however, the dispute concerned the application of federal antitrust law, this time with respect to the movement of hockey players between the two leagues.¹⁸⁷

Following the WHA's formation as a direct competitor of the NHL, the new league began filling its ranks with then NHL players,¹⁸⁸ threatening the NHL's "monopolistic position as the sole supplier of major league hockey competition."¹⁸⁹ In response, the NHL doubled down on its efforts to prohibit its players from jumping ship to the WHA,¹⁹⁰ employing, among others, a stringent interpretation of the familiar "reserve clause."¹⁹¹

183. *Id.*

184. *Id.*

185. Paul D. Staudohar, *The European and U.S. Sports Labor Markets*, in INTERNATIONAL SPORTS ECONOMICS COMPARISONS 65 (Rodney D. Fort & John L. Fizek, eds., 2004) & 1 AARON N. WISE & BRUCE S. MEYER, INTERNATIONAL SPORTS LAW AND BUSINESS 115 (1997).

186. Matheson, *supra* note 48, at 117 & James B. Dworkin & Richard A. Posthuma, *Professional Sports: Collective Bargaining in the Spotlight*, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR 252 (Paul F. Clark, et al., eds., 2002).

187. *See id.*

188. Matheson, *supra* note 48, at 117.

189. Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 466-67 (E.D. Pa. 1972) (U.S.).

190. Matheson, *supra* note 48, at 117.

191. *See generally* NEIL LONGLEY, AN ABSENCE OF COMPETITION: THE SUSTAINED COMPETITIVE ADVANTAGE OF THE MONOPOLY SPORTS LEAGUES 91 (2013).

In similar fashion, professional hockey's "reserve clause" sought to "make players an inimitable resource."¹⁹² NHL teams enjoyed an "absolute monopsony of power over their players[.]" which permitted them to "unilaterally and perpetually renew" their players' contracts, as well as to deny them any opportunities for movement between NHL teams.¹⁹³

Thus, when the WHA emerged as an alternative for professional hockey players, the NHL argued that its "reserve clause" did not only prohibit the movement of players between and among NFL teams; rather, the "reserve clause" actually and more specifically prohibited players from moving between and among leagues.¹⁹⁴ With the NHL's preservation of its own commercial interests coming at the expense of its players' rights to avail of more lucrative opportunities on the ice, the parties eventually came to blows in the courtroom.¹⁹⁵

In *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*,¹⁹⁶ a Pennsylvania district court was presented with the issue of whether the NHL violated federal antitrust law through its "reserve clause, affiliation agreements, and market power dominance[.]"¹⁹⁷ The court, ruling through Judge A. Leon Higginbotham, Jr., found that the NHL and its constituent teams did operate in the field of "interstate commerce [and] within the meaning of the Sherman Act[.]" and that the reserve clause's exclusion of the WHA and its member clubs from entry into major league professional hockey via the "reserve clause" constituted a violation of Section 2 of the same federal statute.¹⁹⁸

Specifically, the decision established that the agreements within the NHL and between its member teams — through its "By-Laws and Constitution, the Joint Affiliation Agreement[.] and the Pro-Amateur Agreement to establish and maintain the player reserve system" — unreasonably restrained players from freely negotiating for their services, both within the NHL and outside the league.¹⁹⁹ In other words, the NHL's "claim to perpetual

192. *Id.* at 91.

193. *Id.*

194. *Id.*

195. *See id.*

196. *Philadelphia World Hockey Club, Inc.*, 351 F. Supp.

197. *Id.* at 467.

198. *Id.* at 517-18. The court, at the preliminary injunction stage, did not decide whether there was a violation of Section 1 of the Sherman Act.

199. *Id.* at 517-18.

ownership of players[,]” as a means to “sustain a long-term competitive advantage[,]” had to yield to antitrust challenge.²⁰⁰ Such arrangements effectively eliminated competition by denying non-NHL teams “access to the supply of potential and established professional caliber players,” whose services, skills, and talent were critical to the “establishment of a major professional hockey league.”²⁰¹

The legal scramble on the ice in *Philadelphia World Hockey Club, Inc.* led the NHL to abandon the “reserve clause” and to instead include a “one-year option clause in all player contracts,” to which the NHL Players Association acceded.²⁰² Nevertheless, with free agency still limited to an extent in professional hockey, collective bargaining would eventually prove to be the catalyst for greater player freedom two decades later.²⁰³

The abolition of the “reserve clause” and the beginning of free agency in the NHL in 1972 fueled not only the increase of player movement between new teams and leagues,²⁰⁴ but more significantly, the rise of individual salaries.²⁰⁵ Consequently, talks emerged regarding the imposition of a salary cap and payroll tax to relieve team owners of the increasing rates at which professional hockey players were being paid prior to the start of the 1994-1995 NHL season.²⁰⁶ When debate over the team owners’ aim to equalize costs and the players’ desire for a revenue sharing scheme hit a snag, a lockout ensued, leading to nearly half the season being cancelled.²⁰⁷

200. LONGLEY, *supra* note 191, at 91.

201. *Philadelphia World Hockey Club, Inc.*, 351 F. Supp. at 518.

202. Jordan I. Kobritz, *Reserve Clause*, in 1 ENCYCLOPEDIA OF SPORTS MANAGEMENT AND MARKETING 1278 (Linda E. Swayne & Mark Dodds eds., 2011).

203. Matheson, *supra* note 48, at 117.

204. Daniel S. Mason, *World Hockey Association*, in SPORTS IN AMERICA FROM COLONIAL TIMES TO THE TWENTY-FIRST CENTURY: AN ENCYCLOPEDIA (VOLUMES 1-3) 962 (Steven A. Riess ed., 2011).

205. *Id.* See also Kobritz, *supra* note 202, at 1278.

206. MILLER & SCHOEPFER, *supra* note 18, at 181 & Dworkin & Posthuma, *supra* note 186, at 252.

207. *Id.* & MARK CONRAD, THE BUSINESS OF SPORTS: A PRIMER FOR JOURNALISTS 169 (2011).

In January 1995, mutual agreement over a reformed CBA lifted tensions and the deadlock between player and team, albeit temporarily.²⁰⁸ Apart from stipulating a rookie salary cap to address the contention over individual salaries, the 1995 CBA also granted “unrestricted free agency” to veterans who were at least 31 years of age and who had at least four years of experience in the NHL.²⁰⁹

Conversely, however, a “restrictive free agency system” was implemented to cover players who met either of the foregoing criteria “but did not attain unrestricted free agent status.”²¹⁰ If a free agent opted to change teams, a hefty sum would have to be paid to that player’s former club, with the rates of compensation depending on his salary during the previous season.²¹¹ An unrestricted free agent, in comparison, could make the switch between clubs without the need to compensate the team from which he came.²¹²

2. Free Agency in the NHL Today

Although peace inside the professional hockey rink would prove to be relatively short-lived after the lockout during the 1994-1995 NHL season,²¹³ the CBA that ended the dispute, at least for the meantime, did leave a lasting legacy on player freedom.²¹⁴ While the dispute was initially premised on

208. CONRAD, *supra* note 207, at 169 & Dworkin & Posthuma, *supra* note 186, at 252.

209. *Id.*

210. CONRAD, *supra* note 207, at 169.

211. Dworkin & Posthuma, *supra* note 186, at 252.

212. *Id.* at 252-53.

213. The failure of the 1995 CBA to provide a sufficient resolution for the issue on salary caps led to another lockout during the 2004-2005 NHL season, the entirety of which was cancelled. MILLER & SCHOEPFER, *supra* note 18, at 181 (citing Alexandra Baumann, *Play Ball: What Can Be Done to Prevent Strikes and Lockouts in Professional Sports and Keep the Stadium Lights On*, 32 J. NAT’L. ASS’N. ADMIN. L. JUDICIARY 253, 282 (2012)) & DANIEL J. BRUTON, SPORTS MARKETING: THE VIEW OF INDUSTRY EXPERTS 51 (2016) (citing Thomas Heath & Tarik El-Bashir, *Cold Reality: NHL Cancels the Season*, WASH. POST, Feb. 17, 2005, available at <https://www.washingtonpost.com/archive/politics/2005/02/17/cold-reality-nhl-cancels-the-season/3d29867b-8f6e-4969-8cbf-67eb9c200cc8> (last accessed July 31, 2023) [<https://perma.cc/XD6S-E52X>]).

214. Len Hochberg, *Last Minute Deal Saves NHL Season*, WASH. POST, Jan. 12, 1995, available at <https://www.washingtonpost.com/archive/politics/1995/01/12/last-minute-deal-saves-nhl-season/13ff25d7-6637-4504-b8da-8a9860254cb7> (last accessed July 31, 2023) [<https://perma.cc/S6SC-M9HJ>].

placing a cap on skyrocketing wages,²¹⁵ negotiations eventually progressed towards making free agency “the sticking point[,]” with the NHL becoming the last of the four major professional sports leagues to incorporate an unrestricted form of free agency (though with no salary cap at the time).²¹⁶

Under the terms of the 1995 CBA, unrestricted free agency was restricted to players who met certain requirements pertaining to (i) age and (ii) tenure in the NHL.²¹⁷ Thus, free agents could be divided into different groups: those who met the criteria, and those who did not.²¹⁸ On one hand, unrestricted free agents who were at least 31 years of age, with at least four years of NHL experience, could sign with new teams without any compensation being paid to their original clubs.²¹⁹ Restricted free agents, on the other hand, could only move depending on their original teams’ payment of compensation or failure to exercise a right of first refusal.²²⁰

Three decades and two labor disputes later,²²¹ NHL players in the present become unrestricted free agents upon the expiration of their contracts and upon either reaching 27 years of age or completing seven years in the league.²²² Unrestricted free agents are permitted to sign with any team from whom they receive a contract offer, but only for a maximum of seven

215. BRUTON, *supra* note 213, at 51 & MILLER & SCHOPFER, *supra* note 18, at 181.

216. *Id.*

217. WISE & MEYER, *supra* note 185, at 115.

218. *Id.*

219. *Id.* Under the specific terms of the 1995 CBA, which was to last for six years, players became unrestricted free agents at age 32 from the 1994-1995 to the 1996-1997 seasons, and at age 31 from the 1997-1998 to 1999-2000 seasons. Richard Sandomir, *HOCKEY; The Players Approve Agreement with N.H.L.*, N.Y. TIMES, Jan. 14, 1995, available at <https://www.nytimes.com/1995/01/14/sports/hockey-the-players-approve-agreement-with-nhl.html> (last accessed July 31, 2023) [<https://perma.cc/UK7M-J39L>].

220. WISE & MEYER, *supra* note 185, at 115.

221. *See generally* MILLER & SCHOEPFER, *supra* note 18, at 181.

222. The Athletic NHL Staff, *How Does NHL Free Agency Work? A Full Guide of What to Know Before Wednesday*, THE ATHLETIC, July 12, 2022, available at <https://theathletic.com/3415886/2022/07/12/nhl-free-agency-facts> (last accessed July 31, 2023) [<https://perma.cc/VY7X-X9DV>].

years.²²³ However, should an unrestricted free agent opt to re-sign with his original team, a period of eight years is permitted under the new contract.²²⁴

NHL players who do not meet the age and tenure requirements, but who have received qualifying offers, are restricted free agents.²²⁵ The acquisition of a restricted free agent typically involves an “offer sheet,”²²⁶ which refers to a contract that a team may present to an eligible restricted free agent whose rights are owned by a different NHL club.²²⁷ If a restricted free agent opts to sign an offer sheet with an NHL team outside his present club, that team is given the option to either match the offer or not.²²⁸ Should the present club match the offer, “it inherits the signed contract as is,”²²⁹ and is bound by such contract.²³⁰ If the present club elects not to do so, the restricted free agent joins the new team under the offer sheet given.²³¹ As a form of compensation, however, the original team is entitled to “draft picks from the signing team, depending on what the average annual value of the offer sheet was.”²³²

223. *Id.*

224. *Id.*

225. *Id.*

226. Bryan Murphy, *NHL Offer Sheet, Explained: Compensation, Qualifications for Signing Restricted Free Agents*, SPORTING NEWS, July 13, 2023, available at <https://www.sportingnews.com/us/nhl/news/nhl-offer-sheet-compensation-rules-restricted-free-agents/gwhzvmvbcjbsmyf3qlckhdrz> (last accessed July 31, 2023) [<https://perma.cc/U5YL-6YFW>]. It has been noted that offer sheets are “extremely uncommon” in contemporary hockey history, as the option not to match an offer and to part ways with a player has only ever been exercised twice this century. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. The Athletic NHL Staff, *supra* note 222.

231. *Id.* & Murphy, *supra* note 226.

232. *Id.* The salary stipulated in the offer sheet determines how many draft-picks the original team receives, and the round in which they should have been selected during the draft. *Id.*

D. Free Agency in the National Football League

1. History

The foundations of free agency in the National Football League (NFL) have likewise been shaped by the lessons learned from the use of a “reserve clause” to sanction ownership by teams of player rights in perpetuity.²³³ The “reserve” system in professional American football was a product of the ratification of the league’s first constitution in 1921,²³⁴ which included a “reserve clause” that gave teams the “first opportunity” to sign players following the expiration of their contracts.²³⁵ If that team did not offer the player a contract, the player could sign with another team of his choosing.²³⁶

The “reserve clause” was scrapped from the NFL’s constitution in 1948 when it was converted into a new “option clause” that permitted teams to keep players for an additional year under the same salary following the expiration of their contracts.²³⁷ Given that this conversion kept the “reserve clause” in play, at least in modified form,²³⁸ it did not take long for the players to test the limits of this new stipulation in the standard player’s contract,²³⁹ and to eventually tackle the issue of its legal validity in the courts.²⁴⁰

233. BRAD SCHULTZ, *THE NFL’S PIVOTAL YEARS: REMAKING PRO FOOTBALL, 1957-1962* 27 (2021).

234. See National Football League, Constitution and Bylaws of the National Football League, at art. XVII, ¶ 17.16, available at <https://sports-entertainment.brooklaw.edu/wp-content/uploads/2021/01/NFL-Constitution-Bylaws.pdf> (last accessed July 31, 2023) [<https://perma.cc/H7AD-3HJW>] & Dalton Miller, *The History of NFL Free Agency*, available at <https://www.profootballnetwork.com/history-of-nfl-free-agency/> (last accessed July 31, 2023) [<https://perma.cc/KV53-3JBC>].

235. *Id.* See also CRAIG R. COENEN, *FROM SANDLOTS TO THE SUPER BOWL: THE NATIONAL FOOTBALL LEAGUE 1920-1967* 89 (2005).

236. National Football League, *supra* note 234.

237. Miller, *supra* note 234 & JAMES QUIRK & RODNEY D. FORT, *PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS* 190 (201).

238. See generally *Rights of Professional Athletes: Hearing Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary*, 94th Cong. 43 (1975).

239. See QUIRK & FORT, *supra* note 237, at 190.

240. See JOHN WILSON, *SPORT, SOCIETY, AND THE STATE: PLAYING BY THE RULES* 103 (1994).

The first flickers of free agency in American football manifested in 1957, when the “reserve system” was struck down in *Radovich v. National Football League*.²⁴¹ The earliest entanglement between labor and capital in the NFL saw the league face antitrust charges in relation to the “reserve clause,” which was alleged to have been violated by Detroit Lions guard William Radovich when he attempted to sign under “a football organization outside the ties of the [NFL].”²⁴²

The “reserve clause” at the time tied Radovich to the Lions and prevented him from signing elsewhere without their approval, with a five-year suspension stipulated as a penalty for any breach.²⁴³ When Radovich signed with the Los Angeles Dons of the All American Football Conference for the 1946 and 1947 seasons, he was blacklisted from the NFL, and later denied a coaching position with an NFL-affiliated team following his retirement.²⁴⁴ This led Radovich to sue the league.²⁴⁵

Although the NFL argued that the professional football business was similar enough to the business of baseball to warrant the same exemption from antitrust law,²⁴⁶ the U.S. Supreme Court held that football was in fact subject thereto, despite the league’s admission of employing “the same techniques that existed in baseball[.]”²⁴⁷ The *Radovich* ruling, however, found that American football, unlike baseball, did constitute interstate commerce, which led the U.S. Supreme Court to question the legality of the NFL’s “reserve clause” and to reject the league’s right to reserve players on the basis thereof.²⁴⁸

Although *Radovich* held that American football was not exempt from antitrust policy, which led to the dismantling of the “reserve clause,” team owners found a way to circumvent the situation to maintain their position

241. *Radovich v. National Football League*, 352 U.S. 445 (1957).

242. *Radovich v. National Football League*, 231 F. 2d 620, 621 (9th Cir. 1956) (U.S.).

243. *Id.*

244. QUIRK & FORT, *supra* note 237, at 189.

245. *Id.*

246. *Radovich*, 352 U.S. at 449–50.

247. QUIRK & FORT, *supra* note 237, at 189–90 (citing *Radovich*, 352 U.S. at 450).

248. LEEDS & VON ALLMEN, *supra* note 33, at 298 & COENEN, *supra* note 235, at 182.

of power.²⁴⁹ While explicit arrangements to bind players perpetually to their teams were prohibited in the spirit of competition, a discrete and unspoken “gentleman’s agreement” not to sign players under contract with another team proved much harder to detect.²⁵⁰

This “gentleman’s agreement” between NFL clubs constituted an “equally illegal” scheme that revived the same predicament for players that had been outlawed by judicial fiat.²⁵¹ NFL teams were actually permitted to sign players who had “played out their option years,” but pursuant to this “gentleman’s agreement,” they implicitly agreed to refrain from doing so.²⁵²

In 1963, the NFL amended its constitution and by-laws to acknowledge that any free agent who played out his option year after the expiration of his contract could sign with a new club, provided that the club losing the free agent would be compensated by current players or draft picks.²⁵³ These amendments were based on the reforms instituted by the “Rozelle Rule” in 1962,²⁵⁴ in recognition of a player’s right to change teams upon the conclusion of his contract, provided that the original team was compensated with “players of equal value.”²⁵⁵ If the old and the new team could not “reach a mutually satisfactory agreement on compensation,” the NFL Commissioner — then Pete Rozelle, after whom the rule was named — had the sole discretion to determine the rate of compensation.²⁵⁶

The “Rozelle Rule” constituted another roadblock to player movement,²⁵⁷ the net effect of which was to keep salaries low,²⁵⁸ as well as

249. Micheal Leeds, *American Football*, in HANDBOOK ON THE ECONOMICS OF SPORT 520 (Wladimir Andreff & Stefan Szymanski eds., 2006).

250. *Id.*

251. *Id.*

252. Richard A. Kaplan, *The NBA Luxury Tax Model: A Misguided Regulatory Regime*, 104 COLUM. L. REV. 1615, 1637 n. 18 (2004) (citing QUIRK & FORT, *supra* note 237, at 190–91).

253. Shelly Kendricks, *The NFL Franchise Player Rule: Legal and Economic Justifications*, 5 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1, 1–2 (2008).

254. Leeds, *supra* note 249, at 520.

255. *Id.*

256. Donald Novick, *The Legality of the Rozelle Rule and Related Practices in the National Football League*, 4 FORDHAM URB. L.J. 582, 582 (1976).

257. See Leeds, *supra* note 249, at 520.

258. EPSTEIN, *supra* note 144, at 352.

to prevent “players from marketing their services to the highest bidder.”²⁵⁹ Technically speaking, free agency did exist in the NFL, and free agents were, by definition, eligible for transfers. Signing a free agent, however, came at a price and thus became equivalent to a trade,²⁶⁰ the terms of which were usually beyond the control of the parties thereto.²⁶¹ With the compensation to be given to the free agent’s previous team typically requiring a hefty payment of draft picks, current players, or money,²⁶² there was hardly any incentive to sign players on the market.²⁶³ As a result, this expensive system of compensation made free agency virtually non-existent,²⁶⁴ putting player movement at a standstill.²⁶⁵

The deterioration of player welfare eventually led the NFL Players’ Association (NFLPA) to file suit on antitrust grounds in *Mackey v. National Football League*.²⁶⁶ The first high-profile case on sports and competition law to reach the U.S. Court of Appeals,²⁶⁷ *Mackey* involved the NFLPA’s attempt to sack the existing “Rozelle Rule” in court, with union President and later Hall of Fame tight end John Mackey leading the charge.²⁶⁸

The NFLPA, on one hand, assailed the legality of the “Rozelle Rule” under the Sherman Act, arguing that the inter-team compensation scheme was a *per se* violation of federal antitrust law, and that even if it was not, the rule was still “illegal under the rule of reason.”²⁶⁹ The league, on the other hand, argued that the rule was key to the success of the NFL.²⁷⁰ Allegedly, without the rule, nothing would stop players from moving to teams in bigger cities, jeopardizing any “competitive balance” between squads.²⁷¹

259. PATRICK K. THORNTON, SPORTS LAW 150 (2011).

260. Leeds, *supra* note 249, at 520.

261. *Id.*

262. EPSTEIN, *supra* note 144, at 352.

263. Daniel S. Mason, *Antitrust Violations in Professional Sports*, in BATTLEGROUND: SPORTS 28 (Michael Atkinson ed., 2008).

264. *Id.*

265. *See id.*

266. *Mackey v. National Football League*, 543 F. 2d 206 (8th Cir. 1976) (U.S.).

267. Mason, *supra* note 263, at 28–29.

268. EPSTEIN, *supra* note 144, at 352.

269. Novick, *supra* note 256, at 583.

270. *Mackey*, 543 F.2d at 609.

271. Mason, *supra* note 263, at 28.

The courts, however, decided in favor of the players.²⁷² While the U.S. court did not identify any *per se* violation of federal antitrust law,²⁷³ it did find that the “Rozelle Rule” contravened the “rule of reason” in American case law, thereby taking on the character of an unreasonable restraint of trade under Section 1 of the Sherman Act.²⁷⁴ Even without an assessment of whether the “Rozelle Rule” was “essential to the maintenance of competitive balance in the NFL[,]” the decision categorically stated that the system of compensation for signing free agents was “significantly more restrictive than necessary to serve any legitimate purpose it might have in this regard.”²⁷⁵

Specifically, the “Rozelle Rule” was deemed to present a “perpetual restriction on a player’s ability to sell his services in an open market throughout his career.”²⁷⁶ Professional football players were not only denied “input into the process” to determine their fair compensation, but also kept in the dark about the compensation demanded by their former teams, and unaware “that other teams might be interested in [them], but for the degree of compensation sought.”²⁷⁷

Reform in professional football post-*Mackey*, however, saw the NFLPA lose much of the yardage it had gained through the favorable ruling.²⁷⁸ The overturning of the “Rozelle Rule” sparked a revamp of the CBA, leading to a “new form of free agency [for] a few players on each team,”²⁷⁹ in what became known as the NFL’s “Plan B.”²⁸⁰ From 1989 to 1992, “Plan B” permitted a team to preserve the rights of 37 players each season,²⁸¹ with the rest of its roster treated as free agents.²⁸² The 37 “protected Plan B free agent[s]” were barred from signing with other teams unless their original

272. *Id.*

273. *Mackey*, 543 F.2d at 623.

274. *Id.*

275. *Id.* at 622.

276. *Id.*

277. *Id.*

278. Mason, *supra* note 263, at 28–29.

279. Kendrick, *supra* note 253, at 2 (citing Jeffrey D. Schneider, *Unsportsmanlike Conduct: The Lack of Free Agency in the NFL*, 64 S. CAL. L. REV. 797, 816 (1991)).

280. *Id.*

281. RICK GONSALVES, PLACEKICKING IN THE NFL: A HISTORY AND ANALYSIS 291 (2014).

282. Kendrick, *supra* note 253, at 2.

teams were given the opportunity to re-sign them first.²⁸³ This right of first refusal did not apply to the remainder of the team, who were left “unprotected” and were at liberty to negotiate new contracts under a different club.²⁸⁴

While “Plan B” granted several veterans the opportunity to avail of “sizeable signing bonuses and salary increases[,]”²⁸⁵ team owners were able to take greater advantage of the system.²⁸⁶ Given that only the rights of players outside of the 37 “protected” free agents were unrestricted, “unprotected” free agents typically consisted of only “unwanted or less wanted players[,]” thus allowing NFL teams to restrict the rights of their players of greater value by including them in the “protected” 37.²⁸⁷ Naturally, among “unprotected” free agents who were able to use their newfound freedom, “none were star players.”²⁸⁸

Like its predecessors, “Plan B” was taken down in federal court in 1992 when eight players brought suit on the ground that the policy operated in “unlawful restraint of trade.”²⁸⁹ In *McNeil v. National Football League*,²⁹⁰ the players argued that “Plan B” was an unfair restriction on their “ability to offer their services on the open market[,]” with a heavy compensation system deterring teams “from pursuing restricted free agents.”²⁹¹ In response, the NFL alleged that “Plan B” was a necessary means of maintaining their competitive edge in providing a top-notch product in the form of quality entertainment.²⁹²

McNeil nevertheless struck down “Plan B” in the same manner and on the same grounds as the invalidation of the “Rozelle Rule” in *Mackey* — for

283. GONSALVES, *supra* note 281, at 291.

284. *Id.*

285. Kendrick, *supra* note 253, at 3 (citing PAUL C. WEILER & GARY R. ROBERTS, SPORTS AND THE LAW: TEXT, CASES, PROBLEMS 211 (1993)).

286. *Id.* at 2.

287. *Id.* (citing Schneider, *supra* note 279, at 818). See generally LONGLEY, *supra* note 191, at 18 & GLENN M. WONG, ESSENTIALS OF SPORTS LAW 495 (4th ed. 2010).

288. Kendrick, *supra* note 253, at 3 (citing WEILER & ROBERTS, *supra* note 285, at 211).

289. GONSALVES, *supra* note 281, at 291.

290. *McNeil v. National Football League*, 790 F. Supp. 871 (1992).

291. WONG, *supra* note 287.

292. *McNeil*, 790 F. Supp. at 896. See also WONG, *supra* note 287.

being unreasonable under American jurisprudence.²⁹³ The U.S. court found that not only was the policy unjustified by any legitimate business purpose,²⁹⁴ but also that the rule was “overly restrictive, in violation of antitrust laws.”²⁹⁵

The decision lit the path towards full free agency rights for football players,²⁹⁶ which led to a significant rise in average salaries, given the thriving competitive environment for player services.²⁹⁷ More significantly, *McNeil* sparked renewed negotiation between the NFL and the players union, both of whom were able to see eye to eye on a new CBA in 1993, the first in almost five years.²⁹⁸

The 1993 CBA stipulated a “*quid pro quo*” on two critical points: (1) free agency in favor of the players, and (2) a salary cap on spending to benefit the owners.²⁹⁹

293. Kendrick, *supra* note 253, at 3 (citing WEILER & ROBERTS, *supra* note 285, at 212).

294. *Id.*

295. ROBERT W. TURNER II, NOT FOR LONG: THE LIFE AND CAREER OF THE NFL ATHLETE 165 (2018).

296. PAUL D. STAUDOHR, PLAYING FOR DOLLARS: LABOR RELATIONS AND THE SPORTS BUSINESS 88 (1996); LONGLEY, *supra* note 191, at 18; & LEEDS & VON ALLMEN, *supra* note 33, at 299.

297. LEEDS & VON ALLMEN, *supra* note 33, at 299. See generally Carol T. Rieger, *The Effect of McNeil v. NFL on Contract Negotiation in the NFL — That Was Then, This Is Now*, 3 MARQ. SPORTS L.J. 45, 58 (1992).

298. Dryer, *supra* note 107, at 282 (citing Melanie Aubut, *When Negotiations Fail: An Analysis of Salary Arbitration and Salary Cap Systems*, 10 SPORTS. J. 189, 213 (2003)) & STAUDOHR, *supra* note 296, at 88. The attainment of “unrestricted” free agency in the NFL was a product of more than just the *McNeil* ruling. Several factors contributed to the downfall of “Plan B,” among the most important of which was the decertification of the players union in 1989. See generally Lisa P. Masteralexis & Glenn M. Wong, *Legal Principles Applied to Sport Management*, in PRINCIPLES AND PRACTICE OF SPORT MANAGEMENT 95 (Lisa P. Masteralexis, et al. eds., 2009); JERRY IZENBERG, ROZELLE: A BIOGRAPHY 219 (2014); & MATTHEW FUTTERMAN, PLAYERS: THE STORY OF SPORTS AND MONEY, AND THE VISIONARIES WHO FOUGHT TO CREATE A REVOLUTION 221 (2016). Legally speaking, however, the decertification of the players union rendered the labor exemption to antitrust law inapplicable, which left arrangements within the NFL vulnerable to antitrust attack. Mitch Truelock, *Free Agency in the NFL: Evolution or Revolution?*, 47 S. METHODIST U. L. REV. 1917, 1939 (1994).

299. STAUDOHR, *supra* note 296, at 88.

Under the terms of the new agreement, veterans with at least five years of experience in the NFL were permitted to “change teams without restriction” upon the expiry of their contracts.³⁰⁰ If the team hit the salary cap, the period to attain unrestricted free agency was lowered to four years.³⁰¹

Moreover, teams were permitted “to exempt one ‘franchise’ player from free agency for his career,” so long as that player was “offered the average of the five top salaries at his position.”³⁰² This became known as the “Franchise Player Rule,” according to which a team holds an “exclusive right” to negotiate with and sign a player who would otherwise fall under the dichotomy of a “restricted” or “unrestricted” free agent.³⁰³

2. Free Agency in the NFL Today

In the present, free agency rules in the NFL remain similar to those employed in the NBA, MLB, and NHL. The advent of free agency in the early 1990s marked a period of improved financial and athletic freedom for professional American football players, although such liberty remains tempered by the rules on salary caps and by the general dichotomy between “restricted” and “unrestricted” free agents.³⁰⁴ This framework of restrictions has, however, undergone significant developments since the CBA of 1993.

Among the four major professional sports leagues in the U.S.,³⁰⁵ free agency in American football has been characterized as having “the most liberal arrangement,”³⁰⁶ although the system thereof has been described as

300. *Id.*

301. *Id.*

302. *Id.*

303. Kendrick, *supra* note 253, at 4.

304. See John Vrooman, *The Economic Structure of the NFL*, in *THE ECONOMICS OF THE NATIONAL FOOTBALL LEAGUE: THE STATE OF THE ART* 22 (Kevin G. Quinn ed., 2011); FRANK P. JOZSA, JR. & JOHN GUTHRIE, JR., *RELOCATING TEAMS AND EXPANDING LEAGUES IN PROFESSIONAL SPORTS: HOW THE MAJOR LEAGUES RESPOND TO MARKET CONDITIONS* 111 (1999); & Alvin Dominique, *NFL History: The Road to Free Agency*, available at <https://bleacherreport.com/articles/18183-nfl-history-the-road-to-free-agency> (last accessed July 31, 2023) [<https://perma.cc/5WHD-8L8U>].

305. Paul D. Staudohar, *The European and U.S. Sports Labor Markets*, in *INTERNATIONAL SPORTS ECONOMICS COMPARISONS* 64-66 (Rodney Fort & John Fizez eds., 2004).

306. *Id.* at 65.

“relatively complex[.]”³⁰⁷ The NFL has been further described as a league of extremes, having the “highest revenues and lowest salaries of any of the four major sports.”³⁰⁸

Today, NFL players are categorized as either “restricted” or “unrestricted” free agents.³⁰⁹ An “unrestricted” free agent is a player with four or more “accrued seasons” whose contract has expired, and who may negotiate and sign with any franchise.³¹⁰ “Unrestricted” free agents may sign with another NFL franchise without need for the new team to compensate the previous club through draft picks.³¹¹

A “restricted” free agent is a player with three “accrued seasons”³¹² who is likewise free to negotiate outside his current club, subject to the current club’s “right to match the highest offer made by any other NFL franchise.”³¹³ Should a “restricted” free agent sign an offer sheet with a new club, the previous club has the “right of first refusal,” which permits it to retain that player by making a qualifying offer.³¹⁴ Failure to match the offer from the

307. SCOTT R. ROSNER & KENNETH L. SHROPSHIRE, *THE BUSINESS OF SPORTS* 320 (2011) & Dryer, *supra* note 107, at 320.

308. Leeds, *supra* note 249, at 521.

309. NFL Football Operations, Updates: 2023 NFL Free Agency Questions & Answers (March 13, 2023), *available at* <https://operations.nfl.com/updates/football-ops/2023-nfl-free-agency-questions-answers> (last accessed July 31, 2023) [<https://perma.cc/J5VC-QUVE>] [hereinafter 2023 NFL Free Agency Questions & Answers].

310. Anthony Holzman-Escareno, 2023 NFL Free Agency Explainer: Vital Information on Franchise Tags, Contract Terms, Salary Cap and More, *available at* <https://www.nfl.com/news/2023-nfl-free-agency-explainer-vital-information-on-franchise-tags-contract-term> (last accessed July 31, 2023) [<https://perma.cc/LP3S-V6YU>]. An “accrued season” refers to a season during which the player was on, “or should have been on,” full-play status for a period of at least six regular-season games. *Id.*

Specifically, the player must have spent six or more regular-season games on the club’s “active/inactive, reserve/injured[,] or reserve/physically unable to perform lists.” NFL Free Agency Questions & Answers, *supra* note 309.

311. NFL Free Agency Questions & Answers, *supra* note 309.

312. Holzman-Escareno, *supra* note 310.

313. GONSALVES, *supra* note 281.

314. NFL Free Agency Questions & Answers, *supra* note 309.

new club entitles the previous team to be compensated in the form of draft choices.³¹⁵

The original team may tender the “restricted” free agent one of several qualifying offers, the amounts of which vary on an annual basis.³¹⁶ If the franchise withdraws the tender, the “restricted” free agent becomes “unrestricted.”³¹⁷ The forms of tender include:

- (1) First-round tender — entails a one-year contract worth whatever is higher between \$6.005 million or one-hundred and ten percent (110%) of the player’s base salary in the previous year.³¹⁸ If the original team opts not to match an offer, that team is entitled to receive a first-round draft pick from the new team.³¹⁹
- (2) Second-round tender — entails a one-year contract worth whatever is higher between \$4.304 million or one-hundred and ten percent (110%) of the player’s base salary in the previous year.³²⁰ If the original team opts not to match an offer, that team is entitled to receive a second-round draft pick from the new team.³²¹
- (3) Original-round tender — entails a one-year contract worth whatever is higher between \$2.743 million or one-hundred and ten percent (110%) of the player’s base salary in the previous year.³²² If the original team opts not to match an offer, that team is entitled to receive a draft pick from the round that the player was originally drafted in.³²³
- (4) Right-of-first-refusal tender — entails a one-year contract worth \$2.627 million.³²⁴ Although the original team can match

315. *Id.*

316. Holzman-Escareno, *supra* note 310.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. Holzman-Escareno, *supra* note 310.

323. *Id.*

324. *Id.*

any signed offer sheet from another franchise, no draft compensation is provided if it opts not to do so.³²⁵

The free agency system in the NFL is likewise governed by a strict schedule as to when negotiations can be entered into and when offers can be made for prospective signings.³²⁶ A two-day negotiating period from 13th to 15th March, the beginning of the NFL league year,³²⁷ applies to “prospective unrestricted free agents,” during which teams may contact and enter into negotiations with their “certified agents.”³²⁸ Moreover, the start of the new league year marks the expiration of contracts from the previous season, as well as the opening of the trade window, within which any offers for “restricted” free agents must be tendered.³²⁹

III. THE CURRENT PREDICAMENT IN THE PHILIPPINE BASKETBALL ASSOCIATION

A. The Tale of the Tape

Philippine basketball history has seen the rise and fall of various professional and semi-professional leagues that have, at one point or another, given the PBA a run for its money. In the early 1980s, Danding Cojuangco, then Chairman of San Miguel Corporation, established the Philippine Basketball League (PBL), a semi-professional organization that featured around five to seven teams sponsored by various business entities throughout an almost thirty-year run.³³⁰ The next decade witnessed the inauguration of “Metroball,” or the Metropolitan Basketball Association, which was contested between teams representing different localities in the country (as opposed to private companies) until it went bankrupt after four years.³³¹

While the PBL and “Metroball” differed as to their format and business models, both leagues did share a common trait — they represented a form of competition for the PBA by offering another stage on which Filipino

325. *Id.*

326. NFL Free Agency Questions & Answers, *supra* note 309 & Holzman-Escareno, *supra* note 310.

327. Holzman-Escareno, *supra* note 310.

328. NFL Free Agency Questions & Answers, *supra* note 309.

329. *Id.*

330. FRANK P. JOZSA, JR., GLOBAL SPORTS: CULTURES, MARKETS AND ORGANIZATIONS 79 (2009).

331. *Id.*

athletes could play for pay.³³² Nevertheless, both leagues paled in comparison to the commercial and logistical might of the PBA, eventually closing shop due to shortages in both operating funds and competing teams.³³³

In the PBL's case, despite enjoying significant to moderate success, failure to secure the commitment of complete rosters to participate in two-conference seasons proved to be a thorn in its side.³³⁴ The absence of continuity among participating clubs was a key factor in the PBL's downfall, with the constant change of contestants making it difficult for the PBL to maintain a stable fan base.³³⁵

The PBL was moreover deemed a stepping stone to bigger and better things on the local athletic stage, serving as an arena for recruitment by PBA franchises, as well as an avenue for amateur Filipino basketball players to attract the attention of higher-caliber professional clubs.³³⁶ However, instead of individual players being picked up by PBA franchises (as was the trend),³³⁷ entire squads ended up jumping ship from the PBL to the PBA, leaving the PBL deprived of full rosters to compete in their conferences.³³⁸ This resulted

332. *See generally* Sev Sarmenta, *Lessons from a League That Tried*, PHIL. DAILY INQ., Mar. 12, 2018, available at <https://sports.inquirer.net/288387/lessons-league-tried> (last accessed July 31, 2023) [<https://perma.cc/3GHU-T4V9>] & Anthony E. Servinio, *Goodbye for Now, PBL*, available at <https://servissports.wordpress.com/2011/02/18/goodbye-for-now-pbl> (last accessed July 31, 2023) [<https://perma.cc/3W5J-88SF>].

333. *Id.*

334. Servinio, *supra* note 332.

335. *See id.*

336. *Id.*

337. *See, e.g.,* Joey Villar, *Welcoat Paints Takes Leave of Absence from PBL*, PHIL. STAR, Feb. 16, 2002, available at <https://www.philstar.com/sports/2002/02/16/150804/welcoat-paints-takes-leave-absence-pbl> (last accessed July 31, 2023) [<https://perma.cc/QD2C-MG8S>].

338. *See, e.g.,* JOZSA, JR., *supra* note 330, at 79; PHIL. STAR, *Pro-Bound Rain or Shine Once Home to PBA Stars*, June 17, 2006, available at <https://www.philstar.com/sports/2006/06/17/342337/pro-bound-rain-or-shine-once-home-pba-stars> (last accessed July 31, 2023) [<https://perma.cc/A26J-XUTM>]; & Reuben Terrado, *Remembering That Grand Slam-Winning Stag Team in the PBL*, available at <https://www.spin.ph/basketball/remembering-the-1995-grand-slam-of-stag-pale-pilsen-in-the-pbl-a795-20200607> (last accessed July 31, 2023) [<https://perma.cc/F8TP-EXUJ>].

in a consistent lack of competitors in PBL tournaments, which, in turn, made it even more difficult for the league to compete with the PBA.

Where “Metroball” was concerned, financial support from ABS-CBN aided its start-up in 1998 as a professional league “based on regionalization.”³³⁹ With teams representing a particular city, province, or island (as opposed to having franchises under the names of major corporations),³⁴⁰ “Metroball” enjoyed the distinct and genuine character of literal “home-and-away basketball.”³⁴¹

From the get-go, competition brewed between “Metroball” and the PBA. A rivalry formed on opening day when Vintage Enterprises, the PBA’s broadcaster then, filed for a court order to stop coverage of the new league by IBC-13,³⁴² which had struck a deal with ABS-CBN to televise “Metroball.”³⁴³ In filing for a temporary restraining order, Vintage Enterprises allegedly sought to shield its monopoly of basketball-television.³⁴⁴

Further fuel was added to the fire of competition between the two leagues when “Metroball” began attracting PBA stars.³⁴⁵ In retaliation, the mother companies of PBA franchises refused to lend “Metroball” support through their commercials,³⁴⁶ which made it difficult for the latter to generate sufficient television revenue.³⁴⁷ Moreover, although the home-and-away system involving provincial or city franchises guaranteed fans based on location,³⁴⁸ this format also required games to be played in local gyms and

339. JOZSA, JR., *supra* note 330, at 79.

340. *Id.* & Bill Velasco, *The MBA’s 25th*, PHIL. STAR, Feb. 25, 2023, *available at* <https://www.philstar.com/sports/2023/02/25/2247453/mbas-25th> (last accessed July 31, 2023) [<https://perma.cc/5TKD-5U4A>].

341. Ivan Stewart Saldajeno, *MBA: A Game Changer in PH Basketball*, *available at* <https://www.pna.gov.ph/articles/1030473> (last accessed July 31, 2023) [<https://perma.cc/5ZTG-BSLW>].

342. Aldrin Cardona, *Basketball Rivalry Goes From Court to Court*, MANILA STAND., Mar. 7, 1998, at 12.

343. Saldajeno, *supra* note 341.

344. Cardona, *supra* note 342.

345. BARTHOLOMEW, *supra* note 7, at 209 & Servinio, *supra* note 332.

346. Sarmenta, *supra* note 332.

347. *Id.*

348. *Id.*

stadiums that could not host crowds to purchase merchandise, tickets, and other products.³⁴⁹

Four years from its inauguration, “Metroball” went bankrupt.³⁵⁰ Although some of its players were earning at nearly the same rate of PBA stars, the financial inability of team owners to keep their franchises running and to sustain development ultimately proved to be the league’s downfall.³⁵¹ The drastic increase in both the salaries of players and in the operating expenses of a regional basketball league forced ABS-CBN to pull its subsidy, which pushed “Metroball” to call it quits.³⁵²

The transfer of both individual players and entire teams from “Metroball” to the PBA likewise proved to be a critical factor in its shutdown.³⁵³ In 2001, “Metroball” suffered a decrease in contesting franchises when seven out of fifteen squads took a leave, left completely, or merged with other squads.³⁵⁴ “Metroball” was neither spared from an exodus of players, with superstars like Dondon Hontiveros,³⁵⁵ Willie Miller,³⁵⁶ and even the members of the Philippines’ “Dream Team” at the 2001 Southeast Asian Games eventually making the transition.³⁵⁷

While the emergence of new leagues has demonstrated both an undying demand for basketball entertainment in the Philippines and the country’s

349. *Id.*

350. *Id.*

351. BARTHOLOMEW, *supra* note 7, at 210.

352. JOZSA, JR., *supra* note 330, at 80.

353. Saldajeno, *supra* note 341.

354. *Id.*

355. Rappler, *Gilas Pilipinas: Dondon Hontiveros*, RAPPLER, Sept. 21, 2015, available at <https://www.rappler.com/sports/gilas-pilipinas/dondon-hontiveros-profile> (last accessed July 31, 2023) [<https://perma.cc/8H9S-TQZB>].

356. Olmin Leyba, *From MBA to PBA Smooth Crossover*, PHIL. STAR, Apr. 18, 2020, available at <https://www.philstar.com/sports/2020/04/18/2007979/mba-pba-smooth-crossover> (last accessed July 31, 2023) [<https://perma.cc/2QCK-RGQE>].

357. Anthony E. Servinio, *The MBA’s Dream Team 2001*, available at <https://servsports.wordpress.com/2010/10/22/the-mbas-dream-team-2001> (last accessed July 31, 2023) [<https://perma.cc/RE9U-82RH>].

capacity to produce a steady supply of professional players,³⁵⁸ the failure of such leagues to find their footing attests to another significant factor at play — the PBA's unwavering status as the premier destination for Filipino basketball talent.³⁵⁹

The PBA's identity as the most lucrative opportunity for professional basketball in the Philippines has solidified its legacy as the ultimate objective for aspiring athletes looking to strut their wares on Philippine soil. With contemporaries often finding themselves in the shadows of the world's second oldest professional basketball league, the PBA enjoys repute as the most viable option for local talent on Filipino basketball courts, which has granted it significant leverage in calling the shots with respect to its players. This vantage point has allowed the league to obtain a position of undeniable power in Philippine basketball, one facet of which is the ability to dictate the terms of free agency.

B. The Present

Although there has been a relative absence of professional outlets in the Philippines outside of the PBA,³⁶⁰ the depth of Filipino basketball talent has reaped the benefits of exposure on the world stage.³⁶¹ International

358. See Beatrice Go, *National Basketball League Opens Opportunities for Homegrown Talents*, RAPPLER, July 16, 2018, available at <https://www.rappler.com/sports/national-basketball-league-philippines-homegrown-talents> (last accessed July 31, 2023) [<https://perma.cc/ZNC3-33HK>].

359. See Antolihao, *supra* note 2, at 455.

360. See Joaquin M. Henson, *MPBL Won't Compete with PBA*, PHIL. STAR, Sept. 2, 2017, available at <https://www.philstar.com/sports/2017/09/02/1735332/mpbl-wont-compete-pba> (last accessed July 31, 2023) [<https://perma.cc/FHR9-R9TM>]. Although the Maharlika Pilipinas Basketball League (MPBL) is a professional contemporary of the PBA, founder and Former Senator Manny Pacquiao expressly stated that the MPBL was never intended to compete with the PBA.

361. See, e.g., Naveen Ganglani, *Japan B.League Emerging as Top Destination for Young Filipino Hoops Stars*, RAPPLER, July 5, 2021, available at <https://www.rappler.com/sports/japan-b-league-emerging-top-destination-young-filipino-basketball-stars> (last accessed July 31, 2023) [<https://perma.cc/84VP-6KAB>] & Peter Atencio, *6 PH Cagers Among Highest Paid Imports in KBL*, MANILA STAND., Nov. 5, 2022, available at <https://manilastandard.net/sports/314275688/6-ph-cagers-among-highest-paid-imports-in-kbl.html> (last accessed July 31, 2023) [<https://perma.cc/C6JB-JAVP>].

recognition has not only boosted the country's reputation as a force to be reckoned with on the basketball court, but also transformed the Philippines into a prominent source of professional athletes.³⁶²

Leagues overseas, notably in Japan and in Korea, have consequently expressed increasing interest in the services of Filipino basketball players, signaling an unprecedented expansion of competition in the market therefor. Faced with rising demand for local talent, the PBA has responded with certain adjustments to league policies, which have, as a result, kept players in check (and on domestic soil).

1. Uniform Players' Contracts

In June 2021, former Ateneo Blue Eagle Kiefer Ravena caught the attention of recruiters from the B.League in Japan and was later reported to have signed with the Shiga Lakestars as their Asian import for the 2021-2022 season.³⁶³ Ravena, who was selected by the NLEX Road Warriors with the second overall pick in the 2017 PBA Draft was set to accomplish yet another milestone as one of the country's top young talents and bound to make a definite splash on foreign soil.³⁶⁴

Just days after the announcement of the signing, however, the PBA released a decision stating that Ravena could not be permitted to play in the B.League while his contract with the NLEX Road Warriors was still in effect.³⁶⁵ Having previously inked a three-year contract extension with the franchise, Kiefer's jump to Japan was conditioned on prior clearance coming from both the Road Warriors and the PBA itself.³⁶⁶ His commitment was concretized in the existing Uniform Players' Contract, which meant that he

362. *Id.*

363. ABS-CBN News, *Kiefer Ravena Signs with Shiga Lakestars in Japan's B.League*, ABS-CBN NEWS, June 2, 2021, available at <https://news.abs-cbn.com/sports/06/02/21/kiefer-ravena-shiga-lakestars-bleague> (last accessed July 31, 2023) [<https://perma.cc/YC46-Q5FG>].

364. *Id.*

365. Delfin Dioquino, *PBA Doubles Down on Stance: Kiefer Ravena Has to Honor Contract*, RAPPLER, June 5, 2021, available at <https://www.rappler.com/sports/pba/kiefer-ravena-has-to-honor-contract> (last accessed July 31, 2023) [<https://perma.cc/6BBB-KWYS>].

366. Camille B. Naredo, *Can the PBA Stop Kiefer Ravena from Playing in Japan?*, ABS-CBN NEWS, June 2, 2021, available at <https://news.abs-cbn.com/sports/06/02/21/pba-kiefer-ravena-bleague> (last accessed July 31, 2023) [<https://perma.cc/485A-TUPG>].

was mandated to honor its sanctity and to abide by its terms for two remaining years.³⁶⁷

Members of the PBA Board emphasized both the binding force of the UPC and the security of the PBA's interests. At an online press conference, PBA Chairman Ricky Vargas stated that “[b]reaking a contract [could] be difficult for [the PBA] to manage moving forward.”³⁶⁸ PBA Vice-Chairman Bobby Rosales similarly admitted that the league was aiming to avoid any “possible bad precedent” by allowing a player to suit up for a foreign league while still under a subsisting contract with a PBA franchise.³⁶⁹ Vargas further shared that the officials considered and revisited all possible outcomes, including a buyout,³⁷⁰ but ultimately “the [B]oard decided that the PBA ha[d] to be protected.”³⁷¹

A month after closing the door on Ravena's dream of a B.League career, the PBA reversed itself and gave him the green light to make the jump to Japanese basketball.³⁷² Their acquiescence, however, came with certain conditions imposed to prevent approval from becoming precedent.³⁷³

367. Philip Matel, *PBA Adamant That Kiefer Ravena Must Honor His Contract*, ESPN, June 5, 2021, available at https://www.espn.ph/basketball/pba/story/_/id/31569665/kiefer-ravena-honor-upc (last accessed July 31, 2023) [<https://perma.cc/AR93-34EU>].

368. Reuben Terrado, *PBA Board Rejects Kiefer Ravena Bid to Play in Japan League*, available at <https://www.spin.ph/basketball/pba/pba-board-rejects-kiefer-ravena-bid-to-play-in-japan-league-a795-20210605> (last accessed July 31, 2023) [<https://perma.cc/R CZ5-PVXB>].

369. *Id.*

370. Dalupang, *supra* note 16 & CNN Philippines Staff, *Eala Bats for Review of PBA Contract Policies*, CNN PHIL., June 4, 2021, available at <https://cnnphilippines.com/sports/2021/6/4/Eala-bats-review-PBA-player-contract-policies.html> (last accessed July 31, 2023) [<https://perma.cc/32ME-USD9>].

371. Dioquino, *supra* note 365.

372. Delfin Dioquino, *PBA Gives Kiefer Ravena Green Light to Play in Japan B. League*, RAPPLER, July 24, 2021, available at <https://www.rappler.com/sports/pba/kiefer-ravena-green-light-play-japan-b-league> (last accessed July 31, 2023) [<https://perma.cc/YV4P-X2A3>].

373. Camille B. Naredo, *PBA Allows Kiefer Ravena to Play in Japan*, ABS-CBN NEWS, July 24, 2021, available at <https://news.abs-cbn.com/sports/07/24/21/pba-allows-kiefer-ravena-to-play-in-japan> (last accessed July 31, 2023)

First, Ravena was only permitted to play with the Shiga Lakestars for one season and was required to return to the PBA after a year in the B.League.³⁷⁴ After completing the move to the Shiga Lakestars, Ravena's contract with the NLEX Road Warriors would be terminated.³⁷⁵ However, upon his return to the PBA, he would be required to sign a new contract with the same franchise.³⁷⁶ Second, if Kiefer opted to renege on this new agreement, he would be penalized by the PBA.³⁷⁷ Kiefer himself promised to return even if the Shiga Lakestars (or any other team) would end up offering him a higher salary.³⁷⁸

In addition, where live contracts were concerned, the PBA sharpened its teeth to deter future violations. The league stated that such contracts could not be terminated for any cause apart from medical reasons, and that two penalties would be meted out for the pretermination thereof: (1) a twenty-million peso (₱20,000,000) fine for the team that permitted the same, and (2) a ban on the player in question.³⁷⁹ If a player unilaterally attempted to terminate his contract, he would be banned from the PBA and would have to “wait five years before he [could] play elsewhere due to standing playing rights of the live contract.”³⁸⁰

A familiar tug-of-war in American sports jurisprudence interestingly saturates the debacle. In one corner, a professional athlete seeks to avail of a golden opportunity in terms of both athletic exposure and livelihood. In the other corner, the professional league, in which he currently plays, seeks to retain his services.

[<https://perma.cc/T43A-PDZN>]. At a press conference, PBA Commissioner Willie Marcial expressly stated that the approval by the PBA Board of Governors came with certain conditions. Further, Marcial was quoted as saying, “*Hindi ito magiging precedent.*”

374. *Id.*

375. *Id.*

376. *Id.*

377. Dioquino, *supra* note 372.

378. *Id.*

379. JR Isaga, *PBA Reworks Free Agency, Rookie Rules After Ravena, Parks Debacle*, RAPPLER, July 24, 2021, available at <https://www.rappler.com/sports/pba/reworks-free-agency-rookie-rules-kiefer-thirty-ravena-ray-parks-debacle> (last accessed July 31, 2023) [<https://perma.cc/DFP9-VTVC>].

380. *Id.*

As the dust settled, the PBA made a few temporary concessions in approving Ravena's transfer, but still managed to fulfill the same objectives that it sought to accomplish when it originally rejected the move a month prior. Despite allowing him to play overseas, the league nevertheless guaranteed his allegiance and eventual return.

Fast forward two years later, although the original conditions imposed on Ravena's "release" included repatriation after a season in Japan, he was able to sign extensions with the Shiga Lakestars for the 2022-2023 and 2023-2024 B.League seasons.³⁸¹ While it would appear that the crisis was averted and that the PBA managed to neutralize the threat, the league has deemed it necessary to clarify its treatment of players looking to make the jump overseas, even if only temporarily.³⁸²

In hindsight, the atmosphere in Philippine basketball has undergone drastic changes since the B.League dilemma. The aftermath of the controversy saw several more stars try their luck on the international playing field, with such players similarly putting their PBA plans (if any) on hold.³⁸³

Brothers Javi and Juan Gomez de Liaño from the University of the Philippines cut short their collegiate careers in the UAAP and made a similar jump to the B.League in July 2021.³⁸⁴ Javi earned a spot on the roster of the

381. Lance Agcaoili, *Kiefer Ravena Signs Extension With Shiga Lakes in B.League*, PHIL. DAILY INQ., Aug. 8, 2022, available at <https://sports.inquirer.net/472751/kiiefer-ravena-signs-extension-with-shiga-lakes-in-b-league> (last accessed July 31, 2023) [<https://perma.cc/F5PS-WSTL>] & John Bryan Ulanday, *Kiefer Ravena Signs Extension with Japan B.League's Shiga*, PHIL. STAR, May 24, 2023, available at <https://www.philstar.com/sports/2023/05/24/2268708/kiiefer-ravena-signs-extension-japan-b-leagues-shiga> (last accessed July 31, 2023) [<https://perma.cc/K46F-MYQ6>].

382. Gerry Ramos, *PBA Board Lifts Sit-Out Sanctions on Overseas-Based Players*, available at <https://www.spin.ph/basketball/pba/pba-board-modifies-rules-on-draft-overseas-players-a793-20230528> (last accessed July 31, 2023) [<https://perma.cc/BPN3-RC4N>].

383. See Michael Angelo B. Asis, *Can PBA Lure Filipinos from B.League?*, MANILA TIMES, Oct. 14, 2021, available at <https://www.manilatimes.net/2021/10/14/sports/can-pba-lure-filipinos-from-bleague/1818310> (last accessed July 31, 2023) [<https://perma.cc/ATN5-R468>].

384. Luisa Morales, *Juan Gomez de Liaño Explains Move to Japan B. League with Brother Javi*, PHIL. STAR, July 8, 2021, available at <https://www.philstar.com/sports/2021/07/08/2111064/juan-gomez-de-liao-explains-move-japan-b-league-brother-javi> (last accessed July 31, 2023) [<https://perma.cc/7BQH-JPA9>].

Ibaraki Robots in Division I, while the younger de Liaño found his way to Earthfriends Tokyo Z in Division II of the same league.³⁸⁵

In the same month, San Beda product Kemark Cariño was reported to have signed with Aomori Wat's in Division II,³⁸⁶ becoming the fifth Filipino player to partake in the exodus of homegrown talent.³⁸⁷ The following August, Bobby Ray Parks, Jr. became the “second PBA player to take his talents away from home”³⁸⁸ and to the B.League after signing with the Nagoya Diamond Dolphins.³⁸⁹ Kobe Paras, a second-generation star with experience playing NCAA Division I basketball,³⁹⁰ followed suit, inking a one-year deal with the Niigata Albirex BB.³⁹¹

385. *Id.*

386. Luisa Morales, *Kemark Cariño Headed to B. League With Aomori Wat's*, PHIL. STAR, July 21, 2022, available at <https://www.philstar.com/sports/2021/07/21/2114059/kemark-cario-headed-b-league-aomori-wats> (last accessed July 31, 2023) [<https://perma.cc/NY9Y-JWMT>].

387. Cedelf P. Tupas, *Thirty Ravena Takes Act to Japanese BLeague*, PHIL. DAILY INQ., June 24, 2020, available at <https://sports.inquirer.net/397080/thirty-ravena-takes-act-to-japanese-bleague> (last accessed July 31, 2023) [<https://perma.cc/AS4L-QD45>]. The first Filipino to make the B.League was Thirty Ravena, who was more specifically the “first Asian import to sign with a Japanese [D]ivision I [T]eam.” Rommel Fuertes Jr., *Thirty Ravena Reaches Milestone in B.League*, available at <https://sports.inquirer.net/492520/thirty-ravena-reaches-milestone-in-b-league> (last accessed July 31, 2023) [<https://perma.cc/CP6P-UCTJ>].

388. JR. Isaga, *FAST FACTS: Who Are the Japan B. League Filipino Imports?*, RAPPLER, Sept. 17, 2021, available at <https://www.rappler.com/sports/things-to-know-filipino-imports-japan-b-league> (last accessed July 31, 2023) [<https://perma.cc/XE4G-TQB3>].

389. CJ Marquez, *Ray Parks Inks One-Year Deal with Japan B.League's Nagoya Diamond Dolphins*, CNN PHIL., Aug. 24, 2021, available at <https://cnnphilippines.com/sports/2021/8/24/Bobby-Ray-Parks-Jr-Nagoya-Diamond-Dolphins-Japan-B.-League.html> (last accessed July 31, 2023) [<https://perma.cc/YTN9-V8S8>].

390. See ABS-CBN News, *Why Kobe Paras Chose Creighton University*, ABS-CBN NEWS, July 22, 2016, available at <https://news.abs-cbn.com/sports/07/22/16/why-kobe-paras-chose-creighton-university> (last accessed July 31, 2023) [<https://perma.cc/6EEM-7HEE>].

391. Bong Lozada, *Kobe Paras Also Joins Japan B.League, Signs with Niigata*, PHIL. DAILY INQ., Sept. 5, 2021, available at <https://sports.inquirer.net/435461/kobe->

Gilas Pilipinas standout Dwight Ramos eventually brought the count to eight, officially turning pro after signing with Toyoma following an impressive stint with Ateneo and the Philippine team.³⁹² In October of the same year, Matthew Aquino, a Filipino-Japanese product of National University, accepted a three-year offer from the Shinshu Brave Warriors in the B.League,³⁹³ foregoing his term with the Pasig Sta. Lucia Realtors in the Maharlika Pilipinas Basketball League (MPBL) in favor of a career overseas.³⁹⁴

The numbers do not lie. A market has indeed emerged for Asian talent, with the demand for Filipino players in particular thriving between professional leagues. These developments in borderless basketball, however, have sparked further reforms within the PBA.

In May 2023, the PBA Board stated that it would refrain from imposing sanctions on players overseas seeking to return to the country's premier basketball league.³⁹⁵ However, the rights of any such players looking to make their way back to the PBA would remain with the franchise on which they played before leaving.³⁹⁶ More specifically, the signing rights of such players would "remain with their respective mother ballclubs in perpetuity."³⁹⁷

paras-also-joins-japan-b-league-signs-with-niigata (last accessed July 31, 2023) [<https://perma.cc/689N-FDQE>].

392. Bong Lozada, *Dwight Ramos Joins B.League, Becomes 8th Filipino to Play in Japan*, PHIL. DAILY INQ., Sept. 10, 2021, available at <https://sports.inquirer.net/435867/dwight-ramos-joins-b-league-becomes-8th-filipino-to-play-in-japan> (last accessed July 31, 2023) [<https://perma.cc/3JN6-5QNZ>].

393. CJ Marquez, *Matthew Aquino Becomes Ninth Filipino Cager to Play in Japan B.League*, CNN PHIL., Oct. 15, 2021, available at <https://cnnphilippines.com/sports/2021/10/15/Matthew-Aquino-Shinshu-Brave-Warriors-Japan-B.League.html> (last accessed July 31, 2023) [<https://perma.cc/R9RM-52J5>].

394. Matthew Li, *Sta. Lucia Manager Encarnado Glad to See 'Apo' Aquino Grow in Shinshu*, available at <https://tiebreakertimes.com.ph/tbt/mixed-emotions-for-encarnado-after-sta-lucia-released-apo-aquino-to-shinshu/223435> (last accessed July 31, 2023) [<https://perma.cc/D7ZG-XJAU>].

395. Ramos, *supra* note 382.

396. *Id.*

397. *Id.*

According to Chairman Ricky Vargas, “if they come back, they will remain with their mother teams. Their teams will have a first crack at them[,] and they ... can trade them if they want to[.]”³⁹⁸

These reforms to the PBA’s system of sanctions come not only on the heels of the storm brewed by Ravena’s decision to suit up for a foreign club, but more significantly in the wake of the greater exodus of Filipino basketball talent for bigger and better opportunities abroad.³⁹⁹ With the country’s best and brightest testing the waters of competition overseas, the frequency of player movement has increased exponentially. The rate, however, at which professional athletes are making use of their freedom warrants an examination not only of the conditions that have opened the borders of international basketball, but also the limits of player freedom itself.

2. Free Agency

The PBA Board’s initial reverence for the sanctity of the Uniform Players’ Contract,⁴⁰⁰ coupled with the league’s invocation of the danger of setting bad precedent,⁴⁰¹ points to the need to examine the framework of free agency in the PBA.

Under previously established rules, PBA franchises owned their players’ rights even in a situation where such players remain unsigned.⁴⁰² A restricted free agent could generally only be permitted to entertain offers from outside his current franchise if he managed to obtain a release therefrom,⁴⁰³ or if the franchise decided to unconditionally drop or waive him.⁴⁰⁴

398. *Id.*

399. *See, e.g.,* Ganglani, *supra* note 361 & Atencio, *supra* note 361.

400. *See* Camille B. Naredo, *Apologetic Kiefer Vows to Return to PBA After B.League Stint*, ABS-CBN NEWS, July 24, 2021, available at <https://news.abs-cbn.com/sports/07/24/21/apologetic-kiefer-vows-to-return-to-pba-after-bleague-stint> (last accessed July 31, 2023) [<https://perma.cc/Q6QV-CTE5>]. Kiefer made a statement admitting his knowledge of the existing UPC, as well as his understanding of the same “as a tripartite agreement by and with the PBA[.]” *Id.*

401. Terrado, *supra* note 368.

402. Terrado, *supra* note 18.

403. *Id.*

404. Catacutan, *supra* note 19.

Free agency in the PBA has thus been criticized as a “misnomer,”⁴⁰⁵ with franchises possessing a “right of first refusal”⁴⁰⁶ over their players.⁴⁰⁷ If a player sought to accept an offer coming from another franchise, that player’s original team could simply make an offer either equal to or greater than the player’s salary in the final year of his existing contract.⁴⁰⁸ As a result, a player’s rights could potentially be retained “in perpetuity.”⁴⁰⁹

In 2021, the PBA implemented a new rule with respect to unrestricted free agency in the league,⁴¹⁰ although the foundations thereof were set much earlier during the term of its former commissioner Chito Salud.⁴¹¹ The said rule bestowed unrestricted status upon a free agent at the end of his seventh season in the PBA, beginning with the members of the 2014 draft class.⁴¹² As such, those drafted in 2014 would become unrestricted free agents in 2021, those drafted in 2015 would acquire the same status in 2022, and so on.⁴¹³ One limitation of the rule, however, was its inapplicability to those drafted before 2014,⁴¹⁴ meaning that any players drafted prior to that year may not obtain unrestricted status unless dropped unconditionally by their original teams.⁴¹⁵

405. *Id.*

406. See *Polytechnic University of the Philippines*, *supra* note 39, at 491 (citing *Rosencor Development Corporation*, *supra* note 39, at 129). “[A] right of first refusal is a contractual grant, not of the sale of a property, but of the first priority to buy the property in the event the owner sells the same.” *Id.*

407. Bong Lozada, *PBA Unrestricted Free Agency Also a ‘Gamble’ for Players, Says Commissioner*, PHIL. DAILY INQ., Jan. 15, 2022, available at <https://sports.inquirer.net/447526/pba-unrestricted-free-agency-also-a-gamble-for-players-says-commissioner> (last accessed July 31, 2023) [<https://perma.cc/MF5U-RGJF>].

408. Catacutan, *supra* note 19.

409. *Id.*

410. Lozada, *supra* note 407.

411. Catacutan, *supra* note 19 & Joaquin Henson, *PBA Free Agency a Gamble*, PHIL. STAR, Jan. 18, 2022, available at <https://www.philstar.com/sports/2022/01/18/2154532/pba-free-agency-gamble> (last accessed July 31, 2023) [<https://perma.cc/U26T-TYYB>].

412. *Id.*

413. Henson, *supra* note 411.

414. Catacutan, *supra* note 19.

415. *Id.*

This seven-season rule reflects the PBA's stance on players who opt to play overseas. As clarified by the PBA Board, any PBA player who suits up for a foreign team must likewise play seven seasons in the league before becoming an unrestricted free agent.⁴¹⁶ Otherwise stated, seasons played abroad are not considered in the seven years that would grant a player an unconditional release from his PBA team.

For example, in May of this year, Filipino-Canadian Matthew Wright of the Phoenix Super LPG signed a multi-year contract with the Kyoto Hannaryz of the B.League.⁴¹⁷ Because Wright was coming off only his sixth season with Phoenix Super LPG, he did not meet the seven seasons with the franchise that would have otherwise made him an unrestricted free agent.⁴¹⁸ If ever Wright does return to the PBA, as earlier discussed, his rights will still be held by his former club. Any seasons played in Japan will not accrue towards the seven-year count that would have allowed him to pick a team of his preference should he decide to resume his PBA career.⁴¹⁹

Further amendments to the free agency framework arose in July 2021 following the Ravena dilemma.⁴²⁰ Under updated guidelines, if players are without a contract, and without an offer from their mother teams, they are unrestricted free agents.⁴²¹ The mother team may offer terms for an extension, but the free agent is permitted to reject the offer and to explore his options with other teams after 30 days.⁴²²

If the free agent does receive an offer from a new team, the mother team need only match the new offer within five days in order to retain the player's

416. Gerry Ramos, PBA Clarifies Rules on Unrestricted Free Agency for Overseas Players, *available at* <https://www.spin.ph/basketball/pba/pba-rules-on-unrestricted-free-agency-for-overseas-players-a793-20230529> (last accessed July 31, 2023) [<https://perma.cc/K4FF-E4E2>].

417. Homer D. Sayson, Matthew Wright Signed to Multi-Year Extension by B.League Team Kyoto, *available at* https://www.spin.ph/basketball/japan-b-league/matthew-wright-signed-to-new-multi-year-contract-by-kyoto-a2244-20230518?ref=article_reco_list (last accessed July 31, 2023) [<https://perma.cc/YLZ9-8C4G>].

418. Ramos, *supra* note 416.

419. *Id.*

420. Isaga, *supra* note 379.

421. *Id.*

422. *Id.*

rights.⁴²³ If the mother team fails to act within that five-day window, then the player becomes an unrestricted free agent.⁴²⁴ However, if the mother team does match the offer within the five-day period, but the player refuses to accept the matched offer and sign with the mother team, the player will be subjected to a five-year ban from the league.⁴²⁵

IV. ANALYSIS

The narrative established across a century of sports jurisprudence highlights a unique storyline that lasts well beyond the final buzzer — the conflict of interests between the individual player and the professional league as a business.

The fact pattern is unmistakable. The sport represents the protagonist's craft, passion, and livelihood. Professional leagues serve as the avenue on which they can make a living, with member teams (in the spirit of enterprise) offering the opportunity to play for pay.⁴²⁶ This dynamic, however, does not only create a stage upon which the amateurs of today can become the legends of tomorrow. More crucially, it equates franchises with employers and athletes with employees, which allows labor law and policy to thicken the plot.⁴²⁷

Over the course of athletic history, leagues and teams have functioned as businesses on a much wider playing field that surpasses the white lines of the pitch.⁴²⁸ In this light, a return on investment tends to be measured by touchdowns, field-goals, and homeruns, with the accolades of superstars, role-players, and benchwarmers being the variables that translate into success.⁴²⁹ In the same manner, championships and win-loss records often provide the measure of a good business deal, as well as the performance of an asset.⁴³⁰

423. Eros Villanueva, *PBA Announces New Rules for Free Agents and Rookies*, ESPN, July 24, 2021, available at https://www.espn.ph/basketball/pba/story/_/id/31872752/pba-bares-new-rules-free-agents-rookies (last accessed July 31, 2023) [<https://perma.cc/FK2A-D75E>].

424. Isaga, *supra* note 379.

425. Villanueva, *supra* note 423.

426. See generally Ingles, *supra* note 26, at 797-801 (2014).

427. *Negros Slashers, Inc.*, 666 SCRA at 642-43.

428. See LEEDS & VON ALLMEN, *supra* note 33, at 108-09.

429. *Id.* at 258-60.

430. *Id.* at 265-69.

This chain of operation holds together a business model that forms the backbone of modern professional sports, one driven by both marketability and profitability of brands and individuals, among other factors.⁴³¹ One unavoidable consequence of this line of thinking, however, is the transformation of athletes into commodities and mere cogs in the system, which ultimately fuels the conflict between the team as the employer, the player as the employee, and the league as an independent enterprise.⁴³²

Both sports history⁴³³ and American case law⁴³⁴ testify to the reality of this interplay. Clubs and franchises seek to retain the services of professional athletes who are likely to win games and fill the seats.⁴³⁵ Human highlight reels generally result in sell-out crowds, with an arsenal of talent typically generating both revenue and goodwill.⁴³⁶ Good employees are the foundation of a prosperous businesses, which is why teams look to keep top athletes under their employ. As chronicled earlier in this Article, this objective has been achieved through restrictive contractual stipulations like the “reserve” clause, and even by unspoken gentleman’s agreements (as with the “Rozelle Rule”).⁴³⁷

A century of sports law further attests to the identity of the victim in a team-centered business model — the individual athlete. When a prized quarterback, a crucial closing pitcher, or an ever reliable sixth man is reduced to a commodity meant to drive revenue, opportunities for exposure and higher pay that exist outside the player’s present club and league are often placed beyond reach, whether by the force of contract or by the perceived honor of abiding by a certain code of conduct.⁴³⁸

431. *Id.*

432. *Id.* at 269-70.

433. *Id.* at 65-67.

434. *See, e.g.*, *O’Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015) (U.S.); *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996) (U.S.); & *Flood*, 407 U.S. 258. *See also* Library of Congress, “A Well-Paid Slave,” available at <https://www.loc.gov/exhibitions/baseball-america/about-this-exhibition/the-promise-of-baseball/the-business-of-baseball/a-well-paid-slave> (last accessed July 31, 2023). *Flood*, when traded against his will, famously said that “a well-paid slave is, nonetheless, a slave[.]” *Id.*

435. *See* LEEDS & VON ALLMEN, *supra* note 33, at 265-69.

436. *Id.* at 265.

437. Epstein, *supra* note 107, at 6.

438. *See id.*

The restrictiveness of such policies, and the corresponding impact on the welfare of professional athletes as employees, has naturally resulted in the intervention of the unsung hero — the players union. The battle cry of the athlete as a disgruntled employee has moreover been grounded in law, with labor unions bravely waging war on the system in response to diminished competition in the market for athletes.⁴³⁹ As case law shows, if the battle cannot be won through the courts, collective bargaining and negotiation may just be the athlete's best bet.⁴⁴⁰

While the four major professional leagues in the U.S. have been built on narratives embodying near identical legal themes, each has found its own present form within a unique framework of free agency rules. Nevertheless, the systems of restrictions that limit the concept of player welfare in each sport represent compromise and concession between the athlete, the team, and, in some cases, the league itself. After all, while professional sports teams operate as businesses, they undeniably have the right to do so, provided their pursuit of enterprise is compliant with the law (and tempered by the rights of their employees). A professional athlete likewise should be given the freedom to suit up for a team of his or her choosing, subject to the right of his or her team to reap the rewards of the services of the employee on its roster and payroll.

Prior to any assessment of the terms of free agency in the PBA, certain premises must be established to guide the analysis.

First, Philippine jurisprudence has established that PBA players are employees of the franchises for which they play.⁴⁴¹ The foregoing characterization is necessary not only to pinpoint the legal principles governing the relationship between player and team, but more specifically to provide a foundation on which to analyze the validity of any interaction between the parties.

Second, disputes on free agency in the PBA and on the interpretation of Uniform Players Contracts have yet to be decided by Philippine courts. There is no decision in Philippine case law on all fours with the conflicts described earlier in this Article, meaning that any assessment thereof will have

439. See generally Ingles & Diploma, *supra* note 8, at 693–98.

440. See, e.g., *O'Bannon*, 802 F.3d 1049; *Brown*, 518 U.S. 231; & *Flood*, 407 U.S. at 285. See also Ingles & Diploma, *supra* note 8, at 708–20.

441. *Negros Slashers, Inc.*, 682 Phil. 593.

to be based on the general principles of labor and contract law, and on the persuasive wealth of foreign jurisprudence.⁴⁴²

The question must then be asked — how do the PBA’s structuring of free agency rules and interpretation of UPCs fit into the mold?

A. Free Agency in the Philippine Basketball Association

Under the existing system in the PBA, “unrestricted” free agency is attained after seven years.⁴⁴³ If a player is unsigned (i.e., without a contract or an offer from his original team), he can reject an offer from the previous franchise and explore other options as a free agent, but the current franchise nevertheless wields the power to keep that player on its roster by matching any offer made.⁴⁴⁴ The acquisition of “unrestricted” status in such a case would thus depend on the current team’s willingness to release the player or on its own inaction.

A glance at the four major professional sports leagues in the U.S. puts the seven-year wait into proper perspective. Generally, NBA players become unrestricted free agents after four years.⁴⁴⁵ The same goes for the NFL.⁴⁴⁶ In comparison, a significantly longer six-year period applies to the MLB,⁴⁴⁷ while NHL players must wait seven years before acquiring unrestricted status.⁴⁴⁸

As the numbers show, there does not appear to be anything inherently unlawful in requiring a specific length of time before professional athletes are permitted to jump from team to team.⁴⁴⁹ Although the current free agency framework of American sports does not by any means constitute binding precedent by which to assess the validity of similarly patterned rules in

442. See *Pangilinan v. Cayetano*, G.R. No. 238875, Mar. 16, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374> (last accessed July 31, 2023).

443. Isaga, *supra* note 379.

444. *Id.*

445. NBA Free Agency Rules, *supra* note 88.

446. Holzman-Escareno, *supra* note 310.

447. Major League Baseball, *supra* note 162.

448. The Athletic NHL Staff, *supra* note 222.

449. See generally NBA Free Agency Rules, *supra* note 88; The Athletic NHL Staff, *supra* note 222; & NFL Free Agency Questions & Answers, *supra* note 309.

Philippine basketball, such rules, and the history behind their development, do provide a starting point for analysis.

In retrospect, placing limits on player movement has been sanctioned by American jurisprudence, subject to the power of the courts to strike these rules down (usually on antitrust grounds).⁴⁵⁰ That the degree and extent of these restrictions has been the subject of negotiation and collective bargaining is further testament to such fact.⁴⁵¹

Indeed, there is no contesting the right of the team and the league to impose certain measures to retain the services of players, so long as within the realm of reason and law. What is beyond doubt, however, is the illegality of holding a player's rights in absolute perpetuity, as was the case with the "reserve" clause.⁴⁵²

Applying this notion to Philippine basketball, it appears that the PBA has steered clear of such character through its recent reforms.

First, the PBA, like contemporary professional sports leagues, has the right to establish rules to govern itself.⁴⁵³ As "an association of various basketball clubs owned by business companies[.]"⁴⁵⁴ the PBA functions as a business.⁴⁵⁵ It offers publicly-accessible entertainment,⁴⁵⁶ drawing revenue from ticket sales, charging for television rights, sponsorships, and the like.⁴⁵⁷

450. See Matheson, *supra* note 48, at 116.

451. *Id.*

452. See generally *id.*

453. *Mackey*, 543 F.2d at 623. For example, in *Mackey*, it was stated that, "It may be that some reasonable restrictions relating to player transfers are necessary for the successful operation of the NFL. The protection of mutual interests of both the players and the clubs may indeed require this." *Id.*

454. *Philippine Basketball Ass'n*, *supra* note 9, at 673.

455. See generally Rod Nepomuceno, *PBA Means Profits and Brand Awareness*, PHIL. STAR, Feb. 26, 2007, available at <https://www.philstar.com/lifestyle/business-life/2007/02/26/386945/pba-means-profits-and-brand-awareness> (last accessed July 31, 2023) [<https://perma.cc/H6QU-Y5GM>].

456. *Philippine Basketball Ass'n*, *supra* note 9, at 673.

457. See generally Joaquin Henson, *PBA Projects Income of ₱640 Million*, PHIL. STAR, Feb. 1, 2020, available at <https://www.philstar.com/sports/2020/02/01/1989554/pba-projects-income-p640-million> (last accessed July 31, 2023) [<https://perma.cc/S5AW-HADF>].

Under the scope of free enterprise and the business judgment rule,⁴⁵⁸ the PBA can impose restrictions as it may deem necessary to carry out its operations, provided that it does so in line with what is legally permissible.

Second, PBA teams, whom Philippine case law has identified as employers,⁴⁵⁹ are likewise permitted to stipulate terms and conditions in protection of their interests.

This freedom on the part of the PBA franchise can be justified by several legal principles. The autonomy of contracts permits that “contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.”⁴⁶⁰ Civil law thus recognizes contractual freedom, which must yield to the police power of the State, “as the circumstances may change, or as experience may demonstrate the necessity.”⁴⁶¹

In a similar manner, where labor law is concerned, “management prerogative” bestows upon an employer “the right to regulate all aspects of employment[.]”⁴⁶² The Supreme Court, however, has recognized that “management prerogative” does not give an employer absolute authority, with the concept subject to “limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice.”⁴⁶³

The PBA’s right to govern its operations and the team’s right to dictate the terms of employment (to a certain extent) are beyond dispute. The next step is to assess how both entities have wielded their power.

Using the history of the “reserve” clause as a metric, it is clear that the reforms instituted by the PBA do not allow teams or the league to hold

458. *Metroplex Berhad v. Sinophil Corporation*, G.R. No. 208281, June 28, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67635> (citing CESAR L. VILLANUEVA, *PHILIPPINE CORPORATE LAW* 228 (1998)).

459. *Negros Slashers, Inc.*, 682 Phil. at 607.

460. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1306 (1949).

461. *Goldenway Merchandising Corporation v. Equitable PCI Bank*, G.R. No. 195540, 693 SCRA 439, 454 (2013) (citing *Beltran v. Secretary of Health*, G.R. No. 133640, 476 SCRA 168, 198 (2005) (citing *Ongsiako v. Gamboa*, G.R. No. L-1867, 86 Phil. 50 (1950))).

462. *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, 664 SCRA 110, 119 (2012).

463. *Id.* (citing *Norkis Trading Co., Inc. v. NLRC*, 504 Phil. 709, 718 (2005)).

players' rights in perpetuity.⁴⁶⁴ The mandate of freedom upon a player's seventh season in the PBA prevents franchises from laying absolute claim to his services, with Filipino basketball players promised freedom, albeit after a particular period of time.⁴⁶⁵

Although it appears that even unsigned players are continually at the mercy of their clubs,⁴⁶⁶ the reward of freedom after seven years proves that this is not the case. According to the July 2021 amendments, for unsigned players, a team is ultimately faced with the prospect of matching an offer and re-signing the player, on one hand, or releasing him, on the other.⁴⁶⁷ Even if the former option is selected, virtually keeping the player on his mother squad, the lapse of seven seasons would make the player an "unrestricted" free agent, unless released sooner by the same club.

B. Uniform Players Contracts in the Philippine Basketball Association

Although seven years may seem like a lifetime, the validity of the free agency framework carries the imprimatur of the parties' consent, resulting in a contract that bears the force of law.⁴⁶⁸ It is in this light that the PBA's interpretation of Uniform Players' Contracts must be assessed.

The Civil Code states that obligations sourced in contracts "have the force of law between the contracting parties and should be complied with in good faith."⁴⁶⁹ This principle would suggest that the player, the team, and the league who are parties to the contract must respect its terms,⁴⁷⁰ given that the agreement itself is sanctioned by Philippine civil law.

Looking back at the PBA Board's reaction to Ravena's initial attempt to make the switch to Japanese basketball,⁴⁷¹ the league's emphasis on respect

464. Villanueva, *supra* note 423.

465. *Id.*

466. See Isaga, *supra* note 379.

467. Villanueva, *supra* note 423.

468. CIVIL CODE, arts. 1308 & 1318 (1).

469. *Id.* art. 1159.

470. Ivan Stewart Saldajeno, *NLEX to Abide by PBA Contract*, available at <https://www.pna.gov.ph/articles/1142416> (last accessed July 31, 2023).

471. See Bong Gondinez, *PBA Board Forbids Kiefer Ravena from Playing in Japan*, GMA ENTERTAINMENT, June 6, 2021, available at <https://www.gmanetwork.com/entertainment/celebritylife/news/77522/pba-board-forbids-kiefer-ravena-from-playing-in-japan/story> (last accessed July 31, 2023) [<https://perma.cc/35KJ-WBQL>].

for the Uniform Players' Contract appears to be legally sound. The PBA and the NLEX Road Warriors cannot be faulted for seeking to retain Ravena on the franchise's roster, considering that he was under a live contract.⁴⁷² Simply put, in exchange for compensation, he agreed to play for the period of time stipulated in the UPC.⁴⁷³ The terms thereof, having been validly agreed upon by the player, the team, and the league, thus had the force of law between the parties.⁴⁷⁴

Further, each party negotiated and entered the contract for a specific reason,⁴⁷⁵ offering the other a particular amount or service to see that purpose fulfilled.⁴⁷⁶ If Ravena were permitted to leave, the team would lose the services of a point-guard in whom it had made a significant investment,⁴⁷⁷ unmistakably directed towards the goodwill and success of the franchise.⁴⁷⁸ If Ravena could just leave the team that he had signed with and

472. See Terrado, *supra* note 368.

473. *Id.*

474. See CIVIL CODE, art. 1159.

475. See *Uy v. Court of Appeals*, G.R. No. 120465, 314 SCRA 69, 82 (1999).

Cause is the essential reason which moves the contracting parties to enter into it. In other words, the cause is the immediate, direct[,] and proximate reason which justifies the creation of an obligation through the will of the contracting parties. Cause, which is the essential reason for the contract, should be distinguished from motive, which is the particular reason of a contracting party which does not affect the other party.

Id. (citing *Basic Books (Phil.), Inc. v. Lopez, et al.*, G.R. No. L-20753, 16 SCRA 291, 292 (1966) (citing *General Enterprises, Inc. v. Lianga Bay Logging Co.*, G.R. No. L-18487, 11 SCRA 733, 739 (1964))).

476. See CIVIL CODE, art. 1350.

477. Acquisition of the player's services would be the team's cause in the contract. Moreover,

[i]n general, teams sign athletes whom they believe will help them [—] in one way or another [—] to increase team revenue or the value of the team in a way such that the cost of the player will not exceed that player's output relative to team revenue or value. In other words, a team will sign a player whose marginal benefit exceeds or at least meets his marginal cost.

Kaplan, *supra* note 252, at 1637.

478. Winning games would be its motive, which is distinct from cause, and which does not affect the other party.

promised to play for, the cause of the contract would consequently be unfairly undermined.

On a wider scale, if the league were to allow such terms of the UPC to be broken, what would stop other players from opting out of their agreements mid-contract? Dangerous precedent could adversely affect the contractual rights of franchises that had made investments in the services of top athletes, much to the detriment of similarly situated teams.

From this perspective, the league's and the team's concerns appear to be valid. How can franchises protect their business interests when the players in whom they have invested are at liberty to jump ship when the right offer comes along? The force of a contract in professional basketball could be reduced to naught if players were given absolute and unrestrained liberty to move from team to team or from league to league.

The PBA's stance on the issue was clear — the UPC had to be respected.⁴⁷⁹ On a similar note, the interpretation of the contract was situated within a valid framework of free agency.⁴⁸⁰ However, with the league and the team eventually changing their tune, what is clear (in hindsight) is that certain developments in Philippine basketball cannot be ignored in putting these legal realities into proper perspective.⁴⁸¹

The Author opined earlier in this Article that professional basketball in the Philippines functions as an ecosystem. Each layer thereof consists of various entities, individuals, and stakeholders engaged in interdependent decision-making, such that the rights of one group affect and are limited by the rights of another.

In this case, the PBA utilizes business prerogative for self-preservation, setting rules and regulations as it deems necessary for internal governance and for the guarantee of its interests as the country's premier professional

479. See ABS-CBN News, *PBA: Kiefer Ravena is Bound by League Rules, Says NLEX*, ABS-CBN NEWS, June 2, 2021, available at <https://web.archive.org/web/20210605213009/https://news.abs-cbn.com/sports/06/02/21/kiefer-ravena-japan-bleague-nlex-pba>.

480. See NBA, *supra* note 88.

481. See Reuben Terrado, *PBA Contracts Must Be Revised to Adapt to Changing Times, Says Eala*, available at <https://www.spin.ph/basketball/pba/noli-eala-says-pba-upc-must-be-revised-to-reflect-changing-times-a795-20210603> (last accessed July 31, 2023) [<https://perma.cc/33RR-29L5>].

basketball league.⁴⁸² The league, however, is a collective of franchises, each of which constitutes an enterprise that exists independently of the PBA.⁴⁸³ These franchises likewise hold the power of management prerogative as employers,⁴⁸⁴ which permits them to regulate the terms and conditions of employment within the scope of Philippine law.

When management prerogative is exercised in furtherance of a franchise's business interests, impact is felt most significantly by the employees whose rights are limited thereby.⁴⁸⁵ In this case, management prerogative and the force of the Uniform Players' Contract operate as limits on player freedom, which, in conjunction, may result in the sacrifice of rare opportunities for invaluable exposure and the accompanying rate of pay.

The binding force of a contract is beyond dispute. However, there is likewise no denying that invitations for recruitment from overseas can often be an athlete's golden ticket to greater heights.⁴⁸⁶ The value of such offers is measured in more than just digits, with international basketball promising a level of competition (and a salary) unmatched by those available on local soil.⁴⁸⁷

Looking beyond legal realities, the question must be asked — is there any way for players to avail of these opportunities, despite management prerogative and contractual force working against them?

482. See PBA, About PBA, available at <https://www.pba.ph/about-us> (last accessed July 31, 2023) [<https://perma.cc/QH25-33VN>]; PBA, Mission & Vision, available at <https://www.pba.ph/csr> (last accessed July 31, 2023) [<https://perma.cc/M54F-3NBL>]; & PBA, PBA Introducing New Rules to Make Game More Exciting, available at <https://www.pba.ph/news/pba-introducing-new-rules-to-make-game-more-exciting> (last accessed July 31, 2023) [<https://perma.cc/5GG7-PTRQ>].

483. See generally Francis T.J. Ochoa, *The Business of Basketball*, PHIL. DAILY INQ., May 27, 2019, available at <https://sports.inquirer.net/351108/the-business-of-basketball> (last accessed July 31, 2023) [<https://perma.cc/WR4S-5JCS>].

484. *Id.*

485. See Emmanuel O. Sales, *Management Prerogatives and Employees' Rights (A General Overview)*, 13 DLSU BUS. & ECON. REV. 1, 1 (2002).

486. Reuben Terrado, Why Japan May Now Be the Premier Basketball Destination in Asia, available at <https://www.spin.ph/basketball/japan-is-now-the-premier-basketball-destination-in-asia-a795-20230306> (last accessed July 31, 2023) [<https://perma.cc/LC22-C4VS>].

487. Ganglani, *supra* note 361.

On this query, foreign precedent and American jurisprudence provide crucial perspectives.

C. Lack of a Players Union

One key distinction between American sports jurisprudence and the Philippine basketball environment is the absence of a key entity that has played an indispensable role in negotiating disputes and defending players' rights within the four major professional sports leagues in the U.S. — the players' association.⁴⁸⁸

In the courtroom and on the court, the *Robertson* case saw the NBA Players' Association fire the first shots of war when it sued the league in an attempt to block the attempted merger with the ABA.⁴⁸⁹ It was also the player union that negotiated the CBA that eventually allowed Tom Chambers to become the first unrestricted free agent to sign with an NBA team.⁴⁹⁰

Where America's pastime was concerned, Curt Flood filed suit with the support of the MLBPA,⁴⁹¹ which sought to throw out the "reserve clause" from the standard player's contract.⁴⁹² Similarly, during the deliberations among the Seitz panel over the construction of the "option clause," it was the players union, represented by Marvin Miller, which argued that the "one-year option clause in the uniform player's contract" should be interpreted as "an option for one year, and not a perpetual option."⁴⁹³

488. See NBPA, Overview & History, available at <https://nbpa.com/about> (last accessed July 31, 2023) [<https://perma.cc/J8Z2-6FUF>]; NFLPA, How the NFLPA Works, available at <https://nflpa.com/about> (last accessed July 31, 2023) [<https://perma.cc/8ENX-H865>]; MLBPA, History, available at <https://www.mlbplayers.com/history> (last accessed July 31, 2023) [<https://perma.cc/U9T4-N2WT>]; & NHLPA, What We Do, available at <https://www.nhlpa.com/the-pa/what-we-do> (last accessed July 31, 2023) [<https://perma.cc/JUT4-R8BB>].

489. QUIRK & FORT, *supra* note 237, at 202.

490. MINTZER & MINTZER, *supra* note 46, at 64.

491. Ron Briley, *The Nation's Strongest Union*, in THE COOPERSTOWN SYMPOSIUM ON BASEBALL AND AMERICAN CULTURE 2013-2014 266 (William M. Simons ed., 2015).

492. FRAN ZIMNIUCH, GOING, GOING, GONE! THE ART OF THE TRADE IN MAJOR LEAGUE BASEBALL 99 (2008).

493. ABRAMS, *supra* note 108, at 125.

Looking into the history of American football, the player's union went as far as decertifying itself to delegitimize the existing CBA in 1988, which was a necessary step to take the Rozelle Rule out of commission.⁴⁹⁴ In the *McNeil* litigation that transpired two years later, the National Football League Players' Association would finance the lawsuit on behalf of New York Jets running back Freeman McNeil and seven other NFL players.⁴⁹⁵

On the ice, the NHL Players Association eventually agreed to the abolishment of the "reserve" clause in all players' contracts in 1972, with the substitution of a one-year option clause in its place.⁴⁹⁶ The union has since been actively involved in several labor disputes growing out of negotiations between player and league, with the most recent 2013 CBA ending a four-month lockout by team owners.⁴⁹⁷

The union has stood at the forefront of disputes between player and team, player and league, and employee and employer.⁴⁹⁸ Conflicts that have arisen out of the terms and conditions of employment in professional sports have typically been litigated, funded, or supported by the players' association, with the disgruntled athlete finding strength in numbers and support in representation.⁴⁹⁹ The narrative thus raises the question — is this the case for Philippine basketball?

The sad answer is that the PBA Union remains inactive in the present.⁵⁰⁰ Originally formed in 1980 with Rene Canent as its first president,⁵⁰¹ the PBA Players' Association, as it was known back then, was a pillar of player

494. Leeds, *supra* note 249, at 521.

495. TURNER II, *supra* note 295, at 105.

496. Kobritz, *supra* note 202, at 1278.

497. FRANK P. JOZSA, JR., *SPORTS NATION: CONTEMPORARY AMERICAN PROFESSIONAL ORGANIZATIONS* 213 (2018).

498. *See id.*

499. *See generally* Ingles & Diploma, *supra* note 8, at 694.

500. *See* Eros Villanueva, *Commissioner Willie Marcial Welcomes Possible Revival of PBA Players' Union*, ESPN, Jan. 2, 2021, available at https://www.espn.com.au/basketball/story/_/id/30636339/marcial-welcomes-revival-pba-players-union (last accessed July 31, 2023) [<https://perma.cc/99D3-JTN5>].

501. *See* Richard Dy, *Touching Base with Rene Canent, First-Ever PBA Players Association President*, ESPN, July 30, 2020, available at https://www.espn.ph/basketball/pba/story/_/id/29562936/touching-base-rene-canent-first-ever-pba-players-association-president (last accessed July 31, 2023) [<https://perma.cc/G6KU-HJJN>].

welfare.⁵⁰² Its absence is felt all the more today, given that it would have ideally operated as the intermediary to negotiate possible middle ground between player and team.⁵⁰³

Theoretically, a union would have been crucial in voicing out the player's perspective of the dispute and his or her desired outcome against the might of the employer and the league.

Looking at the scenario in question, Ravena was one player. In all respects, the league and the team both had legal basis on which to ground their goal of keeping him in an NLEX jersey.⁵⁰⁴ The circumstances fueling Ravena's drive to make a splash in the B.League, however, talked of a much bigger game. Ravena was set to become the second player to suit up for a Japanese ball club (after his younger brother), and the first to directly transfer from the PBA.⁵⁰⁵ The B.League promised a level of play beyond the Philippine basketball court and much higher pay than he could receive here.⁵⁰⁶ The offer was ground-breaking, and possibilities were endless for a young talent.⁵⁰⁷

In this case, there was a novel clash between the harsh and unyielding force of law, and the immeasurable value of an opportunity that was then uncommon for Filipino basketball players. Such an angle was exactly the type of argument that could have been explored by the union on the player's

502. Villanueva, *supra* note 500.

503. *Slord Development Corporation v. Noya*, G.R. No. 232687, 891 SCRA 598, 610 (2019). The PBA Union would have fulfilled its role under "State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer." *Id.*

504. *See Dy*, *supra* note 12 & *Gondinez*, *supra* note 471.

505. *See Kiefer Ravena Joins Brother Thirdy in Japan B. League*, *RAPPLER*, June 2, 2021, available at <https://www.rappler.com/sports/kiefer-ravena-joins-brother-thirdy-japan-b-league/> (last accessed July 31, 2023) [<https://perma.cc/9CHL-D7CU>] & *Bong Lozada, Thirdy Ravena off to Japan for BLeague Stint*, *PHIL. DAILY INQ.*, Oct. 15, 2020, available at <https://sports.inquirer.net/406536/thirdy-ravena-off-to-japan-for-bleague-stint> (last accessed July 31, 2023) [<https://perma.cc/VB7Q-ARZJ>].

506. *Ganglani*, *supra* note 361.

507. *Id.*

behalf, and to prevent him from having his athletic opportunities absolutely limited by his contractual obligations.⁵⁰⁸

While Ravena's move to Japan was exactly the outcome fans were praying for, the road to the league's and the team's acquiescence could have been far less bumpy if a representative body was in existence to argue on the player's behalf. Moreover, if a PBA union was active at the time the dispute arose, precedent could have been more easily set in the form of a CBA to govern the rights of all players, as opposed to conflict with one player leading to a revamp of league rules.

D. Buy-Out Clauses

Another shortcoming that contributed significantly to the debacle between player and team was the lack of buy-out clauses in the Uniform Players' Contract.⁵⁰⁹ A buy-out clause would stipulate liquidated damages to be paid by the player in case he decides to opt out of his incumbent agreement with the team.⁵¹⁰ This would have addressed two key factors of the dispute.

First, if players were permitted to opt out of their contract with the payment of a stipulated amount to serve as damages, then they would be able to accept offers from outside the team or the league, provided that liquidated damages are paid.⁵¹¹ Second, respect for the contract would be guaranteed, considering that a provision has been validly agreed upon between the parties and stipulated with in good faith.⁵¹²

508. In 2015, Trade Union Congress of the Philippines-Nagkaisa (TUCP-Nagkaisa) spokesperson Alan Tanjusay encouraged the formation of the PBA union precisely to "protect the players from abuse of contract[.]" CNN Philippines Staff, *Labor Group Urges PBA Cagers to Restore Players' Union*, CNN PHIL., Oct. 5, 2015, available at <https://www.cnnphilippines.com/sports/2015/10/05/PBA-players-union-Mahindra-Nuyles.html> (last accessed July 31, 2023) [<https://perma.cc/DZW7-79ZD>].

509. Jonas Terrado, *Former League Chief Believes PBA Should Revise Rules After Kiefer Case*, MANILA BULL., June 5, 2021, <https://mb.com.ph/2021/06/04/former-league-chief-believes-pba-should-revise-rules-after-kiefer-case> (last accessed July 31, 2023) [<https://perma.cc/YPZ6-U4HS>].

510. *Id.*

511. See CIVIL CODE, arts. 1226 & 2226.

512. *Id.* art. 1306.

UPCs in the present contain no form of a buy-out clause, which works to the detriment of players in an era of borderless basketball.⁵¹³ A contract with the imprimatur of the parties may indicate mutual consent,⁵¹⁴ but the agreement ultimately works in favor of the employer and the team, while denying the undeniable reality of growing player movement in a shifting professional landscape.

V. CONCLUSION

At the final buzzer, the PBA's response to crisis may have shot down collective hope for basketball fans, but certain realities (and legal notions) cannot be ignored. As Philippine sports history demonstrates, while the PBA has cultivated its stature as the premier destination for aspiring Filipino ballers, there is often no way to detach its character as a basketball league from its nature as a business.

Although the terms of free agency in the PBA may be tough, the imposition thereof is backed by the force of law, with the right of the league and the team to call the shots being sanctioned by the principles of labor law and the Civil Code.

Moving forward, further recognition must be given to the fact that players, teams, and the league do not exist in a vacuum, but in an ecosystem. In a professional environment where business policy affects individual athletic endeavors (and collective national identity in the long run), key opinion leaders and business minds, players and teams, and laborer and employer must learn to find common ground on the basketball court.

Recent developments in Philippine sports highlight the fact that the game of basketball is played on the larger hardcourt of business and enterprise.⁵¹⁵ Contemporary controversy shows that the best and brightest of Filipino basketball can only go so far when external forces pull the strings. And when the athletic ambition of one superstar must yield to business interests, everybody loses.

⁵¹³ Terrado, *supra* note 509.

⁵¹⁴ See CIVIL CODE, art. 1319.

⁵¹⁵ See generally Ochoa, *supra* note 483.