

Playing for Wages: Defining the Legal Relationship Between Professional Athlete and Team, a Sports Law Perspective on Philippine Labor Law

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I. INTRODUCTION

In 2011, the Author was offered a spot to play for one of the teams in the United Football League¹ (UFL). At that time, the UFL was a relatively young league, not more than five years old, but the league's popularity was growing, benefiting from the success of the Philippine Azkals in late 2010.²

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1. United Football League (UFL) Official Website, About United Football League, *available at* <http://ufl.ph/about-us> (last accessed Dec. 31, 2014).
2. *See generally* GMA News Online, Azkals among SI's top football stories of 2010, *available at* <http://www.gmanetwork.com/news/story/209000/sports/azkals-among-si-s-top-football-stories-of-2010> (last accessed Dec. 31, 2014).

At its nascent stages, the league offered football players a venue to play in a competitive and organized environment. It also gave them a chance to extend their playing days, which normally would have ended upon graduation from college. The sport's popularity continued to grow; with it came the influx of sponsors, fans, replica jerseys, even television deals. Soon, the league offered football players something that seemed like a pipe dream just a few years before — a source of livelihood. Granted, the pay did not rival what a basketball player would receive from a team in the Philippine Basketball Association³ (PBA), it was still something — wages to play a sport one would play for free was always a good thing.

The league changed dramatically, and so did the teams. Teams in the UFL soon partnered with corporate sponsors to raise money and provide wages for their players.⁴ They transformed from small collegiate alumni club teams to teams carrying the names of the country's biggest and richest corporations.⁵ Playing contracts were now on the table. For most football players, the Author included, it was a first. A sport played for the love of it now had a tinge of obligatory force, with contracts providing for mandatory fitness levels, public appearances, wages, bonuses, and monetary penalties for missing practices and games. The terms “semi-professional football player” and even “professional football player” were now being thrown around.

The contract offered to the Author had most of these standard provisions. Curiously, the contract also had a provision that explicitly stated that no employer-employee relationship⁶ would arise between the player and the team. Hence, the agreement was not to be construed or to be understood as a contract between an employer and employee. As the Author had just recently finished his classes in Labor Law a few months prior, this naturally led to the question, “Why not? Why would there not be an employer-employee relationship between the player and his team?”

At first glance, as seen from the relationship between the paid athlete and their respective teams, the four-fold test to determine the presence of an employer-employee relationship seems to have been satisfied.⁷ Yet, in

3. See Philippine Basketball Association Official Website, *available at* <http://pba.inquirer.net/> (last accessed Dec. 31, 2014).

4. See UFL Official Website, News, *available at* <http://ufl.ph/news/> (last accessed Dec. 31, 2014).

5. *Id.*

6. See *Equitable Banking Corporation v. NLRC*, 273 SCRA 352, 371 (1997).

7. *Equitable Banking Corporation*, 273 SCRA at 371. In this case, the Court enumerated the four-fold test to determine the existence of an employer-employee relationship, to wit —

(1) [T]he selection and engagement of the employee;
(2) [T]he payment of wages;

practice, the legal relationship seems to be in a state of flux. Some teams treat their players as employees while some treat them as independent contractors.⁸ Defining the said relationship is crucial to athlete's rights, especially as more and more wage-paying teams and leagues are emerging. Similarly, the Philippine Super Liga⁹ (PSL), the country's first volleyball club league, is also gaining popularity alongside the PBA and the UFL.¹⁰

This Article will attempt to provide some stability to the flux. It will seek to answer the question — are professional athletes considered employees of their respective teams?

II. DEFINITIONS

A. Professional Athlete

Before diving deeper into the issue, it is first essential to determine the definition of “professional athlete” within the context of Philippine laws. Such definition will lay down the parameters upon which the issue will be answered.

The definition of “professional athlete” under Philippine laws is almost as non-existent as the country's total Olympic gold medal haul.¹¹ However, two pending bills have sought to define the term.

The first is Senate Bill No. (S.B.) 2741, or the “Professional Filipino Athletes Retirement, Health Care, and Death Benefits Act of 2011.”¹² As its name suggests, S.B. 2741 seeks to provide retirement and health care benefits to professional athletes. It defines “[p]rofessional Filipino [a]thletes” as

(3) [T]he power of dismissal; and

(4) [T]he power to control the employee's conduct, with the control test generally assuming primacy in the overall consideration.

Id.

8. *Orozco v. Fifth Division of the Court of Appeals*, 562 SCRA 36, 48 (2008).

9. *See Philippine Superliga Grand Prix*, available at <http://philippinesuperliga.com/wp/> (last accessed Dec. 31, 2014).

10. *Id.*

11. To date, the Philippines has only ever won one Olympic Gold Medal. *See* David Lozada, Pinoy archer Moreno wins Philippines first ever Olympic gold, available at <http://www.rappler.com/sports/specials/olympics/67109-pinoy-archer-moreno-olympic-gold> (last accessed Dec. 31, 2014).

12. An Act Granting Retirement, Health Care, and Death Benefits to Professional Filipino Athletes Who Win World Championship Titles in International Professional Sports Competitions or in Other Equally Prestigious International Games and Providing Funds Therefor, Senate Bill (S.B.) No. 2741, 15th Cong., 1st Reg. Sess. (2011).

athletes who are Filipino citizens and paid a sum of money and other compensation as [] salary or prize money for participating in a game, bout, tournament[,] or contest of professional sport, either as an individual contestant or a member of a team under a contract entered into with a professional sports promoter [or] operator or team owner and licensed by the Games and Amusements Board (GAB).¹³

The second is House Bill No. (H.B.) 3506, or the “Tax Incentive Act for Professional Athletes Act of 2013.”¹⁴ Filed as a response to the tax controversy involving champion pugilist, congressman, and now professional basketball player, Emmanuel “Manny” D. Pacquiao,¹⁵ H.B. 3506 seeks to amend the 1997 Tax Code¹⁶ and exempt all prizes and awards won by athletes, whether amateurs or professionals, from income taxation.¹⁷ The Bill defines “professional [athlete]” as “any duly licensed Filipino athlete making use of his skill to earn income by joining sports competitions locally or internationally.”¹⁸

Comparing the two bills will show the following common elements in the determination of whether an athlete has crossed the threshold from amateur to professional:

- (1) The athlete is “paid a sum of money and other compensation”¹⁹ or “earn[s] income;”²⁰
- (2) By “making use of his skill”²¹ or “participating in a game, bout, tournament[,] or contest;”²² and
- (3) Is duly licensed by the GAB.²³

13. S.B. No. 2741, § 3 (a).

14. An Act Granting Tax Exemption for Prizes and Awards Granted to Filipino Athletes in Internationally Sanctioned Sports Competitions and Further Amending for this Purpose Sec. 32 (B) (7) (4) of 1997 Tax Code (R.A. 8242), House Bill (H.B.) No. 3506, 16th Cong., 1st Reg. Sess. (2013).

15. BoxRec Official Website, Manny Pacquiao, *available at* http://boxrec.com/list_bouts.php?human_id=6129&cat=boxer (last accessed Dec. 31, 2014).

16. *See* An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [Tax Reform Act of 1997], Republic Act No. 8424, (1997).

17. H.B. No. 3506, § 4.

18. *Id.* § 3 (A).

19. S.B. No. 2741, § 3 (a).

20. H.B. No. 3506, § 3 (A).

21. *Id.*

22. S.B. No. 2741, § 3 (a).

23. *Id.*

The third element — the requirement of a license from the GAB — is immaterial to this Article for two reasons. First, in a long line of cases decided by the Supreme Court on employment, the Court has yet to rule that a person must have a license from any government agency in order to be considered an employee. The test of the existence of an employer-employee relationship has mostly been the four-fold test.²⁴ Second, in both bills, the requirement of athletes to obtain licenses from the GAB can be gleaned from the purpose of both bills — the grant of privileges to athletes. The authors of both bills presumably sought to limit the grant of privileges to athletes who have gone through the process of registering with the GAB, the government body tasked to regulate and supervise professional sports.²⁵ The grant of these privileges willy-nilly to anyone who claims to have received monetary compensation for playing a sport was clearly not the intent of the authors. Hence, for the purposes of this Article, the requirement of obtaining a license from the GAB must be benched and will not play a factor in defining “professional athletes.”

The remaining two elements can be combined to define a professional athlete as any athlete who earns income or is paid a sum of money and other compensation for making use of his skill or by participating or joining sports competitions. To clean the definition up, the United States (U.S.) National Collegiate Athletic Association (NCAA) Division I and II Manuals²⁶ (NCAA Manuals) are instructive. The NCAA Manuals, which outline the governing rules for the NCAA, define a professional athlete as “one who receives any kind of payment, directly or indirectly, for athletics participation, except as permitted by governing legislation of the Association.”²⁷ The NCAA Manuals further state that an individual loses his amateur status once the athlete “[u]ses his or her athletics skill (directly or indirectly) for pay in any form in that sport.”²⁸ Dispensing with the NCAA-specific proviso, the NCAA Manuals’ definition encapsulates the essence of a professional athlete

24. *See* *Francisco v. National Labor Relations Commission*, 500 SCRA 690, 698–99 (2006). In this case, the Court used the economic dependency test to determine the existence of an employer-employee relationship.

25. *See* Further Reorganizing the Different Executive Departments, Bureaus, Offices and Agencies of the Government of the Republic of the Philippines, Making Certain Re-adjustments of Personnel and Reallotments of Funds in Connection Therewith, and for Other Purposes. Executive Order No. 392 [E.O. No. 392] (1951).

26. *See* THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (NCAA), 2014–15 NCAA DIVISION II MANUAL (2014) & NCAA, 2012–13 NCAA DIVISION I MANUAL (2012).

27. 2014–15 NCAA DIVISION II MANUAL, *supra* note 26, at 55.

28. 2012–13 NCAA DIVISION I MANUAL, *supra* note 26, at 60. On a side note, the most a student-athlete can receive are actual and necessary expenses for a competition or a practice that is directly related to a competition. *Id.* at 65.

— one who is paid to participate in athletics — and does the job of combining the two definitions provided by the two bills in a more succinct and concise manner. The NCAA definition also provides the added bonus of adhering to the rule that words in a statute are to be given their ordinary and plain meaning.²⁹

Hence, for the purposes of this Article, a professional athlete (pro) is one who receives any kind of payment for participating in sports. It is a definition sufficient and complete in itself and will be helpful to remember in the course of this discussion.

B. Semi-professional Athletes

How does the semi-professional athlete (semi-pro) fit into the discussion? A semi-pro is an athlete who gets paid to play but does not do it as a full-time job,³⁰ usually because the level of pay is not enough to sustain his or her livelihood. Many UFL players consider themselves semi-pros because they still have to trudge on with their nine-to-five jobs before or after training sessions. It seems that the main determining factor between professional athletes and semi-pros is the level of pay. If one can quit his day job to play a sport fulltime, then he has crossed the threshold from semi-pro to pro.

While the definition of a semi-pro may reflect the economic reality of an individual and the popularity of the sport, the semi-pro is and must be subsumed, for legal purposes, into the definition of a professional athlete for two reasons.

First, to make a distinction between pros and semi-pros would lead to problematic situations such as defining “full-time job”³¹ and finding an economic or monetary threshold to determine if the level of pay is indeed enough to sustain one’s livelihood, i.e., what is adequate compensation for one may not be adequate for another.

Second, note the definitions provided by S.B. 2741, H.B. 3506, and even the NCAA Manuals. The definitions make no distinction as to the level of pay the athlete receives. As long as the athlete receives monetary consideration, then such athlete will be considered a professional athlete. Whether it is enough for the athlete to pursue his sport fulltime is immaterial.

In the end, whatever designation the athlete goes by or whatever label his team wishes to call him, whether pro or semi-pro, it will not matter in

29. WALTER A. SHUMAKER, *THE CYCLOPEDIA OF LAW* 947 (1922).

30. See Merriam-Webster, *Semiprofessional*, available at <http://www.merriam-webster.com/dictionary/semiprofessional> (last accessed Dec. 31, 2014).

31. For instance, what *is* Manny Pacquiao’s full-time job? Is he a congressman? Is he a boxer? Is he a professional basketball player?

determining his employment status with his team. The four-fold test will take care of that.

C. Employer-Employee Relationship

The Court has repeatedly used the four-fold test to determine whether an employer-employee relationship exists between parties.³² For an employer-employee relationship to arise, the following four elements must be present:

- (a) The selection and engagement of the employee;
- (b) The payment of wages;
- (c) The power of dismissal over the employee; and
- (d) The employer's power to control the employee's conduct.³³

The fourth element — the power of control — has been considered the most important.³⁴ Of course, the power of control must not simply refer to control over the results of the work, but also the means and methods to be used in order to achieve these results.³⁵ This power of control often comes in the form of rules. Hence, in *Insular Life Assurance Co., Ltd. v. NLRC*³⁶ the Court drew a helpful distinction —

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.³⁷

For example, a contract that enumerates a laundry list of duties and responsibilities the hired party must comply with suggests that the power of control exists.³⁸ However, if the rules to be followed by the hired party are mere general guidelines to achieve a certain result and the hired party could

32. See, e.g., *Ruga v. National Labor Relations Commission*, 181 SCRA 266, 273-74 (1990); *Aboitiz Shipping Employees Association v. NLRC*, 186 SCRA 825, 829 (1990); *Traders Royal Bank v. National Labor Relations Commission*, 321 SCRA 467, 472 (1999); & *De los Santos v. National Labor Relations Commission*, 372 SCRA 723, 731 (2001).

33. *Orozco*, 562 SCRA at 48.

34. *Id.*

35. See *Investment Planning Corp. of the Phil. v. Social Security System*, 21 SCRA 942, 928-29 (1967).

36. *Insular Life Assurance Co., Ltd. v. NLRC*, 179 SCRA 459 (1989).

37. *Id.* at 465 (emphasis supplied).

38. See *Dumpit-Murillo v. Court of Appeals*, 524 SCRA 290 (2007).

perform the job at his or her pleasure, no power of control, and no employer-employee, exists.³⁹ In these cases, the hired party is most likely an independent contractor.⁴⁰

D. Independent Contractor

*Orozco v. Court of Appeals*⁴¹ defines an independent contractor as follows —

[O]ne who carries on a distinct and independent business and undertakes to perform the job, work, or service on one's own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.⁴²

As can be gleaned from the definition, an independent contractor is free from any control from the principal or the hiring party. The main responsibility of the independent contractor is, to put it bluntly, to “get the job done.” How he or she gets the job done is left to the contractor's discretion and is beyond the control of the principal whose primary concern in the agreement is the result of the work.⁴³

The stories of Wilhelmina S. Orozco, Jose Mel Bernarte, and Jay Y. Sonza will provide an appropriate backdrop for determining the proper status of professional athletes who are often considered independent contractors.

In *Orozco*, Wilhelmina Orozco was a lifestyle columnist for the Philippine Daily Inquirer.⁴⁴ After running her column for two years, the newspaper decided to cancel it.⁴⁵ Orozco filed a complaint for illegal dismissal with the Labor Arbiter.⁴⁶ The Labor Arbiter found that an employer-employee relationship existed between Orozco and the newspaper.⁴⁷

The Court, however, found that Orozco was an independent contractor.⁴⁸ The newspaper had no control over her works.⁴⁹ The Court

39. *Orozco*, 562 SCRA at 51.

40. *Id.* at 55.

41. *Id.* at 56.

42. *Id.*

43. *Id.*

44. *Id.* at 41.

45. *Orozco*, 562 SCRA at 41.

46. *Id.* at 42.

47. *Id.* at 42-43.

48. *Id.* at 55.

49. *Id.* at 59.

found that “there were no restraints on her creativity”⁵⁰ and that she “was free to write her column in the manner and style she was accustomed to and to use whatever research method she deemed suitable for her purpose.”⁵¹ The only control the newspaper had over Orozco was “to the finished product of her efforts, i.e. the column itself, by way of either shortening or outright rejection of the column.”⁵² This power to reject her column was a logical element of one who contracts or commissions another for a piece of work.⁵³

In one of the few sports-related cases ever decided by the Supreme Court, *Bernarte v. Philippine Basketball Association*⁵⁴ resolved the issue of whether PBA referees were employed by the professional basketball league or not. Bernarte and his co-complainant Renato Guevarra were regular PBA referees, calling the games for years.⁵⁵ However, the PBA refused to renew their retainer contracts because of their alleged unsatisfactory performance.⁵⁶ Bernarte and Guevarra claimed that they were employees and were illegally dismissed.⁵⁷ They argued that their retainer contracts proved the element of control as these contracts tasked them to attend all PBA basketball games, to stay in shape, and to give their best efforts, among others.⁵⁸

The Court held otherwise and ruled that the referees were independent contractors.⁵⁹ The Court found that the contractual stipulations in the retainer contracts were mere guidelines to “maintain the integrity of the professional basketball league.”⁶⁰ How they called the game was totally up to them. By the very nature of their profession, the PBA had no control over them.⁶¹ The most the PBA could do was to evaluate their performance which was in turn the basis of the renewal of their retainer contracts.⁶² The Court said,

[w]e agree with respondents that once in the playing court, the referees exercise their own independent judgment, based on the rules of the game,

50. *Id.* at 52.

51. *Orozco*, 562 SCRA at 52.

52. *Id.* at 53.

53. *Id.*

54. *Bernarte v. Philippine Basketball Association (PBA)*, 657 SCRA 745 (2011).

55. *Id.* at 748.

56. *Id.*

57. *Id.*

58. *Id.* at 755.

59. *Id.* at 757.

60. *Bernarte*, 657 SCRA at 755.

61. *Id.* at 757.

62. *Id.* at 759.

as to when and how a call or decision is to be made. The referees decide whether an infraction was committed, and the PBA cannot overrule them once the decision is made on the playing court. *The referees are the only, absolute, and final authority on the playing court. Respondents or any of the PBA officers cannot and do not determine which calls to make or not to make and cannot control the referee when he blows the whistle because such authority exclusively belongs to the referees. The very nature of petitioner's job of officiating a professional basketball game undoubtedly calls for freedom of control by respondents.*⁶³

Perhaps the most famous independent contractor in Philippine jurisprudence is television and radio personality Jay Sonza. His star power was bright enough to reach even the hallowed halls of the Court in *Sonza v. ABS-CBN Broadcasting Corporation*.⁶⁴ In 1996, Jay Sonza, co-host of the popular television and radio show *Mel & Jay*, resigned from the television network ABS-CBN.⁶⁵ He then filed a complaint with the Department of Labor and Employment, claiming that the network did not pay his salaries, separation pay, and 13th month pay, among others.⁶⁶ The labor arbiter found that Sonza was an independent contractor and that no employer-employee relationship existed between him and ABS-CBN.⁶⁷ The Labor Arbiter dismissed the case for lack of jurisdiction.⁶⁸

The Court agreed with the labor arbiter that Sonza was indeed an independent contractor.⁶⁹ The Court applied the control test and found that ABS-CBN did not exercise control over the means and methods of Sonza's work.⁷⁰ As a host, Sonza had control over how he "delivered his lines, appeared on television, and sounded on radio."⁷¹ Sonza even had control of the contents of his script and the topics on the show, provided he did not criticize "ABS-CBN or its interests."⁷² While ABS-CBN did have the "right to modify the program format and airtime schedule 'for more effective programming,'"⁷³ the Court found that this control was only over the result or the finished product.⁷⁴ In fact, ABS-CBN had to continue paying Sonza even if his performance was not up to its standards, showing a lack of control

63. *Id.* at 756-57 (emphasis supplied).

64. *Sonza v. ABS-CBN Broadcasting Corporation*, 431 SCRA 583 (2004).

65. *Id.* at 588.

66. *Id.*

67. *Id.* at 590.

68. *Id.* at 589.

69. *Id.* at 599.

70. *Sonza*, 431 SCRA at 601.

71. *Id.* at 600.

72. *Id.*

73. *Id.* at 600-01.

74. *Id.* at 601.

over the means and methods employed by *Sonza*.⁷⁵ The network's "sole concern was the quality of [their] shows and their standing in the ratings."⁷⁶

Orozco, *Bernarte*, and *Sonza* will be helpful guideposts in determining the status of professional athletes.

III. PROFESSIONAL ATHLETES IN INDIVIDUAL SPORTS

I enjoyed the position I was in as a tennis player. I was to blame when I lost. I was to blame when I won.

— Roger Federer⁷⁷

Before determining the employment status of professional athletes in team sports, it will be interesting to see the status of professional athletes in individual sports, at least to serve as a point of comparison. The differences between individual sports and team sports are obvious — the mechanics, relationships, and dynamics of individual sports differ greatly from those of team sports. These differences, primarily the existence of the power of control in team sports and the lack thereof in individual sports, will lead to divergent results on the employment status of the professional athlete.

Tennis, golf, boxing, badminton, snowboarding, mixed martial arts, and track and field — these are all individual sports.⁷⁸ While each may differ in their own rules and objectives, one thing is common among them — the lack of control over the performance of the athlete. Ordinarily, the professional athlete in an individual sport is free to chart his own course both as to the results and the means and methods to achieve the results. Professional athletes in individual sports are free from any pressure or influence by other parties who could be seen as purported employers like tournament organizers or promoters. Hence, they are generally independent contractors.

Take Manny Pacquiao for example. Pacquiao currently has a promotional agreement with Robert "Bob" Arum and Top Rank Boxing.⁷⁹

75. *Id.*

76. *Sonza*, 431 SCRA at 601.

77. CNN.com/asia, Interview with Roger Federer, *available at* <http://edition.cnn.com/2007/WORLD/asiapcf/12/04/talkasia.federer> (last accessed Dec. 31, 2014). Roger Federer is a 17-time Tennis Grand Slam Champion. *See generally* Tennis.com, Federer vs. Monfils, Wawrinka vs. Tsonga in Davis Cup final, *available at* <http://www.tennis.com/pro-game/2014/11/roger-federer-to-face-monfils-in-davis-cup-final/53304> (last accessed Dec. 31, 2014).

78. *See* Reverso.net, Definition of individual sport, *available at* <http://dictionary.reverso.net/english-definition/individual%20sport> (last accessed Dec. 31, 2014).

79. *See* Lem Satterfield, Bob Arum: Manny Pacquiao prospects improve with Golden Boy union, *available at* <http://ringtv.craveonline.com/news/344821->

The agreement mandates the multi-titled boxing champion to fight a certain number of fights under the umbrella of Top Rank Boxing, with both parties splitting the pie for an undisclosed amount.⁸⁰ What Top Rank Boxing wants from Pacquiao is high-quality boxing matches — these are the results to be obtained by their agreement.⁸¹

When it comes to the means and methods to obtain these results, Pacquiao is in control and free from the interference of Top Rank Boxing. While the agreement presumably obliges Pacquiao to perform a range of promotional activities relating to his fights, Top Rank Boxing still has no control over the method of Pacquiao's training (hence, Pacquiao can play professional basketball just a few months before a big fight), over the strategies he employs in his fights, and how he actually fights come fight night. These are all up to Pacquiao and his trainer Frederick "Freddie" Roach.

Similar to how ABS-CBN's main concern was the quality and ratings of Mel & Jay, Top Rank Boxing's main concern is cashing in on the punching power and lightning mitts of Pacquiao through his boxing matches. Like Jay Sonza, *how* Pacquiao brings these results is up to him. In the words of *Bernarte*, Top Rank Boxing "cannot and do not determine which [punches to throw or not to throw] and cannot control [Pacquiao] when he [throws a punch] because such authority exclusively belongs to [Pacquiao]." ⁸²

The same analogy can be made across different individual sports. The Professional Golfers' Association⁸³ (PGA) cannot tell Jason Day what club to use on the fairway. The Ultimate Fighting Championship⁸⁴ (UFC) has no control over how Mark Muñoz will defend against a rear naked choke. Classifying professional athletes in these individual sports as employees will necessarily fail; the element of control from the hiring parties, the most important element in the four-fold, test will ordinarily be absent. They are independent contractors, free in the means and methods that they employ.

bob-arum-manny-pacquiao-prospects-improve-with-golden-boy-union (last accessed Dec. 31, 2014).

80. See Dan Rafael, Manny Pacquiao stays with Top Rank, *available at* http://espn.go.com/boxing/story/_/id/10959154/manny-pacquiao-signs-two-year-extension-top-rank (last accessed Dec. 31, 2014).

81. *Id.*

82. See *Bernarte*, 657 SCRA at 757.

83. See PGA Tour, About Us, *available at* <http://www.pgatour.com/company/aboutus.html> (last accessed Dec. 31, 2014).

84. See Ultimate Fighting Championship (UFC) Official Website, Discover UFC, *available at* <http://www.ufc.com/discover/> (last accessed Dec. 31, 2014).

IV. PROFESSIONAL ATHLETES IN TEAM SPORTS

[A]nybody who thinks that [we are] up here because of ourselves, [we are] fooling ourselves. This is about a family, this is about teammates, this is about everybody pitching in to make you better and for you hopefully to make them better.

— Michael Strahan⁸⁵

When it comes to professional athletes in team sports, the situation changes. It is a whole other ballgame. The athlete is no longer left to his own devices and must perform within the context of a team. The athlete must subsume himself or herself into the team, whether he or she likes it or not. As will be discussed below, in team sports, the elements in the four-fold test will generally be present, giving rise to an employer-employee relationship between the professional athlete and his or her team.

The Court has already noted that a professional basketball player is an employee of his team. Decided in 2012, *Negros Slashers, Inc. v. Teng*⁸⁶ involved the professional basketball team Negros Slashers of the now-defunct Metropolitan Basketball Association⁸⁷ (MBA) and basketball player Alvin Teng. Throughout his basketball career in the PBA and the MBA, Teng was one of the top lockdown defenders and was known to Filipino basketball fans of the 1980's and 1990's as "The Robocop," and recently, as "Jeron and Jeric's Father."⁸⁸

In 2000, his former MBA team, the Laguna Lakers, traded him to the Slashers.⁸⁹ As a consequence of the trade, Teng executed a Player's Contract of Employment with the Slashers.⁹⁰ The Slashers made it to that season's championship round against eventual champions San Juan Knights. During

85. Michael Eisen, Michael Strahan makes memorable Hall of Fame speech, available at <http://www.giants.com/news-and-blogs/article-1/Michael-Strahan-makes-memorable-Hall-of-Fame-speech/571e5fca-a222-4f74-93ef-08a8494d5558> (last accessed Dec. 31, 2014). He is a Professional Football Hall-of-Famer. *Id.*

86. *Negros Slashers, Inc. v. Teng*, 666 SCRA 629 (2012).

87. Bill Velasco, Remembering the Metropolitan Basketball Association, available at <http://www.philstar.com/sports/2014/08/25/1361506/remembering-mba> (last accessed Dec. 31, 2014).

88. Reynaldo Belen, et al., The List: Top Centers in PBA History, available at <http://www.interaksyon.com/interaktv/the-list-top-centers-in-pba-history> (last accessed Dec. 31, 2014). Jeron and Jeric Teng are Alvin Teng's offsprings who have made a name for themselves in college basketball. See Mylene Mendoza-Dayrit, *Jeric and Jeron Teng: The brothers that play together grow stronger together*, PHIL. STAR, Aug. 14, 2012, available at <http://www.philstar.com/health-and-family/2012-08-14/837930/jeric-and-jeron-teng-brothers-play-together-grow-stronger> (last accessed Dec. 31, 2014).

89. See *Negros Slashers, Inc.*, 666 SCRA at 632.

90. *Id.*

Game 4, Teng did not have the best of games and was benched.⁹¹ While on the bench, he “untied his shoelaces and donned his practice jersey.”⁹² He did not play the next game, calling in sick.⁹³ Not pleased with Teng’s actions, the management of the Slashers terminated his contract.⁹⁴ In turn, he filed a case of illegal dismissal with the labor arbiter.⁹⁵ The labor arbiter found that Teng was illegally dismissed because the punishment meted out by the Slashers was not commensurate to his actions.⁹⁶ The Court of Appeals affirmed the labor arbiter’s decision.⁹⁷

On appeal, the Court ruled in favor of Teng. He was indeed illegally dismissed.⁹⁸ The Court noted the importance of the team concept in team sports such as basketball, and that a “harmonious working relationship among team players is essential to the success of the organization.”⁹⁹ The Court also understood that Teng’s actions in a way jeopardized that relationship because his teammates felt “abandoned” by his absence in Game 5.¹⁰⁰ However, the Court decided that his actions, looking at them objectively by removing them from the charged atmosphere of a locker room after a loss, were not enough to merit the punishment of dismissal.¹⁰¹ Blame could be placed on Teng’s square shoulders, but he could not be blamed *that* much to amount to his dismissal. The Court said,

[a]s an employee of the Negros Slashers, Teng was expected to report for work regularly. Missing a team game is indeed a punishable offense. Untying of shoelaces when the game is not yet finished is also irresponsible and unprofessional. However, we agree with the [l]abor [a]rbiter that such isolated foolishness of an employee does not justify the extreme penalty of dismissal from service. Petitioners could have opted to impose a fine or suspension on Teng for his unacceptable conduct. Other forms of disciplinary action could also have been taken after the incident to impart on the team that such misconduct will not be tolerated.¹⁰²

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 633.

95. *Negros Slashers, Inc.*, 666 SCRA at 633.

96. *Id.* at 634.

97. *Id.* at 635.

98. *Id.* at 642.

99. *Id.*

100. *Id.*

101. *Negros Slashers, Inc.*, 666 SCRA at 643.

102. *Id.* at 642-43 (emphasis supplied).

Vindicated, he was awarded ₱2,530,000.00 in unpaid salaries, separation pay, and attorney's fees.¹⁰³

What is interesting in *Negros Slashers, Inc.* is that Teng's employment status with the Slashers was never raised as an issue. The case was decided on the premise that Teng was indeed an employee of the Slashers and that an employer-employee relationship existed between him and his professional team. Applying the four-fold test will show that this premise was correct — an employer-employee relationship does exist between a professional athlete and his or her team.

A. Selection and Engagement of the Professional Athlete

I [do not] remember Michael Jordan's name being mentioned.

— John "Jack" Ramsay¹⁰⁴

There is no doubt that a professional athlete is selected and engaged by the team. In an established professional league like the PBA, the selection and engagement of the professional athlete starts with the celebrated Draft, where teams select promising amateur players who wish to make the leap to the big league.¹⁰⁵ The PSL has also used the Draft for choosing players.¹⁰⁶ While it certainly is exciting and nerve-racking, the Draft is not the only way a team selects and engages a professional athlete. Players can be offered contracts based on try-outs or past performance. Being undrafted is not the end of the road for the aspiring baller; undrafted players still have a chance to

103. *Id.* at 633.

104. Ramsay's statement on why they drafted Sam Bowie before Michael Jordan in the 1984 NBA Draft. Ben Golliver, Ex-Blazers exec: Portland wanted Bowie and Barkley over Jordan in 1984 draft, *available at* <http://www.si.com/nba/point-forward/2012/12/13/blazers-sam-bowie-michael-jordan-charles-barkley> (last accessed Dec. 31, 2014). Ramsay was the Portland Trailblazers (National Basketball Association) Head Coach from 1976-86. See Richard Goldstein, *Jack Ramsay, Who Led Blazers to 1977 N.B.A. Title, Dies at 89*, N.Y. TIMES, Apr. 28, 2014, *available at* http://www.nytimes.com/2014/04/29/sports/basketball/jack-ramsay-dies-at-89-led-blazers-to-1977-nba-title.html?_r=0 (last accessed Dec. 31, 2014).

105. See Homer Samson, 'Judgment Day' for PBA Draft hopefuls, MANILA STAND. TODAY, Aug. 24, 2014, *available at* <http://manilastandardtoday.com/2014/08/24/-judgment-day-for-pba-draft-hopefuls> (last accessed Dec. 31, 2014).

106. See Noel Zarate, The winner and winners of the first Philippine Super Liga Draft, *available at* <https://ph.sports.yahoo.com/blogs/sportztackle/winner-winners-first-philippine-super-liga-draft-145502086.html> (last accessed Dec. 31, 2014).

impress and bag a contract.¹⁰⁷ Jeremy Lin of the National Basketball Association (NBA)'s Los Angeles Lakers¹⁰⁸ and Wes Walker of National Football League (NFL)'s Denver Broncos¹⁰⁹ are some notable undrafted athletes who have had success in their respective sports. On a local note, PBA player Wynne Arboleda was making waves as an undrafted player¹¹⁰ before he decided to impersonate Ron Artest and maul a heckler in 2009.¹¹¹

Whatever manner the team uses to select and engage the athlete, the team chooses the player based on his or her unique skills, expertise in the sport or a particular aspect of the sport, or the needs of the team at that particular point in time. In fact, the NBA Uniform Player Contract states that "the [p]layer represents and agrees that he has extraordinary and unique skill and ability as basketball player."¹¹² This goes without saying — a professional team will not choose any Juan from the street, give him a jersey, and pay him thousands of pesos just to play ball. The professional athlete must have some special quality that the team needs so much that it is willing to part with its money.

As early as 1902, the Pennsylvania Supreme Court expounded on the unique skills and qualities a professional player may have.¹¹³ In ruling on a breach of a sports contract between baseball player Napoleon Lajoie and his club, the Pennsylvania Supreme Court noted that he was chosen by the team

107. See Rick Olivares, *Thoughts of the undrafted*, PHIL. DAILY INQ., Aug. 25, 2014, available at <http://pba.inquirer.net/48549/thoughts-of-the-undrafted> (last accessed Dec. 31, 2014).

108. See Stephen Smith, Jeremy Lin among NBA's best undrafted point guards, available at <http://www.cbsnews.com/media/jeremy-lin-among-nbas-best-undrafted-point-guards> (last accessed Dec. 31, 2014).

109. See Kyle Montgomery, Wes Walker breaks Rod Smith's record, becoming first undrafted NFL player to catch 850 passes, available at <http://www.milehighreport.com/2014/10/5/6914241/wes-welker-breaks-rod-smiths-record-becoming-first-undrafted-nfl> (last accessed Dec. 31, 2014).

110. See Olivares, *supra* note 107.

111. See GMANews.TV, PBA suspends Arboleda for rest of the season, available at <http://www.gmanetwork.com/news/story/175028/sports/pba-suspends-arboleda-for-rest-of-the-season> (last accessed Dec. 31, 2014). In 2004, Artest, along with some of his teammates, were involved in a melee against basketball fans. See Candace Buckner, As 'Malice in the Palace' brawl turns 10, impact lasts, available at <http://www.usatoday.com/story/sports/nba/pacers/2014/11/16/pistons-malice-palace-brawl-commissioner-artest-adam-silver/19138239/> (last accessed Dec. 31, 2014).

112. See National Basketball Players Association, National Basketball Association Uniform Player Contract, available at <http://www.nbpa.org/sites/default/files/EXHIBIT%20A.pdf> (last accessed Dec. 31, 2014).

113. Philadelphia Ball Club v. Lajoie, 202 Pa. 210 (1902) (U.S.).

because he was “an expert baseball player in any position,”¹¹⁴ a “most attractive card for the public,”¹¹⁵ and while “[h]e may not be sun in the baseball firmament,”¹¹⁶ he was “certainly a bright particular star.”¹¹⁷ Flowery language aside, the Pennsylvania Supreme Court recognized that Lajoie was an exceptional baseball player and crowd drawer, the main reasons his club signed him in the first place.

Those who classify professional athletes as independent contractors because of the athlete’s “unique skills and qualities” will likely point to *Sonza* as authority. *Sonza* was hired because of his “unique skills, talent[,] and celebrity status not possessed by ordinary employees.”¹¹⁸ True, professional athletes are likewise selected and engaged because of their unique skills, talent, and (sometimes) celebrity status. This was the case more than a hundred years ago with Lajoie and is definitely the case today. However, a careful reading of *Sonza* will show that hiring of an individual based on these qualities is a mere “circumstance indicative, but not conclusive, of an independent contractual relationship.”¹¹⁹ Hence, it is not a foregone conclusion that a professional athlete is an independent contractor solely based on his or her skills and qualities.

B. Payment of Wages

We are overpaid, but so are the owners.

— Kobe Bryant¹²⁰

In exchange for their skills and talents, professional athletes are paid by their teams. *How much* they are paid is a matter of negotiation between the athletes, their agents (if ever), and the teams, subject to any restrictions imposed by the league. For example, a PBA player’s maximum monthly salary is ₱420,000.00; for rookies, the maximum monthly salary is lowered to

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Sonza*, 431 SCRA at 595.

119. *Id.*

120. Kevin Zimmerman, Kobe Bryant says players ‘are overpaid, but so are the owners,’ available at <http://www.sbnation.com/nba/2014/10/15/6981591/kobe-bryant-players-overpaid-owners> (last accessed Dec. 31, 2014). Kobe Bryant is a Professional basketball player for the Los Angeles Lakers of the NBA. See NBA.com, Kobe Bryant, available at http://www.nba.com/playerfile/kobe_bryant (last accessed Dec. 31, 2014).

₱150,000.00.¹²¹ In contrast, the monthly salary offered to the Author was just a few notches above the minimum wage. Obviously, aside from the clout of the player, the wages will also depend on the financial capacity of the team and the viability of the league.

This discrepancy in wages across sports once again raises the question of independent contractors. *Sonza* seems to have taught that enormous wages or fees give rise to an independent contractor relationship and not an employer-employee relationship. In *Dumpit-Murillo v. Court of Appeals*,¹²² the Court, ruling on the employment status of a newscaster, noted that her low monthly salary of ₱28,000.00, compared to *Sonza*'s monthly salary of ₱300,000.00, bolstered the "conclusion that [Dumpit-Murillo] was not in the same situation as *Sonza*,"¹²³ and therefore, made her an employee.¹²⁴ A cursory reading of the two cases together may suggest that a high salary leads to an independent contractual relationship, and a low salary leads to an employer-employee relationship.

This, of course, is not and should not be the case. Neither the Labor Code nor jurisprudence states that the *amount* of wages will play a factor for the four-fold test. If this argument would be allowed to run its course, then no employer-employee relationship can ever arise from high-paying jobs. An investment banker will not be considered a bank employee, and the same will be said of a prized associate in a Makati or Ortigas law firm. Again, a careful reading of *Sonza* will put to rest this argument —

S[onza]'s talent fees, amounting to [₱317,000.00] monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay S[onza] such huge talent fees precisely because of S[onza]'s unique skills, talent[,] and celebrity status not possessed by ordinary employees. Obviously, S[onza] acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. *The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.*¹²⁵

At most, high wages, the bargaining power, and panache to demand such wages are mere indications that the hired party is an independent

121. Manila Bulletin, PBA top pick favorite wants \$20,000 salary, *available at* <https://ph.sports.yahoo.com/news/pba-top-pick-favorite-wants-20-000-salary-191006836--nba.html> (last accessed Dec. 31, 2014).

122. *Dumpit-Murillo v. Court of Appeals*, 524 SCRA 290 (2007).

123. *Id.* at 300.

124. *Id.*

125. *Sonza*, 431 SCRA at 596 (emphasis supplied).

contractor; it is not conclusive. Other factors must likewise be considered, the most important of which, is the power of control.¹²⁶

C. Power to Dismiss

The decision to let Ray Rice go was unanimous. Seeing that video changed everything. We should have seen it earlier. We should have pursued our own investigation more vigorously. We [did not] and we were wrong.

— Steve J. Bisciotti¹²⁷

A team has the power to dismiss a player. The team may release or dismiss a player if he or she no longer performs to their required standards. A dip in performance, a slump, woeful conditioning, injury, or even private personal conduct, as in the case of the domestic abuse controversy surrounding NFL star Raymell “Ray” Rice,¹²⁸ may force the team’s hand to dismiss the player. Of course, the propriety or legality of the exercise of the power will always be subject to review as was seen in Alvin Teng’s case. However, it is beyond debate that such power exists.

D. Power of Control

[Chot Reyes]’s just doing a fabulous job of preparing these guys and developing a system that works in the national area and getting these guys to buy into it.

— Earl Timothy “Tim” Cone¹²⁹

The power of control is the most important element to consider in such situations.¹³⁰ In the cases of *Sonza*, *Orozco*, and *Bernarte*, the power of control

¹²⁶. *Orozco*, 562 SCRA at 48.

¹²⁷. Bisciotti on the suspension of NFL’s Ray Rice and upon seeing the video of Rice punching his then-fiancée Janay Palmer. Louis Bien, A complete timeline of the Ray Rice assault case, *available at* <http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens> (last accessed Dec. 31, 2014). Bisciotti is a Majority owner of the Baltimore Ravens of the NFL. See The Richest.com, Stephen Bisciotti, *available at* <http://www.therichest.com/celebnetworth/celebrity-business/men/stephen-bisciotti-net-worth> (last accessed Dec. 31, 2014).

¹²⁸. Bien, *supra* note 127.

¹²⁹. Timothy Cone on the Smart Gilas Pilipinas Team and their head coach Chot Reyes. Naveen Ganglani, Gilas’ success ‘a great reflection of the PBA,’ says Tim Cone, *available at* <http://www.rappler.com/sports/by-sport/basketball/gilas-pilipinas/68302-gilas-success-pba-reflection-tim-cone> (last accessed Dec. 31, 2014). Cone is the Head coach of the Purefoods Star Hotshots of the PBA and considered as one of the most accomplished coaches in the PBA for having won 18 PBA titles. See Jane Bracher, Grand Slam coach Time Cone wins Coach of the Year, *available at* <http://www.rappler.com/sports/by-sport/basketball/66969-tim-cone-pba-2014-coach-year> (last accessed Dec. 31, 2014).

was the trump card that determined the status of the hired parties. It is undoubtedly present in team sports. Granted the nature of sports as one where the skill of an opponent and luck play significant factors in a team's control over the "results of the work," i.e. winning or losing, the team still retains control over the means and methods to be used in order to achieve, or at least *try* to achieve, these results. The team wields such power through the coach or the team management.

The control over the means and method differs and varies per team sport. In basketball, this control can come in the form of using different strategies, such as the triangle offense or employing a zone defense. In football (soccer), this control comes in the formations coaches or managers choose to employ; for example, the coach has the discretion of using a 4-2-3-1 formation, with two holding midfielders to stop any quick counter-attacks. In American football, this control likewise comes in formations, with the coach and his coordinators having thick playbooks to choose the proper formation and play form to combat every situation. What plays to call, what formations to use, and what strategies to employ — these primarily fall on the coach and the team's management, not the players. The role of the players is to execute these plays, formations, and strategies to the best of their abilities.

Moreover, coaches and members of the team management normally instill a certain philosophy or image into the team, a way or methodology on how their team must play the game. For example, previous FC Barcelona (Spanish *Primera División*) coach Josep "Pep" S. Guardiola re-instilled a more fluid and passing-oriented mentality in his players when he took over the club in 2008 and chose players who fit this playing style; players who failed to do so were not selected at all, while some fell to the wayside.¹³¹ The same could be said with Mike D'Antoni's "Seven Seconds or Less" offense with the 2005-2006 Phoenix Suns (NBA) where players either had to fit into the fast-paced offense or leave the team.¹³² Players must fit into the mold or mentality of the team by adjusting their style of play.

In the words of *Insular Life Assurance Co., Ltd*, these strategies, formations, mentality, or philosophy — collectively, team impositions — "control or fix the methodology and bind or restrict the [professional athlete

130. *Orozco*, 562 SCRA at 48.

131. See Michael Walker, Pep Guardiola was the boy born to lead Barcelona; an in-depth look at the Nou Camp sensation, *available at* <http://www.dailymail.co.uk/sport/football/article-1267325/Pep-Guardiola-boy-born-lead-Barcelona-depth-look-Nou-Camp-sensation.html> (last accessed Dec. 31, 2014).

132. See JACK MCCALLUM, SEVEN SECONDS OR LESS: MY SEASON ON THE BENCH WITH THE RUNNIN' AND GUNNIN' PHOENIX SUNS (2007).

or player] hired to the use of such means.”¹³³ While a certain amount of leeway and creativity is given to the player to adjust and improvise to what the game gives him or her, the player must still play within these team impositions.

Even the most headstrong of players must adhere to these impositions. Unlike Wilhelmina Orozco, they cannot perform their “job more or less at [their] own pleasure, in the manner [they see] fit.”¹³⁴ Michael Jordan, arguably the greatest (and most headstrong) basketball player ever, had to adjust to a new offense when Phil Jackson took over the Chicago Bulls in 1989.¹³⁵ Actual restraint or limitation exists when athletes play within the context of a team. How they play is necessarily dictated by the team.¹³⁶

What happens to those who deviate? They get benched.¹³⁷ They get suspended.¹³⁸ They get traded.¹³⁹ They get fined.¹⁴⁰ They can even lose

133. *Insurance Life Assurance, Co., Ltd.*, 179 SCRA at 459.

134. *Orozco*, 562 SCRA at 53.

135. See Sean Hartnett, Jackson’s Triangle Offense Will Bring The Best Out of Anthony, *available at* <http://newyork.cbslocal.com/2014/07/14/hartnett-jacksons-triangle-offense-will-bring-the-best-out-of-anthony> (last accessed Dec. 31, 2014).

136. Of course, it can be argued that a team does not control *how* the player shoots, dribbles, handles the puck, and spikes a volleyball, that the plays or strategies imposed by a coach are mere guidelines — similar to how ABS-CBN could not tell Sonza how to speak his lines. If this argument were to be considered, then by analogy, no control will ever exist over an office secretary because his or her employer cannot control *how* she types (does she use touch typing, or is she a pointer-finger-typer?), saves a file on her computer, takes down notes on her notebook, how she loops her e’s and dots her i’s. The control contemplated is not such as to make employers micro-managers, even as to the minutest of details, leaving no discretion *at all* to the employee. What is contemplated is the fixing of methodologies which bind or restrict the hired employee to use such means.

137. See Dave McMenamin, Andrew Bynum benched late in win, *available at* http://espn.go.com/los-angeles/nba/story/_/id/7746036/los-angeles-lakers-andrew-bynum-benched-late-golden-state-warriors (last accessed Dec. 31, 2014).

138. See Michael Rothstein, C.J. Mosley sent home from London, *available at* http://espn.go.com/nfl/story/_/id/11760827/cj-mosley-suspended-detroit-lions-sent-back-us-london (last accessed Dec. 31, 2014).

139. See Yahoo! PH Sports, Tenorio to Ginebra, Casio to Alaska in blockbuster 5-team trade, *available at* <https://ph.sports.yahoo.com/news/nba--tenorio-to-ginebra--casio-to-alaska-in-blockbuster-5-team-trade.html> (last accessed Dec. 31, 2014).

140. See Frank Schwab, Dolphins fine and suspend player for tweeting negative comment about Michael Sam, *available at* <http://sports.yahoo.com/blogs/>

their jobs, as we saw with Alvin Teng and Ray Rice. Players are, unlike the PBA referees in *Bernarte*, not the “only, absolute, and final authority on the playing court.”¹⁴¹ No matter how good the player is, if the coach or manager does not want him or her to play, then he or she must yield to the coach’s or manager’s decision. The player is left to languish on the bench or sent back to the locker room. Greg Slaughter¹⁴² cannot rush back into the basketball court without his coach’s blessing; Gretchen Ho¹⁴³ cannot just check herself into a PSL volleyball game either. In the end, it is not their call; it is their coach’s.

The team also retains control of the professional athlete outside the actual game or competition. The standard player’s contract, which is usually employed in U.S. professional leagues, shows how the “employer has control over the player by way of various clauses.”¹⁴⁴ For example, the NBA Uniform Player Contract outlines a host of duties and responsibilities for the player. A player is obliged to maintain good physical condition, with penalties if he fails to do so.¹⁴⁵ He must submit himself to regular physical examinations.¹⁴⁶ He will not make public appearances or engage in promotional activities without the consent of the team or the NBA.¹⁴⁷ He will be open to media appearances upon request.¹⁴⁸ The player must also attend training camps, practices, work-outs, team and league promotional activities, and games.¹⁴⁹ On top of these obligations, the player must not engage in activities that may impair his ability to play basketball without the

shutdown-corner/dolphins-fine-and-suspend-player-for-tweeting-negative-comment-about-michael-sam-025704270.html (last accessed Dec. 31, 2014).

141. *Bernarte*, 657 SCRA at 757.

142. See PBA-Online.net, Greg Slaughter, available at <http://www.pba-online.net/profile/Greg-Slaughter/403/> (last accessed Dec. 31, 2014).

143. See Naveen Ganglani, Gretchen Ho: A star in more ways than one, available at <http://www.rappler.com/sports/philippines/61492-gretchen-ho-star-more-ways-one> (last accessed Dec. 31, 2014).

144. WALTER T. CHAMPION, FUNDAMENTALS OF SPORTS LAW 456 (2d ed. 2004).

145. See National Basketball Players Association, *supra* note 112.

146. *Id.*

147. National Basketball Players Association, *supra* note 112. This brings to mind “The Last Home Stand” debacle last July 22, 2014. See Interaksyon.com, GAB tells PLDT to explain NBA-Gilas fiasco: ‘Public was shortchanged,’ available at <http://www.interaksyon.com/interaktv/gab-tells-pldt-to-explain-nba-gilas-fiasco-public-was-shortchanged> (last accessed Dec. 31, 2014).

148. *Id.*

149. *Id.*

consent of the team; these activities include sky-diving, operating an aircraft, and participating in any exhibition basketball game.¹⁵⁰

The PBA Uniform Player's Contract likewise contains provisions akin to what is found in the NBA contracts.¹⁵¹ While contracts in budding leagues like the UFL or the PSL may not be as detailed, the control of the team over the player remains the same — players must adhere to the means and methods set down by the team or else face penalties. The Court has previously ruled that the power of control manifests in the power to discipline erring employees.¹⁵² Unlike *Sonza* where the Court found that ABS-CBN still had to pay Sonza even if the network was unsatisfied with his work,¹⁵³ the team normally has the power to fine and penalize an erring player, a sign that the team does indeed have power of control over the means and methods employed by the player.

With the most important element of the four-fold test satisfied, it is evident that an employer-employee relationship will exist between a professional athlete and his or her team.

This view is likewise shared in jurisdictions with established professional leagues. In the U.S., professional athletes in team sports are considered employees of their teams.¹⁵⁴ The State of California considers professional athletes in team sports employees because of the power of control possessed by the coach or the manager; professional athletes in individual sports are considered independent contractors because of their freedom to determine their own style of play or performance.¹⁵⁵ As employees of their teams, players can therefore form unions to collectively bargain with team owners.¹⁵⁶ Examples of such player unions are the National Basketball

150. *Id.* Again bringing to mind “The Last Home Stand” fiasco. See Interaksyon.com, *supra* note 147.

151. National Basketball Players Association, Exhibit A National Basketball Association Uniform Player Contract 4 & 7 (A Sample of the UPC Currently Being Used in the NBA) available at <http://www.nbpa.org/sites/default/files/EXHIBIT%20A.pdf> (last accessed Dec. 31, 2014).

152. *See* Brotherhood Labor Unity Movement of the Philippines v. Zamora, 147 SCRA 49, 58 (1987).

153. *Sonza*, 431 SCRA at 601.

154. *See* MATTHEW J. MITTEN, ET AL., SPORTS LAW AND REGULATION: CASES, MATERIALS, AND PROBLEMS 404 (2009 ed).

155. *See* State of California Employment Development Department, Total and Partial Unemployment TPU 415.4, available at http://www.edd.ca.gov/ui/bdg/Total_and_Partial_Unemployment_TPU_4154.htm (last accessed Dec. 31, 2014).

156. *See* MITTEN, ET AL., *supra* note 154, at 487.

Players Association (NBPA),¹⁵⁷ the National Football League Players Association (NFLPA),¹⁵⁸ and the Major League Soccer Players Union (MLSPU).¹⁵⁹ The same can be said in the Netherlands where professional soccer players are considered employees of their teams and thus, can enter into a collective bargaining agreement with their teams through their union.¹⁶⁰ In the United Kingdom, professional players are considered employees of their clubs.¹⁶¹ As such, their teams have the corresponding duty to take reasonable care of their health and safety.¹⁶² In a recent ruling by the Swiss Federal Tribunal, the exclusion of a player from trainings and games was considered a violation of his rights as an employee.¹⁶³

As can be seen from the foregoing, the professional athlete is considered an employee of his team. With the elements of the four-fold test satisfied, the employer-employee relationship arises despite the contrary wording of the contract (as was the contract offered to the Author). After all, it is the law that defines an employer-employee relationship, not the physical document evidencing the contract between the parties.¹⁶⁴ This, of course, does not foreclose any possibility that a professional athlete in a team sport can be considered an independent contractor if either party can prove that the four-fold test will not be satisfied. In the end, the question will be one of

157. See National Basketball Players Association, About The NBPA, *available at* <http://www.nbpa.org/about-nbpa> (last accessed Dec. 31, 2014).

158. See NFL Players Association, History, *available at* <https://www.nflplayers.com/About-Us/history/> (last accessed Dec. 31, 2014).

159. See Major League Soccer Players Union, About the MLS Players Union, *available at* http://www.mlspu.org/about_mlspu.html# (last accessed Dec. 31, 2014).

160. See Eva Traag, How Collective Bargaining Benefits Footballers: The New Dutch Football CBA, *available at* http://www.lawinsport.com/articles/employment-law/item/how-collective-bargaining-benefits-footballers-the-new-dutch-football-cba?category_id=113 (last accessed Dec. 31, 2014).

161. See Leanne O'Leary, *Regulating the Employment Relationship in Professional Team Sports*, 41 IND. L.J. 184, 185 (2012) (citing *Walker v. The Crystal Palace Football Club Ltd.*, 1 KB 87 (1910)).

162. See Lydia Banerjee, Mind Games and Mental Drain – Legal Duties of Clubs to Protect Stars from Stress, *available at* <http://www.lawinsport.com/blog/littleton-chambers/item/mind-games-and-mental-drain-legal-duties-of-clubs-to-protect-sports-stars-from-stress?highlight=WyJlbXBsb3llZSIsImVtcGxveWVlJ3MiXQ> (last accessed Dec. 31, 2014).

163. See Roy Levy, The Right to Play: A Professional Football Player is Entitled to Play in the Professional League, *available at* <http://www.lawinsport.com/blog/roy-levy/item/the-right-to-play?highlight=WyJlbXBsb3llZSIsImVtcGxveWVlJ3MiXQ> (last accessed Dec. 31, 2014).

164. See *Legend Hotel (Manila) v. Realuyo*, 677 SCRA 10 (2012).

facts, with this Article hopefully serving as a framework to be used in settling the controversy.

V. RIGHTS OF THE ATHLETE-EMPLOYEE AND IMPLICATIONS ARISING FROM THE EMPLOYER-EMPLOYEE RELATIONSHIP

A number of legal implications will flow from the employer-employee relationship between the professional athlete and his team. The professional athlete will be clothed with the rights granted by the Labor Code to employees: (1) security of tenure,¹⁶⁵ (2) mandatory 13th month pay,¹⁶⁶ (3) Social Security System coverage,¹⁶⁷ and (4) contributions by the employer,¹⁶⁸ among others. As employees, it may also be possible for professional athletes to unionize,¹⁶⁹ similar to the NBPA, NFLPA, and MLSPU. The Labor Arbiter will also have jurisdiction over disputes arising between the player and the team,¹⁷⁰ not the local courts.¹⁷¹

In terms of taxes, the tax rates to be withheld by the team shall be those arising from an employer-employee relationship and not those arising from service rendered by professionals.¹⁷² The payment of the athlete's wages shall also not be subject to VAT, as it is pursuant to an employer-employee relationship.¹⁷³

As regards the team's exposure to liability, the team may be held vicariously liable for the actions of their errant players under Article 2180 of the Civil Code.¹⁷⁴ This opens another legal avenue for a player to receive

165. See A Decree Institutionalizing a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree (P.D.) No. 442, as Amended, § 279 (1974).

166. See A Decree Requiring all Employers to Pay Their Employees a 13th-Month Pay [The 13th Month Pay Law], P.D. No. 851, § 1 (1975).

167. See An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees [Social Security Law], Republic Act (R.A.) No. 1161, as Amended, § 9 (1954).

168. *Id.*

169. See LABOR CODE, § 243.

170. See LABOR CODE, § 217.

171. This was the route Alvin Teng correctly took in *Negros Slashers*.

172. See Bureau of Internal Revenue, Revenue Regulation No. 2-98, as Amended [BIR Rev. Reg. 2-98], § 2.57.2, 2.78 & 2.78.1 (Apr. 17, 1998).

173. See TAX REFORM ACT OF 1997, § 109 (o).

174. Under the Civil Code, Article 2180 provides that

damages for injuries inflicted by an opposing player. Given that the appropriate standard of care has been breached,¹⁷⁵ the injured player may sue the team. This was the theory adopted in *Hackbart v. Cincinnati Bengals, Inc.*¹⁷⁶ where Dale Hackbart filed a case for damages against the Cincinnati Bengals for injuries inflicted by one of its players, Charles Clark.¹⁷⁷

VI. CONCLUSION

While the Philippine sports landscape has many more seasons to play before it reaches the billion-dollar sports industries in the U.S. or in Europe, it is never too early to lay down legal guidelines for its development. As more and more Filipinos continue to invest time, money, and effort to develop Philippine sports, Labor Law is an obvious and important field of law that will acquire a Sports Law perspective. It will help define relationships, outline rights, and present appropriate remedies, especially in the professional arena.

However, Labor Law will not be the only field of law that will undoubtedly be affected by the rise of sports in the Philippines. Issues concerning the Constitution, taxes, contracts, and intellectual property will certainly rise in the near future. In fact, these issues already exist today; the sports pages of broadsheets are full of these issues, just waiting to be discovered by the determined and the creative. The onus to uncover these controversies, frame the issues, and formulate proper legal guidelines does not fall solely on the government agencies, courts, or Congress; it likewise

[t]he obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

...

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

...

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act (R.A.) No. 386, art. 2180 (1950).

175. See Ignatius Michael D. Ingles, Sports Torts: Establishing Vicarious Liability on Coaches for the Acts of their Players and Adopting a Legal Duty Specific for Sports Competitions (2012) (unpublished J.D. thesis, Ateneo de Manila University School of Law) (on file with the Professional Schools Library, Ateneo de Manila University).

176. *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979) (U.S.).

177. *Id.*

falls on everyone with a stake, whether it be emotional, physical, or economic, in the development of such a key and enjoyable aspect of Filipino culture. It falls on the casual fan, the rabid heckler, the armchair analyst, the sports journalist, the star player, the benchwarmer, the celebrated Olympian, the weekend warrior, the collegiate coach, the *liga* manager, the kit man, the corporate backer, and, yes, even the law student who was offered a contract but was too busy studying to sign it.