

Kenneth D. Ferguson

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EDUCATION

O.W. Coburn School of Law, Oral Roberts University

Tulsa, OK

Juris Doctor awarded May 1986.

Drake University

Des Moines, IA

Bachelor of Arts in biology awarded July 1975.

SCHOLARSHIP

Published

Kenneth D. Ferguson, *Shadow, Light and Darkness: Bankruptcy's Business In-Fact and Business In-Law Justification Test Under § 363(b)*, 63 How. L.J. 1(2019)

Sean D. O'Brien and Kenneth D. Ferguson, *Traumatic Brain Injury and the Law: Introduction*, 84 UMKC. L. Rev. 287 (2016)

Kenneth D. Ferguson, *Achieving Gender Equity Under Title IX for Girls From Minority, Urban, Rural, and Economically Disadvantaged Communities* 24 Marq. Sports L. Rev. 353 (2014).

Kenneth D. Ferguson, *UMKC Sports Law Symposium: Emerging Legal Issues Affecting Amateur & Professional Sports*, 76 UMKC. L. Rev. 567 (2008)

Kenneth D. Ferguson, *Blurring The Boundary Lines Between Amateur and Professional Sports*, 76 UMKC. L. Rev. 643 (2008)

Repose or Not? Informal Objections To Claims Of Exemptions After Taylor v. Freeland, 50 Okla. L.Rev. 45 (1997).

Discourse and Discharge: Linguistic Analysis and Abuse of the "Exemption Declaration" Process in Bankruptcy, 70 Am. Bankr. L.J. 55 (1996).

Does Payment By Check Constitute A Transfer Upon Delivery or Payment? 64 Am. Bankr. L.J. 93 (1990).

Works in Progress

Will State Name Image and Likeness Laws Lead Colleges and Universities to Title IX Violations?

State NIL legislation which now seeks to correct the exploitation of student athletes which has occurred in collegiate athletics, providing rights to student athletes to benefit from the use of their NIL. Some state legislations provide student athletes the utmost freedom to negotiate contracts for monetizing their NIL, while other state legislation grant collegiate institutions some control over student athletes monetizing the NIL rights. One question which looms large in the face of new NIL legislation that is being proposed across the United States or that have proposed and enacted is whether these statutes will lead colleges and universities to violate Title IX? Some answer this question with a resounding YES, while others answer with a resounding NO.

This article will delve into the intricacies of Title IX and examine whether colleges and universities could face Title IX liability if female student athletes do not receive proportionate benefits from monetization of their NIL rights and whether colleges and universities may avoid such liability by outsourcing regulation of student athletes NIL deals.

Works in Progress, Cont.

Race Norming in the Administration of the NFL Concussion Settlement: Symptoms of a more Insidious Disease? (In progress).

In continuing my sports law scholarship and expanding opportunities for sports law professional, I am organizing the UMKC School of Law's 2022 Sports Law Symposium titled "The Arc of Race in Professional & Collegiate Sports." This symposium article will address issues surrounding the intersection of race and the NFL Concussion Settlement Agreement and the NFL Settlement's claims payment process. In the case of *In re: National Football League Players Concussion Injury Litigation*, the Third Circuit Court of Appeals approved the NFL Concussion Settlement Agreement of the class action concussion lawsuit filed by former NFL players against the NFL. Under the Settlement Agreement players are required to participate in a baseline assessment examination to determine each player's cognitive functioning level. The baseline examination must be conducted by a board-certified neuropsychologist and by a board-certified neurologist. The Settlement Agreement's baseline testing program enables physicians to determine NFL player's cognitive functioning level at the time of the test, and to predict the player's cognitive functioning level before head trauma associated with participating in professional football.

The baseline testing program offers physicians three standards for predicting a player's cognitive functioning level before professional football, "premorbid intellectual ability". Demographic data, including sex, education, and race/ethnicity is used by two of the three models established under the baseline testing program to determine a player's "premorbid intellectual ability" or cognitive functioning level before trauma resulting from football. The effect of using demographic data is to adjust results of the baseline cognitive functioning test, race-norming, is to construct that the cognitive functioning level of Black players is lower than that of White players. The downward adjustment of the raw scores of Black players, which results when demographic data is applied to baseline testing scores (race-norming), establishes that the premorbid intellectual ability of Black NFL players' and their baseline cognitive functioning are at levels significantly lower than White players.

The effect of race norming when applied both to predict the premorbid intellectual ability of Black players and to establish their baseline cognitive functioning levels at the time of baseline test is administered, is to misdiagnose whether Black NFL players are suffering from dementia and other neurological conditions for which a payout under the Settlement Agreement is determined. On the other hand, the presumption of White NFL players' premorbid intellectual ability and baseline functioning levels, unadjusted for race, is as stated in the baseline assessment results in a correct diagnose, enhancing the probability of resulting payout under the NFL Settlement Agreement.

The NFL Settlement's race norming diagnostic criteria reflect symptoms of a more insidious race-norming disease that currently exist and have historically existed in medical clinical diagnoses. According to the writer Matt McMillen, racing-norming is pervasive, and goes beyond "cognitive assessments in pro sports." Clinical calculations and decisions are informed by Race "across multiple fields in medicine", including – to name a few – endocrinology, urology, cardiology, oncology, obstetrics and even kidney care. The article will consider whether race norming applied in the NFL's Concussion Settlement claims payment process to determine the premorbid intellectual ability of Black NFL players' and their baseline cognitive functioning levels was natural to the lawyers and doctors who formulated the NFL's claims settlement protocols, because race norming has been routinely practiced in clinical medical diagnostics.

Shining Light in the Corners of the Business In-Fact and Business In-Law Analytical Approach to Sales § 363(b). (in progress).

This article is a follow-up and expansive analysis of issues raised in my article, *Shadow, Light and Darkness: Bankruptcy's Business In-Fact and Business In-Law Justification Test Under § 363(b)*, 63 How. L.J. 1(2019), in which I enunciated a two-part analytical approach to evaluating § 363(b) sales of all or substantially all the bankruptcy debtor's bankruptcy assets. The article will shine light on traditional jurisprudence approach, the Business Judgment Rule, to demonstrate the articulated reliance on the corporate business judgment analysis is simply a coalescence of the author's two-part Business In-Fact and Business In-Law analysis. The article will also broaden its analysis of whether the business in-fact justification for approving the sale is legally sufficient under the Business In-Law analytical approach to § 363(b) sales.

COURSES TAUGHT

Contracts I & Contracts II
Secured Transactions
Amateur Sports Law
Debtors & Creditors Rights
Sales & Leasing

Commercial Transactions
Professional Sports Law
Entertainment Law
International Sports Law

PROFESSIONAL EXPERIENCE

UMKC School of Law

Professor of Law
Associate Professor of Law
Assistant Professor of Law
Visiting Professor of Law

Kansas City, MO
2020 – present
1998 – present
1992 – 1998
1990 – 1992

Shughart Thomson & Kilroy

Associate: Bankruptcy & General Corporate Law

- Represented corporations and individuals in bankruptcy litigation.
- Represented corporations in Civil Litigation.
- Pro bono Representation of individuals in criminal litigation.
- Under supervision of firm partners represented corporations in mergers & acquisitions.

Kansas City, MO
1987 - 1990

United State Bankruptcy Court Western District MO

Law Clerk - Chief Bankruptcy Judge Dennis J. Stewart

- Conducted legal research.
- Drafted memoranda and opinions.
- Counseled with the Judge and members of staff on legal matters affecting the administration of bankruptcy laws.

Kansas City, MO
1986 – 1987

O.W. Coburn School of Law

Research Assistant

- Dean John Stanford.
- Associate Dean Thomas Goldman.
- Prof. Tayte Dencer.
- Prof. Edward Fishpaw.

Tulsa, OK
1983 - 1986

Independent Insurance Broker

Sold insurance products on behalf of a particular insurer

- Advised Corporate and Individual client of purchase life & health insurance
- Performed estate planning services

Des Moines, IA- KC, MO
1979- 1983

Iowa Department of Revenue

Research Analyst, Deputy Director Iowa Department of Revenue

Des Moines, IA
1978 - 1979

North Park College

Assistant Football Coach

- Provide instruction to football student-athletes on the fundamentals, details, and strategies of football positions (defensive back, receiver & running back) and other matters as assigned by the Head Coach.

Chicago, Ill
1977 - 1978

SERVICE

UMKC Law School

Academic Service

- UMKC Faculty Senate (Senate Oversight Committee)
- Appointments Committee (2019-Present)
- Faculty Advisor BLSA (2010-Present)
- Faculty Advisor Sport & Entm't. Law Society (1997-)
- Committee on Inclusion and Empowerment
- Honor Code Committee
- Building and Grounds Committee
- CLE Advisory Committee
- Student Affairs (2018 - Present)
- Faculty Advisor BLSA (2010-)
- Admissions Committee
- Curriculum Committee
- Career Services Committee
- Duberstein Moot Court Advisor
- Dean Search Committee (1993)

UMKC Campus

Academic Leadership

- UMKC- Dean, School of Hum & SS (2021-Present)
- Chair Intercollegiate Athletic Committee (06-Present)
- Vice Chancellors Advisory Committee (1996- 2004)
- Athletic Director's Search Committee (2006-2007)
- UMKC FAR (2006-Present)
- Chair Back Studies Comm. (2007-09)
- Intercollegiate Task Force (2017)

PRESENTATIONS PANELS

Sports Law Symposium, Arc of Race in Professional & Collegiate Sports *Oct. 2021-Pres.*

- Planning two-day virtual and in-person symposium with seven (7) panels covering the following topics: (1) Race Norming and Sports Concussion Litigation including NFL Concussion Settlement & Claims Process, (2) The Intersection of Race & Gender Mental Health of Professionals & Collegiate Athletes, (3) Race Norming in Medical Treatment & Clinical Diagnostics and What it Means for Litigation, and (4) The Intersection of Race and Gender in Professional Sports Hiring? (5) The Intersection of Race and Gender in Collegiate Sports Hiring, (6) Will Race and Gender Effect which Student Athletes Profit from their Name, Image and Likeness? and (7) The NFL Concussion Settlement: Settlement Agreement Unfairly Ignoring Families of Players Who Died with Chronic Traumatic Encephalopathy (CTE), Affecting Players of all Races.

Sports Lawyers Association's Title IX Webinar *November 2021*

- Panelist on national addressing the Intersections of Race & Gender Under Title IX and whether Title IX addresses minority gender equity.

Symposium on Name, Image, and Likeness *November 2021*

- Keynote Speaker, Albany Law School - Albany Law Journal of Science & Technology Fall Name, Image, and Likeness Symposium.

The Legacy of Clay v. United States: The Ali Legacy *April 2021*

- Panel Chair: Thomas Hauser, author of Muhammad Ali's biography, Muhammad Ali: His Life and Times.

The Jackie Robinson Symposium: Civic, Legal, and Political Legacy: Negro Leagues Baseball Museum

- Panel Chair: The Legacy of Jackie Robinson & America Civil Right Law *April 2019*

Presentation: Film and the Law Series: 13th

- Panelist – The Lasting Ramifications of the Thirteenth Amendment *April 2018*

PRESENTATIONS & PANELS cont.

Presentation: 8th Annual Civil Rights Summit: Fair Housing Civil Rights Summit

- A Matter of Environmental Justice & Fair housing in the Urban Core *April 2016*

Organized & Moderated, AALS Section on Sports and Law Annual Program

- O'Bannon v. NCAA: Is There an Unprecedented Change To Intercollegiate Sports Just Over the Horizon? *January 2014*

Presentation: UMKC & Michigan State Law School Symposium

- Pursuing the Dreams of Brown and the Civil Rights Act: A Living History of the Fight for Educational Equality. Title IX and The Education Provisions in the Civil Rights Act of 1964 *April 2014*

Presentation: UMKC Film and the Law CLE Seminar

- "The Butler" What Brown and the Civil Rights Movement accomplished, and what still must be accomplished *June 2014*

Presentation: NCAA Women in Sports Forum

- The Intersection of Race and Gender at the Crossroads of Title IX, *March 2008*

National Bar Association Region VIII Conference Seminar

- Panelist and Moderator of Sports and Entertainment Law Program: "Maximizing Lawyer-Client Relations" *March 2001*

Presentation: Fox TV 4's Consumer Report

- Analysis of "The Federal Electronic Signature of Act" *January 2001*

Presentation: Mid-Atlantic Scholars of Color Conference

- "Discourse and Discharge: Linguistic Analysis and Abuse of the 'Exemption by Declaration' Process in Bankruptcy" *February 1995*

Presentation: Kansas City Area Archivists

- "Sign on the Dotted Line: Licensing and Other Agreements, Archival Law and Order" *April 1995*

Presentation: UMKC CLE's Annual Review of the Law

- Review of Recent Developments in Bankruptcy Law" *June 1994*

Presentation: Commercial and Bankruptcy Law Committee's Annual Bench & Bar

- "Update of Hot Topics and Decisions in Bankruptcy Law" *1993*

Presentation: Kansas City Metropolitan Bar Association, Annual Bench And Bar

- "Handling the Civil or Domestic Matter Which Bankruptcy Judges May Inherit" *1992*

BAR ADMISSION

- Missouri Supreme Court *1986*
- United States District Court, Western District of Missouri *1986*

PROFESSIONAL AND COMMUNITY AFFILIATIONS

NATIONAL OBLIGATIONS

American Association of Law Schools (AALS)

- Chair, AALS Section on Sports and Law 2013 – 2014
- Chair Elect, AALS Section on Sports and Law 2012 – 2013
- AALS Section on Sports and Law (Member) 1992 – Present
- Chair, AALS Section on Creditors' and Debtors' Rights 2001 – 2002
- Executive Committee, AALS Section on Creditors' and Debtors' Rights 2001 – 2002
- Member, AALS Section on Creditors' and Debtors' Rights 1992 – Present

National Collegiate Athletic Association (NCAA)

- NCAA Olympic Sports Liaison Committee 2014 – 2018
- NCAA Division I Committee on Academic Performance 2008 – 2012
- NCAA Division I Awards, Benefits, Expenses and Financial Aid Cabinet 2007 – 2011
- NCAA Division I Championship & Competition Cabinet 2007 – 2008

United States Track & Field (USATF)

- USATF Law & Legislation Committee (2002-2013) 2016 – 2018
- USATF Vice Chair for Operations Youth, Executive Committee 2014 – 2016
- Youth Division's Youth Executive Committee 2013 – 2016
- USATF Board of Directors 2013 – 2014
- Co-Chair USATF National Athletics Board of Review (NABR) 2010 – 2013
- USATF Law & Legislation Committee 2002 – 2013
- Youth Executive Committee USATF 2002 – 2016
- USATF Governance Restructuring Task Force 2005 – 2008

STATE & LOCAL OBLIGATIONS

Urban Success Development, Inc., aimed towards Revitalization of Urban Core Community

- Chair, Board of Directors 2016-2018
- Established Collaboration relationship between, Missouri Department Of Natural Resources (MDNR), Division of Environmental Quality, UMKC Law School, Kansas City Health Department, & Linwood YMCA 2016-2018
- Secured EPA funding for Phase I Environmental Assessment 2016-2018
- Secured EPA Funding for Neighborhood Revitalization Planning Through EPA's Technical Assistance to Brownfields ("TAB") Center for Hazardous Substance Research 2016-2018
- Secured seventeen parcels of land from Kansas City Land Bank And Kansas City Homesteading Authority to begin revitalization efforts. 2016-2018

Other Directorships

- Chair of WAC's Faculty Athletics Representatives' Committee 2015- 2016
- NCAA Olympic Sports Liaison Committee 2014-2018
- Vice President of Operations USATF Youth Division (Jan 2015-Present)
- Board of Director USATF (NGB USA Olympic Track &F) (May 2013-Dec 2014)
- NCAA Division I Committee on Academic Performance (2008-2012)
- President, USATF Missouri Valley Association (2008-2013)
- NCAA Division I Awards, Benefits, Expenses and Financial Aid Cabinet (2007-2011)
- NCAA Division I Championship & Competition Cabinet (2007-2008)
- USATF Governance Restructuring Task Force (NGB USA Olympic Track &F) (2005-2008)

STATE AND LOCAL OBLIGATIONS cont.

- Member, AALS Sports Law Committee (2004-Present)
- Chair, Men's Track & Field Committee, USATF Missouri Valley Association (1998-2002)
- Member, Law and Society Associations (1997), Interdisciplinary Association of Scholars
- Member, Mid-Atlantic People of Color Legal Scholarship Conference (1994 to Present)
- Member, Midwestern People of Color Legal Scholarship Conference (1993 to Present)
- Board of Directors, Palestine Economic Development Corporation (2003 to Dec 2014)
- Board of Directors, Swope Park Health Center (1987 - 2004)
- Member, ABA - Corporation, Banking and Business Law Sections (1995)
- Kansas City - Mayor's Task Force on Race Relations (1995-1996)
- Kansas City Memorial Day Classic Track Meet (1995-2005)
- Jackson County Bar Association, Co-Chair Education Committee (1994)
- LAKC Board of Directors (1994), Chair, Membership Committee (1993)
- K.C. Metropolitan Bar Association, Chair, Comm. & Bankr. Law Committee (1993)
- Member, Commercial & Bankruptcy Law Committee (1990-Present)
- Flyers Track Club, Inc. President (1993 to Present)
- Kansas City Attorneys for the Arts, Chair (1993-1995)
- Member, Commercial Law Committee, Missouri Bar Association (1993)
- Commercial Law Committee (1993 to Present)
- Missouri Valley Association Member, Board of Director (1995 to Present)

Service & Athletic Awards

- President's Award, USAT&F *2006*
- Member of All Decade Team, Chicago Sun Times. *1988*
- Outstanding Young Men of America. *1983*
- Football Scholarship, Drake University *1971-1975*
- Prep Player of the Year, State of Illinois. *1970*