

ADAPTING TO THE CHANGING FACE OF AMERICAN SPORTS: ESTATE PLANNING FOR THE INTERNATIONAL PROFESSIONAL ATHLETE

Comment

*by Evan Johnston**

I.	ESTATE PLANNING FOR THE INTERNATIONAL PROFESSIONAL ATHLETE—AN INTRODUCTION.....	340
A.	<i>Introductory Hypothetical</i>	340
B.	<i>Noncitizen Professional Athletes in the United States Face Unique and Difficult Estate Planning Issues</i>	341
II.	A STEP-BY-STEP APPROACH.....	341
A.	<i>Will, Trust, or Both?</i>	342
1.	<i>Will</i>	342
2.	<i>Trusts</i>	343
a.	<i>Revocable Trust</i>	343
b.	<i>Qualified Domestic Trust</i>	344
c.	<i>Leveraged Transfer</i>	345
B.	<i>Player Residency</i>	345
1.	<i>The Green Card “Permanent Residency” Test</i>	346
2.	<i>The Substantial Presence Test</i>	346
3.	<i>Establishing a New Domicile</i>	347
C.	<i>Tax Considerations</i>	348
1.	<i>Determination of Gross Estate</i>	348
2.	<i>Income Determination and Characterization</i>	349
a.	<i>Actual Performance Income</i>	349
b.	<i>Endorsement & Sponsorship Income</i>	350
c.	<i>Signing Bonus Income</i>	351
d.	<i>Foreign Taxes and Foreign Income</i>	351
i.	<i>Offshore Assets</i>	351
3.	<i>Allocation</i>	351
a.	<i>Deductions</i>	351
i.	<i>Marital Deductions</i>	352
ii.	<i>Charitable Deductions</i>	352
iii.	<i>Agent Deductions</i>	353

* B.A., History, University of Calgary, May 2012; J.D. Candidate, Texas Tech University School of Law, May 2015; Editor-in-Chief, Texas Tech Estate Planning & Community Property Law Journal, Volume VII.

4. <i>Bilateral Tax Treaties</i>	353
5. <i>Estate Transfer Taxes</i>	354
6. <i>Gift Taxes</i>	355
D. <i>Asset Beneficiary Designation</i>	355
1. <i>Married Athletes</i>	356
a. <i>Community Property</i>	356
b. <i>Individually Owned Property</i>	356
E. <i>Life Insurance</i>	356
F. <i>Disability Planning</i>	358
G. <i>Athlete Image and Endorsement Issues</i>	359
1. <i>Right of Publicity</i>	359
2. <i>Trademarks</i>	360
III. CONCLUSION.....	361
IV. APPENDIX A.....	362

I. ESTATE PLANNING FOR THE INTERNATIONAL PROFESSIONAL ATHLETE— AN INTRODUCTION

A. *Introductory Hypothetical*

In modern times, the face of major American professional sports has changed dramatically from a national to a global enterprise. Consequently, issues facing an estate planner dealing with athletes has globalized as well. The use of real life hypothetical situations best explains the practical steps an attorney must take in order to best serve their international professional athlete client. For explanatory purposes, it is illustrative to consider two situations:

The first case is that of Shawn Bowman. Shawn is a nineteen year old ice hockey player from the farm town of Lumsden, Saskatchewan, Canada, just outside of the City of Regina. Regina is one of the top producing cities of National Hockey League (NHL) players in the country.¹ Shawn married his high school sweetheart, Jenny, and the following summer, the New York Rangers drafted him first overall in the NHL Draft. In concert with other first overall picks from previous years, Shawn signed a contract that promised to pay him a total salary of \$3.75 million in his first year alone.² Shawn moved to Manhattan to start his new career, purchased a nice apartment, and plans to continue to financially support his parents and their family farm back in Saskatchewan.

1. See NHLPA, *Which Canadian City Has Produced the Most NHL Players?*, BLEACHER REP. (Apr. 9, 2012), <http://bleacherreport.com/articles/1133532-which-canadian-city-has-produced-the-most-nhl-players/page/12> (stating that Regina, Saskatchewan produced the sixth most NHL players among all Canadian cities in the 2011–2012 regular season).

2. See John Fischer, *The Cap Cost of Drafting High in the NHL Draft & the New Jersey Devils*, SB NATION: IN LOU WE TRUST (Jan. 11, 2011), <http://www.inlouwetrust.com/2011/1/11/1929514/the-cap-cost-of-drafting-high-in-the-nhl-draft-the-new-jersey-devils>.

The second case is Nelson Smith, a dynamic twenty-five year old soccer star from Manchester, England. After playing for several years in the development program for his hometown team, Manchester City, the Seattle Sounders of the MLS (Major League Soccer) have signed him to a contract that will pay him \$4.5 million per year, making him one of the highest paid players in the MLS.³ Nelson has a wife, Amanda, and they have a young son together. Nelson also has an ex-wife named Julia with whom he has two children. Both Nelson's ex-wife and two children live back in England. Like Shawn, Nelson will continue to support not only Julia and his two children, but also his aging parents that live in London.

B. Noncitizen Professional Athletes in the United States Face Unique and Difficult Estate Planning Issues

The purpose of this comment is to inform practitioners of the unique legal issues they may face if someone like Shawn or Nelson walks into their office. Both are noncitizens who will obtain a vast amount of money in a very short period of time, making their estate planning concerns both complex and delicate.⁴ When creating a holistic plan for an athlete, an estate planning practitioner should follow a step-by-step approach with special consideration towards the areas of: residency, tax calculation, asset beneficiary designation, life and disability insurance, and athlete image and endorsement issues.⁵

II. A STEP-BY-STEP APPROACH

As with any attorney-client relationship, all parties must be on the same page and employ a true team mentality.⁶ Kevin Matz notes, "[I]t's essential for you as an estate planner to become a true team player with whomever else the athlete picks to manage his finances so that you can coordinate financial, investment, and asset-protection decisions that fit into a comprehensive plan."⁷

3. See *MLS Salaries Posted for Kaka, Villa, Jones, Beasley*, WASH. POST SOCCER INSIDER (Sept. 29, 2014), <http://www.washingtonpost.com/blogs/soccer-insider/wp/2014/09/29/mls-salaries-posted-for-kaka-villa-jones-beasley/>.

4. See Joseph D. Wright, *Skyrocketing Dollars and the Tax Reform Act of 1997: Estate Planning for the Professional Athlete in a New Millennium*, 6 SPORTS LAW. J. 27, 29 (1999) (noting the importance of considering the uniqueness of an athlete's career, especially towards wealth preservation); see also John K. O'Meara, *Estate Planning Concerns for the Professional Athlete*, 3 MARQ. SPORTS L. J. 85, 85–86 (1992) (noting the delicate nature of estate planning for a young professional athlete in creating a holistic estate plan that will take care of both the athlete individually and their beneficiaries, both in the athlete's lifetime and after death).

5. See generally Irwin Kishner & Matthew Pace, *Estate Planning for the Professional Athlete*, LEXOLOGY (May 13, 2011), www.lexology.com/library/detail.aspx?g=7b1f4869-9fff46b5-8380-552959ead432 (stating the special considerations practitioners should consider when estate planning for athletes).

6. See Kevin Matz, *Play Ball! Estate Planning for Professional Athletes*, TR. & EST. 21 (June 2009), http://kmatzlaw.com/yahoo_site_admin/assets/docs/Play_Ball!_Estate_Planning_for_Professional_Athletes.174124223.pdf.

7. *Id.*

By creating a team atmosphere both sides can gain a sense of the big picture of the athlete's long-term plan, allowing them to make the most informed decisions in planning their future.⁸ At the forefront of this plan lies the decision of whether to create a will, a trust, or a combination of the two.⁹

A. Will, Trust, or Both?

One of the first questions practitioners need to address is how to organize the disposition of their client's wealth and property.¹⁰ Frequently, this question is answered through the structure of a will, trust, or a combination of both.¹¹ By ensuring that clients have a registered and cognizable plan for the disposition of both their real and personal property, they will not fall victim to the potentially unfavorable intestacy rules of their domiciled jurisdiction.¹² Without a proper plan, state law may bequeath property in a manner against the client's wishes.¹³ As noted by Matz, a will in cooperation with a revocable trust forms the cornerstone of asset management for a professional athlete.¹⁴

1. Will

"The only way for a person to avoid having the probate estate pass to heirs under the law of intestate succession is to execute a valid will."¹⁵ The general importance of having a will is insurmountable. As highlighted by Feinstein, Kishner, and Pace:

[I]f the athlete has a will, he or she will be able to make his or her own decision as to who would be the guardian of any minor children in the event both parents were to pass away; how the athlete's assets would be distributed when the athlete dies; and who will monitor the funds left behind for children after the athlete dies.¹⁶

Additional benefits for creating a will include the ability to specifically and individually pass property to an athlete's desired beneficiaries, and the ability to name an individual or entity in charge of the athlete's estate.¹⁷ A will further

8. *Id.*

9. *See id.*

10. *See O'Meara, supra* note 4, at 86.

11. *See id.*

12. *See id.*

13. *See id.*; *see also* M. Read Moore, *Answers to Your Questions About International Estate Planning*, SS043 A.L.I.-A.B.A. 125, 156-57 (2011) (discussing the importance of creating a will specifically for athletes, thus ensuring they do not fall victim to the unfavorable laws of their jurisdiction).

14. *See* Matz, *supra* note 6.

15. GERRY BEYER, *TEXAS WILLS AND ESTATES* 75 (6th ed. 2008).

16. *See* Kishner & Pace, *supra* note 5.

17. *See* John K. Harris, *Practitioners Notes: Essentials of Estate Planning for the Professional Athlete*, 11 U. MIAMI ENT. & SPORTS L. REV. 159, 164-65 (1993).

enables athletes to provide direction on which bills, taxes, or debts are to be settled by which part of their finances.¹⁸ A will also has the ability to create a trust, which is why a comprehensive estate plan may include both tools working together.¹⁹ Because athletes, given the nature of their professional sports, may have complex domicile problems and the potential for greater intestacy issues, a will is imperative to communicate the athlete's intent.²⁰ Athletes are young individuals, often with new families and large amounts of money acquired in a very short time. All of the benefits of a will make it a very attractive tool for a practitioner with a client who is an international professional athlete.²¹

2. Trusts

"Trusts are one of the most powerful, useful and advantageous tools available to the modern estate planner."²² A trust is the transfer of legal title to "an individual or financial institution in which the settlor has confidence and equitable title to an individual or charity deserving of a windfall."²³ Trusts serve many purposes including: protecting the beneficiaries, providing the flexibility of asset distribution, protecting against the settlor's incompetence, allowing for the professional management of property, avoiding probate, and offering various tax benefits.²⁴

a. Revocable Trust

A tool gaining popularity within athlete estate planning is the creation of a revocable, "living" trust.²⁵ A revocable trust serves as a living contract between the trustee and the grantor that is "essentially, a list of instructions, outlining for the trustee what to do with the property transferred to the trust."²⁶ A distinguishable benefit of a revocable trust is that a trust realizes as soon as it is created, unlike a will that must be probated or may be contested.²⁷ As Professor Gerry Beyer notes, a further benefit of a trust is the ability to place the client's finances into an individual or entity with extensive experience in investment and financial planning.²⁸ Because a high percentage of professional athletes experience financial hardship due to personal mismanagement, a trust may be

18. *See id.*

19. *See Matz, supra* note 6.

20. *See Harris, supra* note 17 (stating the many benefits of a will for an athlete, primarily the disposition of property based on the wishes of the athlete).

21. *See Matz, supra* note 6, at 24.

22. *See BEYER, supra* note 15, at 3.

23. *See id.*

24. *See id.* at 3–5.

25. *See Tim Matson & Scott Nelson, Estate Planning for the Entertainer or Athlete*, 29 ENT. & SPORTS LAW. 24, 25 (2011).

26. *Harris, supra* note 17, at 165.

27. *See Matz, supra* note 6, at 24.

28. *BEYER, supra* note 15, at 5.

critical to ensure the well being of the athlete's financial assets both after they pass and during their lifetime.²⁹ From a financial perspective, a revocable trust also provides the ability to replace the trustee if the investment performance of a trust falls below expectations.³⁰ Additionally, trusts may provide privacy protection for international athletes who are often well-known celebrities in both the United States and abroad.³¹ Because a trust does not probate through a court system, "the trust, therefore, can be a more private way of distributing the athlete's property."³² Given the great flexibility and the numerous financial options that a trust provides, an estate planner should sit down with a client and a financial consultant to consider creating a revocable trust.³³

b. Qualified Domestic Trust

For married international athletes, an additional option may be a Qualified Domestic Trust (QDOT).³⁴ A QDOT "provides any couple with one or more non-US citizens with an opportunity to delay estate taxes on their property if they wish to provide for their non-citizen spouse after their death."³⁵ The estate tax permits marital deductions through the QDOT.³⁶ Under section 2056A of the Internal Revenue Code, the trust must meet four primary criteria:

1. At least one of the trustees must be a U.S. citizen or U.S. corporation and no distribution can be made from the trust without the approval of such trustee;
2. The trust must comply with regulations that ensure the ultimate collection of an estate tax;
3. The executor of the decedent's estate must make an irrevocable election to have section 2056A apply to the trust; and
4. The trust must meet the QTIP requirements (*i.e.*, the surviving spouse must be entitled to receive all the income from the trust at least annually and no person other than the surviving spouse may have a power to appoint property to anyone besides the surviving spouse).³⁷

29. See Matson & Nelson, *supra* note 25.

30. See Matz, *supra* note 6, at 24.

31. See Harris, *supra* note 17, at 166.

32. See *id.*

33. See *id.*

34. See O'Meara, *supra* note 4, at 95.

35. Jean D. Chen, *What is a Qualified Domestic Trust (QDOT)?*, L. OFF. JEAN D. CHEN, <http://www.jclawoffice.com/p/?what-is-a-qualified-domestic-trust-qdot> (last visited Oct. 9, 2013).

36. See O'Meara, *supra* note 4, at 95.

37. Paul Weisman & Ronald Rale, *U.S. Taxation of Athletes in the U.S. and Abroad*, 1 J. INT'L TAX'N 218, 223-24 (1990) (citing I.R.C. § 2056A).

c. Leveraged Transfer

An additional estate planning tool that ensures the most security and longevity of an athlete's assets is a leveraged transfer.³⁸ Considering that athletes possess large amounts of wealth, a tax professional and an estate planning practitioner can work with the athlete to move parts of the estate, such as gifts, annuity trusts, and appreciating sales, outside of the taxable estate through a transfer to a trust.³⁹ For an athlete, Matz notes, "such a transaction can be particularly beneficial in planning for interests in entities that hold licensing rights related to the athlete's endorsement contracts."⁴⁰ The leveraged transfer works to benefit the athlete by selecting a favorable tax jurisdiction.⁴¹ Through a transfer, an estate planner can move assets into an irrevocable self-settled trust with the athlete as a beneficiary, which typically (depending on the state) subjects the trust assets to the protective tax laws of the specific jurisdiction.⁴²

B. Player Residency

When developing an estate plan for international professional athletes, estate planners must determine a player's domicile.⁴³ A domicile "determines the power of a state to tax worldwide income, gifts and estates. Domicile also dictates voting districts and many other legal rights, privileges and obligations."⁴⁴ For American citizens, the determination is straight forward; Treasury Regulation section 1.1 stipulates that "[e]very person born or naturalized in the United States and subject to its jurisdiction " is a United States citizen.⁴⁵ However, for nonresident aliens, like Shawn or Nelson, there is a limit to the reportable income for United States tax purposes as outlined in the Internal Revenue Code (I.R.C.), which provides two tests to determine the domicile for a noncitizen working in the United States.⁴⁶

38. See Matz, *supra* note 6, at 24.

39. See *id.*

40. *Id.*

41. See *id.*

42. See *id.*

43. See Jeffrey Dunlop, *Taxing the International Athlete: Working Toward Free Trade in the Americas Through a Multilateral Tax Treaty*, 27 NW. J. INT'L L. & BUS. 229–30 (2006).

44. Harris, *supra* note 17, at 159.

45. Carole C. Berry, *Taxation of U.S. Athletes Playing in Foreign Countries*, 13 MARQ. SPORTS L. REV. 1, 5 (2002) (quoting Treas. Reg. § 1.1-1(c) (as amended in 2002)).

46. See I.R.C. § 7701(b)(1)(A)(i)–(ii) (2012) (providing the rules and factors for both the "Green Card Test" and the "Substantial Presence Test"); see also Glenn Tanzer, *Residency Issues for International Entertainers and Athletes*, MARCUM FIN. SERVICES, www.marcumfs.com/news-and-events/residency-issues-for-international-entertainers-and-athletes (last visited Aug. 27, 2013) (stating that if the individual being taxed is a nonresident then limitations are placed on their reportable income as per I.R.C. § 7701(b)(1)(A)).

1. *The Green Card "Permanent Residency" Test*

I.R.C. section 7701(b)(1)(A)(i) stipulates that for general tax purposes an individual is a nonresident alien if they are not an American citizen but "such an individual is a lawful permanent resident of the United States at any time during such calendar year."⁴⁷ This lawful permanent residence is established through the issuance of a green card, which allows the individual to reside within the United States for the period of time as established by the issuance.⁴⁸

2. *The Substantial Presence Test*

I.R.C. section 7701(b)(1)(A)(ii) states that an individual's domicile may be further determined through the substantial presence test.⁴⁹ This test requires the individual to be physically located within the United States at least thirty-one days during the current year or 183 days during a "rolling three year period."⁵⁰ The rolling period is described as "the sum of the number of days the individual is present in the current calendar year, plus one-third of the days present in the preceding calendar year, plus one-sixth of the days present in the second preceding year."⁵¹ Exclusion days for this determination include days organized for the benefit of certain organizations described under I.R.C. section 501(c)(3), events where proceeds contribute to that organization, and events that use volunteers for the substantial amount of the work.⁵² Further exemptions for a foreign athlete include those for medical conditions, listed under I.R.C. section 7701(b)(3)(D), as well as exemptions for an athlete in the United States for less than 183 days in a calendar year and taxed in another country for the same time period (known as the "closer connection tax home exemption").⁵³

If athletes do not pass either of these tests, they are classified as a resident alien, which in itself brings different benefits for deductions and tax liabilities.⁵⁴ Because of these numerous considerations, estate planning professionals need to carefully analyze their client's current living situation, as well as geographic history, to determine whether the athlete will benefit from being categorized as a resident or nonresident alien.⁵⁵ As noted, an important part of estate planning is not only to establish a domicile but "[i]n order for the professional athlete to avoid having more than one domicile, it is important to

47. I.R.C. § 7701(b)(1)(A)(i).

48. See Tanzer, *supra* note 46.

49. See I.R.C. § 7701(b)(1)(A)(i).

50. See Tanzer, *supra* note 46.

51. See *id.*

52. See *id.*

53. See *id.*

54. See *id.*

55. See *id.*

be clear in both establishing the athlete's domicile and relinquishing any prior domicile."⁵⁶

3. Establishing a New Domicile

An estate planning practitioner should follow a number of key steps to make it abundantly clear that the athlete is establishing a new, enforceable domicile.⁵⁷ The first step is acquiring some sort of livable property in the athlete's prospective domicile.⁵⁸ If the athlete is renting accommodations, "it is best to have a written lease for a fixed term—the longer the better."⁵⁹ Additional steps for establishing a new domicile may include: filing a Declaration of Domicile with the local court clerk, transferring any religious or social organizations from the athlete's previous domicile to a similar organization in the new domicile (once again showing an intent to reside in the area), changing the athlete's address on documentation, and physical presence in the new domicile area.⁶⁰

An additional, yet important, step in establishing a new domicile is relinquishing the old domicile.⁶¹ As John K. Harris notes, due to the travel involved with a career as a professional athlete and the potential for an abrupt change in domicile (through trade or other circumstances), "relinquishing domicile is every bit as important as establishing a new one."⁶² Some potential steps for relinquishing a domicile include: informing the tax authorities in the previous domicile that there has been a change, and even writing a new will in the new domicile.⁶³ Although establishing a new domicile may seem trivial on its face, it is absolutely essential to clearly define the domicile if an estate planning professional is attempting to ensure a favorable tax domicile for an athlete's estate.⁶⁴

Returning back to the hypotheticals, for Shawn it would be wise for him to apply for a Social Security number and U.S. citizenship, which would show the United States government that his clear intention is to move permanently to the United States and indicates that he no longer wishes to reside in Canada.⁶⁵ Nelson would want to take the same steps and send the tax authorities in

56. Harris, *supra* note 17, at 160.

57. *See id.*

58. *See id.* Some of the acquisitions that an athlete may make to establish a new domicile include: a house, a condominium, an apartment, or some sort of rental property. *See id.* The key is to try to clearly establish the athlete's intent on living there. *See id.*

59. *Id.*

60. *See id.* at 160–61.

61. *See id.* at 161.

62. *Id.*

63. *See id.*

64. *See* Evan R. Waxman et al., 'Lin-come Tax': State and Local Income Tax Considerations for Athletes, 22 J. MULTISTATE TAX'N & INCENTIVES 39, 39 (2013).

65. *See* Berry, *supra* note 45, at 4–6.

England notification of his intent to move permanently to the United States.⁶⁶ These steps would be more important for Nelson as there may be contention to his new domicile because his children from his first marriage will remain in England.⁶⁷ Although there is no bright line rule for relinquishing an old domicile and establishing a new one, these various steps will help the court to determine where exactly the athlete is domiciled.⁶⁸

C. Tax Considerations

One of the most complicated issues in estate planning for international professional athletes is tax planning, due to the unique structure of the United States tax system.⁶⁹ Howard J. Wiener notes that one of the main tax issues is that athletes “derive income from bonuses, awards, interest-free loans, gift products, personal appearances, endorsements, and/or royalties from merchandising and licensing.”⁷⁰ On top of the numerous income streams, athletes have the potential to work in various states and countries, and they often own property in a number of regions, making it difficult to avoid the issue of double taxation of not only their personal income but of their assets.⁷¹

I. Determination of Gross Estate

Under I.R.C. section 2103, a nonresident alien’s gross estate is taxable to the extent it is located within the United States.⁷² As M. Read Moore notes, “property located in the United States and subject to estate tax includes real property and tangible personal property located in the United States, shares of stock in a corporation incorporated in the United States, and debt obligations of U.S. persons or political subdivisions.”⁷³ Depending on the situs of certain property, even property that is technically located outside of the United States may also be included in an individual’s determination of their gross estate.⁷⁴

66. See Harris, *supra* note 17, at 161.

67. See *id.*

68. See *id.*

69. See Berry, *supra* note 45, at 3.

70. Howard J. Wiener, *Tax Considerations for Athletes and Entertainers*, A.B.A. 1, <http://www.americanbar.org/content/dam/aba/migrated/Forums/entsports/PublicDocuments/taxconsiderations.authcheckdam.pdf> (last visited Oct. 25, 2013).

71. See Dunlop, *supra* note 43, at 227.

72. See I.R.C. § 2103 (2012).

73. Moore, *supra* note 13, at 137; see I.R.C. § 2104 (2012); Treas. Reg. § 20.2104-1(a) (as amended in 1974) (stating the various requirements under the United States Treasury regulations for a nonresident alien to be considered domiciled in the United States for estate tax purposes).

74. See Moore, *supra* note 13, at 137; I.R.C. § 2103.

2. *Income Determination and Characterization*

One of the largest hurdles that the Internal Revenue Service (IRS) has had to overcome in regards to athlete taxpayers is the characterization of their income both domestically and abroad.⁷⁵ Even after an extensive study on the taxability of various categories of foreign income of athletes and entertainers conducted in 1994, the IRS “ultimately recogniz[ed] that there is no ‘clear cut’ answer.”⁷⁶ Nonetheless, one certainty is that the IRS taxes both United States “citizens and resident aliens on their worldwide income, regardless of the geographical sources.”⁷⁷ However, where complications arise is in the application of the United States tax system, which taxes income sourced to the United States and income sourced to other countries differently.⁷⁸ In addition, the United States employs a foreign tax credit system and various IRS rules to help United States citizens and residents avoid double taxation.⁷⁹ Because there is significant variance in the interpretation and application of IRS tax codes toward international professional athletes, some of the types of income analyzed are: actual performance income; endorsement and sponsorship income; signing bonus income; and any foreign income and the accompanying foreign taxes.⁸⁰

a. *Actual Performance Income*

Although initially calculating an athlete's actual performance income seems simple, for many international professional athletes the calculation can be extremely complex.⁸¹ The first consideration is the geographic domicile where the athlete plays their sport.⁸² This is an important consideration for professional athletes because all major professional sports play a game outside the United States (either exhibition games or regular season games).⁸³ Generally speaking, tax apportionments between the United States and the foreign nation the athlete is living/playing in is divided “based on the number of days that the athlete is present in the U.S.”⁸⁴ This would be a major consideration in calculating the performance income for both Nelson and Shawn whose teams will play eleven games in Canada during the 2014–2015 season.⁸⁵

75. See Andrew D. Appleby, *Leveling the Playing Field: A Separate Tax Regime for International Athletes*, 36 BROOK. J. INT'L L. 605, 618–19 (2011).

76. *Id.* at 619.

77. *Id.* at 615.

78. See *id.*

79. See *id.*

80. See *id.* at 619–21.

81. See *id.* at 619.

82. See *id.*

83. See *id.*

84. *Id.*

85. See *New York Rangers 2014–2015 Schedule*, N.Y. RANGERS, <http://rangers.nhl.com/club/schedule.htm> (last visited Jan. 19, 2015) (noting that the New York Rangers will play eight games in Canada in the

b. Endorsement & Sponsorship Income

To determine the tax implications of endorsement and sponsorship income, professional estate planners must first categorize income as either royalty income or personal service income.⁸⁶ Appleby notes, “royalty income earned by nonresidents is not effectively connected with a U.S. trade or business and is, thus, subject to a final 30% gross withholding tax.”⁸⁷ Place of use is considered when characterizing a taxable royalty interest.⁸⁸ Generally, the determination of whether income is a royalty interest or personal service income is a factual analysis, which considers the usage of the athlete’s name or likeness and the action conducted in obtaining the income.⁸⁹ Appleby notes the distinction: “If the income is based on a percentage of sales, the income is generally a royalty. If the athlete is required to perform services—such as acting in a commercial or making a public appearance—the income is generally personal service.”⁹⁰ Even with these descriptions, the application can be difficult given that many endorsement deals have aspects of both royalty and personal service income.⁹¹

For example, when Nelson signs a deal with a trading card company that includes royalty interests for his Seattle Sounders rookie card, he retains a percentage of the card sales as well as a percentage from the fee charged to a local store that partnered with the soccer trading card company for a certain number of autograph signing events. The percentage of the playing card royalties would be categorized as a royalty interest, while the fee obtained for the autograph events would be two different endorsement income categorizations and subject to different taxation. If Nelson performs these events at an away game against Toronto F.C., instead of at the Seattle store, this would further complicate the tax implications by incorporating foreign tax income.⁹² All of these considerations require careful counseling between estate planning professionals and the athletes.⁹³

2014-2015 regular season); see also *Seattle Sounders 2014-2015 Schedule*, SEATTLE SOUNDERS, <http://www.soundersfc.com/schedule> (last visited Jan. 18, 2015) (noting the Seattle Sounders play in Canada against the Vancouver Whitecaps and the Montreal Impact a total of three times in the 2014-2015 season).

86. See Appleby, *supra* note 75, at 619–20.

87. *Id.* at 619.

88. I.R.C. § 861(a)(4) (2012) (noting that income includes “[r]entals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property”); Appleby, *supra* note 75, at 619.

89. See Appleby, *supra* note 75, at 620.

90. *Id.*

91. See *id.* at 620–21.

92. See *id.* at 620.

93. See *id.*

c. Signing Bonus Income

The distinction between general performance income and signing bonus income is whether the income is based on previously rendered services by the athlete.⁹⁴ If the income in question has a tie to a previous performance and is not simply additional “bonus” income for the purpose of signing a contract, then it will be classified as personal service income.⁹⁵

d. Foreign Taxes and Foreign Income

With the reality of ever-increasing globalization, the IRS has increased its reporting requirements on foreign assets and is working with foreign taxation systems to ensure it receives its “fair share” of an athlete’s income.⁹⁶ The key changes lie in the reporting requirements of an athlete’s offshore assets.⁹⁷

i. Offshore Assets

Greenberg Glusker note that because of the increase in IRS reporting, the attorney must consider the foreign country’s specific offshore asset rules.⁹⁸ For example, under the rules, if Nelson obtained a coastal property in Mexico and United States beneficiaries use the property (his children or his spouse for example) then it is deemed a distribution with a value equivalent to the fair rental value for the term used.⁹⁹ Similar rules are employed for reporting financial offshore assets.¹⁰⁰ For financial assets amounting over \$10,000, the athlete must file a Report of Foreign Bank and Financial Accounts (FBAR/Fin. Cen. Report 114) so the IRS can keep track of the foreign financial assets of the athlete.¹⁰¹

3. Allocation

a. Deductions

As nonresident aliens, foreign professional athletes are subject to domestic tax deductions for their domestic income under Treasury Regulation section

94. *See id.* at 621.

95. *See id.*

96. *See Estate Planning for Actors and Athletes*, GREENBERG GLUSKER (Sept. 19, 2012), www.jdsupra.com/legalnews/estate-planning-for-actors-and-athletes-34232/.

97. *See id.*

98. *See id.*

99. *See id.*

100. *See id.*

101. *See id.*; *see also* Report of Foreign Bank and Financial Accounts, Fin. Cen. Report 114, available at <http://www.basefiling.fincen.treas.gov?NoRegFBARFiler.html> (noting the various filing requirements for reporting foreign offshore financial assets).

1.873-1.¹⁰² In addition to Treasury regulation deductions, an athlete may also qualify for a variety of additional tax deductions depending on the athlete's personal and professional situation.¹⁰³

i. Marital Deductions

A married athlete with a taxable estate valued over \$600,000 USD may defer estate tax upon either their passing or the passing of their spouse by using a marital deduction.¹⁰⁴ Moore notes that the deduction is not without limits and is permitted only for "property in the U.S. as long as the requirements of IRC Section 2056 and, if applicable, IRC Section 2056A are met."¹⁰⁵ These statutory limitations provide the rules for the deduction, including the terminable interest and allowance limits.¹⁰⁶ A special consideration is the passing of property for the marital deduction.¹⁰⁷ As John O'Meara discusses, "there is an unlimited marital deduction available. As with the gift tax, property passing outright to the surviving spouse qualifies for the marital deduction, as does property passing to trusts that meet certain conditions."¹⁰⁸ This fact underscores the necessity for clear living wills in states that do not recognize community property to ensure the property is eligible for the marital deduction.¹⁰⁹ Because Shawn and Nelson are married, both would potentially benefit from a marital deduction, depending on the various statutory considerations under section 2056.¹¹⁰

ii. Charitable Deductions

Young professional athletes often make philanthropic charitable contributions, with some of these contributions in the millions of dollars, according to the *Wall Street Journal*.¹¹¹ The benefits of these contributions are not just philanthropic, however, because, as John Harris notes, charitable deductions in both property and trusts offer athletes the chance to reduce or eliminate the estate taxes passed on to their noncharitable beneficiaries.¹¹²

102. See Treas. Reg. § 1.873-1 (1960).

103. See Harris, *supra* note 17, at 167; see also Moore, *supra* note 13, at 276 (discussing the various tax deductions estate planners may explore for their professional athlete clients); Weisman & Rale, *supra* note 37, at 223–24 (discussing the various tax deductions estate planners may explore for their professional athlete clients).

104. See Harris, *supra* note 17, at 167.

105. Moore, *supra* note 13, at 138.

106. See I.R.C. § 2056A (2012).

107. See O'Meara, *supra* note 4, at 94.

108. *Id.*

109. See *id.*

110. See I.R.C. § 2056 (2012).

111. Camille Ricketts & G. Bruce Knight, *What Athletes Are Giving*, WALL ST. J., http://online.wsj.com/public/resources/documents/pt-af323_athletechart.pdf (last visited Jan. 9, 2014).

112. See Harris, *supra* note 17, at 167–68.

iii. Agent Deductions

Athletes may also deduct a number of administrative and agent fees they incur. “Athletes may, under Section 162(a)(1), deduct reasonable compensation paid to their agents. In addition, expenses incurred for tax planning, professional association dues, professional publications and conditioning expenses have been allowed as deductions.”¹¹³ For athletes, like Shawn and Nelson, who possess lucrative contracts and will require multiple attorneys, agents, and financial planners, the savings in these deductions could be substantial.¹¹⁴

4. Bilateral Tax Treaties

One danger for international athletes who reside and compete in more than one country is taxation by multiple countries for the same income through double taxation.¹¹⁵ As a remedy to preventing double taxation, the United States has engaged in bilateral tax treaties with many countries around the world.¹¹⁶ Although historically the treaties lack uniformity, the most widely accepted model is the Organization for Economic Cooperation and Development (OECD) model convention, which is specifically helpful for estate planners as it directly addresses the income of athletes.¹¹⁷ Generally speaking, the United States taxes nonresident aliens on their United States based income; however, the double taxation problem arises because the IRS also taxes income that is “effectively connected with a U.S. trade or business.”¹¹⁸ Although the United States does have a foreign credit system that attempts to reduce the double taxation problem, the calculation is difficult; the bilateral treaties attempt to streamline the difficulties in income characterization that may cause a discrepancy between taxation in the United States and in the athlete’s other country.¹¹⁹

113. Weisman & Rale, *supra* note 37, at 222; *see also* Stemkowski v. Comm’r, 690 F.2d 40 (2d Cir. 1982), *aff’g in part, rev’g in part*, 76 T.C. 252 (1981) (holding that the tax court erred in ruling that the player’s off-season condition expenses were nondeductible because fitness was not just something required for training camp but throughout the season as well); Hanna v. Comm’r 763 F.2d 171 (4th Cir. 1985), *aff’g in part, rev’g in part*, 76 T.C. 252 (1981) (holding that the tax court properly denied deductions filed by a professional hockey player such as state and local gasoline taxes, personal property taxes, and general living expenses in Seattle).

114. *See* Weisman & Rale, *supra* note 37, at 222.

115. *See* Appleby, *supra* note 75, at 605.

116. *See id.* at 607; Dunlop, *supra* note 43, at 233 (outlining the various components of a bilateral tax treaty, including how they are created, as well as the United States bilateral tax treaties with Canada and Mexico); *see also* Moore, *supra* note 13, at 143–44 (discussing the various parts of the United States-Canada estate tax treaty and its history).

117. *See* Appleby, *supra* note 75, at 609.

118. *See id.* at 615.

119. *See id.*

A bilateral treaty that would apply in Shawn's situation is the United States-Canada Income Tax Convention, adopted in 1985.¹²⁰ Article XVI includes a specific section of the convention addressing athletes and artists.¹²¹ The article provides a variety of rules for athletes including: the rules for taxing in the athletes' domiciled state when they are competing abroad, the taxation rules for the athletes' beneficiaries, and the rules for athletes on teams competing in both countries.¹²² In respect to Shawn's situation, because the New York Rangers frequently play both in the United States and Canada, the provisions of that article do not apply (pursuant to Section 3, Article XVI); therefore, when he plays an away game in Toronto his income from that game would not be double taxed under both the Provincial income tax rate for Ontario and the New York state income tax.¹²³

5. Estate Transfer Taxes

With estate and financial planning, an athlete must plan and manage in accordance with transfer taxes.¹²⁴ As John O'Meara describes, the federal government, along with many states, imposes a cumulative tax for transferred wealth over a lifetime with a credit up to the first \$600,000 transferred as a gift.¹²⁵ Although this may seem like a large amount, for athletes like Shawn and Nelson who are making significant amounts of money over their careers, it is quite likely they will exceed even the combined spousal credit total of \$1,200,000 gifted during their lives or in their estates.¹²⁶ This calls for careful planning, as any amount above the permitted transfer credits is taxed at a staggering 37%.¹²⁷ John O'Meara provides an example of how this system works:

[f]or example, if an individual made a taxable gift of \$700,000, the tentative tax determined according to the rate scheduled would be \$229,800. The tentative tax would then be offset by the unified credit of \$192,800, resulting in a tax payable of \$37,000, which is 37% of the amount by which the gift exceeded the equivalent exemption of \$600,000.¹²⁸

Understanding that because of this seemingly harsh estate tax wealthy individuals may preemptively transfer large portions of their wealth to family

120. See generally Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital, U.S.-Can., Sept. 26, 1980, T.I.A.S. No. 11,087 (providing the international tax agreement between the United States and Canada).

121. See *id.* art. XVI.

122. See *id.*

123. See *id.* art. XVI, § 3.

124. See O'Meara, *supra* note 4, at 89.

125. See *id.*

126. See *id.*

127. See *id.*

128. *Id.* at 90.

members to “prevent avoidance of gift or estate tax which would have otherwise been payable had the property been transferred first to the intervening generation and then transferred again to the grandchild,” the federal government has further implemented a generation-skipping transfer tax.¹²⁹ This tax is at the highest estate tax bracket, however the permitted exemption is much higher than that of the estate tax—free from tax for the first \$1,000,000 transferred.¹³⁰ With the much larger cushion, a husband and wife with proper planning could protect up to \$2,000,000 from estate transfer taxes.¹³¹

6. Gift Taxes

Gift taxes are perhaps one of the first estate planning hurdles that a planner must discuss with international athletes.¹³² Many young men in major professional sports are in similar situations as Shawn and Nelson, where they are either supporting family members back home or would like to share their new wealth with friends and family who helped them achieve their success.¹³³ There are many rules surrounding gift taxes, with the easiest being the annual exclusion of \$10,000.¹³⁴ What becomes more difficult, however, is the classification of gifts because the recipient must have a present interest or, in other words, “the recipient of the gift must have the immediate and unrestricted right to use the property transferred.”¹³⁵

D. Asset Beneficiary Designation

Beneficiary designations are important because they will decide who will receive the various forms of property, once the debts and obligations of the deceased athlete have been satisfied.¹³⁶ There are many factors in making beneficiary designations such as the personal relationships of the athlete, the type of property involved, and even the laws of the athlete’s domicile state (which are further muddled in international situations), all requiring careful estate planning.¹³⁷

129. Harris, *supra* note 17, at 169.

130. *See id.*

131. *See id.*

132. *See* Wright, *supra* note 4, at 40.

133. *See* Robert Pagliarini, *Why Athletes Go Broke*, CHI. TRIB. (Aug. 6, 2013), http://articles.chicagotribune.com/2013-08-06/lifestyle/sns-201308061630--tms--pagliarictrnp-a20130806-20130806_1_athletes-nfl-player-financial-stability.

134. *See* Wright, *supra* note 4, at 40.

135. *Id.* (citing I.R.C. § 2503(b) (1996)).

136. *See* O’Meara, *supra* note 4, at 86.

137. *See id.*

I. Married Athletes

a. Community Property

Community property states are states in which, aside from things like individually received gifts or inheritance, half of all property acquired during the marriage belongs to each spouse regardless of who acquired it.¹³⁸ The property may be in one spouse's name but the named spouse may not transfer that property without the consent of the unnamed spouse, due to each spouse possessing a one-half interest in the property.¹³⁹ The community property states are: Louisiana, Texas, New Mexico, Arizona, Nevada, California, Washington, and Idaho.¹⁴⁰ If the athlete's domicile is in one of these states, the estate planner will not have to designate any of the athlete's property if it is acquired during the athlete's marriage, as it is presumed to be community property unless it falls under one of the exceptions mentioned above.¹⁴¹ Although New York is not a community property state, Washington is and therefore community property considerations would be applicable to Nelson.¹⁴²

b. Individually Owned Property

For property that falls under the exceptions to community property in one of the above-mentioned states as well as individually owned property in all other states, the individual ownership property rules apply.¹⁴³ In regards to property held in joint tenancy, property passes in a different way: "Upon the death of either joint tenant, full ownership of the property passes by property right to the survivor. This form of ownership has the advantage of simplicity and the transfer of a joint tenant's interest at death avoids the publicity attendant with probate proceedings."¹⁴⁴ The key advantage is the lack of publicity by avoiding probate, which may be important to a high-profile international athlete like Shawn or Nelson.¹⁴⁵ All other property that is not held in joint tenancy may easily pass by will, as discussed above.¹⁴⁶

E. Life Insurance

Although young adults do not typically consider life insurance, the combination of the dangerous nature of sports, the high wealth of international

138. *See id.*

139. *See id.*

140. *See id.* at 87.

141. *See id.* at 86–87.

142. *See id.* at 87.

143. *See id.* at 86.

144. *See id.*

145. *See* BEYER, *supra* note 15, at 3–5.

146. *See* O'Meara, *supra* note 4, at 86; *see infra* Part II.A.1.

athletes, and the low cost of insurance makes life insurance worth considering.¹⁴⁷ As John Harris notes, some of the various benefits of a life insurance policy are that, in the event the athlete passes, the policy provides a quick cash source for the athlete's family and provides an easy method for the family to pay off any immediate debts and expenses.¹⁴⁸ Life insurance policies can also create trusts for particular family members, ensuring the maintenance of education and general life expenses after the athlete dies.¹⁴⁹ The following types of life insurance are available to an athlete: "term, whole life, survivorship, variable life, and universal life."¹⁵⁰

An athlete may find whole life insurance more attractive because it remains more permanent and requires either prepaid or installment premiums over the individual's lifetime.¹⁵¹ As Harris notes, a distinguishing factor that may appeal to a young, wealthy athlete is the flexibility of whole life insurance in that it has a "cash value which can be borrowed against. Whole life insurance provides both an insurance portion paid at death and, in contrast to term insurance, a cash value portion usable during life."¹⁵²

For athletes wishing to ensure that their policies stay ahead of inflation, variable life insurance may be an attractive alternative to whole life.¹⁵³ Variable life insurance follows the same format as whole life insurance but the value varies because the insurer invests in assets that stay ahead of inflation.¹⁵⁴

Universal life insurance blends the benefits of both term and whole life insurance.¹⁵⁵ Much like variable life insurance, universal life insurance offers either type of insurance but with the cash value being invested in funds.¹⁵⁶ This investment hedges against inflation and provides a hybrid life insurance option.¹⁵⁷

Married athletes with children may consider survivorship insurance to cover the estate taxes and provide a larger payout upon the death of the surviving spouse to the children.¹⁵⁸ An advantage of survivorship insurance is that it has lower premiums than whole life insurance.¹⁵⁹ With proper estate planning, the attorney can create a plan that covers the estate tax upon the death of the first spouse using the unlimited marital deduction—the estate tax would not require payment from insurance proceeds until the second spouse passes.¹⁶⁰

147. See Harris, *supra* note 17, at 163.

148. See *id.*

149. See *id.*

150. *Id.*

151. See *id.*

152. See *id.*

153. See *id.* at 164.

154. See *id.*

155. See *id.*

156. See *id.*

157. See *id.*

158. See *id.* at 163.

159. See *id.*

160. See *id.*

Perhaps the most advantageous life insurance (which a practitioner representing Shawn or Nelson should strongly consider) for an international professional athlete is accidental death insurance.¹⁶¹ With low premiums and payouts only in the event of death by accident, this plan “is especially appropriate for professional athletes because, at the typical athlete’s age and level of health, it is much more likely that death will occur by accident rather than by natural causes.”¹⁶²

After selecting the insurance type, the recommended practice is to set up an irrevocable life insurance trust.¹⁶³ Setting up a trust this way allows the athlete’s estate to not only pay off debts and estate taxes but to care for family members in a stable form after the athlete passes.¹⁶⁴ For both Shawn and Nelson, it would be beneficial to set up a trust in this manner, where they can contribute proceeds over time in conjunction with a type of life insurance that includes an accidental death provision.¹⁶⁵ Both young men have spouses and families to support and are involved in sports where catastrophe may strike at any time.¹⁶⁶ Therefore, setting up an insurance trust in this manner will ensure the most security and benefit to their beneficiaries.¹⁶⁷

F. Disability Planning

As professional athletes’ are more susceptible to chronic health problems, such as traumatic head injuries, disability planning is an essential part of their estate plan.¹⁶⁸ Kevin Matz notes that, in addition to the previous documents discussed in this article including living trusts, living wills, and health care documents, having a durable power of attorney becomes extremely important.¹⁶⁹ A power of attorney empowers the entrusted individual to make transactions on behalf of the athlete, even if the athlete is mentally incapacitated.¹⁷⁰ It is beneficial to athletes to ensure this power is given to someone they trust and who may perform functions such as paying off bills or making gifts within the exclusion amount when the athlete is unable to do so.¹⁷¹ For Shawn and Nelson, this would be of even more importance with family and responsibilities located far away.¹⁷² In their situations, it would be beneficial to appoint this power to someone who has knowledge of their affairs elsewhere

161. *See id.* at 164.

162. *See id.*

163. *See id.*

164. *See id.*

165. *See id.*

166. *See id.*

167. *See id.*

168. *See Matz, supra* note 6, at 23.

169. *See id.*

170. *See id.*

171. *See id.*

172. *See id.*

and would ensure the support of their families back in their home countries if they were to be incapacitated.¹⁷³

G. Athlete Image and Endorsement Issues

In a world of mass media and larger than life celebrity athletes, athletes now have the ability to broaden their income to include use of their image and endorsement of products.¹⁷⁴ For an international athlete's estate plan, the legal practitioner needs to inform athletes of their rights and ability to pass on the right to use, and financially benefit from, their image and name.¹⁷⁵ The law divides the ability for athletes to market their skills and abilities to the world into the right of publicity and the right of copyright or trademark.¹⁷⁶

1. Right of Publicity

Thomas McCarthy and Paul Anderson define rights of publicity as "simply the right of every person to control the commercial use of his or her identity."¹⁷⁷ For our context, this means that, unless someone has a license, no one may use either Shawn's or Nelson's identity in an advertisement.¹⁷⁸ McCarthy and Anderson divide the right of publicity into two key valuations that an athlete needs to protect and may pass on through their estate plan: identity values and performance values.¹⁷⁹ Identity values are what most people typically associate with the right of publicity, the visual image of an athlete associated to some sort of advertisement.¹⁸⁰ For example, a large billboard in England may use Nelson's image of him scoring a goal in an advertisement for a cell phone company.¹⁸¹ Performance value is where someone uses the athlete's performance image to his or her benefit.¹⁸² In our context, if someone who looked very similar to Shawn pretended to be him and was paid by a company to play in a charity hockey game as if he actually was Shawn, that

173. *See id.*

174. *See generally* J. Thomas McCarthy & Paul M. Anderson, *Protection of the Athlete's Identity: The Right of Publicity, Endorsements and Domain Names*, 11 MARQ. SPORTS L. REV. 195 (2001) (discussing the commercial value of an athlete's use of the right of publicity).

175. *See id.*

176. *See id.*

177. *Id.*; *see also* Haelan Labs., Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 868 (2d Cir. 1953) ("We think that, in addition to and independent of that right of privacy (which in New York derives from statute), a man has a right in the publicity value of his photograph, i.e., the right to grant the exclusive privilege of publishing his picture, and that such a grant may validly be made 'in gross,' i.e., without an accompanying transfer of a business or anything else.").

178. *See* McCarthy & Anderson, *supra* note 174, at 197.

179. *See id.*

180. *See id.*

181. *See id.*

182. *See id.*

would be a violation of Shawn's right to publicity based on his performance value.¹⁸³

Ultimately, the test that courts use to measure infringement is the "identifiability" or "unaided identification" of the athlete based on the infringement.¹⁸⁴ The governing law for a false endorsement claim is the Lanham Act.¹⁸⁵ The Lanham Act provides a cause of action for false endorsement, especially in the event that an athlete's image or likeness is used postmortem.¹⁸⁶ Laws like the Lanham Act provide an athlete and the athlete's heirs with likeness protection to ensure that any financial benefit or endorsement from the usage of the athlete's identity goes to the proper source.¹⁸⁷ Likewise, if Shawn becomes the most famous hockey player of all time, and is the iconic image for the sport, his heirs (or whomever inherits the rights to use his image) would be able to sell and profit from his image use on skate or hockey stick advertisements even after his passing.¹⁸⁸

2. Trademarks

Trademarks are legal protections over things such as "words, names, symbols, or devices, or any combination thereof, that are used by consumers to identify products and/or services and distinguish them from competing products or services."¹⁸⁹ For example, if Nelson and his management team created a nickname and symbol representing him then they could put Nelson's nickname and symbol on merchandise, much like that of former NBA basketball player Shaquille O'Neal.¹⁹⁰ However, trademark rights are not indefinite; their duration is limited to how long it is in use.¹⁹¹ Federal trademarks must be renewed regularly—initially, after the original registration, it must be re-registered after five years and then every ten years thereafter.¹⁹² Therefore, if athletes or their families cease to renew their trademark registration and another party uses it, the original trademark holders will be unable to file suit.¹⁹³ Federally, trademarks are protected by the same statute as the right of publicity, 15 U.S.C. § 1051, also known as the Lanham Act.¹⁹⁴ Section 1051 provides the registration requirements, the application process for a trademark, and the

183. *See id.*

184. *See id.*

185. *See* 15 U.S.C. § 1125 (2012); McCarthy & Anderson, *supra* note 174, at 205 (citing Lanham Act § 43(a)).

186. *See* 15 U.S.C. § 1125; McCarthy & Anderson, *supra* note 174, at 205 (citing Lanham Act § 43(a)).

187. *See* 15 U.S.C. § 1125; McCarthy & Anderson, *supra* note 174, at 205 (citing Lanham Act § 43(a)).

188. McCarthy & Anderson, *supra* note 174, at 199.

189. Matson, *supra* note 25, at 3.

190. *See* Appendix A.

191. *See* Matson, *supra* note 25, at 3.

192. *See id.*

193. *See id.*

194. 15 U.S.C. § 1051 (2012); Matson, *supra* note 25, at 3.

governing rules.¹⁹⁵ Fundamentally, the purpose of a trademark is protection of the specified representation of the athlete, with the goal of obtaining a royalty interest so that the athlete or the heir will receive financial compensation for the “privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.”¹⁹⁶

III. CONCLUSION

The unique combination of young athletes with a high net worth acquired in a very short amount of time makes estate planning for an international professional athlete difficult. The process requires both careful planning and a step-by-step approach to ensure all bases are covered. However, the importance of this task cannot be underscored enough. The two hypothetical situations presented with Shawn and Nelson are no longer the exception but have become the norm in professional sports. These young men are often supporting people outside their immediate family and trying to plan for their future, all the while knowing a career that solely relies on physical ability can end in an instant. Unsurprisingly, the chance of a major, or even deadly, injury occurring in professional sports is greater today than it has ever been. In contact sports, like ice hockey, head injuries are becoming more and more prevalent, with recent studies of Canadian children attributing nearly half of all head injuries to the sport.¹⁹⁷ Studies also show that high-level athletes are more susceptible to high-risk day-to-day activities and, subsequently, a higher risk of major health concerns.¹⁹⁸ All of these issues underscore the importance of having a carefully planned estate for these young people with so much on the line. With open communication between the planning professional and the athlete, they can work together as a team to make sure both athletes and their families in the United States and abroad are well taken care of.

195. See 15 U.S.C. § 1051.

196. See Matson, *supra* note 25, at 4 (citing Treas. Reg. § 1.691(a)-1(b) (1965)).

197. See Christian Nordqvist, *Ice Hockey Causes 44.3% of All Traumatic Brain Injuries Among Canadian Kids*, MED. NEWS TODAY, <http://www.medicalnews today.com/articles/258450.php> (last updated Apr. 1, 2013).

198. See A. Nattiv et al., *Lifestyles and Health Risks of Collegiate Athletes: A Multi-Center Study*, SAFETYLIT, http://www.safetylit.org/citations/index.php?fuseaction=citations.viewdetails&citationIds%5B%5D=cit_journalarticle_210838_38 (last visited Jan. 19, 2014) (noting in the article abstract that in a multi-center study of 2,298 collegiate athletes, the athletes showed significantly higher propensities for high-risk behaviors such as: driving with someone under the influence, less safe sex, greater quantity and frequency of alcohol consumption, and less likely to use seatbelts when driving).

IV. APPENDIX A



199. Dave Morrison, *Lebron James, Tom Brady and the Top 25 Player Logos in Sports*, BLEACHER REP. (Dec. 6, 2010), <http://bleacherreport.com/articles/536772-lebron-james-tom-brady-and-the-top-25-player-logos-in-sports/page/7>.