

CROSSING THE LINE: LEGALITY OF RESTRICTIONS ON PLAYER MOVEMENT IN THE PHILIPPINES*

*Ian Paolo D. Catalan***

ABSTRACT

Professional sports have been a part of popular culture for decades. In the Philippines, it is no different. It is popular among fans, especially men's basketball and women's volleyball—the most popular team sports in the country. However, the field of sports has not been seen much in Philippine jurisprudence, especially with regard to professional athletes.

This paper seeks to explore the issue of freedom of movement of professional athletes in team sports and will draw from labor law and antitrust law. In doing so, the Note will draw upon the experience in other parts of the world, especially the United States and Europe. However, it will also include other countries such as Australia, South Africa, India, and Japan, and will apply the situations there in the Philippine context. Application is important in the Philippine context, especially given that the Philippine Basketball Association (PBA) has introduced new restrictions in light of Filipino players playing in overseas leagues across East Asia.

First, it seeks to point out that professional athletes in team sports are employees. Afterwards, it seeks to argue that restricting the movement of athletes through free agency and draft restrictions runs counter to the policy of allowing workers to choose their place of employment and constitutes anti-competitive conduct; thus, it should not be allowed.

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** Junior Associate, Gargantiel Ilagan & Atanante Law.; J.D., Gonzalo W. Gonzalez Most Outstanding Law Intern Award, University of the Philippines College of Law (2024); B.A. History, *cum laude*, University of the Philippines Diliman (2019).

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I. INTRODUCTION

Professional sports have been a staple watch around the world. The basketball world watches the National Basketball Association (NBA), which attracts followings from around the world. Meanwhile, in football, the English Premier League,¹ the Spanish La Liga, and the UEFA Champions League² are the most watched for club football.

Professional sports are also a staple in the Philippines. Here, basketball is the most popular sport, especially among men. The Philippine Basketball Association (PBA) is still watched by many, despite poor television ratings in recent years.³ Another sport whose popularity is rising is volleyball, especially women's volleyball.⁴ This rise is evident in the attendance numbers within the Philippine Volleyball League (PVL), the women's professional volleyball league in the country.⁵

Recent developments have changed the world of Philippine sports, especially with our professional athletes going overseas to ply their trade. While Filipinos have played in other countries before,⁶ this was brought to the forefront when top amateur basketball players decided to go overseas to play, rather than apply for PBA drafts. The "exodus" of top amateurs has led to restrictive rule changes by the PBA, on top of other such rules already being in place, such as a longer period of restricted free agency, despite contracts often being shorter in the league.

With these in mind, it is also important to look at the rights of professional athletes in the Philippines, especially their right to seek work

¹ Charlie Walker, *English Premier League dominated European rivals, the Bundesliga, Ligue 1, La Liga and Serie A, attracting 3.2 billion viewers worldwide and bringing in 500,000 tourists in 2019-20 – while contributing £7.6 billion to the UK economy, despite Covid*, DAILY MAIL, Jan. 17, 2022, at <https://www.dailymail.co.uk/sport/sportsnews/article-10409843/Premier-League-dominates-Bundesliga-Ligue-1-La-Liga-Serie-attracting-3-2-billion-TV-viewers.html>.

² Josh Sim, *Champions League coverage on CBS averages 967k viewers as 2.18m tune into final*, SPORTSPRO MEDIA, June 14, 2023, at <https://www.sportspromedia.com/news/uefa-champions-league-final-tv-us-viewership-ratings-cbs-canale-5-tf1-zdf/>.

³ Isagani de Castro, Jr., *Making sense of the PBA-TV5-A2Z basketball content deal*, RAPPLER, Oct. 23, 2023, at <https://www.rappler.com/voices/rappler-blogs/making-sense-pba-tv5-a2z-basketball-content-deal/>.

⁴ Peter Atencio, *The Filipinos' growing love for volleyball*, MANILA STANDARD, July 8, 2023, at <https://manilastandard.net/?p=314347973>.

⁵ Mark Escarlote, *PVL Record Crowd Boosts Local Volleyball*, DAILY TRIBUNE, Dec. 19, 2023, at <https://sports.tribune.net.ph/2023/12/19/pvl-record-crowd-boosts-local-volleyball/>.

⁶ Ariel Ian Clarito, *Asian basketball exodus: Why it's actually a good thing*, RAPPLER, at <https://www.rappler.com/sports/reasons-asian-basketball-exodus-good-thing/>.

locally or abroad. Professional athletes in team sports are employees, and their movement should not be restricted in their freedom of employment. It is a declared state policy under the Constitution to protect the rights of workers and promote their welfare.⁷ The first paragraph of Article XIII, Section 3 of the Constitution provides that “[t]he State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.” Under the Labor Code, it is state policy to promote and maintain a state of full employment,⁸ protect every citizen desiring to work locally or overseas,⁹ to facilitate a free choice of available employment by persons seeking work,¹⁰ and to facilitate and regulate the movement of workers.¹¹ These are rights of workers, and professional athletes are entitled to these rights.

Thus, this Note seeks to reinforce the notion that professional athletes in the Philippines are entitled to the same rights as other workers, and their freedom to seek employment anywhere should not be unduly hindered.

II. STATE OF FILIPINO PROFESSIONAL ATHLETES

Most Filipino professional athletes play in teams based in the Philippines. They play in leagues like the PBA, Maharlika Pilipinas Basketball League (MPBL), the Pilipinas Super League (PSL), the PVL, and the Philippines Football League (PFL).

However, some players have found careers in overseas leagues due to the greater monetary benefits offered by teams in those leagues. While Filipino athletes in team sports have been plying their trade overseas, attention only started in June 2020, when Ferdinand “Thirdy” Ravena III, a former player for the Philippine men’s national basketball team, signed with the San-En Neophoenix, a team in the first division of the B.League, Japan’s professional basketball league.¹² At the time, Thirdy had just finished his collegiate career with the Ateneo de Manila University. Moreover, he was a top player there, which helped generate attention to players going abroad to play. The B.League had introduced the Asian Player Quota system in their

⁷ CONST. art. II, § 18.

⁸ LAB. CODE, art. 12(a).

⁹ Art. 12(b).

¹⁰ Art. 12(c).

¹¹ Art. 12(d).

¹² Ivan Stewart Saldajeno, *Thirdy Ravena joins Japan’s B.League*, PHILIPPINE NEWS AGENCY WEBSITE, June 24, 2020, at <https://www.pna.gov.ph/articles/1106860>.

league.¹³ Under this system, players from other Asian countries such as the Philippines and South Korea can play in the B.League.¹⁴ However, for a Filipino holding two passports to be eligible as an Asian heritage import, he must establish citizenship by playing for the Philippine national basketball team, also currently known as “Gilas,” as a local.¹⁵ Afterwards, Filipino players who have played for the men’s national basketball team like Dwight Ramos,¹⁶ Kobe Paras,¹⁷ and Juan Gomez de Liaño¹⁸ signed with teams from the B.League.

It is not only in Japan where players were offered options to play. In 2022, the Korean Basketball League (KBL), South Korea’s professional basketball league, expanded its own Asian Quota Players program to include Filipino players.¹⁹ After this, Samjosef Belangel, Rhon Jay Abarrientos, Rhenz Abando, Sean Dave Ildefonso, and Justin Gutang then signed for Korean teams Daegu KOGAS Pegasus,²⁰ Ulsan Mobis Phoebus,²¹ Anyang KGC,²² Suwon KT Sonicboom, and Changwon LG Sakers,²³ respectively. Kai Sotto,

¹³ Rommel Fuertes, Jr., *B.League expands reach, adds more countries for Asia special quota*, PHILIPPINE DAILY INQUIRER, June 26, 2024, at <https://sports.inquirer.net/572045/b-league-expands-reach-adds-more-countries-for-asia-special-quota>.

¹⁴ *Id.*

¹⁵ Joaquin M. Henson, *Dual citizens explore Gilas route*, PHIL. STAR, at <https://www.philstar.com/sports/2023/10/24/2306005/dual-citizens-explore-gilas-route>.

¹⁶ Matthew Li, *Dwight Ramos signs with B.League team Toyama Grouses*, TIEBREAKER TIMES, Sept. 10, 2021, at <https://tiebreakertimes.com.ph/tbt/dwight-ramos-signs-with-b-league-team-toyama-grouses/218743>.

¹⁷ Randolph B. Leongson, *Kobe Paras signs with Japan B.League Division I side Niigata Albirex*, SPIN.PH, Sept. 5, 2021, at <https://www.spin.ph/basketball/japan-b-league/kobe-paras-signs-with-japan-b-league-side-niigata-albirex-a1374-20210905>.

¹⁸ Matthew Li, *Juan GDL signs with B2 team Earth Friends Tokyo Z*, TIEBREAKER TIMES, June 23, 2021, at <https://tiebreakertimes.com.ph/tbt/juan-gdl-signs-with-b2-team-earth-friends-tokyo-z/209984>.

¹⁹ Matthew Li, *KBL expands Asian Quota to Filipinos*, TIEBREAKER TIMES, Apr. 18, 2022, at <https://tiebreakertimes.com.ph/tbt/kbl-expands-asian-quota-hiring-to-filipinos/237547>.

²⁰ Matthew Li, *SJ Belangel comes to terms with KBL team Daegu KOGAS*, TIEBREAKER TIMES, June 6, 2022, at <https://tiebreakertimes.com.ph/tbt/sj-belangel-signs-with-kbl-team-daegu-kogas/241835>.

²¹ Matthew Li, *RJ Abarrientos forgoes remaining years with FEU, to join Ulsan Hyundai*, June 19, 2022, TIEBREAKER TIMES, at <https://tiebreakertimes.com.ph/tbt/rj-abarrientos-forgoes-remaining-years-with-feu-signs-with-ulsan-hyundai/243136>.

²² Matthew Li, *Rhenz Abando leaves Letran, signs with Anyang KGC*, July 28, 2022, TIEBREAKER TIMES, at <https://tiebreakertimes.com.ph/tbt/rhenz-abando-leaves-letran-signs-with-anyang/246386>.

²³ Matthew Li, *Justin Gutang to sign one-year deal with Changwon LG*, TIEBREAKER TIMES, June 21, 2022, at <https://tiebreakertimes.com.ph/tbt/justin-gutang-signs-one-year-deal-with-changwon-lg/243337>.

a Filipino player with dreams of entering the NBA, signed with the Australian National Basketball League's Adelaide 36ers in 2021.²⁴

Continuing what has been termed an “exodus” of players, Filipino basketball players, such as Carl Tamayo,²⁵ Matthew Wright,²⁶ and Miguel Oczon,²⁷ have signed for Japanese and Korean teams. Even volleyball stars like Celine “Ced” Domingo,²⁸ Tots Carlos, and Mylene Paat²⁹ planned to join teams in overseas leagues. Likewise, volleyball star Jia Morado-De Guzman has already signed with the Denso Airybees in Japan.³⁰ If a player plays well enough, he or she could be considered for naturalization, even if the player does not need to be naturalized to play in the nation's domestic league. For example, Alyja “Jaja” Santiago, a Filipina volleyball star currently playing in Japan's volleyball league, is being considered for naturalization so she may play for Japan's national team.³¹ This comes at a time when players are being naturalized to allow them to play for a national team and to improve the competitiveness of such national team.³² Indeed, Santiago's impending naturalization might set a precedent for talented Filipino athletes to change nationality to have better chances of playing in international competitions like the Olympics or the World Cup.

²⁴ Cody Taylor, *Former Ignite prospect Kai Sotto signs with Adelaide 36ers of NBL*, YAHOO SPORTS, Apr. 21, 2021, at <https://sports.yahoo.com/former-ignite-prospect-kai-sotto-152412672.html>.

²⁵ Matthew Li, *Carl Tamayo signs with B.League's Ryukyū*, TIEBREAKER TIMES, Jan. 11, 2023, at <https://tiebreakertimes.com.ph/tbt/carl-tamayo-signs-with-b-leagues-ryukyu/258881>.

²⁶ Lance Agcaoili, *Matthew Wright takes his act to Japan, signs with Kyoto Hanaryū*, PHIL. DAILY INQUIRER, Sept. 2, 2022, at sports.inquirer.net/475624/matthew-wright-takes-his-act-to-japan-signs-with-kyoto-hanaryu.

²⁷ Mark Rey Montejo, *Migs Oczon signs with KBL team Ulsan*, MANILA BULLETIN WEBSITE, Dec. 7, 2023, at <https://mb.com.ph/2023/12/6/migs-oczon-signs-with-kbl-team-ulsan>.

²⁸ Jonash Dannug, *Creamline allows Ced Domingo to chase overseas dreams*, TIEBREAKER TIMES, Oct. 28, 2023, at <https://tiebreakertimes.com.ph/tbt/creamline-allows-celine-domingo-to-chase-overseas-dreams/284670>.

²⁹ JR Isaga, *Tots Carlos, Mylene Paat set to miss PVL semis openers amid Korean V-League tryouts*, RAPPLER, Apr. 30, 2024, at <https://www.rappler.com/sports/volleyball/tots-carlos-mylene-paat-set-miss-premier-league-semifinal-openers-korean-league-tryouts-2024/>.

³⁰ Justin Valencia, *Jia Morado signs with Japan's Denso*, TIEBREAKER TIMES, Sept. 7, 2023, at <https://tiebreakertimes.com.ph/tbt/jia-morado-signs-with-japans-denso/280838>.

³¹ John Mark Garcia, *Jaja Santiago confirms Japan naturalization process ongoing*, SPIN.PH, May 8, 2024, at <https://www.spin.ph/volleyball/jaja-santiago-confirms-japan-naturalization-process-ongoing-a5172-20240508>.

³² Meliksah Bayrav, *The main naturalized players at the 2023 FIBA World Cup*, EUROHOOPS, Aug. 22, 2023, at <https://www.eurohoops.net/en/fibawc/1541887/2023-fiba-world-cup-naturalized-players/>.

The trend of players moving overseas has had varying effects in leagues throughout the Philippines, specifically in volleyball and basketball, where Filipino star players are involved. However, the PVL has not yet been noticeably affected, as there are many former collegiate stars playing there despite some players going abroad to play professionally. In fact, one PVL game between the Creamline Cool Smashers and the Choco Mucho Flying Titans set an attendance record of 24,459 for the PVL,³³ which is a good indicator of volleyball's rising popularity in the country. On the other hand, the PBA has been experiencing poor television ratings and poor attendance figures in elimination games in Metro Manila.³⁴ Then-Chairman of the PBA Board of Governors, Ricky Vargas, even said that the exodus has hurt the PBA.³⁵ Thus, the league will need popular and highly-touted amateur basketball players like Tamayo, Gomez de Liaño, and Kai Sotto to help increase interest, which will not happen if players opt to play overseas. This is especially urgent for the PBA, considering that the PBA's top players in the past decade such as June Mar Fajardo, Terrence Romeo, Calvin Abueva, Scottie Thompson, Japeth Aguilar, and Jayson Castro are aging out, with all of them over the age of 30.

Since the start of the “exodus” of basketball players, the PBA has instituted new rules which restrict entry into the league, thus potentially affecting the livelihood of professional basketball players. These kinds of restrictions implemented in professional leagues might affect the rights of athletes to freedom of movement, freedom to contract, and freedom to seek employment anywhere, whether domestic or international. They will also affect the chances of Filipino professional athletes to maximize their ability to earn.

With the foregoing premises, this Note seeks to answer the following questions:

1. Are professional players in the Philippines considered as employees?
2. Are restrictions on player movement within sports leagues legal?
3. Are restrictions on entry into a league legal, especially restrictions on citizens?

³³ Justin Valencia. *Creamline vs Choco Mucho II sets PH volleyball attendance record*. TIEBREAKER TIMES, Dec. 16, 2023, at <https://tiebreakertimes.com.ph/tbt/creamline-vs-choco-mucho-ii-sets-ph-volleyball-attendance-record/291670>.

³⁴ De Castro, Jr., *supra* note 3.

³⁵ Matthew Li, *Vargas tells B.League: 'Japan exodus has hurt PBA, Gilas'*, TIEBREAKER TIMES, Sept. 17, 2022, at <https://tiebreakertimes.com.ph/tbt/vargas-tells-b-league-japan-exodus-has-hurt-pba-gilas/250110>.

III. EMPLOYMENT STATUS OF PROFESSIONAL ATHLETES

Before assessing the legality of the restrictions on player movement, it is important to first look at the employment status of professional players. In many jurisdictions, players have been classified as workers and employees.

A. In the United States

In the United States, a professional athlete is considered by the courts to be an employee.³⁶ Professional sports are governed by the National Labor Relations Act (NLRA).³⁷ According to Wong, “[p]rofessional athletes were first organized into unions as far back as the 1950s, in an effort to wrest increased salary, job security, pensions, and player mobility from the leagues.”³⁸ In the 1970s, the National Labor Relations Board (NLRB) first established its jurisdiction to oversee the league in *American League of Professional Baseball Clubs and Association of National Baseball League Umpires*, where the NLRB established that professional sports affect interstate commerce, and thus should be subject to its jurisdiction.³⁹ This sealed the status of professional players as employees.

B. In Europe

Professional players, particularly footballers, have been considered as workers in the United Kingdom and the European Union. According to Blackshaw, “[u]nder English Common Law, footballers are considered employees and not ‘independent contractors’ working on their own account.”⁴⁰ Section 230 of the UK Employment Rights Act defines an employee as “a person who has entered into or works under a contract of employment,” but the ultimate determination is subject to case law.⁴¹

The British Court of Appeal held in *Walker v. Crystal Palace* that an English professional football player was an employee.⁴² In the case, the Court,

³⁶ GLENN M. WONG, ESSENTIALS OF SPORTS LAW 514 (4th ed.).

³⁷ PATRICK K. THORNTON, SPORTS LAW 194.

³⁸ WONG, *supra* note 36, at 514.

³⁹ Jo-Annie Charbonneau, *A Comparative Analysis of American and Canadian Antitrust and Labor Laws as Applied to Professional Sports League Lockouts and Potential Solutions to Prevent Their Occurrence*, 26 MARQ. SPORTS L. REV 111, 116–117.

⁴⁰ IAN S. BLACKSHAW, INTERNATIONAL SPORTS LAW: AN INTRODUCTORY GUIDE 76.

⁴¹ Antoine Duval & Oskar van Maren, *The Labour Status of Professional Football Players in the European Union: Unity in/ and/ or Diversity*, 8 EUR. LAB. L.J. 264.

⁴² BLACKSHAW, *citing* 1 K.B. 87 (1910).

specifically through Lord Justices Farwell⁴³ and Cozens-Hardy⁴⁴ opined that professional footballers are employees because they are paid to play football and must obey the directives of the team. Furthermore, professional players are bound according to the express terms of his contract to obey all general directions of the club.⁴⁵ Thus, this set the stage of professional athletes being employees. Currently, the players of the Premier League, England's top football league, enjoy employee benefits such as player contracts, collective bargaining,⁴⁶ and freedom of movement from team to team, especially upon expiration of their contracts.⁴⁷

In the European Union (EU), EU law, which is based on the Treaty on the Functioning of the European Union (TFEU), has been applied to sporting issues. Particularly, it applies to economic activity. In applying EU Law to sport, the European Court of Justice (ECJ) held in *Walrave and Koch v. Association Union cycliste internationale* that sport is plainly capable of constituting an economic activity.⁴⁸ In that case, the ECJ held that when an economic activity is in the character of gainful employment, it was subject to the Treaty's provisions on freedom of movement of workers, specifically Articles 48 to 58.

This was confirmed in the case of *Union Royale Belge des Sociétés de Football Association ASBL (URBSFA) v. Jean-Marc Bosman*,⁴⁹ better known as the Bosman ruling, which held that Article 48 applies to rules laid down by sporting associations such as URBSFA and FIFA (*Fédération Internationale de Football Association*; International Association Football Federation) or the Union of European Football Associations (UEFA). Thus, labor law of Europe applied to sports so long as it constituted an economic activity, and players may be considered as workers. In individual EU nations, professional players are also considered workers, as in Belgium⁵⁰ and Germany.⁵¹

⁴³ *Id.*, in 2 MARQ. SPORTS L. J. 217.

⁴⁴ BLACKSHAW, *supra* note 40, at 76.

⁴⁵ *Id.*

⁴⁶ Tyson Hallan, *Sport Is the Art of Balance: The Impact of Employment Law on the Financial and Competitive Balance in Professional Sports - A Comparison of the National Hockey League and the Barclays Premier League*, 2 SOUTHAMPTON STUDENT L. REV. 87, 94.

⁴⁷ *Id.* at 111.

⁴⁸ Stephen Weatherill & Jacques Delors, *Do Sporting Associations Make Law or Are They Merely Subject to It*, EUR. BUS. L. REV. 217, 218; *Walrave & Koch v Union Cycliste Internationale* [Hereinafter, "*Walrave & Koch*"], Case No. 36/74 (1974).

⁴⁹ Case No. C-415/93 (1995).

⁵⁰ 8 EUR. LAB. L.J. 261.

⁵¹ *Id.* at 262–263.

C. In Asia

In Japan, the relevant labor laws are the Labor Contract Act, the Labor Standards Act, and the Labor Union Act. However, these laws have varying definitions of the term “employee.” Thus, players in Nippon Professional Baseball (NPB) are held to be employees under the Labor Union Act and independent contractors according to the Labor Contract Act and the Labor Standards Act.⁵² In South Korea, Article 2(2)(1) of their Labor Standards Act defines “worker” as “a person, regardless of being engaged in whatever occupation, who offers work to a business or workplace for the purpose of earning wages.”

However, as of this writing, jurisprudence on whether South Korean athletes fall under this definition has not been found. In India, although there is jurisprudence finding that sports clubs are industries,⁵³ nothing has been definitively said about the status of professional athletes themselves.

D. Other Examples

Other countries outside the European Union and Asia have also adopted the view that professional athletes are employees. In Australia, professional team athletes have been considered as employees, starting in *Buckley v. Tutty*,⁵⁴ where the Australian High Court ruled that “the fact that [Australian] football is a sport does not mean that a man paid to play football is not engaged in employment” and that “the position of a professional footballer vis-a-vis his club is that of employer and employee.” The express terms of professional team athletes’ contracts usually include promises to play the sport whenever and wherever directed by the club, attend training sessions, and carry out instructions of the coach. These terms are already indicative of a contract of employment.⁵⁵

⁵² Keiji Kawai & Matt Nichol, *Labor in Nippon Professional Baseball and the Future of Player Transfers to Major League Baseball*, 25 MARQ. SPORTS L. REV. 491, 512.

⁵³ Editors’ Desk, *Contemporary Labour Law Issues in the Indian Sports Industry – A Comparative Study*, SPORTS LAW REVIEW INDIA, at <https://sportslawreviewindia.blog/2022/07/17/contemporary-labour-law-issues-in-the-indian-sports-industry-a-comparative-study/>.

⁵⁴ 125 C.L.R. 353 (1971).

⁵⁵ Hayden Opie & Graham F. Smith, *Professional Team Sports and Employment Law in Australia: From Individualism to Collective Labour Relations*, 2 MARQ. SPORTS L. J. 219.

In South Africa, there have been some rulings on athletes, but the general trend is that professional team players are employees.⁵⁶ The fact that disputes are being heard at the Commission for Conciliation, Mediation & Arbitration (CCMA) or the Labour Court, where focus is on the legal rules and principles that govern the relationship between employers and employees, is further evidence that professional sports persons are regarded as employees. Professional rugby players, for instance, are covered by the labor laws of South Africa and that, despite the sometimes unique employment environment, all labor law principles are applicable when dealing with professional rugby players.⁵⁷ In *Cronje v United Cricket Board of SA*,⁵⁸ the labor court ruled that the relationship of the United Cricket Board of South Africa with the contracted players is a direct employer-employee relationship and is governed by the terms of their contracts of employment.

E. Employment Status of Filipino Professional Athletes

In the Philippines, the term “*employee*” includes any individual employed by an employer.⁵⁹ Since the definition of the word “employee” is circular, there are tests in jurisprudence to ascertain the relationship between a worker and his employer.

1. Determining Employment Relationship: Four-Fold Test

The first basis for a finding that a worker is an employee is the four-fold test. The test is as follows:

In determining the existence of employer-employee relationship, the following elements are generally considered, namely:

1. The selection and engagement of the employee;
2. The payment of wages;
3. The power of dismissal; and
4. The power to control the employees’ conduct — although the latter is the most important element.⁶⁰

⁵⁶ Susan Smailes, *Sports Law and Labour Law in the Age of (Rugby) Professionalism: Collective Power, Collective Strength*, 28 IND. L. J. 60.

⁵⁷ *SA Rugby (Pty) Ltd v. CCMA & others*, 27 ILJ 1041 (LC); 1 BLLR 27 (LC) (2006), cited in 28 IND. L. J. 59.

⁵⁸ 4 SA 1361 (2001) at 1367J; 22 ILJ 2577, cited in 28 IND. L. J. 60.

⁵⁹ LAB. CODE, art. 97(c).

⁶⁰ *Viaña v. Al-Lagadan*, 99 Phil. 408, 411–412 (1956).

2. *Determining Employment Relationship: Economic Realities Test*

When the control test is insufficient, the economic realities of the employment are considered to get a comprehensive assessment of the true classification of the worker.⁶¹ The test is as follows:

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.⁶²

3. *Are Professional Athletes Employees?*

The first instance wherein a professional athlete was declared as an employee was the case of *Negros Slashers v. Teng*.⁶³ The Supreme Court ruled that Alvin Teng, then a professional basketball player of the Negros Slashers, was an employee. However, there has been no jurisprudence applying the ruling to other professional athletes in team sports. Thus, it is uncertain whether the *Negros Slashers* ruling should be applied generally. In that case, Teng, then a player of the Negros Slashers of the Metropolitan Basketball Association (MBA), was benched in Game 4 of the 2000 MBA Championship round.⁶⁴ He then called in sick in Game 5 and did not play.⁶⁵ Afterwards, Teng's contract was terminated, which prompted him to file a case for illegal dismissal before the NLRC. ⁶⁶ The Supreme Court ruled that Teng, as an employee, correctly went to the NLRC and was illegally dismissed.⁶⁷ While the Court ruled that Teng was an employee, it did not elaborate on why Teng was an employee.

⁶¹ *Ditiangkin v. Lazada E-Services Philippines, Inc.*, G.R. No. 246892, Sept. 21, 2022.

⁶² G.R. No. 246892, Sept. 21, 2022.

⁶³ [Hereinafter "*Negros Slashers*"], G.R. No. 187122, 666 SCRA 629, Feb. 12, 2012.

⁶⁴ *Negros Slashers*, 666 SCRA 629, 632.

⁶⁵ *Negros Slashers*, 666 SCRA 629, 632.

⁶⁶ *Negros Slashers*, 666 SCRA 629, 633.

⁶⁷ *Negros Slashers*, 666 SCRA 629, 642.

Using the four-fold test, Ingles argues that professional athletes in team sports are employees.⁶⁸ *First*, there are ways in which a professional sports team can select an employee. In the PBA, players are drafted, signed from free agency, or acquired through trades.⁶⁹ In the PVL, players were engaged through signing contracts with a team, but starting in 2024, players enter the league through a draft.⁷⁰ Regardless of the mode of engagement, the teams themselves select and engage the players.

Second, the teams pay the wages of the players. For example, in the PBA, the lowest salary is PHP 70,000.00 a month,⁷¹ whereas the maximum salary is PHP 420,000.00 a month for veteran players and the top three draft picks, and the maximum salary for other rookies is PHP 200,000.00 a month.⁷² In the PVL, the highest salary a player can earn is as high as PHP 400,000 a month.⁷³ Although high wages may play a factor wherein a person might be considered as an independent contractor rather than an employee, such high wages is only indicative of an independent contractor relationship.⁷⁴ Ultimately, the team's power to control the actions of a player is more important in determining whether the player is an employee.⁷⁵

Third, as to dismissal, the team may dismiss a player if he or she no longer performs to their required standards. Poor performance or conditioning, injury, or even private misconduct may force the team to dismiss the player.⁷⁶ Age may also be a reason. In fact, in 2016, veterans Eric Menk and Dorian Peña were waived from their PBA teams, the Alaska Aces (which was eventually sold and renamed to the Converge FiberXers on March 23, 2022) and GlobalPort Batang Pier (now the NorthPort Batang Pier),

⁶⁸ Ignatius Michael D. Ingles, *Playing for Wages: Defining the Legal Relationship between Professional Athlete and Team, a Sports Law Perspective on Philippine Labor Law*, 59 ATENEO L.J. 797.

⁶⁹ *Id.* at 797–798.

⁷⁰ BusinessMirror, *PVL breaks new ground with first-ever Rookie Draft*, BUSINESSMIRROR, May 19, 2024, at <https://businessmirror.com.ph/2024/05/19/pvl-breaks-new-ground-with-first-ever-rookie-draft/>.

⁷¹ Gerry Ramos, *How much do the lowest-paid PBA players make? Not bad at all*, SPIN.PH, Mar. 12, 2019, at <https://www.spin.ph/basketball/pba/how-much-salary-do-the-lowest-paid-pba-players-make-ain-t-bad-at-all-a793-20190312>.

⁷² Spin.ph Staff, *PBA set to raise rookie salary cap amid Thirty and Co. move overseas*, SPIN.PH, June 29, 2021, at <https://www.spin.ph/basketball/pba/pba-study-group-proposes-lifting-of-salary-cap-on-rookies-a1374-20210629>.

⁷³ John Mark Garcia, *PVL plans rookie draft, salary cap for 2023-24 season*. SPIN.PH, at <https://www.spin.ph/volleyball/pvl/pvl-to-hold-rookie-draft-set-salary-caps-a5172-20230617>.

⁷⁴ Ingles, *supra* note 68, at 800–801, *citing* *Sonza v. ABS-CBN Broad. Corp.*, G.R. No. 138051, 431 SCRA 583, June 10, 2004.

⁷⁵ *See* Ingles, *supra* note 68, at 801.

⁷⁶ *Id.*

respectively,⁷⁷ to make room for younger players. Furthermore, teams may still cut players or relegate them to the unrestricted free agent list to accommodate new players.

Fourth, and most importantly, the team has the power to control the actions of a player. The greater the right to control the work, the more likely it is that there is an employer-employee relationship.⁷⁸ The team wields the power to control through the coach or the team management.⁷⁹ Players must fit into the mold or mentality of the team by adjusting their style of play so that they can execute plays designed by the coaching staff.⁸⁰ Players who deviate are benched, suspended, traded (transferred to another team in exchange for players or draft picks), or fined.⁸¹ As a recent example, Kelly Nabong, Arwind Santos, and Ronald Tubid of the San Miguel Beermen, were suspended by the team for fighting in practice in December 2019.⁸² Another is Mikey Williams of the TNT Tropang Giga getting suspended for one week for repeatedly missing practice.⁸³ Furthermore, the team exercises control when the player practices through scheduling. When a player misses practice, he may get fined or suspended, as in the case of Mikey Williams. Most importantly, a contract between a team and a player outlines a list of obligations to the team on and off the court or field.⁸⁴ Thus, teams still exercise a degree of control over how the players must perform.

Using the economic realities test, there is difficulty in analyzing whether professional players in the Philippines are employees of the team. While PFL clubs are self-operating, PBA and PVL teams are owned by companies with other businesses. For instance, the San Miguel Beermen, Barangay Ginebra San Miguel, and Magnolia Hotshots Pambansang Manok, three PBA teams, are owned by San Miguel Corporation (“SMC”), which deals in food, alcohol, poultry, and dairy, which are different from sports. However, sports may be classified as a business, and it could be said that

⁷⁷ Jeric Lopez, *PBA vets get waived; All-Star changes up*, MANILA STANDARD, Nov. 9, 2016, at <https://manilastandard.net/?p=220921>.

⁷⁸ Opie & Smith, *supra* note 55, at 218.

⁷⁹ Ingles, *supra* note 68, at 802.

⁸⁰ *Id.*

⁸¹ Ingles, *supra* note 68, at 803.

⁸² ABS-CBN News, *PBA: SMB suspends Nabong, Santos, Tubid after scuffle in practice*, ABS-CBN WEBSITE, NOV. 20, 2019, at <https://news.abs-cbn.com/sports/11/20/19/pba-smb-suspends-nabong-santos-tubid-after-scuffle-in-practice>.

⁸³ Gerry Ramos, *TNT suspends Mikey Williams for one week without pay*, SPIN.PH, Oct. 30, 2022, at <https://www.spin.ph/basketball/pba/tnt-management-metes-disciplinary-action-on-mikey-williams-a793-20221030>.

⁸⁴ IGNATIUS MICHAEL D. INGLES, LAWS FOR SPORTS AND THE SPORTY: A HANDBOOK ON PHILIPPINE SPORTS LAW 46–47.

sports are another business of SMC through their participation in the PBA. The PBA itself recorded PHP 200 million in revenues,⁸⁵ which indicates that basketball teams are a business, even if the costs outweigh the profits, as shown by SMC's PHP 1 billion budget for the operation of its team.⁸⁶ In this line of SMC's business, the players are integral to the team, as they are one of the main factors in whether a team wins or loses games and championships.

As for degree of control, the team's management can suspend a player for poor behavior or the team's coach may bench the player for poor play, as previously mentioned. Furthermore, a player can be cut. As for dependence of players on the team for continued employment, the player may look to other leagues, but the PBA is the highest-paying league, with a maximum contract of PHP 420,000 per month.⁸⁷ While some players like Scottie Thompson⁸⁸ of Barangay Ginebra San Miguel have businesses, many players look to the sport as their main source of income. Thus, the test is satisfied in this regard.

Therefore, in the Philippines, under both the four-fold test and economic realities test, professional athletes in team sports are employees. Thus, they have the rights and protections afforded to employees under the Labor Code.

IV. PLAYER MOVEMENT AND ENTRY SYSTEMS

As Schwab observed, professional teams have employed restrictions on players' freedoms:

In professional team sports, a wide range of controls over the movement of players have been employed from time to time, including: the retain and transfer system; the reserve clause; player drafts; zoning; permit rules; training compensation; home grown

⁸⁵ Joaquin M. Henson, *PBA sets record in revenues*, PHILIPPINE STAR, May 28, 2023, at <https://www.philstar.com/sports/2023/05/28/2269661/pba-sets-record-revenues>.

⁸⁶ SPIN.ph Staff, *RSA says SMC spends P1 billion annually for PBA teams' operation*, SPIN.PH, Sept. 15, 2023, at <https://www.spin.ph/basketball/pba/ramon-s-ang-says-smc-spends-p1-billion-a-year-for-pba-teams-a1374-20230915>.

⁸⁷ SPIN.ph Staff, *supra* note 87.

⁸⁸ Karlo Sacamos, *Preparing for the future, Scottie Thompson puts up barbershop in Digos City*, SPIN.PH, Nov. 1, 2016, at <https://www.spin.ph/basketball/pba/scottie-thompson-barber-shop-team-of-barbers-thompsonbarbers-facebook-ginebra-gilas>.

player rules; and salary caps. These rules all place restrictions on the economic and sporting freedom of the players.⁸⁹

First, it is important to discuss the development of player movement systems throughout the world before moving on to the Philippines.

A. Development of Player Movement Systems in Europe

In European professional leagues, the mode of entry is straightforward. Players first enter the scene through their mother team's youth system. As the player progresses through the age groups, he or she signs a professional contract sometime after the senior team calls him or her up to the mother team.

Movement of players, however, is governed by the transfer system. A transfer was defined by the 1983 URBSFA federal rules as "the transaction by which a player affiliated to an association obtains a change of club affiliation."⁹⁰ Basically, a transfer means a player moving from one team to another. The system governs how and when professional players can move between clubs.⁹¹ In this system, players may move from team to team for a transfer fee if that player is under contract. While failure to agree on a transfer fee may prevent a player from joining his chosen club,⁹² many players currently wait for or demand transfers to bigger teams or to teams willing to give them playing time.

The current system is governed by FIFA's Status and Transfer of Players Regulations, which have been revised since the Bosman ruling.⁹³ Still, most players move between clubs either by waiting for the end of their contract and move on a free transfer, or following the payment of a transfer fee while the player is still under contract.⁹⁴ Transfers for a fee can take place if players want to move while under contract, or when a club simply decides to "sell" them while they are still under contract.⁹⁵ On the players' end, they may only terminate their contracts for "sporting just cause" and other

⁸⁹ Brendan Schwab, *When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System*, 32 MD. J. INT'L L. 4, 19.

⁹⁰ *Bosman*, Case No. C-415/93 (1995).

⁹¹ Geoff Pearson, *Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football "Transfer System*, 21(2) EURO L. J. 221, 222.

⁹² MICHAEL J. BELOFF ET AL., SPORTS LAW 68.

⁹³ Pearson, *supra* note 91, at 226.

⁹⁴ *Id.* at 227.

⁹⁵ *Id.*

exceptional circumstances.⁹⁶ Players may transfer only from June 1 to August 31 and January 1 to January 31 of each year; otherwise, players may not register with a club.⁹⁷ The transfer system in European football also allows for loan agreements for at least six months.⁹⁸ Through loans, players gain opportunities not otherwise found in their mother clubs, and if they improve, the mother club may keep them or “sell” the players to another club for a higher price.

The transfer system has undergone some changes, mainly due to legal developments. In the European Union, transfer policies are subject to Article 45 of the TFEU. Article 45 provides that every worker within the EU has the right to freedom of movement. More specifically, it provides the workers the right to accept offers of employment, to move freely within the territory of EU Member States, and to remain in the territory of another Member State.⁹⁹

Apart from labor laws, the system has also been under the restraint of trade doctrine.¹⁰⁰ Simply put, this doctrine requires that there be a legitimate interest to be protected by any trade restriction, which must be reasonable in scope.¹⁰¹ Otherwise, such restriction is contrary to public policy.¹⁰² Under the doctrine, a few contracts and transfer policies restricting player movement have been declared illegal in Europe, most especially in England and the European Union. The doctrine first found application in the case of *Eastham v. Newcastle United*,¹⁰³ where it was ruled that the “retain and transfer” system, which prevented the movement of a player from one club to another without the permission of the former club, regardless of contractual status, was declared an unreasonable restraint of trade.¹⁰⁴ The *Eastham* ruling then became a step towards freedom of movement of professional players in England—a freedom which Premier League players, as well as players in other leagues, enjoy today.

In Continental Europe, the progression toward freedom of movement took longer. The ECJ first ruled that sports are subject to EU law

⁹⁶ *Id.* at 226.

⁹⁷ Michele Colucci & Felix Majani, *The FIFA Regulations on the Labour Status and Transfer of Players*, 5 *INDONESIAN J. INT'L L.* 681, 688.

⁹⁸ *Id.* at 687.

⁹⁹ Consolidated Version of the Treaty on the Functioning of the European Union, art. 45, 2012 O.J. (C 326) 47.

¹⁰⁰ BELOFF ET AL. *supra* note 92, at 83.

¹⁰¹ BLACKSHAW, *supra* note 40, at 14.

¹⁰² *Id.*

¹⁰³ Schwab, *supra* note 89, at 20, *citing* Ch. 413.

¹⁰⁴ *Id.*

in the case of *Walrave and Koch*.¹⁰⁵ In the Bosman ruling, the ECJ definitively held that professional athletes are covered by the provisions of freedom of movement. Thus, professional football players who were EU nationals were entitled to negotiate their own contracts with new clubs within the EU without their current clubs being able to demand a transfer fee as a condition to sign with the new club.¹⁰⁶ However, the Court in *Bosman* did not apply the EEC Treaty's free movement provisions to a wholly internal situation.¹⁰⁷ Indeed, "the transfer rules were found to be primarily unlawful [...] [only] because their very existence impeded employment opportunities in another part of the Community as such."¹⁰⁸ In short, the rules only applied to movement from one nation to another.

Still, there have been free transfers within a league after the Bosman ruling, none of which have been brought to the courts. Some notable free transfers within a domestic league include defender Sol Campbell from Tottenham Hotspur F.C. to North London rivals Arsenal F.C. in the Premier League,¹⁰⁹ midfielder Andrea Pirlo from Associazione Calcio Milan (AC Milan or Milan) to Turin-based club Juventus,¹¹⁰ and striker Robert Lewandowski from Borussia Dortmund to Bundesliga rivals F.C. Bayern Munich.¹¹¹ Thus, players are free to move even within their respective domestic leagues.

B. Development of Player Movement Policies in the United States

The United States operates on a different model from the European leagues. Players enter the professional leagues through a draft system. Through this system, teams take turns in selecting top prospects until their selections have run out. Generally, the draft order is determined by who loses

¹⁰⁵ Case 36–74 (1974).

¹⁰⁶ Simon Gardiner & Roger Welch, *Bosman — There and Back Again: The Legitimacy of Playing Quotas under European Union Sports Policy*, 4(1) EUR. L. J. 828.

¹⁰⁷ David O'Keeffe & Paul Osborne, *The European Court Scores a Goal*, 12 INT'L J. COMP. LAB. L. & INDUS. REL. 111, 123.

¹⁰⁸ *Id.*

¹⁰⁹ The Guardian, *Sol Campbell joins Arsenal*, THE GUARDIAN, July 3, 2001, at <https://www.theguardian.com/football/2001/jul/03/newsstory.sport3>.

¹¹⁰ Tim Fontenault, *AC Milan Star Andrea Pirlo Reportedly Agrees 3-Year Deal with Juventus*, BLEACHER REPORT, May 12, 2011, at <https://bleacherreport.com/articles/698105-ac-milan-star-andrea-pirlo-reportedly-agrees-3-year-deal-with-juventus>.

¹¹¹ Paul Smith, *Bayern Munich win the race to sign Borussia Dortmund striker Robert Lewandowski*, THE MIRROR, Nov. 10, 2013, at <https://www.mirror.co.uk/sport/football/news/robert-lewandowski-bayern-munich-win-2715710>.

the most games. Whoever has the most losses gets the top selection in the following season's draft.

In the NBA, however, there is a lottery system in which the draft order is determined among the teams that did not make the NBA playoffs, the tournament, with the team that finished last having the highest odds to get the top pick of the next season's draft. When players wish to go to another team, they are usually traded to another team. The trade is usually in exchange for players and/or future picks in succeeding drafts, and sometimes cash considerations as well. In a sense, this is similar to the transfer system wherein a player goes to a team for some sort of compensation, whether in money or in players.

There are also restrictions on player movement. Some of these restrictions included the reserve and option clauses, which represent the most restrictive aspects of the player-control mechanisms. Through the reserve clause, "the team could indefinitely renew the contract of a player, effectively binding him to that club for his entire playing career."¹¹² Meanwhile, the option clause renewed the contract upon the same terms and conditions without further right of renewal.¹¹³

Another prevalent rule was the "compensation rule," which mandates that when a player completes his contract with his old team, the new team must pay compensation to the old team.¹¹⁴ Eventually, however, some restrictions on player movement have been declared void under the restraint of trade doctrine, which in the United States is embodied in the Sherman Antitrust Act. Section 1 provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."¹¹⁵

Beginning in the 1950s, players, represented by "Players Associations," which are their sort of unions, began to use the antitrust laws to challenge league rules that restricted players' earnings and player mobility.¹¹⁶ In *Radovich v. NFL*,¹¹⁷ the US Supreme Court found that American football was clearly engaged in interstate commerce, and was therefore subject

¹¹² Brian E. Lee, *A Survey of Professional Team Sport Player-Control Mechanisms under Antitrust and Labor Law Principles: Peace at Last*, 11 VAL. U. L. REV. 373, 392.

¹¹³ *Id.*

¹¹⁴ In the Matter of Robertson Class Plaintiffs v. Nat'l Basketball Ass'n., 625 F.2d 407 (2d Cir. 1980).

¹¹⁵ THORNTON, *supra* note 37, at 137.

¹¹⁶ WONG, *supra* note 36, at 459.

¹¹⁷ *Id.* at 462, *citing* 231 F.2d 620 (9th Cir. 1956).

to antitrust laws. Thus began the challenges to the movement restriction systems at the time.

In *Smith v. Pro Football*,¹¹⁸ the Court ruled that the draft eliminates economic competition among buyers for the service of sellers, reasoning that the NFL teams are not economic competitors on the playing field. Furthermore, the Court, sticking to competition in an economic sense, held that the draft does not increase competition in the economic sense of encouraging others to enter the market and to offer the product at a lower cost.¹¹⁹

Despite the ruling in *Smith*, the draft persists in the NFL and the other professional leagues in the United States. This did not mean that the draft system was not challenged. For example, it was one of the challenged policies in the case of *Robertson v. National Basketball Association*,¹²⁰ where NBA players, through the National Basketball Players' Association (NBPA) and its president, Oscar Robertson, challenged the reserve clause and the draft. The case was filed by the NBPA after reports of a proposed merger between the NBA and the American Basketball Association but was eventually settled in 1976. Under the settlement, rookies may become free agents if they are not given offers by the team that drafted them.¹²¹ Furthermore, under the settlement, the option clause became illegal, and the "compensation rule" would be eliminated after ten years.¹²²

Most importantly, the settlement of the *Robertson* case paved the way for players to move freely to other teams once their contracts had ended. In the first few years after the ruling, contracts were still long, but eventually they became shorter under the present CBA. Since then, free agency has become a route for players to move to better situations where they can win or make more money. Some of the most notable free agency signings involving NBA superstars were Shaquille O'Neal from the Orlando Magic to the Lakers in 1996,¹²³ LeBron James from the Cleveland Cavaliers to the Miami Heat in

¹¹⁸ *Id.* at 455, *citing* 593 F.2d 1173 (D.C. Cir. 1978).

¹¹⁹ *Id.*

¹²⁰ 556 F.2d 682, June 9, 1977.

¹²¹ *Robertson v. Nat'l Basketball Ass'n.*, 72 F.R.D. 64, 70 n.1 (S.D.N.Y. 1976).

¹²² 556 F.2d 682.

¹²³ Scot Salomon, *Los Angeles Lakers Signed Shaquille O'Neal to Richest NBA Contract 28 Years Ago*, SPORTS ILLUSTRATED, July 18, 2024, at <https://www.si.com/fannation/backinthedaynba/los-angeles-lakers-signed-shaquille-o-neal-to-richest-nba-contract-28-years-ago-01j33ffc6j7m>.

2010,¹²⁴ and Kevin Durant from the Oklahoma City Thunder to the Golden State Warriors in 2016.¹²⁵

However, some players may not move wherever they please. Such players are called “restricted free agents.” A player is a restricted free agent if he has been in the league under a certain number of years under a league’s CBA with the players’ association. This involves a team’s “right of first refusal,” which allows a player’s prior team to match any competing offer and retain the player’s services.

In the NBA, a qualifying offer must be made to make a player a restricted free agent. Qualifying offers may be made to players picked in the first round of the draft finishing the second option year of their rookie contract.¹²⁶ The same qualifying offers may be made to players who have played three years or less in the NBA at the end of their contracts.¹²⁷ Provisions on restricted free agents in the NFL¹²⁸ and the NHL¹²⁹ are also embodied in their respective CBAs.

C. Player Movement Policies in Asia

There are similar provisions restricting movement in Asian leagues. For example, in the Korean Baseball Organization (KBO), there is a reserve clause, but upon a closer reading, this clause is more similar to a restriction in a restricted free agent contract. A provision in the KBO Uniform Players’ Contract, states that any instance in which a contracted player leaves Korea constitutes a breach of contract, thereby restricting the player from playing for any other baseball team worldwide.¹³⁰ In Japan, the baseball system provides for a “posting system” under which Nippon Professional Baseball players who do not have the requisite nine years of professional experience to

¹²⁴ ESPN.com news services, *Heat stars sign six-year deals*. ESPN, July 9, 2010, at <https://www.espn.com/nba/news/story?id=5368003>.

¹²⁵ Kevin Durant, *My Next Chapter*, THE PLAYERS’ TRIBUNE, July 4, 2016, at <https://www.theplayerstribune.com/articles/kevin-durant-nba-free-agency-announcement>.

¹²⁶ 2023 NBA-NBPA Collective Bargaining Agreement, Art. XI, § 4 (a)(i) (July 1, 2023), at <https://ak-static.cms.nba.com/wp-content/uploads/sites/4/2023/06/2023-NBA-Collective-Bargaining-Agreement.pdf>.

¹²⁷ *Id.* See Art. XI, § 4 (b).

¹²⁸ See 2020 NFL-NFLPA Collective Bargaining Agreement, Art. 9, § 2 (Mar. 15, 2020), at <https://nflpaweb.blob.core.windows.net/website/PDFs/CBA/March-15-2020-NFL-NFLPA-Collective-Bargaining-Agreement-Final-Executed-Copy.pdf>.

¹²⁹ See 2012 NHL-NHLPA Collective Bargaining Agreement, Art. 10, 10.2 (Sept. 16, 2012–Sept. 15, 2022).

¹³⁰ John Kim, *An Examination of the KBO Reserve Clause and Its Legal Implications for American Baseball Players*, 4 ARIZ. ST. U. SPORTS & ENT. L.J. 138, 162.

gain international free agency can request to be “posted” for Major League clubs.¹³¹ On the other hand, basketball and football transfers in Japan are more similar to those in Europe. For instance, Kai Sotto was loaned from his mother club, the Hiroshima Dragonflies, to the Yokohama B-Corsairs, during the 2023 to 2024 B.League season.¹³² In China, there were restrictions to prevent top players from going abroad, but they have been eventually relaxed as the years went on.¹³³

D. Player Movement Systems in the Philippine Setting

In the Philippines, the mode of entry depends on the sport. For instance, in volleyball and football, players simply sign contracts with a professional team and move only upon transfer or termination of their contracts. In football, which is subject to the FIFA transfer system, clubs like Kaya Iloilo FC¹³⁴ and Stallion Laguna¹³⁵ have an academy system in which players may be promoted to their professional team. Both teams, which are members of the Philippines Football League (PFL), have these as a requirement. The PFL requires that a club must have a written youth development program approved by the Philippine Football Federation (PFF).¹³⁶ This is part of the rules that clubs should each have at least two youth teams that train and compete regularly. Players may also be signed directly from a collegiate team. The system used to be similar in the PVL, although for collegiate players. However, the PVL has implemented a draft system since 2024.¹³⁷

In the PBA, players generally enter through a draft system, but undrafted players may sign contracts with any team. Players are usually moved by being traded to other teams, but especially in the past, a player must be dropped unconditionally by his mother ballclub to become an unrestricted

¹³¹ MLB, *Japanese Posting System*, MLB Website, on <https://www.mlb.com/glossary/transactions/japanese-posting-system>.

¹³² Nikole Javier, *Kai Sotto transfers to Yokohama in B.League*, MANILA BULLETIN, Dec. 28, 2023, at <https://mb.com.ph/2023/12/28/kai-sotto-shifts-teams-in-japan-b-league-as-he-recovers-from-back-injury>.

¹³³ Tien-Chin Tan & Alan Bairner, *Globalization and Chinese Sport Policy: The Case of Elite Football in the People's Republic of China*, 2010 CHINA Q. 581, 591–592.

¹³⁴ *Programs*, KAYA FC ACADEMY WEBSITE, at <https://www.kayafcacademy.com/programs/>.

¹³⁵ Lerche Njang, *New Look Stallion Academy Is The Best Place For Youth Players*, THE SPORTS COLUMN, Aug. 15, 2017, at <https://www.thesportscol.com/2017/08/new-look-stallion-academy-is-the-best-place-for-youth-players/>.

¹³⁶ Club Licensing Regulations for Philippines Football League, 6.2.

¹³⁷ BusinessMirror, *supra* note 70.

free agent.¹³⁸ Unlike in the NBA, a player cannot move from team to team at will upon his contract's expiration.

Recently, however, the PBA instituted a rule that players who had played seven years in the PBA are automatically unrestricted free agents upon the end of their contracts or upon renunciation of their rights by their mother teams.¹³⁹ Still, the new unrestricted free agent rule is only applicable to players who applied for the 2014 PBA Draft and beyond. Those drafted before them must have their rights renounced by their mother team to become an unrestricted free agent and sign with any other team. This was the case when Jared Dillinger was put on the unrestricted free agent list by the MERALCO Bolts of the PBA. Afterwards, he was signed by Barangay Ginebra San Miguel.¹⁴⁰ Players drafted from 2014 onwards must either first be released by their respective teams, or have completed their seventh season in the PBA before they can sign anywhere after their contract ends. For example, in 2023, the Converge FiberXers released their rights to Jeron Teng who was drafted in the 2017 PBA Draft.¹⁴¹

The PBA has rules for free agency and for the draft which were instituted recently.¹⁴² For one, free agents are subject to right of first refusal if a team other than his old team offers him a contract. If the offer is matched and a player refuses, he will have to sit out for five years, unless he accepts the mother team's offer within two years. If the player still refuses to sign, he may sign with another team only after the five-year sit-out period. Another rule is that unrestricted free agents can sign with other squads if the mother team does not give them a new offer to re-sign within 30 days of his contract's expiration. Furthermore, live contracts cannot be terminated except for medical reasons. Pre-termination of the deal by the player, including retirement and leave of absence, constitutes a breach, which will subject both the player and the team to hefty fines. Likewise, the player will be banned from the PBA.

¹³⁸ Dodo Catacutan, *By 2021, PBA will finally have 'real' unrestricted free agents*, SPIN.PH, July 2, 2019, at <https://www.spin.ph/life/guide/in-two-years-pba-will-finally-have-unrestricted-free-agency-a791-20190702>.

¹³⁹ *Id.*

¹⁴⁰ Jan Ballesteros, *Ginebra scoops up Jared Dillinger from free agent pool*, ESPN, May 31, 2019, at https://www.espn.com/basketball/pba/story/_/id/26860438/ginebra-scoops-jared-dillinger-free-agent-pool.

¹⁴¹ Matthew Li, *Converge, Jeron Teng part ways*, TIEBREAKER TIMES, Sept. 19, 2023, at <https://tiebreakertimes.com.ph/tbt/converge-jeron-teng-part-ways/281769>.

¹⁴² Eros Villanueva, *PBA announces new rules for free agents and rookies*, ESPN PHILIPPINES, July 24, 2021, at https://www.espn.ph/basketball/pba/story/_/id/31872752/pba-bares-new-rules-free-agents-rookies.

The current draft policy is as follows:

1. A draft applicant, whether local or Filipino-foreigner, is eligible if he is 22 years old and above or at least 19 but has completed at least two years of college.
2. A draft applicant must have studied and played in collegiate leagues in the country before playing in a professional league overseas, regardless of age, provided that he joins the PBA draft within the third year of his eligibility.
3. If the applicant decides to join the draft in the fourth or fifth year of his eligibility after playing in a pro league overseas, he will have to go through a special computer-generated lottery among the 12 teams.
4. The application of an applicant who has played abroad and joined the draft in the sixth year of his eligibility or more is subject to conditions and approval of the Board of Governors.¹⁴³

The new PBA rules were made after many players ventured overseas to play basketball in other professional leagues. It is a strong possibility that the restrictions were imposed to dissuade players from going overseas by threatening to remove the possibility of a PBA career after an overseas stint. As previously mentioned, the PBA's popularity has been declining, and attendance figures have been dropping,¹⁴⁴ so the PBA needs the popular collegiate basketball stars to help revitalize the league. However, the policies implemented by the league threaten the players' right to seek employment and freedom to contract.

V. RESTRICTIONS ON PROFESSIONAL PLAYERS

There have been restrictions on players in domestic leagues before. However, they were mostly on foreign players, and some were disciplinary.

Before and even after the Bosman ruling, there have been restrictions on the number of foreign players who can play for a team in a domestic league. In the Premier League, for example, clubs can sign up to 25 players for the senior team squad. However, at least eight of the 25 players should be

¹⁴³ PBA, *Revised policy to be implemented for 2023 Draft*, PBA WEBSITE, Aug. 30, 2023, at <https://www.pba.ph/news/revised-policy-to-be-implemented-for-2023-draft>.

¹⁴⁴ Concept News Central, *Exodus hurting the PBA*, DAILY TRIBUNE, Apr. 21, 2024, at <https://tribune.net.ph/2024/04/20/exodus-hurting-the-pba>.

“homegrown,” which means they merely need to have been on the books of a club affiliated with the English Football Association for at least three years before they turn 21 years of age.¹⁴⁵ Examples of homegrown foreigners include Francesc ‘Cesc’ Fàbregas of Spain,¹⁴⁶ Gabriel Martinelli of Brazil,¹⁴⁷ and William Saliba of France,¹⁴⁸ all of whom played, or are currently playing, for Arsenal FC. They are considered homegrown because they were signed by Arsenal at least three years before turning 21. In La Liga, each club is allowed five non-EU players, or players without an EU passport. Furthermore, clubs are only allowed to name three non-EU players in each matchday squad.

The PBA and PVL restrict entry into the league to a point that only Filipino players can play as permanent players. Foreign players can only enter the league as imports in certain tournaments called conferences. Both leagues have All-Filipino conferences as part of their tournaments, in which only natural-born Filipino citizens can compete. Naturalized players like Marcus Douthit, Andray Blatche, and Justin Brownlee can only play as imports.¹⁴⁹ Furthermore, the PBA and PVL have “reinforced conferences” wherein only one import for each team can play. The PBA has also imposed height limits for imports in select tournaments,¹⁵⁰ as well as restrictions against employing too many “Filipino-foreigners,” which are Filipinos born or based abroad.¹⁵¹

Other leagues in Asia have restrictions on imports as well. In the KBL, teams can have up to one Asian Quota player from Japan or the Philippines and up to two imports from the rest of the world—otherwise called “world imports.” However, world imports cannot play together.

¹⁴⁵ Soham Mukherjee, *How many foreign players can a Premier Club Sign?*, GOAL.COM, at <https://www.goal.com/en/news/how-many-foreign-players-can-a-premier-league-club-sign/bltb28934959d4e82d3>.

¹⁴⁶ Goal, *Premier League Home Grown Players rule – how does it work?*, GOAL.COM, Mar. 9, 2018, at <https://www.goal.com/en/news/premier-league-home-grown-players-rule---how-does-it-work/1mww3y06t775v1a7c6139153ji>.

¹⁴⁷ Arsenal Media, *Gabriel Martinelli to join club*, ARSENAL FC WEBSITE, July 2, 2019, at <https://www.arsenal.com/news/gabriel-martinelli-join-club>.

¹⁴⁸ Jack McGraghan, *Arsenal complete £.27m Saliba signing as defender loaned back to Saint-Etienne*. GOAL.COM, July 26, 2019, at <https://www.goal.com/en/news/arsenal-complete-27m-saliba-signing-as-defender-loaned-back-to-saint-etienne/16ax2seugaly11evkkgdy5jguu>.

¹⁴⁹ Camille B. Naredo, *Naturalized players can be imports in PBA, says league chairman*, ABS-CBN NEWS, Jan. 10, 2022, at <https://news.abs-cbn.com/sports/01/10/22/naturalized-players-can-be-imports-in-pba>.

¹⁵⁰ Bill Velasco, *Are height limits outdated?* PHILIPPINE STAR, Feb. 12, 2024, at <https://www.philstar.com/sports/2024/02/12/2332703/are-height-limits-outdated>.

¹⁵¹ Gerry Ramos, *Cariaso hopes PBA lifts limit of five Fil-foreigners per team*, SPIN.PH, Oct. 4, 2024, at <https://www.spin.ph/basketball/pba/cariaso-hopes-pba-reconsiders-long-time-rule-on-five-fil-ams-per-team-a793-20211004>.

Furthermore, naturalized players not from Asia are counted as world imports. As for the Asian Quota, both of the player's parents must be a citizen of the country of origin. The B.League has similar restrictions to that of the KBL, but teams in the B.League may employ one more world import than the KBL, and Asian Quota Players there may have at least one parent from their country of origin if those players have played for the national team in FIBA competitions as a local. For instance, while Dwight Ramos of the B.League's Levanga Hokkaido is Filipino-American, he may still play in the B.League as he has played for the Philippine national team as a local.

Some leagues have even banned players currently playing in the league at the time. In the NBA, Micheal Ray Richardson was banned from the league for use of cocaine. He was given an opportunity to be reinstated,¹⁵² but then played overseas for the rest of his career. In the PBA, the first instance of a ban was against Rudy Distrito, who was banned from the league for undercutting Jeffrey Cariaso while the latter was shooting a layup in Game 4 of the All-Filipino Cup final.¹⁵³ Another incident involved former NBA player Renaldo Balkman, who choked his teammate Arwind Santos while playing as an import for the Petron Blaze Boosters (now the San Miguel Beermen) in the Commissioner's Cup. Balkman was banned from the PBA until he showed good behavior.¹⁵⁴ Ultimately, the ban was lifted before the 2018 PBA Commissioner's Cup,¹⁵⁵ and Balkman was able to play for the San Miguel Beermen in that tournament. However, the aforementioned players were already playing in the league at the time they were banned. Furthermore, the above restrictions on entry were for foreigners, not citizens of the home nation of the above-mentioned leagues, and some were for unruly behavior.

VI. LEGALITY OF PLAYER MOVEMENT RESTRICTIONS IN THE PHILIPPINES

As previously discussed, the foreign jurisdictions labeled several practices such as the reserve and option clauses, the retain-and-transfer system, and the compensation rule as unlawful for limiting freedom of

¹⁵² Sam Goldaper, *Richardson is Banned as Tests Find Cocaine*, NEW YORK TIMES, Feb. 26, 1986, at <https://www.nytimes.com/1986/02/26/sports/richardson-is-banned-as-tests-find-cocaine.html>.

¹⁵³ Randolph B. Leongson, *Where does Abueva ban rank among harshest punishments in PBA? Let's see*, SPIN.PH, June 5, 2019, at <https://www.spin.ph/basketball/pba/calvin-abueva-and-harshest-punishments-suspensions-in-the-pba-basketball-a2437-20190605>.

¹⁵⁴ Joaquin M. Henson, *No lifetime ban on Balkman*, PHILIPPINE STAR, Mar. 14, 2013, at <https://www.philstar.com/sports/2013/03/14/919478/no-lifetime-ban-balkman>.

¹⁵⁵ Leongson, *supra* note 153.

movement of workers. However, these foreign jurisdictions had a statutory or treaty basis for ruling as such. A similar legal analysis must be applied in the Philippine jurisdiction. A difficulty is the absence of cases regarding player movement. Although the Philippines has *Negros Slashers v. Teng*, the ruling was on illegal dismissal, not on Teng's freedom to switch teams.

Restricted free agency, for one, affects where the player can sign, since his or her mother team retains the first right to a player once his or her contract ends. It can be a reasonable restriction if the period is reasonable. However, when the period of restricted free agency is too long, it can run counter to the freedom of choice of *employment* to workers. Furthermore, it can be an unreasonable restraint of trade.

The restraint of trade doctrine has been applied in the Philippines, having been brought from the United States. In this jurisdiction, "restraint of trade or occupation embraces acts, contracts, agreements or combinations which restrict competition or obstruct due course of trade."¹⁵⁶ The case of *Del Castillo v. Richmond*,¹⁵⁷ citing *Ollendorff v. Abrahamson*, further states:

[A] contract by which an employee agrees to refrain for a given length of time, after the expiration of the term of his employment, from engaging in business, competitive with that of his employer, is not void as being in restraint of trade if the restraint imposed is not greater than that which is necessary to afford a reasonable protection.¹⁵⁸

Furthermore, there is already a competition statute in the Philippines in Republic Act No. 10667, otherwise known as the Philippine Competition Act ("PCA"). Section 14, which governs anti-competitive agreements, provides as follows:

(a) The following agreements, between or among competitors, are per se prohibited:

- (1) Restricting competition as to price, or components thereof, or other terms of trade;
- (2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

¹⁵⁶ *Avon Cosmetics, Inc. v. Luna*, G.R. No. 153674, 511 SCRA 376, 391, Dec. 20, 2006.

¹⁵⁷ 45 Phil. 679 (1924).

¹⁵⁸ 45 Phil. 679, 684.

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.¹⁵⁹

Agreements under the PCA need not include contracts. Under Section 4(b), they also include any type of “arrangement, understanding, collective recommendation, or concerted action,” whether formal or informal, explicit or tacit, written or oral. Thus, conduct by teams of a particular league may fall under the provisions of the PCA if they substantially limit competition. For agreements to be anti-competitive, its effect on limiting the competition must be substantial.

Restricted free agency among the teams might limit the competition. In the PBA, teams compete to win games and trophies. The restricted free agency policy will limit who has the rights to engage a player’s services. Furthermore, the policy may be either written in the contract or be apparent from the conduct of the teams in trying to secure a player’s services. It may substantially limit competition from other teams for the player’s services if the period of right of first refusal is too long.

Restricted free agency might be similar to a non-compete clause in business contracts. A non-compete clause is “a contractual undertaking effective after the cessation of the employment relationship between the

¹⁵⁹ Rep. Act No. 10667 (2015). Philippine Competition Act.

parties.”¹⁶⁰ It may have a stipulation that a violation of the said clause makes the employee liable to his former employer for liquidated damages.¹⁶¹

In *Ferrazini v. Gsell*,¹⁶² the Supreme Court of the Philippines ruled as follows:

In the United States it is well settled that contracts in undue or unreasonable restraint of trade are unenforceable because they are repugnant to the established public policy in that country. Such contracts are illegal in the sense that the law will not enforce them. The Supreme Court of the United States, in *Oregon Steam Navigation Co. vs. Winsor* (20 Wall., 64), quoted with approval in *Gibbs vs. Consolidated Gas Co. of Baltimore* (130 U. S., 396), said:

Cases must be judged according to their circumstances, and can only be rightly judged when the reason and grounds of the rule are carefully considered. There are two principal grounds on which the doctrine is founded that a contract in restraint of trade is void as against public policy. One is, the injury to the public by being deprived of the restricted party's industry; and the other is, the injury to the party himself by being precluded from pursuing his occupation, and thus being prevented from supporting himself and his family.

And in *Gibbs vs. Consolidated Gas Co. of Baltimore*, *supra*, the court stated the rule thus:

Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, that contract may be sustained. The question is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable.

In *Solidbank v. Rivera*,¹⁶³ the Court ruled that while contracts limiting rights to seek employment or put up a business elsewhere should be scrutinized, it is also important to protect the enjoyment of an establishment in trade or profession. Thus, although freedom to contract must not be unreasonably abridged, a man's right to protect his business by reasonable restrictions should not be denied. The Court then issued this test of reasonableness as follows:

¹⁶⁰ *Portillo v. Rudolf Lietz, Inc.*, G.R. No. 196539, 683 SCRA 568, 580, Oct. 10, 2012.

¹⁶¹ 683 SCRA 568, 580 (2012).

¹⁶² 34 Phil. 697, 712–713 (1916).

¹⁶³ G.R. No. 163269, 521 Phil. 628, April 19, 2006.

Thus, in determining whether the contract is reasonable or not, the trial court should consider the following factors: (a) whether the covenant protects a legitimate business interest of the employer; (b) whether the covenant creates an undue burden on the employee; (c) whether the covenant is injurious to the public welfare; (d) whether the time and territorial limitations contained in the covenant are reasonable; and (e) whether the restraint is reasonable from the standpoint of public policy.¹⁶⁴

However, as opposed to a non-compete clause, restricted free agents in the PBA cannot simply leave their team, as opposed to ordinary employees. Their employment might be terminated, but their mother teams may still exercise their right of first refusal on the players. Ordinary employees under a non-compete clause, on the other hand, may go to the competitors at risk of incurring a breach.

The application of the test in *Solidbank* to the restricted free agent policy of the PBA is as follows: *First*, the policy protects the legitimate business of the employer, which is to operate a team and build it to win games and eventually championships. This allows the teams to retain their first right to key players that may aid them in winning championships. *Second*, a burden could be created if the player wants an opportunity in another team, but the team wants to keep him. However, such a burden is not necessarily an undue burden. *Third*, there could possibly be no limitations contained in the contracts signed by the players since PBA teams are not based in cities or municipalities in the Philippines.

The time limitation of seven years, however, is not reasonable. While the Court has upheld a time limit of two years for being a reasonable restraint of trade,¹⁶⁵ seven years is far longer than two years. The time limit is not reasonable especially when taken from the standpoint of public policy. It must be remembered that the employer-employee relationship is much affected with public interest.¹⁶⁶ In fact, Article 1700 of the Civil Code provides that “[t]he relations between capital and labor are not merely contractual” and that “they are so impressed with public interest that labor contracts must yield to the common good.”

Furthermore, the Labor Code provides the following declaration of policy in terms of employment in Article 12:

¹⁶⁴ 521 Phil. 628, 656.

¹⁶⁵ *Tiu v. Platinum Plans Phils. Inc.*, G.R. No. 163512, 517 SCRA 101, Feb. 28, 2007.

¹⁶⁶ *Pakistan Int'l Airlines v. Ople*, G.R. No. 61594, 190 SCRA 90, 93, Sept. 28, 1990.

It is the policy of the State:

- a) To promote and maintain a state of full employment through improved manpower training, allocation and utilization;
- b) To protect every citizen desiring to work locally or overseas by securing for him the best possible terms and conditions of employment;
- c) To facilitate a free choice of available employment by persons seeking work in conformity with the national interest;
- d) To facilitate and regulate the movement of workers in conformity with the national interest;
- e) To regulate the employment of aliens, including the establishment of a registration and/or work permit system;
- f) To strengthen the network of public employment offices and rationalize the participation of the private sector in the recruitment and placement of workers, locally and overseas, to serve national development objectives;
- g) To insure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad.

Thus, the State has the responsibility to promote a state of full employment, to facilitate a free choice of available employment, and to facilitate the movement of workers. Movement of workers must not be unduly restricted. This is especially true for players who are currently not under contract.

As for the restriction on movement to other leagues on a live contract, the rule is that players who move to other leagues while on a live contract will be banned from the PBA. First, the restriction protects a legitimate interest of the team, which is to maintain competitiveness against other teams within the PBA and against other teams from other leagues. However, this restriction places an undue burden on the part of the player, which is an employee in the PBA. The undue burden is that the player cannot go back to the PBA. Although stars have a good chance of getting signed in the B.League, the options are limited if the player has one Filipino parent; for instance, the player cannot sign with a KBL team and he is banned from the PBA for life. He may go to other leagues like the MPBL and the PSL, but they do not pay as well as the PBA does. For comparison, the MPBL has a maximum monthly salary of PHP 50,000.00,¹⁶⁷ as opposed to the PBA's maximum of PHP 420,000.00 per month.

¹⁶⁷ From the Wires, *MPBL vows strict implementation of P50,000 monthly salary cap for players*, SPIN.PH, June 7, 2019, at <https://www.spin.ph/basketball/mpbl-vows-strict-implementation-of-p50-000-monthly-salary-cap-for-players-a1373-20190607>.

As previously stated, several restrictions have been imposed in the various domestic leagues and even continental federations. However, some of them have been ruled illegal, as in the *Bosman* ruling, either for preventing freedom of movement or for restraint of trade. Thus, player movement restrictions do not have that much effect, especially when contracts have ended.

Currently, the longest a PBA player can sign is three years. However, many PBA players sign one-year contracts. It can actually be argued that once a PBA player signs a contract with a team, that team holds the right of first refusal to the player for his first seven years in the PBA, no matter how long the initial contract was. While “fringe players” might be content with this, as they are playing to lengthen their careers, “stars” or top players, due to their higher level of skill and talent as compared to most players, cannot choose wherever they want to go. Even some “fringe players” will need to go elsewhere if they are not getting enough opportunities to play.

Furthermore, a lifetime ban from the PBA for termination of contract is unreasonable. An unlimited time limit is not reasonable, especially in terms of professional athletes. Professional basketball players have an average career of 10 to 12 years, which means they need to maximize their playing years. They need to earn as much as possible. Although there are other leagues that may provide employment, such as the MPBL and PSL, the PBA is the top professional league; thus, it offers the highest wages to a player based in the Philippines.

Finally, leaving the entry of a player to the mercy of a governing board of a professional league directly goes against the Labor Code’s state policy to promote and maintain a state of full employment for workers, whether here or abroad. It also goes against the Constitution’s policy to protect the rights of workers to full employment, whether here or abroad. It must be emphasized that the players concerned are Filipino citizens, who can be the only full-time players in leagues like the PBA, the PVL, the MPBL, and the PSL. As Filipino citizens, they enjoy the rights under the Labor Code and especially the Constitution.

With the foregoing considered, restricted free agency is a reasonable restriction to protect the team’s business interest. Such policy is reasonable if the limitations therein are reasonable. If the time limit of the right of first refusal is too long or is indefinite, the policy is not reasonable and is an undue restriction on the players’ right to full employment under the Labor Code. Another policy against the right of workers to full employment is the PBA’s

draft policy, as it leaves the players at the mercy of the governing board. Finally, a lifetime ban for breach of contract also violates the right to full employment, and thus, should be illegal. This particularly denies players, especially those who cannot get overseas offers, the right and the opportunity to maximize one's earnings from one's skill as a player.

VII. CONCLUSION

As discussed above, professional players are employees in the Philippines, the same case as in the United States, the United Kingdom, and the European Union. The basis is not only in the similarity of cases but also in the local law provided in the Philippines, through the Labor Code and doctrines from jurisprudence, specifically the four-fold test and the economic realities test. Indeed, they are entitled to the rights and benefits of an employee under the Labor Code. Thus, some movement restrictions should not be allowed in Philippine sports leagues such as the PBA and the PVL. For one, no Filipino citizen must be banned from seeking employment in these leagues. Lifetime bans on players who pre-terminate their contracts also go against state policy and violate the right of players to earn a wage and to seek full employment in any establishment. They likewise deny players their opportunity to maximize their earnings from their skills as players, especially if they cannot play overseas.

Restricted free agency may be allowed in sports leagues, but being similar to non-compete clauses, the time limit and geographical parameters must be reasonable, as established in jurisprudence. The PBA's restricted free agency period, consisting of seven years, is not such a reasonable time limit, especially considering that the maximum duration of PBA rookie contracts is only three seasons. The time limit for restricted free agency must be shorter for players to be given a chance to play elsewhere for money or more playing time.

Furthermore, Filipino citizens seeking to enter a Philippine sports league should be given an opportunity to enter the league without restrictions. Restrictions to entry may limit the options of players to find leagues to play in. For instance, once the PBA draft restrictions are applied to regular players, who are Filipino citizens, they may lose employment opportunities and a chance to earn more money if they join the draft in the fifth and sixth years of eligibility. This subjects their employment chances to the mercy of the Board of Governors. This also goes for players who might be banned for pre-terminating their contracts in their leagues. Although they will find

employment in other professional leagues, these other professional leagues do not pay as well as the top league, especially for basketball players.

Lastly, it is conceded that the preference of young athletes to ply their trade abroad will affect our domestic professional leagues. It is understandable that professional leagues will do anything within their power to get young superstars to play there. After all, a professional league will need younger superstars to take over when the past generation of superstar athletes have aged or retired. These younger superstars will help greatly in marketing the league to fans and generate interest and revenue. However, a league's interest in generating interest should not lead to measures which basically force a player to choose that league instead of better offers from overseas leagues. Such measures violate a player's free choice of available employment and his or her freedom to move to other places to gain employment. A player, as an employee, should have the right to go back to such domestic professional league as a fallback should his or her overseas career end sooner than expected. That will protect a player's right to free choice of available employment and freedom of movements.

VIII. RECOMMENDATIONS

The present PBA restrictions should be challenged before the courts and declared contrary to law and public policy. The period for restricted free agency should be lessened to a period like five years. A period of seven years constitutes an unreasonable restraint of trade. Furthermore, the draft policies and lifetime ban violate state policy in the Labor Code by being against the right to freedom of workers to seek employment anywhere.

Another recommendation is the enactment of a law from Congress or regulation from the Games and Amusements Board establishing the status and rights of professional athletes in team sports. Such law or regulation must confirm the status of professional players in team sports. This will ensure that professional athletes' rights to full employment and freedom of movement are protected by the law.