

THE MYTH & MYSTERY OF PERSONAL SEAT LICENSES AND SEASON TICKETS: LICENSES OR MORE?

INTRODUCTION

Professional sports have been a source of entertainment to Americans for decades.¹ Sports is a multi-billion dollar industry² with franchises gaining revenue from ticket sales, parking, concessions, broadcasting contracts, licensing, and merchandise. In fact, the average family of four spends \$164.43 at a Major League Baseball game³ and \$329.82 at a National Football League game.⁴

As the business of the sports industry expands, more and more professional teams are marketing season tickets and seat licenses to fans. Indeed, season tickets have become a hot commodity among fans. In some sports franchises, thousands of fans sign up on waiting lists just for the right to purchase season

1. Robert Taylor Bowling, Comment, *Sports Aggravated: The Fan's Guide to the Franchise Relocation Problem in Professional Sports*, 28 STETSON L. REV. 645, 645 (1999).

2. Richard M. Nichols, *Agent, Lawyer, Agent/Lawyer . . . Who Can Best Represent Student Athletes?*, ENT. & SPORTS LAW, Fall 1996, at 1; see also GLENN M. WONG, ESSENTIALS OF SPORTS LAW 3 (3d ed. 2002). "Professional sports leagues make up a large share of the more than \$150 billion sports industry in the United States." *Id.* In fact, in 2005 the NFL reported \$5.7 billion in revenues. Karl Taro Greenfeld, *The Big Man*, SPORTS ILLUSTRATED, Jan. 23, 2006, at 58.

3. Team Marketing Report, Fan Cost Index: Major League Baseball 2005, http://www.teammarketing.com/fci.cfm?page=fci_mlb2005.cfm (last visited Nov. 12, 2006).

4. Alan Snel, *\$363.85: Taking the Family to Raymond James Stadium to See the Bucs These Days Comes with Its Own Sticker Shock*, TAMPA TRIB., Sept. 8, 2005, at 1. This average cost index is "made up of the prices of four average-price tickets, two small draft beers, four small soft drinks, four regular hot dogs, parking for one car, two game programs and two of the cheapest adult-size adjustable caps." *Id.*; see also Team Marketing Report, Fan Cost Index: National Football League 2005, http://www.teammarketing.com/fci.cfm?page=fci_nfl_05.cfm (last visited Nov. 12, 2006). Additionally, costs for professional sports fans have steadily climbed over time. In fact, the average cost has increased markedly since the Team Marketing Report's inception in the 1991 professional sports seasons. In 1991, the average family of four spent \$79.41 at a MLB game and \$151.33 at a NFL game, representing an increase in the average cost in excess of 100 percent in both leagues. See Team Marketing Report, Fan Cost Index: Major League Baseball 1991, http://www.teammarketing.com/fci.cfm?page=fci_mlb1991.cfm (last visited Nov. 12, 2006); Team Marketing Report, Fan Cost Index: National Football League 1991, http://www.teammarketing.com/fci.cfm?page=fci_nfl_91.cfm (last visited Nov. 12, 2006).

tickets.⁵ The increased interest in season tickets results in legal issues arising from the purchase of season tickets and/or ownership of seat licenses.

Professional sports fans make substantial investments in their preferred team through time watching games and following team news, money spent to purchase season tickets and seat licenses, and of course, emotions involved in the ups and downs of following the team over several years.⁶ Professional sports teams raise large revenue through their sale of season tickets and seat licenses. For these reasons, it is important to both the fan and the team to understand the rights that result from the purchase of season tickets and seat licenses.

This Comment will discuss a fundamental issue of fans' rights: the property rights arising from seat licenses and the season ticket holder status. Traditionally, sports franchises that sell seat licenses and season tickets classify them in total as a license. However, careful analysis reveals that holders of personal seat licenses and season tickets have greater interests in these properties than a traditional licensee. Accordingly, the season ticket holder status and the personal seat license should be afforded more consideration than a license.

Part I of this Comment defines season tickets and personal seat licenses and discusses characteristics common to each. Part II presents the legal background surrounding season ticket holder claims. Part III analyzes the property traits of season ticket holder status and personal seat licenses and argues for free ability to alienate these property interests. Finally, Part IV discusses the need for uniform treatment of these property interests and possible issues with the implementation of procedures for achieving uniformity.

I. WHAT ARE SEASON TICKETS AND PERSONAL SEAT LICENSES?

Professional sports franchises market season ticket packages that give the purchaser the right to a specific seat in the franchise stadium for every regular season game that franchise plays in the stadium.⁷ Additionally, season ticket

5. James T. Reese et al., *National Football League Ticket Transfer Policies: Legal and Policy Issues*, 14 J. LEGAL ASPECTS OF SPORT 163, 165–66 (2004).

6. When the Cleveland Browns announced their plans to leave Cleveland, their fans emotions were deeply affected. Terrence Monmaney, *Feeling Blue over the Browns: Why Do Sports Fans Such as Cleveland's Become so Distraught when Their Teams Leave Town? Researchers Cite 'Reflected Glory,' Self-Esteem and Even Hormones*, L.A. TIMES, Jan. 27, 1996, at A1. In fact, many Browns fans experienced depression and anxiety as a result of the team's relocation. *Id.* Psychologists believed this emotional and psychological distress was the result of a deep tradition of Browns football for fans in the Cleveland area. *Id.*

7. Mark Levengood, Comment, *Unregistered Securities in the National Football League: Can the Securities Act of 1933 Protect Season Ticket Holders and Personal Seat License Holders?*, 11 VILL. SPORTS & ENT. L.J. 411, 414 (2004).

packages generally give the purchaser rights to purchase tickets for the same seat during highly sought after games.⁸ For instance, most professional sports fans that purchase season ticket packages enjoy the extraordinary right to purchase tickets to post-season games, as well as All-Star Games played in the stadium.⁹ Additionally, they have the right to purchase individual and group tickets to regular season games prior to their availability to the general public.¹⁰ The prices of such packages vary widely between stadiums and according to seat locations.¹¹

In recent years, sports franchises have conditioned the purchase of season tickets, especially for premium seating, on the fan's purchase of a personal, or private, seat license (PSL).¹² The rights conveyed by the PSL vary among different franchises.¹³ However, the seat license typically gives the purchaser a right to buy season tickets in a premium seat location in the future.¹⁴ Often, these licenses also give the purchaser the right of first refusal for post-season tickets and the right to transfer the PSL.¹⁵ The term of the PSL also varies from franchise to franchise.¹⁶ In some cases, the PSL has an indefinite term and will only terminate if the license holder violates the license agreement, most notably by choosing to not purchase tickets for a season.¹⁷ However, in other cases, the seat licenses are valid for a term of years.¹⁸ Like season

8. See St. Louis Cardinals 2006 Season Ticket Overview, http://stlouis.cardinals.mlb.com/NASApp/mlb/stl/ticketing/season_overview.jsp (last visited Nov. 12, 2006).

9. *Id.*; ST. LOUIS RAMS 2006 SEASON TICKET GUIDE, *Ticket Policies & Information* (St. Louis Rams, St. Louis, MO 2006), available at <http://www.stlouisrams.com/Tickets/seasonticketguide>; San Diego Padres 2006 Season Tickets (on file with The Saint Louis University Law Journal).

10. New York Yankees Ticket Licensees, http://newyork.yankees.mlb.com/NASApp/mlb/nyy/ticketing/sth_faqs.jsp (last visited Nov. 12, 2006); Letter from Michael Hall, Director, Group Ticket Sales, St. Louis Cardinals LLC to Season Ticket Holders (Dec. 21, 2005) (on file with author).

11. Levengood, *supra* note 7, at 414.

12. *Id.* Often, the requirement that premium seat holders purchase PSLs occurs when the franchise relocates or constructs a new stadium. See Doug Moore, *Deal Makes Cards Owners of Stadium: Team Will Contribute Extra Money for New Ballpark*, ST. LOUIS POST-DISPATCH, Dec. 24, 2003, at A11; Sam Walker, *Craving Cash, Teams Ask Ticket Holders to Pay Twice*, WALL ST. J., Jul. 10, 1998, at B1.

13. Levengood, *supra* note 7, at 415.

14. Bowling, *supra* note 1, at 680.

15. Levengood, *supra* note 7, at 415.

16. *Id.*

17. *Id.*; WONG, *supra* note 2, at 10. The team also reserves the right to revoke tickets privileges based on misconduct of the license holder, such as scalping and unsportsmanlike conduct. GREEN BAY PACKERS SEASON TICKETS, *Season Ticket Holder Policies* (on file with The Saint Louis University Law Journal); ST. LOUIS RAMS 2006 SEASON TICKET GUIDE, *Ticket Policies & Information* (St. Louis Rams, St. Louis, MO), available at <http://www.stlouisrams.com/Tickets/seasonticketguide>.

18. Levengood, *supra* note 7, at 415.

tickets, the price of the PSLs will vary between stadiums and even between seats within stadiums.¹⁹ In a single stadium, seat licenses can range from \$1,000 per seat to several thousand dollars per seat for premium seats.²⁰

The personal seat license has become popular among professional sports franchises because it provides an avenue for additional revenue and increased profits to the team.²¹ Team owners often utilize this large amount of additional revenue to fund stadium renovations and new stadiums.²² Team owners prefer the use of PSLs as a revenue generator for stadium financing because it targets fans that have an interest in the team, instead of burdening taxpayers through public financing.²³ Moreover, this type of license agreement ensures the franchise continued revenue through the form of guaranteed season ticket sales by compelling license holders, who may not have purchased season tickets every year, to purchase the tickets or lose their rights to future years through termination of their license agreement.²⁴

II. LEGAL BACKGROUND

A. *Defining Property and Licenses*

Because this Comment analyzes season tickets and PSLs based on United States property law, consideration must be given to the framework of democracy. Against that backdrop, it is critical to realize that property rights in the U.S. have evolved over the past three centuries.²⁵ A democratic government allows its participants to contribute to government through the election process. Through suffrage, the democratic system forces evolution of property rights as voters express their opinions on property issues and elected

19. *Id.* For example, to finance the St. Louis Cardinal's new stadium, which opened in Spring 2006, the club announced the inception of The Ballpark Founders program. See THE BALLPARK FOUNDERS (St. Louis Cardinals, St. Louis, MO 2005). Seat licenses for premium infield seats, under this program, ranged from \$2,000 to \$7,500 per seat. *Id.* at 6.

20. WONG, *supra* note 2, at 10.

21. Bowling, *supra* note 1, at 680; Alan J. Ostfield, *Seat License Revenue in the National Football League: Shareable or Not?*, 5 SETON HALL J. SPORT L. 599, 599 (1995).

22. Bowling, *supra* note 1, at 681; Walker, *supra* note 12, at B1. For example, the Carolina Panthers sold 61,000 PSLs and raised over \$150 million to fund its new stadium. WONG, *supra* note 2, at 10.

23. Bowling, *supra* note 1, at 681.

24. Ostfield, *supra* note 21, at 601; see also Paul L. B. McKenney & Eric M. Nemeth, *The Purchase and Sales of a Sports Team*, 80-JUN MICH. BAR J. 54, 59 (2001) (“[S]eason ticket holders/sky box leases represent critical income streams to any club”).

25. Clearly, this discussion does not represent a complete history of property rights in Western Democracy, but only attempts to demonstrate the correlation between a representative government and the property rights system it endorses.

officials create and/or change laws to reflect social attitudes.²⁶ Furthermore, the judicial system has molded the law of property. Courts find their instruction in the democratically enacted Constitution of the United States of America, which protects property through protecting individual rights,²⁷ and through legislation. The judicial system supports the democratically devised U.S. property law system by protecting property rights and facilitating the exercise of these rights.

In a legal sense, the term “property” refers to a “right and interest in an object.”²⁸ Property, in the legal community, is commonly regarded as a “bundle of rights.”²⁹ In other words, it consists of a collection of individual rights, including not only the right to possess and own the object, but also the rights to use, enjoy, and dispose of the object.³⁰

On the other hand, a license is a restricted interest in an object or land. It grants the holder the limited right to use and enjoy the object or land. As one court has stated, “[a] license grants the licensee a right to enter upon the licensor’s land and use it for a specific purpose, without giving up the licensor’s legal possession and control over the property.”³¹ Because the licensor retains ownership, legal possession, and control of the object or land, the licensee does not enjoy the right to dispose of the object in the manner he or she prefers. Therefore, a classic license is personal to the licensee, and thus, nontransferable and terminable upon the licensee’s death.³² As a result, the licensee has no right to convey the object or land through sale or succession.

B. *The Contract*

The team structures season tickets and personal seat licenses as license contracts. Indeed, the team generally includes disclaimers in its contract terms and policies acknowledging the limited interests the season ticket holders or PSL owners receive.³³ Moreover, the team attempts to maintain control over

26. See GOTTFRIED DIETZE, IN DEFENSE OF PROPERTY 47 (1963); *Securing Property Rights: The Foundation of Markets*, ECON. REFORM TODAY 2, 4 (No. 1, 1996).

27. See generally U.S. CONST. amends. V, XIV.

28. AM. JUR. 2D *Property* § 1 (2005) (citing *United States v. Gen. Motors Corp.*, 323 U.S. 373 (1945)).

29. *Moore v. Regents of Univ. of Cal.*, 793 P.2d 479, 509 (Cal. 1990) (Mosk, J., dissenting), cert. denied, 499 U.S. 936 (1991).

30. *Id.*

31. *Soderholm v. Chicago Nat’l League Ball Club, Inc.*, 587 N.E.2d 517, 520 (Ill. App. Ct. 1992), cert. denied, 596 N.E.2d 637 (Ill. 1992).

32. 53 C.J.S. *Licenses* § 136 (2005).

33. See, e.g., Chicago Bears, *Information Regarding PSL Transfers*, at B-3 (on file with The Saint Louis University Law Journal) (“A PSL does not grant or provide Licensee with any ownership or other equity interest in the Stadium . . . or the Team. The rights licensed under this Agreement are revocable rights of personal privilege PSLs should not be viewed or acquired as an investment.”); GREEN BAY PACKERS SEASON TICKETS, *supra* note 17 (“Season tickets are

the season ticket holder's status and renewal rights, as well as the PSL through its policies and contract terms. In fact, the team may threaten revocation of the season ticket holder's status upon a violation of these policies.³⁴ Similarly, the team reinforces the license structure of the contracts by limiting the fan's ability to transfer the season ticket holder's status and the PSL.³⁵

C. Precedent Supports Team Ownership

Historically, courts presented with issues relating to season tickets and personal seat licenses have treated season tickets as licenses and have supported the team's ownership of tickets.³⁶ This stems from the commonly accepted rule that a single admission ticket to a place of amusement is "a mere license to witness the performance, which the owner or proprietor may revoke at will."³⁷

In *Soderholm v. Chicago National League Ball Club, Inc.*,³⁸ Soderholm, who held season tickets to Chicago Cubs baseball games, sought an injunction compelling the franchise to sell him season tickets for future baseball seasons.³⁹ Soderholm held eighteen season tickets in both his name and his company's name when the club heard "rumors" that he was scalping the tickets.⁴⁰ After sending a letter warning Soderholm that scalping was cause for

revocable licenses that may be revoked, and admission refused, at the sole discretion of the Packers."); New York Yankees Ticket Licensees, *supra* note 10 ("There is no 'ownership' or other property right in the Tickets, the Ticket Account, or the seat locations by Licensees."); ST. LOUIS RAMS, REGULAR PATRON CPSL AGREEMENT 2 (2005) ("[R]ights licensed under this Agreement are rights of personal privilege and do not . . . confer . . . any interest or estate in real property").

34. See *supra* note 17 and accompanying text.

35. See, e.g., GREEN BAY PACKERS SEASON TICKETS, *supra* note 17 (limiting transfers to spouse, blood relatives, and between a closely held corporation and its owners); New York Yankees Ticket Licensees, *supra* note 10 ("The [Season] Ticket Account . . . shall not be . . . transferred in any manner, whether voluntarily or by gift, bequest, or operation of law.").

36. Reese et al., *supra* note 5, at 167; see, e.g., *In re Harrell*, 73 F.3d 218, 220 (9th Cir. 1996); *In re Livingston*, 28 F.Supp.2d 623, 625 (D. Colo. 1998); *Bickett v. Buffalo Bills, Inc.*, 472 N.Y.S.2d 245, 247 (N.Y. App. Div. 1983).

37. 27A AM. JUR. 2D *Entertainment & Sport Law* § 43 (1996); see also *Marrone v. Wash. Jockey Club*, 227 U.S. 633, 636 (1913) (stating that a holder of a race-track admission ticket does not have a right *in rem* and may be prevented from entering); *People v. Waisvisz*, 582 N.E.2d 1383, 1386 (Ill. App. Ct. 1991), *appeal denied*, 591 N.E.2d 30 (Ill. 1992) ("A ticket to a sporting or entertainment event is a license which may be revoked at the will of its issuer. Moreover, an event sponsor may impose restrictions on the transferability of tickets which it issues."); *Capital Theatre Co. v. Compton*, 54 S.W.2d 620, 621 (Ky. Ct. App. 1932) (stating that a theater ticket is a revocable license); *Finesey v. Seattle Baseball Club*, 210 P. 679, 681 (Wash. 1922) ("[A] ticket of admission [to baseball park] is a mere license, revocable at the will of the proprietor, even after the holder has entered the [park] and has taken the seat.").

38. 587 N.E.2d 517 (Ill. App. Ct. 1992), *cert. denied*, 596 N.E.2d 637 (Ill. 1992).

39. *Id.* at 518.

40. *Id.*

revocation of season ticket holder status, the Cubs refused to offer the plaintiff more than six tickets for the subsequent season.⁴¹ The court held that season tickets to watch the Chicago Cubs are a “series of revocable licenses,” and therefore, the Cubs could refuse to sell season tickets to a ticket holder for subsequent seasons.⁴² The court based its finding on the fact that the ticket only granted its holder entrance to the ball park on a specific time and date to sit in a specific seat at the identified game.⁴³

Similarly, in *In re Liebman*,⁴⁴ a Chapter 7 bankruptcy debtor held season tickets to Chicago Bulls basketball games.⁴⁵ The bankruptcy trustee presented a motion to the court to sell the debtor’s renewal rights in these tickets.⁴⁶ The Chicago Bulls contested this motion, arguing that the debtor had no property interest in the right to renew his season tickets, but instead, only had an expectation of the team’s offer to renew.⁴⁷ The bankruptcy court pointed out that section 541 of the Bankruptcy Code defines property of the state as “all legal or equitable interest of the debtor in the property as of the commencement of the case,”⁴⁸ and that state law determines property interests.⁴⁹ As a result, the court had to determine whether the Chapter 7 debtor had a property interest in his right to renew season tickets under Illinois law.⁵⁰ The court noted that the manner in which the sports franchise treats the renewal rights of season tickets was fundamental to its decision.⁵¹ The court found the Bulls clearly stated their policy regarding renewal rights—that the “season tickets are offered on a one-year basis,” are a “revocable license,” and are “not transferable”—in all pertinent material.⁵² Even though the Bulls automatically renewed season tickets if the ticket holder’s account was current, the court found that a Bulls season ticket holder only had a revocable license to purchase tickets and did not have an interest in property under Illinois law.⁵³

41. *Id.*

42. *Id.* at 520–21.

43. *Soderholm*, 587 N.E.2d at 521.

44. 208 B.R. 38 (Bankr. N.D. Ill. 1997).

45. *Id.* at 39.

46. *Id.*

47. *Id.*

48. *Id.*

49. *In re Liebman*, 208 B.R. at 39.

50. *Id.*

51. *Id.* at 40.

52. *Id.*

53. *Id.* at 41.

D. Bankruptcy Courts Find a “Property Interest” in Season Tickets

While the commonly recognized rule regarding tickets leans toward classifying the tickets as a revocable license, some courts find a more substantial property interest in season tickets. This occurs particularly when the seller posts vague season ticket policies and the seller fails to enforce its policies consistently.⁵⁴

In *In re I.D. Craig Service Corp.*,⁵⁵ a dispute arose regarding the proper ownership of Pittsburgh Steelers season tickets. The bankruptcy court found a property interest existed in the renewal rights of season ticket holder status for a professional football team.⁵⁶ There, a Chapter 7 bankruptcy trustee was granted a motion to sell season tickets for the 1990–1991 Pittsburgh Steelers football games.⁵⁷ Accordingly, the trustee sold fourteen tickets to all remaining games in the season by dividing the tickets into six groups.⁵⁸ Additionally, the bankruptcy trustee moved to sell the renewal rights in the same tickets.⁵⁹ The trustee supported this motion by showing that, at the time, the Pittsburgh Steelers had a transfer policy that allowed season ticket holders to transfer tickets to another individual or company for a nominal fee.⁶⁰ Additionally, arguing that the renewal rights were property of the bankruptcy estate, the trustee claimed the football team’s tradition of offering season tickets to the ticket holder on an annual basis “evidences the existence of rights in the holder to renew the season tickets.”⁶¹

The seller of the season tickets, Sports, Inc., opposed the motions to sell the tickets and the rights to future season tickets with several arguments. It argued that the sale would violate state anti-scalping laws,⁶² that the transfer would be unfair to fans on the season ticket waiting list,⁶³ and that the transfer to multiple groups violated its policy of limiting the number of ticket transfers an account could execute in a given year.⁶⁴ Despite these arguments the bankruptcy court confirmed the sale of the tickets and renewal rights.⁶⁵

54. Reese et al., *supra* note 5, at 167.

55. 138 B.R. 490 (Bankr. W.D. Penn. 1992).

56. *Id.* at 502.

57. *Id.* at 492. These season tickets were previously owned by the debtor, but during the bankruptcy proceedings, were transferred to the trustee’s name as part of the debtor’s estate. *Id.* at n.2.

58. *Id.*

59. *Id.*

60. *In re I.D. Craig Service Corp.*, 138 B.R. at 492.

61. *Id.*

62. *Id.*

63. *Id.* at 497.

64. *Id.* at 492.

65. *In re I.D. Craig Service Corp.*, 138 B.R. at 495.

The court discredited each of the seller's arguments opposing the sale. The court determined the separate sale of the season tickets and the right to future season tickets did not violate the state's anti-scalping law, which makes it illegal to resell tickets or "evidence of the right of entry" at a price higher than the face value of the ticket.⁶⁶ The tickets were not sold at a price higher than face value, so sale of the tickets did not violate the statute.⁶⁷ Furthermore, the court found the sale of the trustee's season ticket holder status, which entails the right to renew season tickets, is not subject to the anti-scalping laws because it is not a ticket or "evidence of the right of entry to any place of amusement."⁶⁸ Rather, season ticket holder status evidences the "right to receive the offer to purchase the season tickets."⁶⁹

The court next refuted the argument that the transfer would be unfair to the individuals on the season ticket waiting list by pointing out that the seller provided no guarantee the tickets at issue would actually go to individuals on the wait list if the transfers were barred.⁷⁰ The team had discretion in allocating returned tickets; for example, the seller could distribute the tickets in various ways other than through the season ticket waiting list.⁷¹ Indeed, the seller's practice of transferring tickets based on the season ticket holder's request, which also bypassed the waiting list, supported this finding.⁷²

Finally, the court noted that while the seller's transfer policy restricting transfers to one-per-year per account may have existed in the early 1980's to ease bookkeeping, the policy had been abolished or ignored for the previous five years.⁷³ The evidence showed that in recent years the team focused on customer satisfaction and made exceptions to its policy, allowing several complicated ticket transfers.⁷⁴

The seller argued each ticket had language indicating that, as a revocable license, the seller was not bound to offer future season tickets for purchase.⁷⁵ However, the court reasoned that the seller cannot deny the trustee's request to transfer the season ticket holder status based on revocability of the tickets because the tickets and the renewal rights were "separate and distinct

66. *Id.* at 499–500.

67. *Id.* at 499.

68. *Id.* at 500. The Pennsylvania anti-scalping law "prohibits the resale of any tickets of admission, or any other evidence of the right of entry to any place of amusement, at a price higher than the established price fixed by the owners of such place of amusement, without having first obtained a license to so resell or engage in such business from the licensor." *Id.* at 499 (quoting 4 PA. STAT. ANN. § 202).

69. *Id.* at 500.

70. *In re I.D. Craig Service Corp.*, 138 B.R. at 497.

71. *Id.*

72. *Id.*

73. *Id.* at 499.

74. *Id.*

75. *In re I.D. Craig Service Corp.*, 138 B.R. at 493.

interests.”⁷⁶ Additionally, the seller’s language in ticket policies contradicted its argument that the season tickets were revocable licenses.⁷⁷ The seller’s annually distributed handbook had a transfer policy which stated that the “season ticket holder of record may transfer *ownership*.”⁷⁸ Also, the handbook referred to the season ticket holder as the “owner” on two occasions and contained a section entitled “SEASON TICKET OWNERSHIP.”⁷⁹

Furthermore, the court found the ticket seller’s policies and practices regarding season tickets created an expectancy interest in the renewal rights of season ticket holders.⁸⁰ First, the seller, in accordance with its season ticket renewal policy, automatically offered season ticket holders tickets to the upcoming season of Pittsburgh Steelers home games on an annual basis, allowing the purchaser to retain season ticket holder status as long as he continued to purchase the season tickets.⁸¹ This was evidenced by both its past actions and its renewal policy, which was outlined in the season ticket holder handbook.⁸² Additionally, the court noted the sellers had never withheld an offer to a current season ticket holder to renew season tickets.⁸³ As a result, the season ticket holder reasonably expected that the right to renew season tickets would continue indefinitely.⁸⁴ The court held that the trustee had a property interest in the season ticket holder’s right to renew the season tickets.⁸⁵ This was a result of the seller’s practice of encouraging the season ticket holders’ expectation of annually renewing their status or to transfer their status upon written request and payment of a five dollar fee.⁸⁶ Based on the presence of interested purchasers of the season ticket holder status and the existence of a waiting list for season tickets, the court found the renewal rights present were valuable property of the bankruptcy estate which could be sold under section 541 of the Bankruptcy Code.⁸⁷

More recently, *In re Platt*⁸⁸ considered the ownership interest of season tickets for the Boston Red Sox. In this case, a Chapter 11 trustee attempted to

76. *Id.* at 494.

77. *Id.* at 498 n.15.

78. *Id.* at 498 & n.15 (emphasis added).

79. *Id.* at 498 n.15.

80. *In re I.D. Craig Service Corp.*, 138 B.R. at 495. *Contra In re Harrell*, 73 F.3d 218, 220 (9th Cir. 1996) (holding that under Arizona law, the Phoenix Suns season ticket holders’ expectation of renewal of the season tickets is not a property right when the renewal opportunity is revocable).

81. *In re I.D. Craig Service Corp.*, 138 B.R. at 493.

82. *Id.*

83. *Id.* at 497.

84. *Id.* at 502.

85. *Id.* at 495.

86. *In re I.D. Craig Service Corp.*, at 495–96.

87. *Id.* at 495.

88. 292 B.R. 12 (Bankr. Mass. 2003).

sell at public auction four season tickets to the Boston Red Sox 2003 baseball season and the right to future renewals of season tickets.⁸⁹ The Red Sox opposed the sale, arguing that the sale of the tickets violated anti-scalping laws and conflicted with the Red Sox non-transfer policy.⁹⁰ But, the bankruptcy court dismissed the anti-scalping argument, finding it did not apply to the bankruptcy trustee, who was not “engaged in the business of reselling tickets within the meaning of the statute.”⁹¹

Additionally, the trustee argued the past practice by the Red Sox of allowing parties to transfer season tickets created a reasonable expectation that renewal rights could be sold as a property interest.⁹² The court agreed with the trustee, ruling that the Red Sox season tickets were property.⁹³ Because the team automatically sent renewal letters to season ticket holders each year, season ticket holders’ had reasonable expectations of renewal, prompting the court to find a renewal right in the season tickets.⁹⁴

Moreover, the court found that the Red Sox allowed transfers of season tickets between family members, in the case of corporate mergers or name changes, and in “special courtes[y]” situations, without requiring any special investigation into the truthfulness of transfers between family members and corporations.⁹⁵ Furthermore, the team’s exceptions to its non-transfer policy for such “special courtesies” were subject to the discretion of upper-level management.⁹⁶ The court held that the practice of automatically renewing season tickets and arbitrarily allowing the transfer of tickets created a property interest in the season ticket holder.⁹⁷ The Red Sox ultimately won, however, because the bankruptcy trustee failed to prove that the debtor, and therefore the estate, owned the season tickets they were attempting to sell.⁹⁸

These cases “demonstrate that the legal trend in regard to ticket transfers in professional sports appears to be favoring the ability of season ticket holders to prevail in establishing property rights.”⁹⁹ While the team structures the contract as a license, courts have begun to look beyond the contract terms to the policies of the teams to find these property rights. In addition to contract terms and team policies, these courts find weight in the intangible expectation of renewal created by season ticket holder status.

89. *Id.* at 13–14.

90. *Id.* at 14.

91. *Id.* at 18 n.5 (quoting MASS. GEN. LAWS ANN. ch. 140, § 185A (1924)).

92. *Id.* at 14.

93. *In re Platt*, 292 B.R. at 17.

94. *Id.*

95. *Id.* at 18.

96. *Id.*

97. *Id.* at 17.

98. *In re Platt*, 292 B.R. at 17.

99. Reese et al., *supra* note 5, at 186.

E. Courts Find Property Interest in Personal Seat Licenses

Similar to the analysis followed by courts with respect to season tickets, courts are finding property interests in PSLs which are greater than the interests common to a license. In *Marinik v. Cascade Group*,¹⁰⁰ a judgment creditor secured orders from a municipal court in Cleveland to garnish personal property of its debtor.¹⁰¹ The garnishment orders resulted in the attachment of two personal seat licenses for season tickets to the Cleveland Browns' football games and two sets of season tickets for the same team.¹⁰² The debtor had purchased the personal seat licenses for \$1,000 per seat.¹⁰³ With the purchase, the debtor gained a permanent right to purchase Browns season tickets on an annual basis.¹⁰⁴

In spite of a transfer restriction policy prohibiting any transfer of the seat licenses for a period after the purchase of the seat license, the magistrate found that a personal seat license is "personal property that is vested in the owner and that is alienable by the terms of the grantor's document that creates the right in the property owner."¹⁰⁵ Following the *In re I.D. Craig Serv. Corp.*¹⁰⁶ decision, the magistrate reasoned that a PSL does not merely constitute a license to purchase season tickets to the sporting event, but it also provides "a valuable expectancy interest in renewable rights to season tickets . . . a wholly separate and distinct interest from game tickets."¹⁰⁷ Because the PSLs were property of the debtor and properly attached, the PSLs were to be transferred to the judgment creditor,¹⁰⁸ resulting in a \$2,000 reduction of the amount the debtor owed to the judgment creditor.¹⁰⁹

100. 724 N.E.2d 877 (Ohio Mun. Ct. 1999).

101. *Id.* at 878.

102. *Id.*

103. *Id.* at 879.

104. *Id.* The personal seat licenses were sold in the late 1990s by the city of Cleveland to finance the construction of a new stadium for the Browns: Cleveland Stadium. *Id.*

105. *Marinik*, 724 N.E.2d at 880.

106. 138 B.R. 490 (Bankr. W.D. Penn. 1992).

107. *Marinik*, 724 N.E.2d at 880.

108. *Id.* at 879.

109. *Id.* at 881. The personal seat licenses were valued at \$2,000, or \$1,000 per seat, after a great deal of argument regarding their valuation. *Id.* at 879. While the fair market value of an attached article is normally the value credited to the judgment-debtor's account, the valuation of the personal seat licenses was more difficult. *Id.* at 881. In *Marinik*, the fair market value of the personal seat license was not ascertainable because the PSLs were subject to a transferability restriction, limiting transfer of the PSL's until May 1, 2000. *Id.* at 879. As a result, the parties presented opinions about the present value of the seat licenses and the value after the transferability restriction was lifted. *Id.* However, the magistrate found these opinions were too speculative, and thus, valued the seat licenses at \$1,000 each. *Id.* at 879-80. Due to the transferability restriction, the only possible buyer at the time of attachment was the Cleveland Browns. *Id.* at 881. The Cleveland Browns' policy limited the club to paying a PSL holder, on

These cases illustrate the divided opinions and lack of uniformity regarding the proper treatment of ownership and rights bestowed upon season ticket and PSL holders. For this reason, it is important to reach a more conclusive determination.

III. PROPERTY INTERESTS IN SEASON TICKETS AND PERSONAL SEAT LICENSES

Because the cases finding “property interests” in season tickets are mostly in the context of bankruptcy and debt judgments, it is important for sports fans and franchises alike to determine if the “property interest” analysis can be carried into other contexts. For example, this analysis could play a role in contract disputes that arise when the team relocates to a new stadium or modifies their existing stadium, when a fan attempts to sell her rights with respect to the season ticket or the PSL, or when a fan contests the team’s revocation of the fan’s ticket purchasing rights.

Property, as defined in *Black’s Law Dictionary*, is “the right to possess, use, and enjoy a determinate thing” or “the right of ownership.”¹¹⁰ Courts have cited several factors to indicate property ownership.¹¹¹ These include: dominion, control, title, possession, and right of disposition, as well as the ability to exclude others from interfering with the property.¹¹² Property is an aggregate of these rights and characteristics relating to ownership.¹¹³ A determination defining something as property involves careful analysis of the implicit public policy considerations and concerns.¹¹⁴

Possession is an ambiguous, yet key concept in property law. Possession of property entails the power and intent to control such property¹¹⁵ or “the exercise of dominion over property.”¹¹⁶ One is said to be in possession of something when he has “apparent control” or the “power of excluding others.”¹¹⁷

Additionally, the right of disposition, to sell and transmit property, is an important right that accompanies property ownership. This right indicates control over the property by giving the property owner the ability to alter his or

repurchase of the PSL, the original contract price for the PSL, which in this case was \$1,000 per seat. *Id.* at 879–80.

110. BLACK’S LAW DICTIONARY 1232 (7th ed. 1999).

111. 73 C.J.S. *Property* § 44 Incidents of Ownership (2006).

112. *Id.*

113. *In re Kimura*, 969 F.2d 806, 810 (9th Cir. 1992).

114. *See generally* *Moore v. Regents of Univ. Cal.*, 793 P.2d 479 (Cal. 1990), *cert. denied*, 499 U.S. 936 (1991) (holding public policy demands that a patient’s excised cells are not the property of the patient because finding such would constrain medical research and technology).

115. 63C AM. JUR. 2D *Property* § 28 (2006).

116. BLACK’S LAW DICTIONARY 1183 (7th ed. 1999).

117. *Id.*

her rights and entitlements.¹¹⁸ If property rights “cannot be transferred, there is no way of shifting a resource from a less productive to a more productive use through voluntary exchange.”¹¹⁹

The *Restatement of the Law of Property* defines each of these factors as a single property interest.¹²⁰ The sum of all interests which a person could legally have with respect to an item comprises “complete property” in the item.¹²¹ An individual who has complete property in a thing, either personal items or land, is deemed “owner” of the thing.¹²² If an individual does not “own” the “complete property,” but retains rights and privileges with respect to the property, then he holds an interest in the property.¹²³ A license, for example, represents an incomplete form of property, or a property interest. It grants the holder restricted rights in the property—usually the right to use the property for a particular purpose—but it limits the right of the license holder to devise or dispose of the property.

A. *Season Tickets*

With respect to season tickets, the season ticket holder clearly does not have complete property ownership of the seat. The holder of season tickets does have the right to sit in the seat and exclude others from the seat during the event, and therefore, has possession of the seat when she attends the sporting event. Nevertheless, she does not enjoy full possession or control over the seat itself. For example, the season ticket holder’s rights in regard to the seat are limited to the specific sporting event. A season ticket holder holds no right to possess the seat or exclude others from the seat when that sporting event is over, or even during other, non-sporting events in the stadium. Furthermore, the season ticket holder is not entitled to make changes to the seat or physically remove the seat from the stadium.

Indeed, these restrictions are placed on the season ticket holder as a matter of public policy. The team and the public require uniformity among the seats to ensure the viewing abilities of surrounding fans. Also, the team and the public must limit the ability of the fan to enter the stadium and make use of the

118. *Energy Oils, Inc. v. Mont. Power Co.*, 626 F.2d 731, 736 (9th Cir. 1980); Susannah L. Baker, *It’s All Fun and Games Until Somebody Declares Bankruptcy: A Debtor’s Right to Season Ticket Holder Status*, 14 *BANKR. DEV. J.* 159, 174 (1997); see OLIN L. BROWDER, JR. ET AL., *BASIC PROPERTY LAW* 218 (4th ed. 1984).

119. ROGER A. CUNNINGHAM ET AL., *THE LAW OF PROPERTY* 3 (2d ed. 1993).

120. *Id.* at 4 (citing *RESTATEMENT OF THE LAW OF PROPERTY* §§ 1–10 (1936)). The Restatement is based on Wesley Hohfeld’s analysis of property and the “legal relations between persons with respect to ‘things.’” *Id.* at 3.

121. *Id.* at 4.

122. *Id.*

123. *Id.* Interests include any “right, privilege, power or immunity or . . . ‘varying aggregates of rights, privileges, powers, and immunities.’” *Id.*

seat to times in which a sporting event is taking place. It would be a drain on the resources of the franchise and the community to require policing of the stadium grounds and other services expected by the season ticket holder when an event is not occurring.

On the other hand, a season ticket holder's status and right to purchase future tickets could be deemed more closely akin to property. A season ticket holder gains status and the right to future season tickets when she contracts for the tickets and pays her account. She uses and enjoys this status when she purchases additional tickets and relocates to better seats. Additionally, renewal of the season tickets each year gives her the right to enjoy the sporting events in subsequent seasons. As long as the season ticket holder continues to renew her season tickets on an annual basis, she excludes other fans from the season ticket holder status.

However, the season ticket holder's interest in her status and renewal rights is subject to some caveats. The season ticket holder loses her status if she fails to purchase season tickets for a year. Moreover, the season ticket holder's status, in some cases, may be revoked if the season ticket holder violates team policies through activities such as conduct disrespectful to other fans or scalping.¹²⁴ However, unless cause for revocation exists, teams often automatically extend to the season ticket holder the opportunity for renewal.

The season ticket holder's ability to transfer her season ticket status varies from team to team. But generally, season ticket holders have limited rights to transfer.¹²⁵ If the season ticket holder does enjoy the right to transfer his account to another individual or entity, she often has no right to transfer status or account seniority, which is of high importance to the season ticket holder and the potential transferee.¹²⁶ These limitations greatly diminish the argument that a season ticket holder owns her status. Yet, as the season ticket seller's policies for transfer of season ticket holder status relax and the ability to transfer the season tickets increases, the season ticket holder status and the rights to renew the status more closely resemble a complete property interest.

Undoubtedly, the season ticket holder's interest does not completely resemble full ownership interest in a property. Yet, Jeremy Bentham defined property as the "expectation . . . of being able to draw such or such an

124. See, e.g., *supra* note 17 and accompanying text.

125. SAN FRANCISCO 49ERS 2005 SEASON TICKET HOLDER HANDBOOK 2 (San Francisco 49ers, San Francisco, CA 2005). As PSLs have become increasingly popular, a number of season ticket holders are required to purchase PSLs for the right to purchase season tickets. As a result, the season ticket holder who is also a PSL owner has greater ability to transfer renewal rights.

126. *Id.* The account seniority is important to season ticket holders because it factors into seat relocation and upgrades, the number of post-season tickets to which a holder is entitled and purchase of additional post-season tickets. GREEN BAY PACKERS SEASON TICKETS, *supra* note 17.

advantage from the thing' in question, 'according to the nature of the case.'"¹²⁷ In the case of season tickets, the season ticket holder, through the team's automatic renewal of status, holds the great expectation of being able to enjoy the use of the season tickets and being able to take advantage of the right to renew their season ticket holder status for years to come.¹²⁸ This expectation gives force to the argument that season ticket holder status is more than a mere license.

Furthermore, this expectation of renewal rights and perpetual enjoyment of the status is a function of the fan's loyalty to the team which has developed over time, regardless of the changing team composition that results from retirement, trade agreements, and free agency of players.¹²⁹ The fan is encouraged, through franchise marketing and merchandising, to root for the uniform and those who wear it.¹³⁰ As a result of this expectation and loyalty created by the season ticket holder status, the team develops a profound bond that links the fan to the franchise through successive generations.¹³¹ Many sports writers and psychologists have written about the phenomenon of fan

127. CUNNINGHAM ET AL., *supra* note 119, at 1 (quoting J. BENTHAM, THEORY OF LEGISLATION 68 (1975)).

128. Courts often recognize this expectation when evaluating whether season tickets or PSLs are property. See *In re Platt*, 292 B.R. 12, 17 (Bankr. Mass. 2003); *Marinik v. Cascade Group*, 724 N.E. 2d 877, 880 (Ohio Mun. Ct. 1999). This expectation has been recognized in federal bankruptcy court:

The knowledge that they will have the first opportunity to renew their seats next season is part of the inducement to fans to buy season tickets. Even if season ticket holders do not attend all games or the team has a losing season, they realize that next year's performance might be better and they will have the first opportunity to buy tickets which are in very high demand.

In re I.D. Craig Service Corp., 138 B.R. 490, 502 (Bankr. W.D. Penn. 1992).

129. See Chico Harlan, *Why Do They Keep Coming Back? Some Fans Are Hopelessly Devoted to the Pirates, a Team That in the Past 12 Years Has Had Little Hope*, PITT. POST-GAZETTE, May 21, 2005, at E1.

[Baseball fans] attend games . . . for many reasons. Because they just love [the stadium]. Because of the drip-by-drip drama of a sport with no time limit. Because of a specific player. Because of the chance to watch a particular opponent. Because baseball is a summer sport. Because baseball is a family sport. Because baseball is an American sport.

Id.

130. For example, the Carolina Panthers market themselves as "the team of the Carolinas, North and South." Lorenzo Perez, *Panther Pride Swells in Netland*, THE NEWS & OBSERVER (Raleigh, N.C.), Jan. 22, 2006, at A1; see also Dean Bonham & Don Hinchey, *As Baby Boomers Age, Sports Business Will Need a New Game Plan*, ROCKY MOUNTAIN NEWS, Nov. 5, 2005, at 6C (discussing new market strategies professional sports teams require to encourage team loyalty in the next generation of sports fans).

131. See Monmaney, *supra* note 6, at A1. "Americans have a surprisingly complicated bond with their home teams." *Id.* Indeed, "[m]any people here look at football not just as a sport but as a tradition. It has been a bonding process for fathers and sons, one of the few that the male ego would allow. This has been a way of life for many people for many years." *Id.*

loyalty¹³² and the resulting expectation, which undercuts the team's argument that season tickets are merely a series of revocable licenses that are personal to the holder.

B. Personal Seat Licenses

While, by name, PSLs are licenses, they are a strange form of license because the PSL owner gains more rights than a traditional licensee. The increased rights accompanying a personal seat license cut toward the fan's argument that PSLs are a complete property interest.

Similar to season tickets, the holder of a personal seat license has the possession of the seat and the right to exclude others from the seat during the sporting event. However, the PSL gives the holder a greater exclusion right by providing the holder the exclusive right to purchase the season tickets for that particular seat as long as the team plays in that stadium. Yet, the PSL holder is subject to revocation, like the season ticket holder, based on failure to purchase tickets for a year or based on conduct related violations.

The personal seat license holder often enjoys more rights of control than the season ticket holder because she has a greater ability to transfer the PSL and its accompanying ticket purchasing rights. While some PSL contracts only give the license holder limited rights to transfer, such as rights to transfer to family members only,¹³³ other contracts give complete authority to the holder to transfer by gift, bequest, or sale to anyone.¹³⁴ Often, the PSL is limited to one transfer per season, and the holder is restricted from transferring the PSL for a short period, usually the first season.¹³⁵ Still, the ability to transfer the PSL gives it more characteristics associated with complete property ownership.

Teams promoting personal seat licenses tout this feature of "ownership," giving the purchaser the impression that she is making an investment and the expectation that she gains permanent rights. For example, the St. Louis Cardinals advertised that their Ballpark Founders program gives the seat license holder "the right to *maintain* and *control*, for as long as [the holder

132. In fact, some experts say professional "[s]ports teams are one way of creating cultural identity across lines of race, ethnic background and class." Monmaney, *supra* note 6; *see also* Jeff Baker, *True to Their Team*, THE OREGONIAN, Sept. 9, 2005, at 37 ("Sports is a meeting place where people with nothing else in common can meet and relate to each other as equals."); Beth Gillin, *Fantastic vs. Fanatical: The Devoted. The Johnny-come-latelies. And, Ahem, the Other Extreme*, THE PHILADELPHIA INQUIRER, Jan. 30, 2005, at A1.

133. GREEN BAY PACKERS SEASON TICKETS, *supra* note 17.

134. THE BALLPARK FOUNDERS, *supra* note 19, at 1. The St. Louis Cardinals seat license promotional materials state: "[T]he seat will effectively remain in your control, allowing you to transfer, will or sell the ticket-purchasing right." *Id.*; *see also* CHICAGO BEARS, FOR SOME THERE ARE NOT FOUR SEASONS THERE IS ONLY ONE 22 (Chicago Bears, Chicago, IL 2001) (placing no restrictions on to whom the personal seat license may be transferred).

135. CHICAGO BEARS, *supra* note 134, at 28.

chooses], seats that offer the closest proximity to the field and the best views of the game,” in addition to the rights to transfer in any manner.¹³⁶ Furthermore, the Chicago Bears wrote in marketing information that a PSL “will cement your affiliation and personal connection to the Chicago Bears—it is your one chance to become a permanent part of the Bears’ future. Your PSL . . . gives you permanent control of the rights to your new seats.”¹³⁷ Likewise, the Cincinnati Bengals market their equivalent of PSLs, the Charter Ownership Agreement (COA), by saying “COA’s transfer the *ownership* rights of the season ticket locations from the team to the individual entering into the *ownership* agreement. Once the COA is paid in full, the *owner* is granted *control* of the season tickets.”¹³⁸ This marketing creates an expectation in the PSL holder that she receives ownership interests when she purchases the PSL and contradicts the team’s argument that a personal seat license is a revocable license.¹³⁹

A personal seat license does not seem to fit the definition of a traditional license, because licenses are personal to the holder, and therefore, typically nontransferable, neither *inter vivos* nor upon death.¹⁴⁰ However, as previously discussed, the typical seat license holder has the ability to transfer her license and purchasing rights to another party.¹⁴¹

C. *Evaluating the Bundle*

Season ticket holder status and personal seat licenses should be a freely alienable property interest. Teams couch their arguments for limiting transfer on the team’s right to revoke tickets.¹⁴² However, the team’s right to revoke based on fan conduct and the fan’s renewal right should not be analyzed together when determining the fan’s ability to transfer the season ticket holder status or the PSLs because the tickets and the status or license represent two distinct interests.¹⁴³ Placing conduct-related restrictions on the season ticket

136. THE BALLPARK FOUNDERS, *supra* note 19, at 1 (emphasis added).

137. CHICAGO BEARS, *supra* note 134, at 8.

138. Cincinnati Bengals, Charter Ownership Agreements, <http://www.bengals.com/tickets/coa.asp> (last visited Nov. 12, 2006) (emphasis added).

139. *In re I.D. Craig Service Corp.*, 138 B.R. 490, 502 (Bankr. W.D. Penn. 1992).

140. 53 C.J.S. *Licenses* § 136 (2006).

141. For example, the St. Louis Rams Charter Personal Seat License Agreement (CPSL) limits the licensee’s right to transfer the CPSL during the first year following purchase. ST. LOUIS RAMS REGULAR PATRON CPSL AGREEMENT, *supra* note 33, at 2. The transferee may only transfer in special circumstances, such as transfer upon “death, disability, employment relocation,” transfer to an immediate family member or related business party, or transfer as a result of a major business transaction, in which “acquisition of the CPSL is not the intent of the transaction.” *Id.* After the first year of ownership, the licensee is only subject to a limitation on the number of transfers made in a single year. *Id.*

142. *See, e.g., In re I.D. Craig Service Corp.*, 138 B.R. at 493–94.

143. *Id.* at 494.

holder and/or personal seat license holder, violations of which could result in revocation of tickets, should not break the bundle of rights that accompany the interest. Indeed, restrictions are placed on both real and personal property for a number of policy reasons.¹⁴⁴ In fact,

both law and contract may limit the right of an owner of real property to use his parcel as he sees fit. Owners of various forms of personal property may likewise be subject to restrictions on the time, place, and manner of their use. Limitations on the disposition of real property . . . may be imposed. Finally, some types of personal property may be sold but not given away, while others may be given away but not sold.¹⁴⁵

Here, restricting the conduct of the fan while at the game comports with policy. Yet, these restrictions should not destroy all rights, specifically transfer rights, associated with season ticket holder status and personal seat licenses.

D. *Why Limit Transferability?*

In the mind of a fan, she has paid for the tickets, the season ticket status, and the PSL. Therefore, it makes sense that the fan should be able to dispose of these interests as she chooses. However, the team, through its policies, greatly limits the ability of the fan to dispose of these tickets and the fan's status.

1. Scalping

Many teams try to prohibit the sale of individual tickets at a value above the stated ticket price, as well as the transfer of the right to purchase future season tickets by claiming it amounts to scalping. As demand for tickets to professional sporting events increased, a network for ticket distribution developed independent of the sports franchises.¹⁴⁶ Ticket sales through this network involved sales through ticket brokers, commonly known as scalpers.¹⁴⁷ Scalpers obtain tickets to sporting or entertainment events and resell the tickets for profit, at a price higher than the original purchase price or printed face value of the ticket.¹⁴⁸ Generally, they resell these tickets in the secondary market to fans unable to purchase tickets directly from the team's

144. *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479, 509 (Cal. 1990) (Mosk, J., dissenting), *cert. denied*, 499 U.S. 936 (1991).

145. *Id.* at 509–10 (discussing zoning and nuisance laws, condominium agreements, public health and safety laws, and bankruptcy laws as examples of these restrictions).

146. *See, e.g.*, Reese et al., *supra* note 5, at 171 (commenting on the increased demand for NFL tickets).

147. *Id.*

148. 27A AM. JUR. 2D *Entertainment & Sports Law* § 7 (2005).

ticketing agents.¹⁴⁹ Often, scalpers will maximize their profits by selling the high-demand tickets to the fan who offers the most money for the ticket.¹⁵⁰

Ticket scalpers traditionally sell tickets on street corners near the event venue due to the high concentration of potential buyers.¹⁵¹ However, with the rising popularity of the Internet, the traditional street-corner scalper is less exploited.¹⁵² Now, the Internet presents a number of opportunities for fans to purchase tickets from ticket brokers or scalpers with greater ease and less exposure to risks of violating anti-scalping laws.¹⁵³

Scalpers utilize various resources to obtain tickets, including legitimately purchasing tickets directly from the team and purchasing tickets from other fans that hold individual tickets or season tickets.¹⁵⁴ Furthermore, fans purchasing season ticket packages and personal seat licenses have followed the lead of the ticket brokers and have scalped their personal tickets when high-demand games generated the potential for lucrative profits.¹⁵⁵ However, most franchises discourage and attempt to prevent this practice by threatening, in season ticket and PSL contracts with the fan, to revoke the ticket holder's right to purchase future tickets.¹⁵⁶

Scalping is prohibited and/or regulated in most states to protect fans who wish to see their local sports team play by preventing fraud and price gouging for high-demand games.¹⁵⁷ Also, some states ban scalping to prevent "nuisance and harassment" of fans from scalpers selling on street corners near event venues.¹⁵⁸ Moreover, as a policy matter, states have enacted anti-scalping statutes to prevent loss of proceeds to sports franchises, event venues, and the local economy.¹⁵⁹

149. Reese et al., *supra* note 5, at 171.

150. *Id.*

151. Daniel J. Glantz, *For-Bid Scalping Online?: Anti-Scalping Legislation in an Internet Society*, 23 CARDOZO ARTS & ENT. L.J. 261, 262 (2005).

152. *Id.* at 262.

153. *See id.* at 262–65.

154. Reese et al., *supra* note 5, at 171. Often ticket scalpers purchase PSLs and season tickets for high-demand, premium seats from the team's ticketing agents. *Id.*

155. *See id.*

156. *E.g.*, New York Yankees Ticket Licensees, *supra* note 10.

157. Glantz, *supra* note 151, at 274. In 2005, 29 states had statutes regulating the resale of tickets. *Id.* at 266. While some states completely ban the resale of tickets above the printed face value, other states limit the ticket resale by allowing only state-licensed ticket brokers to sell tickets above face value. *Id.* at 285.

158. Glantz, *supra* note 151, at 274.

159. *State v. Leary*, 587 A.2d 85, 88 (Conn. 1991).

Through these laws, the franchises attempt to prevent season ticket holders from reselling their tickets and their status and renewal rights.¹⁶⁰ However, while anti-scalping laws control the resale of admission tickets to sporting events in most states, the sale of the right to annually purchase season tickets is not the equivalent of the sale of the right to admission to such games.¹⁶¹ As a result, the sale of a season ticket holder's status and renewal rights is not subject to anti-scalping laws.¹⁶²

Sports franchises support state and local government enacted anti-scalping laws by arguing that they are protecting the fan because ticket scalping results in fans paying exorbitant prices for tickets, and like individual tickets, the sale of season ticket holder status and renewal rights is unfair to the fan.¹⁶³ However, this argument, coming from the franchises, seems hypocritical because the franchises are offering "premium seat" services. The franchises are willing to charge excessive prices for tickets to the game and even require that fans who wish to purchase premium seats, often the seats with better views of the playing field or court, purchase personal seat licenses for the right to purchase these tickets.¹⁶⁴ In fact, many teams only offer the premium seats to PSL and season ticket holders,¹⁶⁵ so the fan that wishes to buy tickets in premium seats to a single game has no opportunity to purchase them from the team's ticketing agents. Unfortunately, these policies are pricing some fans out of the market for tickets because the fans are unable to pay both the high price for seat rights, as well as the per-game price for the ticket.¹⁶⁶

Moreover, the teams' argument that anti-scalping policies protect the fan from paying high prices for tickets to high-demand games is translucent. Teams themselves are charging higher prices per ticket to games which are

160. See, e.g., *In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 499–500 (Bankr. W.D. Penn. 1992) (addressing the applicability of anti-scalping law to transfers of rights to repurchase or sell tickets).

161. 27A AM. JUR. 2D *Entertainment & Sports Law* § 7 (2005) (citing *In re I.D. Craig Serv. Corp.*, 138 B.R. at 500).

162. *Id.*

163. In fact, sports franchises often have policies stating that when the team learns a ticket holder is scalping the tickets, the team may revoke the scalper's rights to purchase tickets by terminating the scalper's ticket accounts. See New York Yankees Ticket Licensees, *supra* note 10. Furthermore, franchises are taking an active role in preventing scalping by working with police and monitoring Internet auctions and online ticket brokerage sites. See *id.*

164. Some economists believe the requirement of purchasing PSLs is a way for the teams to recover revenue that season ticket holders make from scalping tickets. Ike Brannon, *Financing Our Stadium*, WASH. TIMES, Jan. 3, 2005, at A15.

165. Club Season Tickets, <http://www.redskins.com/tickets/article.jsp?id=3375> (last visited Nov. 12, 2006).

166. Walker, *supra* note 12, at B1. The seat license requirement is no trivial matter. In fact, sports franchises require ticket holders to place deposits of up to \$25,000 for the right to purchase season tickets. *Id.*

perceived to generate greater fan interest. Many sports franchises, especially those affiliated with Major League Baseball, have selected “premium” or “prime” dates on which they charge anywhere from \$5 per ticket to \$20 per ticket above the regular ticket price.¹⁶⁷ Typically, teams designate premium days based on a variety of factors, including weekend dates, inter-league matches, such as the St. Louis Cardinals versus the New York Yankees and the Chicago Cubs versus the Chicago White Sox, and long-established rivalries, such as the New York Yankees versus the Boston Red Sox and the St. Louis Cardinals versus the Chicago Cubs.

Furthermore, franchises often create venues where season ticket holders may resell their tickets.¹⁶⁸ Through this secondary market, the team collects profits, over their normal per-ticket profit, by facilitating the ticket transfer between fans and charging the buyer and/or seller.¹⁶⁹ For example, the Seattle Mariners reported that they charged the seller and the buyer 15% and 10% of the final purchase price, respectively.¹⁷⁰ Through this practice, the team profited between \$150,000 and \$200,000 in the 2002 season, in addition to the printed face value that season ticket holders had already paid the club for the tickets.¹⁷¹ Similarly, while the San Francisco Giants have a stated policy prohibiting resale of tickets near their stadium,¹⁷² the Giants offer an online service to season ticket holders which acts as a secondary market for reselling tickets.¹⁷³ Through this service, ticket holders may resell their tickets at any price, even above the printed price on the ticket.¹⁷⁴ When the ticket is purchased, the buyer pays 10% of the sale price to the San Francisco Giants.¹⁷⁵ Clearly, these teams are taking advantage of the law and manipulating their ticket scalping policies to their gain.¹⁷⁶

Franchises who offer secondary markets for ticket resale often also prohibit ticket scalping in their season ticket holder policies.¹⁷⁷ The franchises limit the season ticket holder’s ability to resell his or her tickets by claiming

167. See Wrigley Field Seating and Pricing, <http://chicago.cubs.mlb.com/NASApp/mlb/chc/ticketing/seating.jsp> (last visited Nov. 12 2006); 2006 ST. LOUIS CARDINALS PARTY FACILITIES & GROUP TICKETS (St. Louis Cardinals, St. Louis, MO 2006), at 10, 14.

168. Glantz, *supra* note 151, at 270.

169. *Id.* at 271.

170. *Id.*

171. *Id.* at 271–72.

172. *Id.* at 278. This anti-scalping policy conflicts with the California laws, which allow the resale of tickets. *Id.*

173. Glantz, *supra* note 151, at 279; see The San Francisco Giants Ticket Policies, <http://sanfrancisco.giants.mlb.com/NASApp/mlb/sf/ticketing/doubleplay.jsp> (last visited Nov. 12, 2006).

174. Glantz, *supra* note 151, at 279.

175. *Id.*

176. *Id.*

177. *E.g.*, New York Yankees Ticket Licenses, *supra* note 10.

that the tickets are revocable licenses and scalping is cause for revocation.¹⁷⁸ However, the secondary market for reselling tickets that the teams have created is analogous to ticket scalping because, through this market, the season ticket holders are selling over the internet, often in an auction type format, to unknown buyers.¹⁷⁹ Through the secondary market, teams make transfer of the tickets easier for season ticket holders, while generating additional profit for the team. These policies contradict the teams' alleged purpose behind the anti-scalping policies of protecting the fans by showing the franchise's intent to maintain control over future revenues generated from the resale of tickets.¹⁸⁰

2. PSL Transfer Limitations

Similarly, teams who restrict the transferability of personal seat licenses seem to do so out of monetary consideration. By restricting transfer to another individual or entity, the personal seat license reverts back to the team when the holder no longer wants to purchase season tickets or upon death of the owner. As a result, the team is able to re-offer the PSL for purchase to another fan, thereby gaining additional revenue, which the fan would have acquired upon transfer.

Moreover, limiting the personal seat license holder's ability to transfer for a period following the purchase is motivated by money as well. Following economic theory, if the PSL holder is allowed to transfer immediately after purchase, then supply of available PSLs on the market would increase, thereby decreasing the fair market value of the PSL and the price the team could demand.

IV. WHY SHOULD SEASON TICKETS AND PERSONAL SEAT LICENSES BE CONSIDERED PROPERTY INTERESTS?

Historically, courts have analyzed season tickets and personal seat licenses on a very fact-specific and jurisdiction-specific basis to determine if a property interest exists. Courts often look at the policies of the sports organization or seller of the season tickets regarding revocability of tickets, annual renewal of season tickets, and transfer restrictions on season ticket holder status and

178. *Id.*

179. The secondary market resembles traditional street-corner ticket scalping in that the street-corner scalper and the buyer are strangers who agree upon a price for the ticket exchange. Similarly, in the newer Internet ticket scalping format, the buyer and seller never meet one another, but agree on a price over the Internet.

180. The secondary ticket resale markets for season ticket holders make it much easier for a ticket holder to resell the tickets. Through this avenue, the team provides the season ticket holder with individualized accounts that allow the ticket seller to resell at any time. In some cases, the season ticket holder even has the ability to set a reserve price. The San Francisco Giants Ticket Policies, *supra* note 173. With the ease of this transaction, the teams have made it so that there should be no motivation for the ticket holder to scalp in a traditional format.

personal seat licenses, as well as exceptions to their policies.¹⁸¹ Additionally, courts have based their findings on state laws.¹⁸² Because of this fact-specific and jurisdiction-specific analysis, court holdings regarding season tickets have conflicted. It seems courts faced with similar facts have different results on the property interest issue.

Here, the lack of uniform treatment among courts concerning PSLs and season tickets undercuts the property system. Courts addressing the issue are faced with the difficult decision of which precedent to follow. This divergence makes it difficult for ticket sellers and purchasers to predict how a court addressing this issue may rule in the future. Each party should feel confident in their agreements concerning season tickets and PSLs. Without this confidence, the fan, as purchaser, and the franchise, as seller, cannot be expected to invest in the upkeep of their relationship. Therefore, a need for uniform treatment of the issues exists.

Because under state law factually similar cases reach different results, the most recognizable way to generate uniform treatment of season ticket holder status and personal seat licenses among the states is through federal law.¹⁸³ This may be achieved either by passing new federal legislation regarding season ticket holder status and personal seat licenses or by applying currently existing federal law to this arena. With the time required to pass legislation in mind, it likely would be easier to classify season ticket holder status and personal seat licenses in preexisting federal law.

Arguments have been made that seat licenses should be considered securities, and therefore, fall under the protection of the Securities Act of 1933 and the Securities Exchange Act of 1934.¹⁸⁴ This analysis seems fitting, as the purchase of a personal seat license invests money which is pooled together with the money of other investors to finance the reconstruction or remodel of a

181. *See supra* Part II, C–E.

182. *Compare In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 495 (Bankr. W.D. Penn. 1992) (holding expectancy interest in renewal rights is a property interest alienable by the bankruptcy estate under Pennsylvania law), and *In re Harrell*, 73 F.3d 218, 220 (9th Cir. 1996) (holding that, under Arizona law, the expectation of renewal of the season tickets is not an alienable property right when the opportunity to renew is revocable). As a result, courts in different states analogize the season tickets and PSLs to different types of property interests. *See, e.g., In re Harrell*, 73 F.3d at 219–20 (comparing season tickets to a long-term lease); *In re I.D. Craig Serv. Corp.*, 138 B.R. at 494–95 (comparing season tickets to a liquor license); *Soderholm v. Chicago Nat'l League Ball Club, Inc.*, 587 N.E.2d 517 (Ill. App. Ct. 1992) (comparing season tickets to a revocable license).

183. The point of this Comment was not to develop a sure-fit solution, but rather, to recognize the existing problem and the need for a solution.

184. Levensgood, *supra* note 7, at 442–43. Classifying seat licenses as securities would also protect the fan who purchases a PSL from the franchise by requiring the franchise to submit financial information and material information, such as plans to relocate. *Id.* at 430.

stadium.¹⁸⁵ Through this investment, the purchaser expects to make a profit, the extent to which is based on the success or failure of the team, if he or she sells the seat license.¹⁸⁶

Regardless of the means in which uniformity is met, it is important that the purchasers of season tickets and personal seat licenses enjoy more property rights than those which accompany a traditional license. Specifically, it is important to the purchaser that she may be able to recover her investment in the team by transferring her interest in the season ticket holder status and/or personal seat license.

Franchises will likely continue to fight the transfer issue, as they have in previous cases. Additionally, they may attempt to draft around the fan's rights to transfer, making the success of this less likely. For example, in response to the previously discussed cases finding an alienable property interest in season ticket holder status and renewal rights, franchises, as sellers of season tickets, adjusted their policies and contracts in an attempt to preclude similar cases in the future. Indeed, the New York Yankees included a section in their policies which cancels the season ticket holder's account when she files for bankruptcy, causing the season ticket holder to lose renewal rights.¹⁸⁷ In effect, this clause bars the bankruptcy trustee's ability to sell the season ticket holder status for the benefit of the bankruptcy estate and creditors. The Green Bay Packers have a similar clause, requiring the tickets to revert to the team upon involuntary dissolution and barring the trustee's claim of right.¹⁸⁸ Based on these attempts to circumvent the court system and the rights of alienation, it is necessary to implement a strategy that allows the organization to retain some rights regarding transfer of season ticket holder status and personal seat licenses, yet allows the fan to retain and enjoy her rights to transfer.¹⁸⁹

185. *Id.* at 435–37.

186. *Id.* at 437–38.

187. New York Yankees Ticket Licensees, *supra* note 10. The Yankees' policies state: In the event that the Yankees receive notice, or information that a person or business-entity has filed for bankruptcy or an involuntary bankruptcy petition has been filed, at the option of the Yankees, the Ticket Account will be canceled. The Ticket Account of a bankrupt person or business-entity are [sic] revocable licenses and may not be transferred under any circumstances and the Ticket Account should not be considered an asset of the person, the business-entity, the bankrupt estate, or any trustee or receiver thereof. In the event that a Ticket Account is canceled during the season, the Tickets associated with the Ticket Account will remain the property of the Licensee; however, the Licensee will not be offered an invoice for the relevant postseason or beyond.

Id.

188. Season Ticket Holder Policies, *supra* note 17.

189. The rights of the team could include controlling the price at which the season ticket holder status or PSL sells, rather than allowing the fan to sell it at fair market value. Also, perhaps the team should be provided the right of first refusal for the season ticket holder status or

CONCLUSION

Due to fans' substantial investments and the franchises' reliance on revenues generated through season tickets and personal seat licenses, it is important for both parties to discern the contractual rights and privileges. Yet, conflicting holdings of courts about the rights and privileges of these interests result in uncertainty. Season ticket holder status and personal seat licenses, while regarded by the franchise as licenses, bestow upon the purchaser greater rights and expectations than a license. While the fans' conduct with regard to tickets is subject to restrictions, this is not enough to break the fans' bundle of rights, and the fan's expectation of perpetual renewal rights cannot be limited by these restrictions. Therefore, season ticket holder status and personal seat licenses are property interests that should be transferable between individuals and/or businesses without restrictions.

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PSL so that it may purchase this right if it is willing to match competitive offers at the fair market value.

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