

THE DANISH QUESTION, THE MAILMAN, AND JUSTICE SCALIA: EXAMINING THE GROUP PLAY TIEBREAKER RULES

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I. INTRODUCTION

During the 1996 Summer Olympics held in Atlanta, a press conference yielded an interesting exchange when the international media were given an opportunity to pose questions to members of the U.S. men's basketball team (Dream Team III). One reporter asked power forward Karl Malone, "I am from Denmark and I am new at this. *Why do you get two points for a basket?*"¹ Several news accounts reported laughter in reaction to the question.² Others went a step further, describing the question as "unusual,"³ "ridiculous,"⁴ a "corker,"⁵ and even "[t]he leading candidate for Dumbest Question of the Centennial Olympics."⁶ Malone, nicknamed "the

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¹ Athelia Knight, *As Countdown Ends, The City Is Ready*, WASH. POST, July 19, 1996, at C06, 1996 WLNR 6477975 (emphasis added); *Athlete's Birthday Good As Gold*, WASH. POST, July 19, 1996, 1996 WLNR 6559462 (emphasis added); *Atlanta Games Day 1 Our Commemorative Edition Olympic City Press Pass*, ATLANTA J. & CONST., July 19, 1996, at S42, 1996 WLNR 2968113 (emphasis added); *Journalists Ask the Hardest Questions*, PALM BEACH POST, July 19, 1996, at 11C, 1996 WLNR 1608610 (emphasis added).

² See, e.g., Gary Hill, *Olympics-Basketball-Dream Team Carefree*, REUTERS NEWS, July 19, 1996; Jim O'Connell, *Always New Questions for Dream Team*, AP ONLINE, July 18, 1996; *Atlanta Games Day 1*, *supra* note 1, at S42; *U.S. Coach: Chinese Swimmers Not 'Clean'*, USA TODAY, July 19, 1996, at 04E, 1996 WLNR 2825227.

³ *U.S. Coach*, *supra* note 2, at 04E.

⁴ O'Connell, *supra* note 2. The subtitle of another article reporting the exchange reads, "NBA Stars Field Questions from the Sublime to the Ridiculous." John Crumacker, *Dream Teams Go on the Loose*, S.F. EXAMINER, July 19, 1996, at F1, 1996 WLNR 16158.

⁵ O'Connell, *supra* note 2; *Atlanta Games Day 1*, *supra* note 1, at S42.

⁶ Norm Clarke, *Italian Athlete Spared*, DENV. ROCKY MTN. NEWS, July 20, 1996, at 20, 1996 WLNR 665459. Malone contributed to this sentiment, when he "shook his head in a mixture of amusement and amazement," Steve Campbell, *Redeem Team Hardly Bashful*, ALBANY TIMES UNION, July 21, 1996, at C1, 1996 WLNR 328947, and quipped, "I thought I had heard them all," Knight, *supra* note 1, at C06; O'Connell, *supra* note 2.

Mailman,”⁷ delivered thus: “It’s the rules of the game, my man.”⁸ “Long ago, Dr. Naismith said you would get two points for a basket.”⁹ “That’s just the way Dr. Naismith designed it.”¹⁰ Malone continued and volunteered: “You get two points, unless you shoot behind the 3-point line. Then you get three points.”¹¹ “Why? I don’t know. That’s just the way we do it in America, my man.”¹²

It is a commentator’s license to draw meaningful connections between a spontaneous response at a press conference by a hall of fame member of one court to the pronouncements by a jurist in another, the nation’s highest. In retrospect, Malone’s explanation of the rule awarding two points for a basket is reminiscent of a statement by Justice Antonin M. Scalia in a case five years later, involving the rules of a professional golf association. In *PGA Tour, Inc. v. Martin*, the Justice wrote that the rules of all sports are “entirely arbitrary” and “[t]he only support for any of them is tradition and (in more modern times) insistence by what has come to be regarded as the ruling body of the sport”¹³

⁷ Malone first got the nickname as a college player because “he delivered.” Sam Goldaper, *Malone Becomes a Major Force*, N.Y. TIMES, Dec. 15, 1988, at D27; see also Harvey Araton, *Coleman and Nets Delayed by Malone’s Special Delivery*, N.Y. TIMES, Nov. 18, 1992, at B12 (“He knows where you live.”); Sam Goldaper, *After 19 Seasons, Malone Is Retiring*, N.Y. TIMES, Feb. 12, 2005, at D2 (“for his reliability”).

⁸ Crumacker, *supra* note 4, at F1; Hill, *supra* note 2. Indeed, Rule No. 5, Section I(b) of the rules of the National Basketball Association provides: “A successful field goal attempt from the area on or inside the three-point field goal line shall count two points.” NAT’L BASKETBALL ASS’N, OFFICIAL RULES OF THE NATIONAL BASKETBALL ASSOCIATION R. 5, § I(b) (Jan. 31, 2001), http://www.nba.com/analysis/rules_5.html?nav=ArticleList.

⁹ *Athlete’s Birthday Good As Gold*, *supra* note 1; *Atlanta Games Day 1*, *supra* note 1, at S42; *Journalists Ask the Hardest Questions*, *supra* note 1, at 11C; *U.S. Coach*, *supra* note 2, at 04E; Knight, *supra* note 1, at C06.

¹⁰ Mark Murphy, *Dream Team Talks It Up*, BOSTON HERALD, July 19, 1996, at 108, 1996 WLNR 261600.

¹¹ *Id.*; see Campbell, *supra* note 6, at C1 (“You get two points for a basket. Unless you shoot it from behind the 3-point line. Then you get three points.”); Hill, *supra* note 2 (“If you shoot behind the three-point line, you get three.”).

¹² Campbell, *supra* note 6 at C1; see Hill, *supra* note 2 (“Why? Because that’s how we do it over here in America.”); Murphy, *supra* note 10, at 108 (“That’s how we do it in Middle America.”). Was Malone suggesting that there was a different rule in other countries? As one media account noted, “Actually, that’s how they do it most everywhere.” Hill, *supra* note 2. Indeed, basketball in Denmark operates under the same rules, i.e., two points for a basket, one for a free throw, and three points for a basket made from beyond the three-point line. DANMARKS BASKETBALL FORBUND [*DANISH BASKETBALL FEDERATION*], INTERNATIONALE BASKETBALL LOVE 2014 § 16.2.1 (Danish text). I thank my colleague (and competitive basketball player) Mads Krogh, of Aalborg, Denmark, for his translations and assistance relating to the preceding citation. The rules of the game in Denmark are the same as those of the Fédération Internationale de Basketball (FIBA), the international governing body of the sport. FÉDÉRATION INTERNATIONALE DE BASKETBALL, OFFICIAL BASKETBALL RULES 2014 Art. 16.2.1 (“A goal released from a free throw counts 1 point. . . . A goal released from the 2-point field goal area counts 2 points. . . . A goal released from the 3-point field goal area counts 3 points.”).

¹³ 532 U.S. 661, 700, 701 (2001) (Scalia, J., dissenting). It should be noted that Justice Scalia’s statements relating to rules of sport were included in his *dissenting* opinion, in which Justice Thomas

With due respect to Malone, I think the Danish reporter's question was inquisitive, sound, and natural for someone new to the game;¹⁴ an informed response required more knowledge of basketball history than the all star player had at his fingertips at the time. This is not to fault Malone. Indeed, I suspect that many basketball fans stateside may not be able to offer readily a full explanation of the allocation of points in basketball, without prior research. In brief, Naismith did not arbitrarily assign two points for a basket when he established the rules of the game. Rather, there is an explanation as to how, over time, the rule of awarding two points for a basket was set.¹⁵ The

joined. The very nature of a dissent, in contrast to a majority opinion that sets forth reasons for judgment, allows for a more free-wheeling and unrestrained delivery, and Justice Scalia did not disappoint. For example, he declared, among others, that "it is the very nature of a game to have no object except amusement (that is what distinguishes games from productive activity)." *Id.* at 700-01. One of the issues in the case was whether the use of a golf cart would "fundamentally alter the nature" of the golf association's tournaments, under the Americans With Disabilities Act of 1990. *Id.* at 664-65 (majority opinion) (quoting 42 U.S.C. § 12182(b)(2)(A)(ii)). The plaintiff, Casey Martin, was a talented golfer who was afflicted with a degenerative circulatory disorder that prevented him from walking an 18-hole golf course. He requested and was denied a waiver of the walking rule. For the seven-member majority of the Court, Justice John Paul Stevens wrote, "We are not persuaded that a waiver of the walking rule for Martin would work a fundamental alteration . . ." *Id.* at 683. Rather, "the *essence* of the game has been shotmaking—using clubs to cause a ball to progress from the teeing ground to a hole some distance away with as few strokes as possible. . . . That *essential* aspect of the game is still reflected in the very first of the Rules of Golf . . ." *Id.* at 683-84 (footnote and citation omitted) (emphasis added). Seizing on this point, Justice Scalia wrote that rules "are (as in all games) entirely arbitrary," *id.* at 700 (Scalia, J., dissenting), "and none is essential," *id.* at 701. He also noted that "there is no basis on which anyone—not even the Supreme Court of the United States—can pronounce one or another of them to be 'nonessential' if the rulemaker (here the PGA TOUR) deems it to be essential," *id.* at 700, and "it is quite impossible to say that any of a game's arbitrary rules is 'essential,'" *id.* at 701.

¹⁴ There is a valid query as to precisely what the Danish reporter sought by asking his question. Indeed, one media report related that the "[reporter's] meaning was obscure." Hill, *supra* note 2. Perhaps the question relates to why a "field goal" in basketball is worth two points, when a "goal" in hockey or soccer is marked simply as a goal, or why a field goal in basketball is worth two points, when the same in U.S. football is worth three. Another possibility, which I acknowledge requires some imagination on the part of the listener, is the question of why two points are awarded for a basket that is made within a meter's distance from the rim, but one point for a free throw shot, which is from a significantly farther distance. On this point, I am able to offer an explanation. A free throw, which occurs after a foul on a player, is uncontested, whereas a field goal attempt near the basket occurs when the ball is "live," and a defensive player may block or alter the attempted shot, or steal possession of the ball. There is no consequence if the offensive player is alone, with no defensive players nearby. The team is merely awarded for the consequence of creating that opportunity on the offensive side. In short, there is a reason for the rule, and it is not arbitrary.

¹⁵ In 1891, fitness instructor James Naismith introduced to his students the game of basketball as a suitable indoor athletic activity during the winter months. JAMES NAISMITH, BASKETBALL: ITS ORIGIN AND DEVELOPMENT 29 (1941). Naismith's original thirteen rules of the game did not specify that a basket would be worth two points. Indeed, the original rules did not refer to "point[s]" at all. The only provisions relating to scoring in the new game provided: "If either side makes three consecutive fouls, it shall count a *goal* for the opponents." *Id.* at 54 (R. 7) (emphasis added). "A *goal* shall be made when the ball is thrown or batted from the grounds into the basket and stays there, providing those defending the goal do not touch or disturb the goal." *Id.* (R. 8) (emphasis added). "The side making the most *goals* in that time shall be declared the winners." *Id.* at 55 (R. 13) (emphasis added). Naismith later explained the revisions of the rules related to the allocation of point scoring:

reason for the rule awarding three points for a basket from beyond a certain distance is, I think, rather straightforward—a field goal attempt from a farther distance generally increases the degree of difficulty, and the added point rewards those who take the risk and make a successful attempt.¹⁶

With equal respect to Justice Scalia, I would argue that many rules of sports have some rationale behind them, and an examination of the reasons for particular rules is a worthy exercise.¹⁷ My view is premised on the proposition that rules of sport are akin to laws of society, in that both govern activity, whether in an arena or within a territorial jurisdiction. A sport's rules and regulations reflect the purpose and goals of the governing body (sometimes guided by the elusive “best interests”¹⁸ of the game), just as the legislature's enacted laws reflect the public's will and desire. Thus, rules for addressing similar situations may differ from one sport to another, as laws may vary from one jurisdiction to the next. Moreover, some rules of sport have the appearance and feel of statutory text; some are as detailed and cumbersome as provisions of the Code of Federal Regulations; and many rules, like many laws, require interpretation. Some rules, like some laws, receive little attention until their application in unusual circumstances results in an outcome that the fan base, the media, and perhaps some within the governing body itself, find objectionable. Such instances sometimes trigger debate, deliberations, and even amendment. Lastly, perhaps for some rules, like some laws, it is not entirely clear what the intention of a rule is, or what policy aim it reflects.

One clause was inserted in the rules in an effort to protect a clean team from another that used rough tactics. The clause read that if three fouls were committed by one team without the other having committed a foul, the team that was fouled would receive *one point*. This was rather a serious penalty, as a field goal at that time only counted *one point*.

Realizing that this penalty was too severe, the value of a field goal was changed from *one point to three points*, and each foul committed against a team counted *one point*. . . .

The next change allowed the team that had been fouled to try for the basket from a line twenty feet from the goal. If this try was successful, the goal counted the same as one made from the field. . . . In 1895, the free-throw line was moved up to fifteen feet, and the goals from the free-throw line were counted the same as the goals from the field. *In the following year, the points were changed to two for a field goal and one for a foul*. The distance of the free-throw line and the value of the baskets have remained the same up to the present time.

Id. at 69-70 (emphasis added).

¹⁶ The three-point basket in basketball invites the question of why the three-point line is set where it is, or for that matter, why the free throw line is where it is, in youth, college, professional, or international play. The responsive answer is beyond the scope of this article, but the question relates to an important point. The task of line drawing—literally in sport and figuratively in law (in the determination of what is within and beyond permissible activity)—is the very province of the sport's governing body or the legal institutions of a jurisdiction, respectively.

¹⁷ Although tradition may explain why the rules continue to require, for example, “[e]ighteen-hole golf courses, 10-foot-high basketball hoops, 90-foot baselines, 100-yard football fields,” *PGA Tour, Inc.*, 532 U.S. at 701 (Scalia, J., dissenting), I do not think these rules are purely *arbitrary*. I suspect that each has a beginning point, followed by a relevant development.

¹⁸ MAJOR LEAGUE BASEBALL CONSTITUTION, art. II, § 2(b) (2000) (authorizing the Commissioner to “investigate . . . any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball.”).

In this Article, I discuss the parallels between a game's rules and a society's laws—which includes an examination of the rationale for both—using particular tiebreaker rules in selected sports. Take the situation of a tournament setting, where only a limited number of teams can advance to the championship round after pool play (mostly, but not always, a round robin¹⁹ format). Where there are ties between teams with identical records, there must be rules to break the ties.²⁰ What are these rules? As with laws generally, these tiebreaker rules say something about the governing body that makes (and can change) them, and perhaps the sport as a whole. As to the focus on tiebreaker rules and not others, I confess an interest in the collective subject of ties: rules to break ties, the mindset of those who make them, and the differences between the rules of one sporting jurisdiction to the next.²¹ Admittedly, the scope of this Article is limited—it does not pretend to explain or defend all rules in sport, and the tiebreaker rules of only three sports are selected for discussion herein. These rules, in my opinion, best highlight the similar aspects of rules of sport and societal laws.

Part II begins with an introduction of tiebreaker rules in a youth baseball association, allowing for an opportunity to discuss the reasons and rationale for the rules in that arena, and their application in a hypothetical tie. This provides the setting for contrasting tiebreaker rules in two other sports, intercollegiate football stateside, and international professional *football* (i.e., soccer). This part also addresses the two situations when the unlikely happened—a three-way tie at the end of the regular season in one division of the former Big 12 Conference, and a four-way tie in group play during Fédération Internationale de Football Association's (FIFA) World Cup—both requiring the respective sport's tiebreaker laws to be applied. In one, there was controversy, calls for reform, and indeed, amendment; the other resulted in disappointment for one team, but otherwise a collective regard for the game's rules. I probe the reasons for the differences in the two jurisdictions' reactions to the tie event. In Part III, I indulge, with an unconventional application of the aforementioned tiebreaker rules of the Big 12 to the tiebreaker situation in the World Cup, and vice versa, intending to

¹⁹ In this context, *Webster's* defines "round robin" as "a tournament in which every contestant meets every other contestant in turn." *Round robin*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1980 (2002).

²⁰ This Article does not address rules to break ties at the end of a regulation contest. I address that point, in part, in a forthcoming piece. Ilhyung Lee, *The American Aversion to Ties in Sport and Intercollegiate Wrestling's Labyrinthine Rules*, 47 SW. L. REV. (forthcoming 2017). Returning to the press conference, one wonders if Malone were asked why, when the score is tied at the end of the second and final half, the teams continue to play, his response would have been the same: "It's just the rules of the game, my man," or "Long ago, Dr. Naismith said you play overtime, until you have a winner." For the record, Naismith's original rules provided that "[i]n case of a draw, the game may, by agreement of the captains, be continued until another goal is made." NAISMITH, *supra* note 15, at 55 (R. 13).

²¹ I ask what result obtains when a vote by partners at a law firm, or members of a law faculty, ends in a tie. The partnership agreement or the university or law school's bylaws might contain a provision regarding a tie vote, indicating the respective institution's prior deliberation of such a possibility and its desire for a procedure to be followed in such an event. Absent such a provision, what the partnership or faculty does next is also informative.

highlight the reasons for the differing rules of the respective sports. Ultimately, the game's rules, like a society's laws, reflect the values and culture of the jurisdictional base that enacts them. Rules should make sense, and when they do not, action is required.

II. TIEBREAKER RULES: CASE STUDIES

A. YOUTH BASEBALL

Youth baseball during the summer months often includes weekend tournaments.²² Typically, teams are placed in one of two groups, with each team playing every other team in the group, in the traditional round robin format.²³ At the end of pool play, teams are seeded by win-loss records, and the top two teams from each group advance to the championship bracket, in single elimination play to determine a champion.²⁴ There are sometimes ties in the win-loss records, usually for the second place team in the group, in my experience. The tournament schedule does not allow for the tied teams to play an elimination (or play-in) game. In one tournament in mid-Missouri, the following "Pool Play/Tie Breaker Criteria" were announced:

1. Head-to-Head (only when 2 teams are tied)
2. Runs Allowed
3. Run Differential (maximum +/- 8 runs per game)
4. USSSA [United States Specialty Sports Association²⁵] Point System
5. Coin Flip²⁶

The "Danish question" (if I may) could be posed here—that is, for those new to the sport, why are these the criteria for breaking ties, and why in this order? I offer my own thoughts, as an observer, fan, and amateur analyst of the sport.²⁷ The rationale for the first criterion—head-to-head record between two tied teams—is fairly straightforward. When two teams are tied with equal records, the team which defeated the other in a head-to-head matchup should be considered "superior" and more deserving of advancing to the next

²² I was introduced to these tournaments when my son played in them during his middle and high school years.

²³ See, e.g., USSSA World Series, July 11-14, 2013 (14U AAA 60/90 division) (on file with author).

²⁴ *Id.*

²⁵ See United States Specialty Sports Ass'n, <http://www.ussabaseball.org/rules-by-laws> (last visited Oct. 17, 2017).

²⁶ *Game 7 Baseball 2012 Tournament Rules*, USSSA (June 11, 2012) (on file with author). Other tournaments have similar rules. E.g., BC Baseball League, School's Out, USSSA State Qualifier [May 31, 2012–June 3, 2012] ("Head to Head; Fewest Runs Allowed; Highest Run Differential") (on file with author); USSSA World Series, *supra* note 23 ("Head to Head; Fewest Runs Allowed; Highest Run Differential; USSSA Points; Coin Toss").

²⁷ My thoughts were confirmed in large part by a long-time coach of youth and high school baseball in mid-Missouri and a former scout for the Colorado Rockies. Telephone interview with Kendall J. Lewis (Aug. 7, 2017).

round. By the same rationale, if there is a tie between three teams, and one of the teams defeated the other two, that team should advance.²⁸

The second criterion—runs allowed—awards the team that gave up the fewest number of runs. This criterion emphasizes and rewards good pitching and defense. It is said that pitching is the most important part of the game, perhaps “75% of baseball.”²⁹ If true, it deserves a relatively higher status in the hierarchy of tiebreaking criteria. Note that the number of runs a team *scores* on offense is not a separate criterion, but is subsumed in the third criterion—run differential. Run differential refers to the difference in the number of runs scored and runs allowed, and therefore includes in one criterion a team’s ability on both offense and defense. The more runs scored in combination with fewer runs allowed, the higher the differential. This criterion acknowledges victories by significant (as opposed to narrow) margins, as well as narrow losses over blowout defeats. Note that this criterion also contains a limitation—there is a maximum run differential of +8 or -8 runs per game, no matter how lopsided the actual score.³⁰ Thus, with respect to the third criterion, a 21-1 victory yields the same run differential as a 9-1 win.

The fourth criterion refers to points that the team has accumulated based on its performance in previous sanctioned tournaments.³¹ This is a more distant measure of a team’s ability, and although it does not take into account performance during the tournament in which the tie resulted, it yields a quantifiable index by which teams can be compared. The fifth and final criterion—coin flip—is a game of chance, and has no connection to a team’s baseball ability or performance. The coin toss, however, does satisfy the need for closure and finality. At some point, the games must go on.

One may ask why, in a game in which the objective is to score runs, the number of runs *scored* is not a separate criterion. Although it is subsumed in the third criterion of run differential, runs scored does not have separate standing as does runs allowed. I venture to guess that this reflects the tournament organizer’s desire to discourage teams from “running up the

²⁸ Thus, I think it is error for the rules to say that this criterion applies “only when 2 teams are tied.” It would apply for three teams if one beat the other two. In reality, however, when there is a three-way tie, often Team A defeated Team B, which defeated Team C, which in turn defeated Team A, completing the circle of even records. Rather than a flat rule that says that the head-to-head criterion does not apply, the criterion as applied would not resolve the tie, and the next criterion would be used. In addition, some tournaments have groups with a large number of teams, and not every team in a group plays against all others in the same group, in which case, the head-to-head criterion would not apply between tied teams that did not play against each other.

²⁹ James K. Skipper, Jr., *Is Pitching 75% of Baseball? Expert Opinions*, SOCIETY FOR AMERICAN BASEBALL RESEARCH, RESEARCH JOURNALS ARCHIVE, <http://research.sabr.org/journals/is-pitching-75-of-baseball> (quoting Connie Mack).

³⁰ The reason for this limitation is discussed *infra* text accompanying note 32.

³¹ See *National Rankings*, USSSA POINT SYSTEM, USSSA RANKINGS, <http://www.ussa.com/baseball/Rank1/#/?gdSport=11>. See also *Additional Ranking System*, USSSA, <http://www.ussa.com/baseball/RankingPoints/#/?gdSport=11> (explaining rating system and factors used).

score,” especially against less talented opponents.³² This is *youth* baseball, where the level of talent between teams can be uneven and the outcome of some contests is far from doubt. A game with a lopsided score can be demoralizing for players and spectators, and even parents of the winning team wish for a quick end.

The list of the criteria as a whole reflects reason and rationale. Tiebreaker rules are necessary to determine which teams advance. They are posted in advance of the tournament, giving notice. Multiple criteria are offered to break the tie, including the last one, which will be definitive, in the event that those at the higher end of the list do not yield an answer. The order of the criteria reflects the tournament organizer’s priority and preferences with respect to the various determinants of the game.

To see the above tiebreaker rules in practice, assume the following statistics after ten hypothetical games of round robin play in a group with five teams³³:

Team	Win-Loss Record	Runs Allowed	Run Differential (maximum +/- 8 runs/game)
X	4-0	7	+16
A	2-2	11	+2
B	2-2	14	+7
C	2-2	11	+3
Y	0-4	36	-28

³² As a parent, I have seen my share of games with lopsided scores.

³³ These figures would result from the following scores of hypothetical games played within the pool. In each cell, the first number (before the colon), indicates the number of runs scored by the team in the vertical column, at left; the second number is the number of runs by the team in the horizontal row, at top. The score of the game is followed by “W” for win or “L” for loss, for the team in the vertical column. The final entry indicates the run differential of that game. A “*” notation is noted after “+8” or “-8” if the run differential for the game exceeds 8.

	X	A	B	C	Y
X	---	5:3 W +2	6:3 W +3	4:1 W +3	12:0 W +8*
A	3:5 L -2	---	4:3 W +1	2:3 L -1	4:0 W +4
B	3:6 L -3	3:4 L -1	---	5:2 W +3	10:2 W +8
C	1:4 L -3	3:2 W +1	2:5 L -3	---	10:0 W +8*
Y	0:12 L -8*	0:4 L -4	2:10 L -8	0:10 L -8*	---

Team X is the number one seed in the group and advances because it has the best win-loss record after round robin play. But there is a three-way tie for second place, and only one team may advance. The head-to-head criterion does not break the tie because no one team beat both of the other two teams. Team A beat Team B (4 to 3), Team B beat Team C (5 to 2), and Team C beat Team A (3 to 2). The second criterion is runs allowed. The team that gave up the fewest runs would advance. But again, there is a tie between Teams A and C. Some observers may ask (as I did to the tournament director), in the event that there is a tie in the runs allowed criterion between two teams, given that C defeated A head-to-head, whether, in this circumstance, the tie is broken effectively by the first criterion. It is a fair question (likely to be raised by supporters of Team C), and one that calls for interpretation of the rules. The tournament director informed me that once a particular criterion is applied and does not result in breaking the tie, the criterion is no longer used—or in his words, “Never to return again.”³⁴ This is an important rules clarification. In the list of tiebreaking criteria quoted above, this point is not directly stated. In another tournament, it was explicitly stated in the posted tiebreaker criteria: “Once [the head-to-head criterion] is by-passed, it is not used again.”³⁵ The rationale of the rule for not returning to the head-to-head criterion could be that in a situation where there is a tie between three or more teams, a single winner must emerge from the criteria, affirmatively and definitively, and not via a return and incorporation of a previous criterion.

In the above scenario, the third criterion breaks the tie in that Team B has the highest run differential of the three tied teams. Team A’s supporters will likely cry foul, because it: (i) defeated Team B head-to-head (the first criterion), *and* (ii) gave up three fewer runs than B (the second criterion). As intimated above, Team C’s supporters will emphasize the unfairness of not taking into consideration its head-to-head victory over Team A to break the tie by the second criterion. Such are the rules, however, and their rationale and application may lead to the possibility of occasional discomfiture and protest. Team C’s argument that the head-to-head criterion should be considered when a later criterion leads to a tie between only two teams can be effected simply by a change in the rules. There is always the possibility of reform and revision of rules otherwise seen as unfair.³⁶

³⁴ Interview with Steve Reller, Executive Director, BC Baseball League, Twin Oaks Complex, Columbia, Mo. (May 31, 2012).

³⁵ USSSA World Series, *supra* note 23.

³⁶ The argument (likely raised by supporters of Team C) that the head-to-head criterion should be re-employed when there is a tie between the top two teams in later criteria is incorporated in the current rules for football in the Big 12 Conference. *Tiebreaker Procedures*, BIG 12 SPORTS, July 2017, ¶ b., <http://www.big12sports.com/ViewArticle.dbml?ATCLID=1546006> [hereinafter *2017 Tiebreaker Procedures*] (“If three or more teams are tied, steps 1 through 4 will be followed until a determination is made. If only two teams remain tied after any step, the winner of the regular season game between the two tied teams shall prevail.”).

The above serves as a backdrop for a discussion of two case studies in which there was a tie between multiple teams. One involved a tie for a divisional championship in the Big 12 Conference in U.S. intercollegiate football; the other occurred in a World Cup soccer tournament, organized by the sport's governing body, FIFA. The stakes were considerably higher in these two settings than youth baseball.

B. U.S. INTERCOLLEGIATE FOOTBALL: THE BIG 12 CONFERENCE

In 2008, the Big 12 Conference had two divisions, North and South, with six teams in each.³⁷ Each team played eight conference games, five against the other teams in its own division plus three against teams in the other division.³⁸ At the end of the regular season, the first place teams of the two divisions would face off in a conference championship game in Kansas City, Missouri. At the conclusion of the conference schedule in the 2008 season, there was a tie for first place in both divisions (listed by win-loss record and then alphabetically)³⁹:

North			South		
Team	Win	Loss	Team	Win	Loss
Missouri	5	3	Oklahoma	7	1
Nebraska	5	3	Texas	7	1
Kansas	4	4	Texas Tech	7	1
Colorado	2	6	Oklahoma State	5	3
Kansas State	2	6	Baylor	2	6
Iowa State	0	8	Texas A&M	2	6

The North Division had a tie between two teams—Missouri and Nebraska—both with a record of five wins and three losses. The South Division had a three-way tie, between Oklahoma, Texas, and Texas Tech, all of which had a record of seven wins and one loss. Therefore, the conference's tiebreaker rules would apply. They provided:

³⁷ *Football 2008-09*, BIG 12 SPORTS (last visited Oct. 17, 2017), http://www.big12sports.com/standings/Standings.dbml?SPID=13139&DB_OEM_ID=10410&DEF_FY=2008.

³⁸ Thus, this was not a pure round robin format where each team in the group played every other team, and no more. Here, each team played every other team in the group, plus games against three other teams, but not the same three.

³⁹ See *Football 2008-09*, *supra* note 37.

Divisional Tiebreakers: The following procedure will determine the representative from each division in the event of a tie:

- a. If two teams are tied, the winner of the game between the two tied teams shall be the representative
- b. If three or more teams are tied, steps 1 through 7 will be followed until a determination is made. If only two teams remain tied after any step, the winner of the game between the two tied teams shall be the representative[]
 1. The records of the three teams will be compared against each other
 2. The records of the three teams will be compared within their division
 3. The records of the three teams will be compared against the next highest placed teams in their division in order of finish (4, 5 and 6)
 4. The records of the three teams will be compared against all common conference opponents[]
 5. The highest ranked team in the first Bowl Championship Series Poll following the completion of Big 12 regular season conference play shall be the representative
 6. The team with the best overall winning percentage [excluding exempted games] shall be the representative
 7. The representative will be chosen by draw.⁴⁰

Initially, a note on the drafting is in order. Rules, like laws, by their nature, entail the written word. Some enactments are imprecisely, ambiguously, or vaguely phrased. With respect to the Big 12 rules above, first, there is a plain drafting error, in that the prefatory language in paragraph b. begins, “If three or *more* teams are tied,” yet the first four subparagraphs therein refer to “[t]he records of the *three* teams.” Second, and more substantively, the comparative “records of the three teams” seen in the first four criteria under paragraph b. could have been phrased more clearly. For example, the first criterion, which is intended to incorporate the head-to-head determinant,⁴¹ could read, “The records of the three teams *in games against each other* will be compared.”

With respect to the substantive determinants seen in the rules, and keeping in mind the tiebreaker rules in youth baseball, there are differences of interest. First, the head-to-head criterion appears at the top for ties between both two and three teams (paragraphs a. and b.1.).⁴² Second, with respect to ties between three (or more) teams, there are multiple criteria, with the

⁴⁰ *Tiebreaker Procedures*, BIG 12 SPORTS, Oct. 23, 2006 [hereinafter *2006 Tiebreaker Procedures*] (alteration in original) (on file with author).

⁴¹ Sports commentators have interpreted this first criterion in this manner. See, e.g., Bart Pohlman, *U. Arkansas: Tiebreakers Inevitably Lead to Football Chaos*, ARKANSAS TRAVELER, U-WIRE, Dec. 5, 2008.

⁴² This is further elaborated herein. See *infra* text accompanying 45, 47.

explicit condition that “[i]f only two teams remain tied after any step, the winner of the game between the two tied teams shall be the representative,”⁴³ indicating the reversion to the head-to-head criterion. Third, the criterion of points differential does not appear at all, perhaps due to the diverse methods in which a team may score points in football—touchdown (six points), field goal (three), safety (two), “successful try” (one or two)⁴⁴—in contrast to the single unit of scoring seen in baseball or soccer.

In applying the tiebreaker rules at the conclusion of the 2008 regular season, the tie between Missouri and Nebraska in the North Division was broken simply and cleanly, given that Missouri was “the winner of the game between the two tied teams.”⁴⁵ This is the head-to-head criterion. Missouri had defeated Nebraska 52-17, on October 4, 2008, in Lincoln, Nebraska. Thus, Missouri advanced to the conference championship game as the North Division’s representative. That Missouri lost to Kansas, while Nebraska beat the same Jayhawks team,⁴⁶ was neither relevant nor considered. The result in the head-to-head contest was all that mattered under the rules.

For the three-way tie in the South Division, under the first (head-to-head) criterion, if one team had defeated the other two teams with whom it was tied, that team would be the representative. But that was not the case here. Texas beat Oklahoma (45-35, on October 11, 2008, on a neutral field), Oklahoma beat Texas Tech (65-21, on November 22, at Oklahoma), and Texas Tech beat Texas (39-33 on a last second scamper, on November 1, at Texas Tech).⁴⁷ Breaking the tie would have to be resolved by another criterion.

The second criterion—each team’s record against teams in the division—did not break the tie because all three teams had a 4-1 record against South Division opponents. The third criterion also did not resolve the question because for each team, the only loss in the division was to one of the other two teams, and each team defeated the fourth, fifth, and sixth place teams in the division. The fourth criterion, which compares the records of the three teams in games against common opponents, resulted in a deadlock because each team had a 4-0 record against common opponents. In addition to the three common opponents in the South Division (Baylor, Oklahoma

⁴³ 2006 Tiebreaker Procedures, *supra* note 40, ¶ b.

⁴⁴ NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2016 AND 2017 NCAA FOOTBALL RULES AND INTERPRETATIONS FR-80 (R. 8 § 1 art. 1) (2016), <http://www.ncaapublications.com/productdownloads/FR17.pdf>. The current rule regarding the method of scoring in NCAA football is identical to the rule for the 2008 season. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2008 NCAA FOOTBALL RULES AND INTERPRETATIONS FR-107 (R. 8 § 1 art. 1) (2008), <http://www.ncaapublications.com/productdownloads/FR08.pdf>.

⁴⁵ 2006 Tiebreaker Procedures, *supra* note 40, ¶ a.

⁴⁶ *Football – 2008 Schedule & Results*, BIG 12 SPORTS, [http://www.big12sports.com/SportSelect.dbml?SPSID=106580&SPID=13139&Q_SEASON=2008&SCHEDULE_MONTH\(select “Kansas” for “Select School”\)](http://www.big12sports.com/SportSelect.dbml?SPSID=106580&SPID=13139&Q_SEASON=2008&SCHEDULE_MONTH(select%20%22Kansas%22%20for%20%22Select%20School%22)) (last visited Oct. 17, 2017); UNIVERSITY OF KANSAS, 2008 FOOTBALL SCHEDULE, <http://www.kuathletics.com/schedule.aspx?schedule=265&path=football> (last visited Oct. 17, 2017).

⁴⁷ *Football – 2008 Schedule & Results*, *supra* note 46 (select Texas; Oklahoma; Texas Tech).

State, and Texas A&M), the only other common conference opponent was Kansas, which the three tied teams all defeated.⁴⁸

Ultimately, the three-way tie was broken and a first place team crowned after the application of the fifth criterion: “[t]he highest ranked team in the first Bowl Championship Series [BCS] Poll following the completion of Big 12 regular season conference play shall be the representative.”⁴⁹ The previously used BCS rankings were based on two polls and an average of multiple computer rankings.⁵⁰ Oklahoma was second in the BCS standings with a rating of .9351, Texas was third at .9223, and Texas Tech was seventh at .7805.⁵¹ Therefore, Oklahoma emerged as the South Division representative under this criterion.⁵² The Sooners handily defeated Missouri in the conference championship game, 62 to 21, and was selected to play in the BCS national championship game, which it lost to Florida, 24-14.⁵³

That was not the end of the tiebreaker story. Indeed, the selection of Oklahoma over Texas: “ignited several weeks of consternation;”⁵⁴ led to “[a]n uproar in Austin and across the national media landscape”⁵⁵ and “one of the major controversies in Big 12 history;”⁵⁶ and left Texas fans “apoplectic.”⁵⁷ One sportswriter wrote, “That decision is wrong on so many levels, it’s hard to know where to begin.”⁵⁸ The reason for the controversy

⁴⁸ *Id.* (select “Kansas”).

⁴⁹ *2006 Tiebreaker Procedures*, *supra* note 40, ¶ b.5.

⁵⁰ ESPN, *BCS Standings*, Jan. 21, 2010, <http://www.bcsfootball.org/news/story?id=4765845>. If there was a tie in the BCS Standings “after the computation is carried out to full decimal points,” the BCS provided for four tie-breaking criteria, the first of which was: “Look to head-to-head result.” ESPN, *BCS Selection Procedures, Tie-Breaking Procedure* ¶ 1, July 25, 2013, <http://www.bcsfootball.org/news/story?id=4819597>.

⁵¹ *Bowl Championship Series Standings*, THE NATIONAL FOOTBALL FOUNDATION & COLLEGE HALL OF FAME, Nov. 30, 2008, http://www.collegefootballpoll.com/pdf/bcs_113008.pdf. Texas had beaten Oklahoma on October 11, 2008. But after Texas’ loss to Texas Tech on November 22, Oklahoma surpassed Texas in the BCS standings. See Thayer Evans & Pete Thamel, *Oklahoma Wins Where It Matters, Off the Field*, N.Y. TIMES (Nov. 30, 2008), http://www.nytimes.com/2008/12/01/sports/ncaafootball/01oklahoma.html?pagewanted=all&_r=0 (last visited Oct. 17, 2017); Ben Volin, *Harvin “Questionable” for Title Game*, PALM BEACH POST (FL), Dec. 1, 2008, at 1C, 2008 WLNR 25078140.

⁵² See Wendell Barnhouse, *Oklahoma Earns Tiebreaker*, BIG 12, Nov. 30, 2008, <http://www.big12sports.com/ViewArticle.dbml?ATCLID=3625484>.

⁵³ *Football – 2008 Schedule & Results*, *supra* note 46 (select Oklahoma).

⁵⁴ Tim Griffin, *Big Ten May Adopt Controversial Big 12 Tiebreaker*, ESPN, Mar. 2, 2009, http://espn.go.com/blog/big12/post/_id/1652/big-ten-may-adopt-controversial-big-12-tiebreaker. It also “served as a talk-show and bulletin-board staple long after that.” *Id.*

⁵⁵ John Taylor, *Big 12 Tweaks ‘Controversial’ Tiebreaker*, NBC SPORTS, Oct. 21, 2010, <http://collegefootballtalk.nbcsports.com/2010/10/21/big-12-tweaks-controversial-tiebreaker/>.

⁵⁶ Chuck Carlton, *Two Years After Texas-Oklahoma Controversy, Big 12 Changes Tiebreaker*, DALLAS NEWS, Oct. 21, 2010, <http://sportsday.dallasnews.com/college-sports/texaslonghorns/2010/10/21/Two-years-after-Texas-Oklahoma-controversy-9312>.

⁵⁷ Kelly Whiteside, *Big 12 Tiebreaker Rules Stab Deep in Heart of Texas*, USA TODAY (Dec. 1, 2008), http://usatoday30.usatoday.com/sports/college/football/big12/2008-11-30-BCS_N.htm.

⁵⁸ Jim Litke, *BCS Should Reconsider ‘Plus-one’ Game—and Fast*, AP DATASTREAM, Dec. 1, 2008.

was simple: Texas, which the tiebreaker rules relegated to second place in the division standings, had previously beaten Oklahoma, head-to-head, 45-35. Another commentator stated, most pointedly:

On a neutral field, Texas beat Oklahoma 45-35 this season.

There's nothing left to debate. It doesn't matter that Oklahoma's nonconference wins are more impressive than Texas'. It doesn't matter that Oklahoma is playing "better" football at the end of the season.

Texas beat Oklahoma.

I don't care about the three-way tie, and the fact that Texas Tech beat Texas. We're allowed to use common sense when deciding a complex situation.

. . . .

My main point is that it's criminal Oklahoma will get to play for the Big 12 crown and not Texas.⁵⁹

Similarly, one coach indicated that he voted Texas ahead of Oklahoma in the coaches poll, explaining, "Head to head, Texas beat Oklahoma and it was on a neutral field[.] . . . That was the deciding factor for me. I haven't seen anything to make me change that. . . . If you beat somebody head to head, that's the defining deal."⁶⁰ Perhaps there are few things more American than the desire to resolve the question of breaking a tie between two relatively equal teams by using the head-to-head criterion. It is seen in youth baseball and American football. To some, it is plain "common sense."⁶¹

The problem with this approach, however, is that it does not take into account the governing *law* for the applicable situation. Granted, the head-to-head criterion was clearly emphasized in the rules, in paragraphs a. and b., and subparagraph b.1. But none of these provisions were applicable to the South Division in the 2008 season. After the first four criteria in paragraph b. failed to break the tie, under the fifth criterion, Oklahoma emerged as the first place team. Under this same criterion, *if* Oklahoma and Texas were tied in the BCS poll (i.e., had the same ranking) *and* Texas Tech was ranked lower, *then* the head-to-head outcome between the Longhorns and Sooners would come into play. But there was no such tie, and per the tiebreaker rules, Oklahoma was the team selected. Nevertheless, the dialogue revolved around Texas' defeat of Oklahoma head-to-head.

Two years before the 2008 season, the athletic directors of the Big 12 Conference member institutions considered and approved the tiebreaker

⁵⁹ Jason Whitlock, *UT Should Be Above OU*, TULSA WORLD, Dec. 1, 2008, at B2, 2008 WLNR 23108180.

⁶⁰ Evans & Thamel, *supra* note 51 (quoting Doug Martin, Head Coach, Kent State).

⁶¹ Whitlock, *supra* note 59, at B2.

rules.⁶² There was notice of the rules at the beginning of the season.⁶³ There was also a stated rationale for them. The criterion of the highest BCS ranking was “to give the conference the best possible chance at having a representative in the BCS championship game.”⁶⁴ Yet there was little sympathy for the view that “rules are rules.” Instead, many blamed the Big 12 Conference for the controversy.⁶⁵ There was also this curious reference to (in)justice, law, and jurisdiction (the suggestion of federal meddling in a local matter): “[I]t wouldn’t be a season if a scale of justice wasn’t tipped—and this year’s outrage is Texas being left out of the mix. Never mind that what happened to Texas was the Big 12’s fault for calling in Big Government to settle a City Council zoning law.”⁶⁶

Rules and laws, once adopted and applied, have consequences, as in which team advances to the championship game. Rules may also differ from conference to conference, as laws differ from jurisdiction to jurisdiction. As the media reported, had the tiebreaker rules of four other conferences (Atlantic Coast, Conference USA, Mid-American, or Southeastern) been in force, Texas, not Oklahoma, would have been the division representative, a maddening reality for Texas fans.⁶⁷ The Southeastern Conference’s (“SEC”) tiebreaker rules, for example, also included the highest ranking in the BCS standings as a criterion, but if “the top two teams are within FIVE spots of

⁶² Barnhouse, *supra* note 52 (quoting Dan Beebe, Big 12 Commissioner: “The tiebreak process currently in place was carefully considered and voted upon by our athletics directors years ago . . .”).

⁶³ See “*Vaunted Exspurt*” to Longhorns: *You Fumbled, Now Get over It*, THE DUNCAN BANNER, Dec. 14, 2008, 2008 WLNR 23973735 (“OK, Texans, maybe the Big 12 tie-breaker isn’t the best way to solve a three-way stalemate, but that was the rule at the start of the season.”). Days after the tiebreaker rules determined that Oklahoma, not Texas, would be the South Division’s representative, a “plane was spotted circling the University of Texas campus with a banner that read, ‘Mack Brown Quit Your Whining U Knew The Rules.’” Mike Penner, *Morning Briefing: Totally Random*, L.A. TIMES, Dec. 5, 2008, at 2, 2008 WLNR 23388084. In the previous weekend, before Oklahoma’s game at Oklahoma State, a plane “buzzed overhead with a banner that read ‘TEXAS 45 OKLAHOMA 35—SETTLED ON A NEUTRAL FIELD.’” Evans & Thamel, *supra* note 51.

⁶⁴ Scott Wright, *OU Football: Big 12 Tiebreaker Hasn’t Been Discussed Yet*, DAILY OKLAHOMAN, Dec. 7, 2008, 2008 WLNR 23502046.

⁶⁵ Tony Barnhart, *Mr. College Football*, ATLANTA JOURNAL-CONSTITUTION, Dec. 1, 2008, 2008 WLNR 25879130 (“Big 12, not BCS, to blame for Texas-OU mess” and “[T]his is the Big 12’s fault.”); Jeremy Fowler, *Imperfect But Functional, BCS Keeps on Going*, ORLANDO SENTINEL, Dec. 9, 2008, at D1, 2008 WLNR 23682192 (referring to “the Big 12 tiebreaker fiasco with Texas and Oklahoma”); John Henderson, *Won’t Be Easy, but the Tide Could Turn*, DENVER POST, at C10, Dec. 5, 2008, 2008 WLNR 32025373 (“The nation is at the Big 12’s throat for its tiebreaker rules.”); *Rising Tide Has Company*, ORLANDO SENTINEL, Dec. 29, 2008, at C5, 2008 WLNR 25039692 (“There was controversy at the conference level thanks to the Big 12’s three-way tiebreaker rules that favored Oklahoma over a Texas team that beat the Sooners.”).

⁶⁶ Chris Dufresne, *On College Football: Bowled over? No, But It’s Still a Treat*, L.A. TIMES, Dec. 8, 2008, at 1, 2008 WLNR 23545670.

⁶⁷ Evans & Thamel, *supra* note 51; Joe Schad, *Commissioner: Big 12 To Reassess Divisional Championship Tiebreaker*, ESPN, Dec 2, 2008, <http://sports.espn.go.com/ncf/news/story?id=3739466>.

one another . . . , then the head-to-head game between those two teams will be the tie-breaker.”⁶⁸

The controversy raged on, and even has its own webpage on Wikipedia.org.⁶⁹ Texas head coach Mack Brown, among others, called for a change of the rules, urging the Big 12 to adopt the tiebreaker rules of the SEC.⁷⁰ The situation was synonymous with calls for the legislature to change the law when it leads to what some see as an unforeseen and undesired result.⁷¹ As legislative enactments reflect the public’s will and the society’s culture, values, priorities, and passions, so must a sport’s governing body take into account much of the same. In due course, the athletic director for the University of Texas reportedly submitted a proposal to change the rule.⁷² The relevant tiebreaker criterion was revised in 2010, to read:

The highest ranked team in the first Bowl Championship Series poll following the completion of Big 12 regular season conference play shall be the representative in the Big 12 Championship Game, unless two of the tied teams are ranked within *one* spot of the other in the BCS poll. In this case, the head-to-head results of the top two ranked tied teams shall determine the representative in the Big 12 Championship Game.⁷³

Were this rule applied in the 2008 season, Texas, not Oklahoma, would have advanced to the conference championship game, since Texas (ranked #3 in the BCS poll) was within one spot of Oklahoma (#2), and Texas beat Oklahoma head-to-head. It is a fair question to ask why the head-to-head determinant is triggered only when the two teams are within *one* spot of each other. Why not five spots (as provided for by the SEC), or two spots, especially if the team in between is not in the same conference, and if the lower seeded team defeated the higher team soundly, head-to-head, on the latter’s home field? Much like the location of the three-point line in

⁶⁸ Barnhart, *supra* note 65. But another writer wrote, “How does that make sense? By using this tiebreaker, it would be acting as though Texas and Texas Tech never played. You can’t arbitrarily act like a game never happened.” Pohlman, *supra* note 41.

⁶⁹ 2008 Big 12 Conference South Division 3-way Tie Controversy, WIKIPEDIA, https://en.wikipedia.org/wiki/2008_Big_12_Conference_South_Division_3-way_tie_controversy (last visited Oct. 17, 2017).

⁷⁰ See Barnhouse, *supra* note 52; see also Barnhart, *supra* note 65.

⁷¹ After the Supreme Court’s decision upholding the military’s ban on the petitioner’s wearing of a yarmulke, in *Goldman v. Weinberger*, 475 U.S. 503 (1986), Senator Frank Lautenberg proposed legislation to reverse the ban. *Religious Headgear in Military OK’d*, DALLAS MORNING NEWS, Oct. 3, 1987, at 43A, 1987 WLNR 1961417. “He described the subject as ‘a fundamental issue about America—to be able to stand up for one’s country and religious heritage.’” *Id.* Congress enacted the amendment. 10 U.S.C.A. § 774, Pub. L. 100-180, Dec. 4, 1987, 101 Stat. 1086 (“[With exceptions,] a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member’s armed force.”). For a history of the case and legislative response, see Dwight H. Sullivan, *The Congressional Response to Goldman v. Weinberger*, 121 MIL. L. REV. 125 (1988).

⁷² See Carlton, *supra* note 56.

⁷³ *Id.* (emphasis added); Wendell Barnhouse, *Tiebreaking Scenarios*, BIG 12 SPORTS, Nov. 21, 2010, <http://www.big12sports.com/ViewArticle.dbml?ATCLID=205035231> (emphasis added).

basketball, this is precisely the matter of line drawing that is the province of the legislature and the sport's governing body.⁷⁴

Ultimately, the Big 12 controversy raises the basic question of how best to determine which team should advance when multiple teams are tied with identical records, or put another way, by which measure should the governing body decide the "superior" team. The head-to-head criterion, as discussed above in youth baseball and intercollegiate football, appears to be held dear by some. Even where three teams are tied and the head-to-head criterion does not resolve the tie, there appears to be a ready willingness to make it apply. Another approach is the so-called "body of work" method of evaluation. That is, which team, over the course of the entire season (with a focus on the conference schedule and its most relevant games), has the better record of performance? In the discourse relating to the Big 12 South controversy, not many voices lent support to this latter approach, with the exception of Oklahoma's coach Bob Stoops, who said: "[I]n the end, it's your whole body of work through the year and how you've played down the stretch."⁷⁵ The body of work method appears to be a higher criterion in another sport, international soccer, a discussion of which follows after a Big 12 epilogue.

The Big 12 Conference saw another high profile tiebreaker controversy at the end of the 2014 season. By then, due to conference alignment, four schools from the 2008 season had left the conference, with two new additions bringing the conference membership to ten.⁷⁶ Rather than placing members in two divisions, with the two division representatives playing in the championship game, the new Big 12 opted for a complete round robin format with each team playing all other teams in the conference to determine its champion. Baylor and TCU finished the 2014 season with identical 8-1 records. Both teams were crowned as co-conference champions.⁷⁷ But Baylor's supporters, and most vocally, its coach Art Briles, urged that Baylor was the sole champion due to its head-to-head victory over TCU.⁷⁸ Conference commissioner Bob Bowlsby declined to name Baylor the outright conference champion, reasoning that conference bylaws did not

⁷⁴ The league office explained that the one-spot separation was decided on so as not to risk losing a team in the BCS title game. See Carlton, *supra* note 56. Big 12 Commissioner Dan Beebe said, "I think the feeling is if they're within a place of each other [in the BCS], it's not going to affect that access. We looked at other possibilities that were within five places and thought that was too big a risk." *Id.*

⁷⁵ Evans & Thamel, *supra* note 51.

⁷⁶ See *Big 12 Conference*, BIG 12 SPORTS, http://www.big12sports.com/ViewArticle.dbml?ATCLID=1514841&DB_OEM_ID=10410&DB_OEM_ID=10410 (last visited Oct. 17, 2017).

⁷⁷ See Max Olson, *Art Briles Slams Co-Champion Stance*, ESPN, Dec. 7, 2014, http://espn.go.com/college-football/story/_/id/11992137/baylor-bears-coach-art-briles-criticizes-big-12-co-champions-policy.

⁷⁸ *Id.*; Creg Stephenson, *Baylor Coach Art Briles Goes on Offensive Toward Playoff Committee*, *Big 12 Commissioner*, AL.COM, Dec. 7, 2014, http://www.al.com/sports/index.ssf/2014/12/baylor_coach_art_briles_goes_o.html.

allow tiebreakers to determine a conference “champion.”⁷⁹ Rather, the tiebreaker procedure was to be used to determine the conference “representative” for bowls not filled by the selection committee under the then newly implemented College Football Playoff format.⁸⁰ Bowlsby stated that the rule, which coaches and athletic directors previously approved, was already in place and could not be changed at that time.⁸¹

The following spring, the conference revised the rule: “If two teams are tied, the winner of the game between the two tied teams shall be the champion.”⁸² This led one sportswriter to comment: “Chalk up a victory for *common sense*, Art Briles and, of course, ‘the American way.’”⁸³ Indeed, the head-to-head criterion is part of the American Way, and surely, no one is opposed to “common sense.”⁸⁴ But what is common sense in one setting, may be neither *common* nor *sense* in another.

C. INTERNATIONAL SOCCER: FIFA’S WORLD CUP AND THE GROUP OF DEATH

In the 1994 World Cup soccer tournament held in the United States, qualifying teams from twenty-four nations were placed in six groups, with four teams each.⁸⁵ In the preliminary round, each team would play the other

⁷⁹ See Adam Rittenberg, *Big 12 Is One True Conundrum Entering Final Playoff Ranking*, ESPN, Dec. 7, 2014, http://espn.go.com/blog/big12/post/_id/93658/big-12-is-one-true-conundrum-entering-selection-sunday.

⁸⁰ See Mike Herndon, *Baylor’s Art Briles Rails against Limited Southern Influence on College Football Playoff Committee*, AL.COM, Dec. 7, 2014, http://www.al.com/sports/index.ssf/2014/12/baylors_art_briles_rails_again.html; Mike Herndon, *Bob Bowlsby Says Big 12 May Go ‘Back to the Drawing Board’ After Playoff Snub*, AL.COM, Dec. 7, 2014, http://www.al.com/sports/index.ssf/2014/12/bob_bowlsby_says_big_12_may_go.html; Rittenberg, *supra* note 79. There was media speculation that Bowlsby decided to present Baylor and TCU as co-champions in the hopes of boosting both school’s chances to be selected for one of the four teams for the semifinals of the playoff. See Mark Schlabach, *Jilted Big 12 Must Make Changes*, ESPN, Dec. 6, 2014, http://espn.go.com/college-football/bowls14/story/_/id/11995102/jilted-big-12-make-changes-college-football-playoff-relevance. Instead, the selection committee selected Alabama, Oregon, Florida State, and Ohio State. Baylor and TCU finished fifth and sixth, respectively. *Week 16 (Final Rankings – Released Sunday, December 7)*, <http://cfp-cms-s3-prod.slcfp.com/wp-content/uploads/2014/05/2014-Rankings.pdf>.

⁸¹ See Schlabach, *supra* note 80; Jon Solomon, *Baylor’s Briles Rips Big 12, Do Bears, TCU Have Shot To Make CFP?*, CBS SPORTS, Dec. 7, 2014, <http://www.cbssports.com/college-football/news/baylors-briles-rips-big-12-do-bears-tcu-have-shot-to-make-cfp/>.

⁸² *Tiebreaker Procedures*, BIG 12 SPORTS, ¶ a., June 2015 [hereinafter *2015 Tiebreaker Procedures*] (on file with author); Jon Solomon, *Big 12 Will Actually Have ‘One True Champion’ with New Tiebreakers*, CBS Sports, May 6, 2015, <http://www.cbssports.com/college-football/news/big-12-will-actually-have-one-true-champion-with-new-tiebreakers> (quoting then recently announced tiebreaker rules).

⁸³ Allan Taylor, *Big 12 Joins Rest of American Sport, Recognizes Head-to-Head Tiebreaker*, METRONews, May 6, 2015, <http://wvmetronews.com/2015/05/06/big-12-joins-rest-of-american-sport-with-head-to-head-tiebreaker/> (emphasis added).

⁸⁴ Whitlock, *supra* note 59.

⁸⁵ FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, REGULATIONS FIFA WORLD CUP USA 1994 art. 23(1) (1991) [hereinafter *FIFA WORLD CUP REGULATIONS 1994*].

three teams in its group once in round robin play.⁸⁶ The top two teams in each of the six groups plus the top four third-place teams—a total of sixteen—would advance to the “knockout” round, with single elimination play to determine the championship team.⁸⁷ Group E, which included Ireland, Italy, Mexico, and Norway, was widely known as the “Group of Death or *girone della morte*, for its top-to-bottom quality.”⁸⁸ It was “a group with no weaklings, a group in which any of the four teams could, on a given day, beat any other.”⁸⁹ With four evenly matched teams, there was the real possibility of ties in individual games, and in the standings at the end of group play. Tiebreaker rules would likely be in force.

Article 23, paragraph five of the governing rules for the 1994 World Cup provided:

The qualifications in each group shall be determined as follows:

[*] Number of points,

[1] Goal difference,

[2] Number of goals scored,

[3] Score of direct match,

[4] Drawing lots.⁹⁰

Note that the regulation makes no reference to “tiebreaker.” Instead, it refers to a ranking (“qualifications”) system. The first item on the list notes that standings in each group play are determined not by win-loss records, but by points. Beginning from the 1994 tournament, three points were awarded for a win, one for a draw, and zero for a loss.⁹¹ Where teams have the same number of points, the tie would be broken by the enumerated criteria that followed. Note also that the 1994 regulation does not specify the number of teams that are tied. The criteria apply regardless of the number of teams affected.

⁸⁶ *Id.* art. 23(4).

⁸⁷ *Id.* art. 23(6).

⁸⁸ Alexander Wolff, *A Day To Be Irish*, SPORTS ILLUSTRATED, June 27, 1994, at 56, 60; see Neil Best, *World Cup '94: Knotted, Twisted 4-way Tie Will Be Broken Today in Colorful Group E*, NEWSDAY, at A61, June 28, 1994, 1994 WLNR 405820 (referring to “the World Cup’s most imposing foursome”); Julie Deardorff, *Tie Enough Drive To Advance Ireland*, CHI. TRIB., June 29, 1994, at 4, 1994 WLNR 4304332 (referring to “the brutally competitive Group E”).

⁸⁹ Lawrie Mifflin, *World Cup '94: Mexico Thrives In 'Group Of Death,'* N.Y. TIMES (June 29, 1994), <http://www.nytimes.com/1994/06/29/sports/world-cup-94-mexico-thrives-in-group-of-death.html>.

⁹⁰ FIFA WORLD CUP REGULATIONS 1994, *supra* note 85, art. 23(5).

⁹¹ The regulations for the 1994 World Cup (dated June 13, 1991) provided that two points would be awarded for a win, *id.* art. 23(4), but in December 1993, FIFA voted to change it to three, to encourage more offense. See *FIFA Rule Changes Aimed at Reversing Decades of Decreasing Offense in Cup*, BUFFALO NEWS (NY), June 11, 1994, at B4, 1994 WLNR 1073720.

A review of FIFA's tiebreaker criteria as a whole indicates differences from those for youth baseball tournaments⁹² and the Big 12 Conference in football.⁹³ The American-driven head-to-head criterion is not the first, but third. FIFA's first criterion—the difference in the number of goals scored and allowed—appears to reflect more of a body of work approach to determining the superior team. To explain, soccer is very much a game of goals (as baseball is a game of runs and football is a game of touchdowns, to be sure), but especially at the professional level, goals in soccer are scored less frequently⁹⁴ than runs in baseball or touchdowns in football. Thus, every goal is vital, and the sport encourages teams to score as many—and surrender as few—goals as possible. The rationale is that the larger the goal differential, the better team; hence, this is the first criterion to break a tie between teams with equal points. Unlike the limitation seen in youth baseball above,⁹⁵ there is no maximum or minimum goal differential per game. Simply, each team should score as many goals as possible.

The emphasis on goals is also reflected in the second criterion, the number of goals scored. While both youth baseball and FIFA include the scoring differential as a criterion (the third criterion for baseball and the first for FIFA), baseball isolates runs *allowed*, while FIFA separately lists goals *scored*. As between offense and defense, FIFA places a higher premium on offense, whereas youth baseball's emphasis is on defense. Perhaps the difference is due to the nature of the sport. In soccer, FIFA has acted to encourage teams to take risks to score goals, in contrast to the more conservative style that allows teams to play for a draw.⁹⁶ The criteria of goal difference and goals scored (collectively), which are calculated at the conclusion of group play and appear at the top of soccer's prioritized list, suggests more of a body of work evaluation to break the tie, as opposed to the focus on the individual head-to-head contest. FIFA's head-to-head criterion, expressed in a somewhat roundabout way ("Score of direct match") is the last before the drawing of lots.

The fierce competition predicted for the games in Group E proved to be true. Of the six games played in group play, the first four led to narrow victories, each by a one-goal margin: Ireland defeated Italy (1-0) on June 18, 1994; Italy defeated Norway (1-0) on June 23; Norway defeated Mexico (1-0) on June 19; and Mexico defeated Ireland (2-1) on June 24.⁹⁷ On the final day of group play, on June 28, 1994, the two games played simultaneously ended poetically (for some soccer romantics) or pathetically (for those

⁹² See *supra* text accompanying note 26.

⁹³ See *supra* text accompanying note 40.

⁹⁴ See Alan Jacobs, *Why Draws in Soccer Make Sense—Most of the Time*, WALL ST. J. (June 27, 2014), <https://blogs.wsj.com/dailyfix/2014/06/27/why-draws-in-soccer-make-sense-most-of-the-time/> (stating that soccer "is a game in which it is very, very difficult to score"); see also EDUARDO GALEANO, *SOCCER IN SUN AND SHADOW* 9 (1998) (trans. Mark Fried) (discussing elusive goal).

⁹⁵ See *supra* text accompanying note 26 (¶ 3.).

⁹⁶ See *supra* note 91.

⁹⁷ *Matches*, FIFA, <http://www.fifa.com/worldcup/archive/usa1994/matches/index.html> (last visited Oct. 17, 2017).

opposed to ties in sport generally)⁹⁸ in draws: Italy 1, Mexico 1; and “a skull-imploding naught-naught tie”⁹⁹ between Ireland and Norway.¹⁰⁰ The final group standings were as follows¹⁰¹:

Team	Wins	Draws	Losses	Points	Goals Scored	Goals Allowed	Goal Differential
Mexico	1	1	1	4	3	3	0
Ireland	1	1	1	4	2	2	0
Italy	1	1	1	4	2	2	0
Norway	1	1	1	4	1	1	0

It was the first time in World Cup history (and still the only to date) that all four teams finished group play with identical records of one win, one loss, and one draw, the epitome of even play. Under the scoring system, each team had four points—three points for its only win, one for its one draw, and zero for its sole loss. The tiebreaker rules would have to be applied to break the four-way tie.

The first criterion—goal difference—did not break the tie, because each team scored the same number of goals as it allowed, resulting in a net differential of zero for all four teams. The second criterion—the number of goals scored—determined the first place team, Mexico, which scored more goals (three) than any of the other teams, and also the fourth place team, Norway, which scored only one, and was eliminated from the tournament. This second criterion also yielded a tie for second place, between Ireland and Italy, which both scored two goals. The head-to-head criterion listed as the third determinant—“[s]core of [the] direct match”—would be necessary to

⁹⁸ E.g., Frank Deford, *The American Way: Winners And Losers, And No Ties*, NPR, Morning Edition, May 6, 2012, <http://www.npr.org/2012/05/16/152737291/the-american-way-winners-and-losers-and-no-ties>; Pohlman, *supra* note 41.

⁹⁹ Steve Fainaru, *Ireland, Norway Draw Conclusion*, BOSTON GLOBE, June 29, 1994, at 55, 1994 WLNR 2055530.

¹⁰⁰ *Matches*, *supra* note 97. The mere titles of the articles reporting the tie games would surely make those opposed to ties cringe. E.g., Paul McMullen, *Tie Leaves Mexico on Top of Group E World Cup 1994*, BALTIMORE SUN, June 29, 1994, at 10D, 1994 WLNR 897469; Michael Rosenthal, *Ireland Ties up Berth: Norway Is Done After 0-0 Draw*, DAILY NEWS (Los Angeles, CA), June 29, 1994, at S4, 1994 WLNR 1378976; *Ireland, Norway Draw: Tie Means Irish Move to Round 2 the World Cup*, S.F. EXAMINER (CA), June 28, 1994, at C6, 1994 WLNR 16816; *Mexico, Italy Advance After Standoff/Ireland Eliminates Norway With Scoreless Tie*, TULSA WORLD, June 29, 1994, at S5, 1994 WLNR 5079803.

¹⁰¹ *Groups*, FIFA, <http://www.fifa.com/worldcup/archive/usa1994/groups/index.html> (“Group E”) (last visited Oct. 17, 2017).

break the tie between the two: Ireland 1, Italy 0. Thus, Ireland was the second place team, and automatically advanced to the next round. Italy, as the third place team, would have to wait to see if it would be one of the four third-place teams with the best records to advance.¹⁰² In short, given the evenly matched play, rules were necessary to break the tie between four teams. And they worked to determine which teams advanced, and their respective seeding.

Poor Norway.¹⁰³ It was the only team not to advance out of the Group of Death, and the only team in the tournament with four points that did not advance. For Norway, the result was a “somber”¹⁰⁴ and “numb[ing]”¹⁰⁵ disappointment.¹⁰⁶ As midfielder Erik Mykland put it, “The World Cup is like heaven and hell, and this is hell.”¹⁰⁷ But what about the fact that Norway defeated Mexico in their “direct match”—just as Texas beat Oklahoma head-to-head?¹⁰⁸ A review of the contemporaneous media reports indicates that this fact was not expressed with the level of indignation seen in the Big 12 South controversy, even by Norway’s players or fans. With respect to the *rules* that allowed for Norway, the sole team to defeat the purported number

¹⁰² See FIFA WORLD CUP REGULATIONS 1994, *supra* note 85, art. 23(6). The same tiebreaker criteria that were used to determine rankings for each group (except for the head-to-head criterion) were used to rank the six third place teams. See *id.* art. 23(7). Italy was the fourth and final third place team to advance:

Team	Wins	Draws	Losses	Points	Goals scored	Goals allowed	Goal differential
Argentina	2	0	1	6	6	3	+3
Belgium	2	0	1	6	2	1	+1
USA	1	1	1	4	3	3	0
Italy	1	1	1	4	2	2	0
Russia	1	0	2	3	7	6	+1
Korea Republic	0	2	1	2	4	5	-1

See *Groups*, *supra* note 101. Both Argentina and Belgium, with six points each, were in three-way ties for first place in their respective groups. The tiebreaker criteria relegated them to third place.

¹⁰³ This is in the same vein as “[p]oor, sad Lady Edith,” of the British television miniseries, *Downton Abbey*. See Ruth La Ferla, *The Transformation of Lady Edith*, N.Y. TIMES (Jan. 31, 2014), <http://www.nytimes.com/2014/02/02/fashion/Downton-Abbey-Laura-Carmichael-fashion-Roaring-20s.html>.

¹⁰⁴ Rosenthal, *supra* note 100.

¹⁰⁵ Fainaru, *supra* note 99, at 54.

¹⁰⁶ See Grahame L. Jones, *World Cup USA '94/The First Round: Norway Sits Back, Ireland Moves On*, L.A. TIMES, June 29, 1994, at 4, 1994 WLNR 4180492; Doug Mellgren, *World Cup-Norway-*, AP ONLINE, June 29, 1994; *Ireland, Norway Draw: Tie Means Irish*, *supra* note 100, at C6.

¹⁰⁷ Neil Best, *World Cup 94: Great Tie for Irish*, NEWSDAY (USA), June 29, 1994, at A64, 1994 WLNR 435309. Norway’s forward Goran Sorloth said, “We are out and we can’t believe it. What can we do? We can’t change it. If we could change it, we would do it, but it’s not possible. We are out and that’s a fact.” Jones, *supra* note 106, at 4.

¹⁰⁸ See *supra* notes 59-60.

one team in the group, to be sent home, the media and popular reaction was also restrained. Other than one U.S.-based reporter who described the tiebreaker rules as “convoluted,”¹⁰⁹ and another (self-identified soccer novice) who characterized it more critically, as “unavoidable but ludicrous,”¹¹⁰ there was little objection to the rules or their application. Rather, there appeared to be a begrudging acceptance of the result.¹¹¹ As one account reported, “‘We can’t believe it,’ [Norway’s midfielder Kjetil Rekdal] said. But he was not angry. ‘That’s football. That’s the way it goes sometimes.’”¹¹² Hard, very hard, but such is the law.¹¹³ Moreover, unlike the scenario after the Big 12 controversy, there were no calls to change the rules so that it does not happen again (even if a four-way tie with identical points and records is not likely to occur).¹¹⁴ Nor were there aspersions cast against the governing body or demand for adherence to “common sense.” Rather, FIFA’s tiebreaker rules for group play are largely still in effect.¹¹⁵

¹⁰⁹ Best, *supra* note 107, at A64.

¹¹⁰ Sushant Sagar, *Ireland 0, Norway 0: Charlton Gets Some Old-Fashioned Irish Cheer*, WASH. POST, June 29, 1994, at C06, 1994 WLNR 5503357.

¹¹¹ Perhaps there is a method to the maddening result, and the result effected by the tiebreaker rules reflects the sport’s sense of *justice*. Put another way, the rules not only broke a four-way tie that was a “statistical quirk,” Robert Millward, *World Cup-Norway-Ireland*, AP ONLINE, June 29, 1994, but also got it *right*. As noted above, soccer is a game of goals. Norway scored just one goal in three games. Had Norway scored one more goal in any of its three games, against Mexico, Ireland, or Italy—and everything else remained the same—Norway would have been the first place team in the group and the team against which Norway scored the additional goal would have been the fourth place team. The same result would have obtained if Norway had not given up its only goal against Italy: Norway would have been first, Italy would have been last. In that game, Norway gave up a goal against an Italian team that had only ten players, after its goalkeeper was sent off. Thus, for three-fourths of the game, Norway was playing with a man up, and against a substitute goalkeeper. FIFA, Match Report, <http://www.fifa.com/worldcup/matches/round=337/match=3064/index.html#nosticky> (indicating expulsion of Gianluca Pagliuca of Italy at 21st minute, and Italy’s goal at 69th minute); see also FIFA WORLD CUP USA ’94 104 (1994) (“[A] team with such a meagre-looking goal tally—just one in three games—can’t really be surprised at being eliminated early on.”); Jones, *supra* note 106, at 4 (“[T]he Norwegians have only themselves to blame. They knew what had to be done and failed to do it. [In the game against Ireland,] [i]nstead of attacking from the outset, they allowed the Irish, cheered on by the vast majority of the fans, to dictate the game. That surprised even the Irish players.”); Bob Lenarduzzi, *Americans Flocking to World Cup*, VANCOUVER PROVINCE, June 29, 1994, at A55, 1994 WLNR 3264752 (“[T]he Norwegians were punished for their ultra-defensive tactics and wound up in last place . . .”).

¹¹² Fainaru, *supra* note 99, at 55. Unlike the Longhorn faithful, “Norwegians took the disappointment in stride.” Mellgren, *supra*, note 106.

¹¹³ *Durum valde durum, sed sic lex est*. Penhallow v. Doane’s Adm’rs, 3 U.S. (3 Dall.) 54, 89 (1795). Or in soccer parlance, as stated by Ireland’s manager Jack Charlton, “I’m sorry to see Norway go out. It’s very hard to go out when you have four points but that’s the rules.” *Ireland, Norway Draw: Tie Means Irish*, *supra* note 100, at C6.

¹¹⁴ Millward, *supra*, note 111 (referring to four-way tie as “statistical quirk” and quoting midfielder Kjetil Rekdal, “It will probably never happen again.”).

¹¹⁵ Some clarification has been added over the years. For the 2014 World Cup, the governing regulation read:

The ranking of each team in each group shall be determined as follows:

- a) greatest number of points obtained in all group matches;
- b) goal difference in all group matches;

Of interest is an epilogue to the 1994 World Cup. From the Group of Death, Italy advanced to the next round as the last third place team to qualify. After three consecutive victories in the round of sixteen, quarterfinal, and semifinal matches, the team qualified for the championship game against Brazil. The final match of the month-long tournament ended in a *tie* after 120 minutes of play—ninety minutes of regulation plus thirty minutes of “additional extra time.”¹¹⁶ The tiebreaker rule in such situations was to resort to penalty kicks,¹¹⁷ in which Brazil prevailed, 3 to 2.¹¹⁸ It was the first time in the history of the World Cup that a championship game was decided by penalty kicks¹¹⁹—an exercise “with all the grandeur of a training drill”¹²⁰—to the consternation of the sport’s traditionalists.¹²¹ For them, it was a

c) greatest number of goals scored in all group matches.

If two or more teams are equal on the basis of the above three criteria, their rankings shall be determined as follows:

- d) greatest number of points obtained in the group matches between the teams concerned;
- e) goal difference resulting from the group matches between the teams concerned;
- f) greater number of goals scored in all group matches between the teams concerned;
- g) drawing of lots by the FIFA Organizing Committee.

FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, REGULATIONS 2014 FIFA WORLD CUP BRAZIL art. 41(5) (2013), https://www.fifa.com/mm/document/tournament/competition/01/47/38/17/regulationsfwcbrazil2014_up_date_e_neutral.pdf.

¹¹⁶ FIFA, Match Report, <http://www.fifa.com/worldcup/matches/round=3459/match=3104/index.html#nosticky>; FIFA, WORLD CUP USA '94 22 (1994), http://resources.fifa.com/mm/document/afdeveloping/technicaldevp/50/08/62/wc_94_tr_part1_272.pdf.

¹¹⁷ FIFA WORLD CUP REGULATIONS 1994, *supra* note 85, art. 14(3). “FIFA implemented [penalty] shootouts when it went to knockout rules in the later rounds of the cup in 1986.” Larry Siddons, *World Cup-The Tournament*, AP ONLINE, July 18, 1994. The then applicable rules regarding penalty kicks read as follows:

4. (a) Subject to the terms of the following paragraphs (c) and (d) both teams shall take five kicks. (b) The kicks shall be taken alternately. (c) If, before both teams have taken five kicks, one has scored more goals than the other could, even if it were to complete its five kicks, the taking of kicks shall cease. (d) If, after both teams have taken five kicks, both have scored the same number of goals or have not scored any goals, the taking of kicks shall continue, in the same order, until such time as both have taken an equal number of kicks (not necessarily five more kicks) and one has scored a goal more than the other.
5. The team which scores the greater number of goals, whether the number of kicks taken is in accordance with the terms of the foregoing paragraph 4(a), 4(c) or 4(d) shall qualify for the next rounds of the competition, or shall be declared winner of the competition, as the case may be.

FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, LAWS OF THE GAME 42 (1994) (on file with author).

¹¹⁸ FIFA, Match Report, *supra* note 116; FIFA, WORLD CUP USA '94, *supra* note 116, at 22.

¹¹⁹ Siddons, *supra* note 117; Alexander Wolff, *World Beaters: Brazil Won Soccer's Greatest Prize in a Not-So-Great Finale*, SPORTS ILLUSTRATED, July 25, 1994, at 20, 22.

¹²⁰ Wolff, *supra* note 119, at 25.

¹²¹ See, e.g., Julie Cart, *It's a Success—Except the Finish Soccer: After Brazil's Victory on Penalty Kicks, Method To Break Tie in Final Is Questioned*, L.A. TIMES, July 19, 1994, at 1, 1994 WLNR 4227251 (“[T]here was a chorus of international criticism about the method for determining the winner.”); Scott French, *FIFA Sticks with Shootout; But 1998 Will Feature Limited Sudden Death*, LONG BEACH PRESS TELE. (CA), July 19, 1994, at F4, 1994 WLNR 1182285 (“Penalty kicks, derided by nearly all as

“capricious,”¹²² “woeful,”¹²³ and “patent[ly] unfair[.]”¹²⁴ way to determine a champion. Even FIFA acknowledged that it was an “unsatisfying” end to an otherwise successful tournament.¹²⁵ The day after the championship game, the governing body’s General Secretary, Joseph S. Blatter, stated, “We were not happy . . . and certainly the teams weren’t that the game had to go to penalty kicks.”¹²⁶ Blatter stated that although FIFA would consider various alternatives to decide a champion, there was no better solution than the penalty kicks format.¹²⁷

Of note in Blatter’s other comments were his multiple references to the “culture” of the game. It is a culture that does not allow indefinite play until a goal is scored,¹²⁸ or additional player substitutions, even in overtime.¹²⁹ Perhaps it is this same culture that rejects the possibility of having co-champions when there is a tie in the final game. “We *have* to have a winner at the end of the competition,” Blatter said.¹³⁰ That the governing body would not consider declaring the two best teams co-champions after 120 minutes of play begs the question: why? Simply, that is the rule (per Malone), but the reason for it invites more elaboration.

For his part, Arrigo Sacchi, coach of the losing Italian team, speaking with either reverence for the Rule of Law or resignation that rules are rules, stated: “We have to accept the rules with great calmness and serenity.”¹³¹ Note the contrast from the reactions after the Big 12 South controversy.¹³²

III. A FROLIC: TRANSPLANTING RULES

As a matter of an inquisitive curiosity, I ask what results would have obtained if: (i) the tiebreaker rules for the Big 12 (in 2008) were applied to

a woeful way to determine a World Cup champion, apparently are here to stay.”); Wolff, *supra* note 119, at 20 (“Brazil and Italy settled what was supposed to have been an epochal meeting with penalty kicks. Never before had a World Cup final been decided in such capricious fashion. Never again should it be.”).

¹²² Wolff, *supra* note 119, at 20.

¹²³ French, *supra* note 121, at F4.

¹²⁴ Henry Kissinger & Anthony Day, *World Cup USA '94/The Final: Analysis: Unfair Rule Puts an End to Fair Final*, L.A. TIMES (July 18, 1994), http://articles.latimes.com/1994-07-18/sports/sp-17047_1_world-cup.

¹²⁵ Cart, *supra* note 121, at 1.

¹²⁶ *Id.* As one observer noted, “When FIFA is not happy, FIFA sometimes changes the rules.” Andrew Bagnato, *Soccer May Give Penalty Kicks Boot: Sudden-Death Overtime Likely for '98 Cup*, CHI. TRIB., July 19, 1994, at 5, 1994 WLNR 4364295.

¹²⁷ See French, *supra* note 121, at F4; *OT Format To Change For '98 Cup*, NEWSDAY (USA), July 19, 1994, at A54, 1994 WLNR 453982. Having the teams continue to play until one team scores a winning goal was not an option, Blatter said. “We might have a death on the field. We can’t take that responsibility.” *New Format for Breaking Ties Promised for 1998*, ROCKY MTN. NEWS (CO), July 19, 1994, at 4B, 1994 WLNR 600976.

¹²⁸ Cart, *supra* note 121, at 1.

¹²⁹ Bagnato, *supra* note 126, at 5 (“The culture of our game does not allow (extra) substitutions,” [Blatter] said. “That would change our game.”).

¹³⁰ Cart, *supra* note 121, at 1 (emphasis added).

¹³¹ Wolff, *supra* note 119, at 24.

¹³² See *supra* text accompanying notes 54-59, 65-66.

break the four-way tie in the Group of Death in the 1994 World Cup, and conversely, (ii) FIFA's rules in 1994 were imposed to break the tie between the three teams in the Big 12 South Division in 2008. I acknowledge that this exercise may sound entirely inapt, for two reasons. First, the laws of one jurisdiction are crafted for that sport or society, taking into account its culture, history, and very nature. To transplant those rules onto another jurisdiction (for which it was not necessarily designed) risks rejection, and sounds of the proverbial "square peg in a round hole." Second, those in each arena did not have notice that another set of rules would be applicable; with such knowledge, they might have played the games differently. Yet this latter point may be questionable when it comes to tiebreaker rules in some sports, which sometimes languish in obscurity and go unnoticed and unstudied even by coaches who might be most directly impacted by them, until a tie actually occurs.¹³³ With these observations in place, the application of one sport's rules on another may highlight the comparative reasons for the differences in the rules of the two sports.

A. BIG 12 RULES ON GROUP E OF THE 1994 WORLD CUP

If the Big 12 rules from 2008¹³⁴ were applied to break the four-way tie in Group E, the tie would have to be broken, and the first, second, and third place seedings determined, by the seventh and final criterion: "by draw"¹³⁵ (or in FIFA's parlance, "[d]rawing lots"¹³⁶). Assuming, as noted above, that the Big 12 rules of 2008 were intended to apply to a tie involving four teams as well as three teams,¹³⁷ the first criterion (head-to-head) would not resolve the tie, because each team had a 1-1-1 record against each other. The second, third, and fourth criteria are not determinative because there were only the four teams in the group and the only games were within the group. The fifth criterion, ranking in the BCS poll, has no equivalent in World Cup play. The sixth criterion, best overall winning percentage, also does not break the tie. Thus, the final criterion, of choosing teams "by draw," would determine the teams' seeding in the group. Norway, which was eliminated from the tournament under FIFA's tiebreaker rules, would have preferred this method,

¹³³ One example is the wrestling dual on January 7, 2012, between Oklahoma State University and Iowa, the two most storied programs in intercollegiate wrestling, and the top two ranked teams in the country at the time. At the end of the last of the ten bouts, the team score was tied, 16-16. Under the tiebreaker rules then in place, Oklahoma was awarded an additional point, and determined the victor. But there was confusion, even by the coaches and the media. See Roger Moore, *Getting out the Rulebook: Rules Changes Have Fans and Some Officials Scratching Heads*, NCAA.COM, Jan. 26, 2012, <http://www.ncaa.com/news/wrestling/article/2012-01-26/getting-out-rulebook>; *Post Iowa/Okie State: Tom Brands*, YOUTUBE, <http://www.youtube.com/watch?v=W2HytOVypvc> (last visited Oct. 17, 2017) (post-dual press conference with Iowa coach Tom Brands).

¹³⁴ See *supra* text accompanying note 37.

¹³⁵ 2006 *Tiebreaker Procedures*, *supra* note 40, ¶ b.7.

¹³⁶ FIFA WORLD CUP REGULATIONS 1994, *supra* note 85, art. 23(5).

¹³⁷ See *supra* text accompanying note 40.

given that the team would have had a three-in-four chance of advancing to the next round.¹³⁸

B. FIFA'S RULES ON THE BIG 12 SOUTH

Applying FIFA's tiebreaker rules of 1994¹³⁹ to select the Big 12 South Division's representative in the 2008 season among Texas, Texas Tech, and Oklahoma yields a definitive result after applying the first criterion—point difference (modified from goal difference). For purposes of this tabulation, I have considered the points scored only in Big 12 South Division games—that is, all of the games in round robin pool play, and not the three teams' three other games against opponents from the North Division. Oklahoma emerges as the first place team in this calculus:

Big 12 South Division Games

Team	Points Scored	Points Allowed	Points Difference
Oklahoma	276	152	+124
Texas	200	128	+72
Texas Tech	194	171	+23

Oklahoma would also have been the top finisher if the points scored and allowed in the three teams' games against the lone common opponent from the North Division (Kansas) were also included in the calculations.¹⁴⁰ If points in only the games between the three tied teams were considered—which injects an element of the head-to-head criterion—the Sooners would again emerge first:

¹³⁸ The draw would ultimately determine the first, second, third, and fourth place teams in the group. The top two teams automatically advance. The third place team in this group also advances, because with a record of one win, one loss, and one tie, it earned four points, and would be the fourth (and last) of the third place teams from all six groups. Note that Italy advanced this way. *See supra* note 102.

¹³⁹ To reiterate: “[1] Goal difference, [2] Number of goals scored, [3] Score of direct match, [4] Drawing lots.” FIFA WORLD CUP REGULATIONS 1994, *supra* note 85, art. 23(5).

¹⁴⁰ Including the games of the three tied teams against Kansas, the adjusted results would be: Oklahoma, +138; Texas, +100; Texas Tech, +65.

Oklahoma v. Texas—Texas v. Texas Tech—Texas Tech v. Oklahoma Games¹⁴¹

Team	Points Scored	Points Allowed	Points Difference
Oklahoma	100 [35 v. Texas] [65 v. Texas Tech]	66 [45 v. Texas] [21 v. Texas Tech]	+34
Texas	78 [45 v. Oklahoma] [33 v. Texas Tech]	74 [35 v. Oklahoma] [39 v. Texas Tech]	+4
Texas Tech	60 [21 v. Oklahoma] [39 v. Texas]	98 [65 v. Oklahoma] [33 v. Texas]	-38

Statistics can be misleading and it is fair to say that Oklahoma's 44-point victory over Texas Tech (65-21) skewed the results in the Sooners' favor in the results displayed above. For the record, if Oklahoma's points from only the first half against Texas Tech (when presumably, the outcome of the game was still in doubt) are included in the calculation, while Texas Tech's points from the entire game are considered, Oklahoma would still emerge as the first place team:

¹⁴¹ I will return to, and elaborate on, this method herein. See *infra* text accompanying notes 143-48.

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Oklahoma v. Texas—Texas v. Texas Tech—Texas Tech v. Oklahoma
(First Half Only)*

Team	Points Scored	Points Allowed	Points Difference
Oklahoma	77 [35 v. Texas] [42* v. Texas Tech – first half only]	66 [45 v. Texas] [21 v. Texas Tech]	+11
Texas	78 [45 v. Oklahoma] [33 v. Texas Tech]	74 [35 v. Oklahoma] [39 v. Texas Tech]	+4
Texas Tech	60 [21 v. Oklahoma] [39 v. Texas]	75 [42* v. Oklahoma – first half only] [33 v. Texas]	-15

Some may argue that since football is a game of touchdowns, the emphasis and focus should be on touchdowns and not total points. Here are the standings per the touchdown differential:

Big 12 South Division Games

Team	Touchdowns Scored	Touchdowns Allowed	Touchdown Difference
Oklahoma	38	19	+19
Texas Tech	26	16	+10
Texas	26	22	+4

Oklahoma v. Texas—Texas v. Texas Tech—Texas Tech v. Oklahoma
Games

Team	Touchdowns Scored	Touchdowns Allowed	Touchdown Difference
Oklahoma	14 [5 v. Texas] [9 v. Texas Tech]	8 [5 v. Texas] [3 v. Texas Tech]	+6
Texas	9 [5 v. Oklahoma] [4 v. Texas Tech]	9 [5 v. Oklahoma] [4 v. Texas Tech]	0
Texas Tech	7 [3 v. Oklahoma] [4 v. Texas]	13 [9 v. Oklahoma] [4 v. Texas]	-6

Oklahoma v. Texas—Texas v. Texas Tech—Texas Tech v. Oklahoma (First
Half Only)*

Team	Touchdowns Scored	Touchdowns Allowed	Touchdown Difference
Oklahoma	11 [5 v. Texas] [6* v. Texas Tech – first half only]	8 [5 v. Texas] [3 v. Texas Tech]	+3
Texas	9 [5 v. Oklahoma] [4 v. Texas Tech]	9 [5 v. Oklahoma] [4 v. Texas Tech]	0
Texas Tech	7 [3 v. Oklahoma] [4 v. Texas]	10 [6* v. Oklahoma – first half only] [4 v. Texas]	-3

Some will argue that, after the win-loss record, the scoring differential criterion is the best determinant of a team's body of work over the course of

the season, with all of the relevant games considered. If this criterion were applied to the Big 12 South Division in the 2008 season, it would have resulted in a clean sweep for the Oklahoma Sooners, under the various scenarios noted above.¹⁴²

I return to the tabulation above that isolated the scoring differential of the three tied teams in games between them, from which Oklahoma emerged as the top team.¹⁴³ At first glance, resorting to this method, that is, of applying a slightly modified version of the first criterion in FIFA's tiebreaker rules of 1994 to the Big 12 South Division in 2008, may seem somewhat out of the ordinary to some. Yet it appears that this same scoring differential criterion would be determinative if the *current* Big 12 tiebreaker rules were applied to the Big 12 South in the 2008 season. In 2015, after the conference realignment resulting in a single-division conference and the controversy of the 2014 season,¹⁴⁴ the conference voted to adopt new tiebreaker procedures.¹⁴⁵ These procedures were largely restored in the 2017 amendments.¹⁴⁶ Applying the current Big 12 rules for breaking a tie between three or more teams to the tie situation between Oklahoma, Texas, and Texas Tech in 2008, the first two criteria would not have been determinative.¹⁴⁷ The third criterion is "[s]coring differential among the tied teams."¹⁴⁸ This criterion, applied in 2008, would have made Oklahoma the South Division representative. Thus, the actual result under the then effective tiebreaker rules in 2008, the result of the application of slightly modified FIFA rules from 1994, and the result of a retroactive application of the current Big 12 rules, are all the same: Oklahoma. Despite the controversy at the time, and

¹⁴² Recall that the two-team tie between Nebraska and Missouri in the North Division was resolved simply and without any controversy under Big 12 rules, due to Missouri's head-to-head victory over the Cornhuskers. If FIFA's rules were applied to break this two-team tie, the winner under the points or touchdown differential would have been, decisively, Missouri.

North Division Games: Points

	Points Scored	Points Allowed	Points Difference
Missouri	240	101	+139
Nebraska	193	153	+40

North Division Games: Touchdowns

	Touchdowns Scored	Touchdowns Allowed	Touchdowns Difference
Missouri	31	21	+10
Nebraska	25	21	+4

¹⁴³ See *supra* text accompanying note 141.

¹⁴⁴ See *supra* text accompanying notes 76-82.

¹⁴⁵ *2015 Tiebreaker Procedures*, *supra* note 82; Solomon, *supra* note 82.

¹⁴⁶ *2017 Tiebreaker Procedures*, *supra* note 36. Effective July 2017, the Big 12 rules provide for a conference championship game between the top two teams after regular season play. *Id.*

¹⁴⁷ They are: "1. The Conference records of the three or more teams will be compared against each other in a "mini round-robin" format. 2. The Conference records of the three or more teams will be compared against the remaining team(s) in the Conference standings from top to bottom. . . ." *Id.* ¶ b.1., 2.

¹⁴⁸ *Id.* ¶ b.3.

all things considered, perhaps there was a just result in the 2008 season in the Big 12 South.

A final return to the Danish question: why did the Big 12 revise the rules to include the scoring differential criterion in 2015, and why this criterion over points scored or points allowed, which are not separately included at all?¹⁴⁹ Conference commissioner Bob Bowsby explained, “[W]hen you get down to that level” (meaning *after* the criteria relating to head-to-head and records against common opponents have been applied), “there aren’t a lot of real good ways to break the tie. This is probably as good as any.”¹⁵⁰ Comparativists will note that the Big 12 ultimately chose the first criterion from FIFA’s rules and the third from youth baseball. With respect to points scored or points allowed as possible criteria, Bowsby explained, “We were concerned that it would favor an offensive team or a defensive team.”¹⁵¹ That the conference chose to include the scoring differential criterion and not the points scored or allowed criteria is telling of the governing body’s priorities and preferences, and perhaps politics therein, much like that of a legislative body.

IV. CONCLUSION

Through the vehicle of selected tiebreaker rules in sports, this Article draws parallels between rules of sport and the laws of a societal jurisdiction. The governing body of a sport adopts rules in furtherance of the game. In theory, such rules should be based on some articulable reason or rationale. The entire process of rule adoption and later challenge and revision, sometimes spurred by an undesired result upon application of the rules, appears to mirror that seen for legislative enactments of a societal jurisdiction. Most of all, the rules of the game, like a jurisdiction’s laws, say much about those adopting them.

¹⁴⁹ Observers will note that the scoring differential criterion—and the points scored criterion even more so—will place coaches in the position of going for more points, even when the score is already lopsided, in the event that tiebreaker rules might come into play at season’s end. Bowsby acknowledged the possibility: “There is, I think, probably a little bit of apprehension about scoring differential because theoretically it could contribute to running up the score.” Andy Staples, *New Big 12 Tiebreaker Rules Not Perfect, But Effective and Needed*, SPORTS ILLUSTRATED, May 7, 2015, <http://www.si.com/college-football/2015/05/06/big-12-tiebreaker-rules-one-true-champion>. That the scoring differential criterion in the rules is calculated from only the games involving the tied teams, presumably the best in the conference (and not against a team in the conference that has not been competitive historically), should decrease the likelihood of this happening. But note in the 2008 season, Oklahoma held a 42-7 lead over Texas Tech at half time, in which the final score was 65-21. The scoring differential criterion will require coaches to be informed about the relevant teams’ points amassed and given up, so as to maintain the competitive advantage, without overdoing.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* It is said that in sports, while a good offense may win games, “defense wins championships.” Dan Orr & Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis*, 21 OHIO ST. J. ON DISP. RESOL. 597, 625 (2006). This view could be reflected in tiebreaker rules that incorporate fewest points allowed as a top criterion.