

BUSINESS OF SPORTS: SAFEGUARDING IMAGE RIGHTS AND MANAGING CONTRACTS

January 10, 2025



PRESENTATION COVERS....

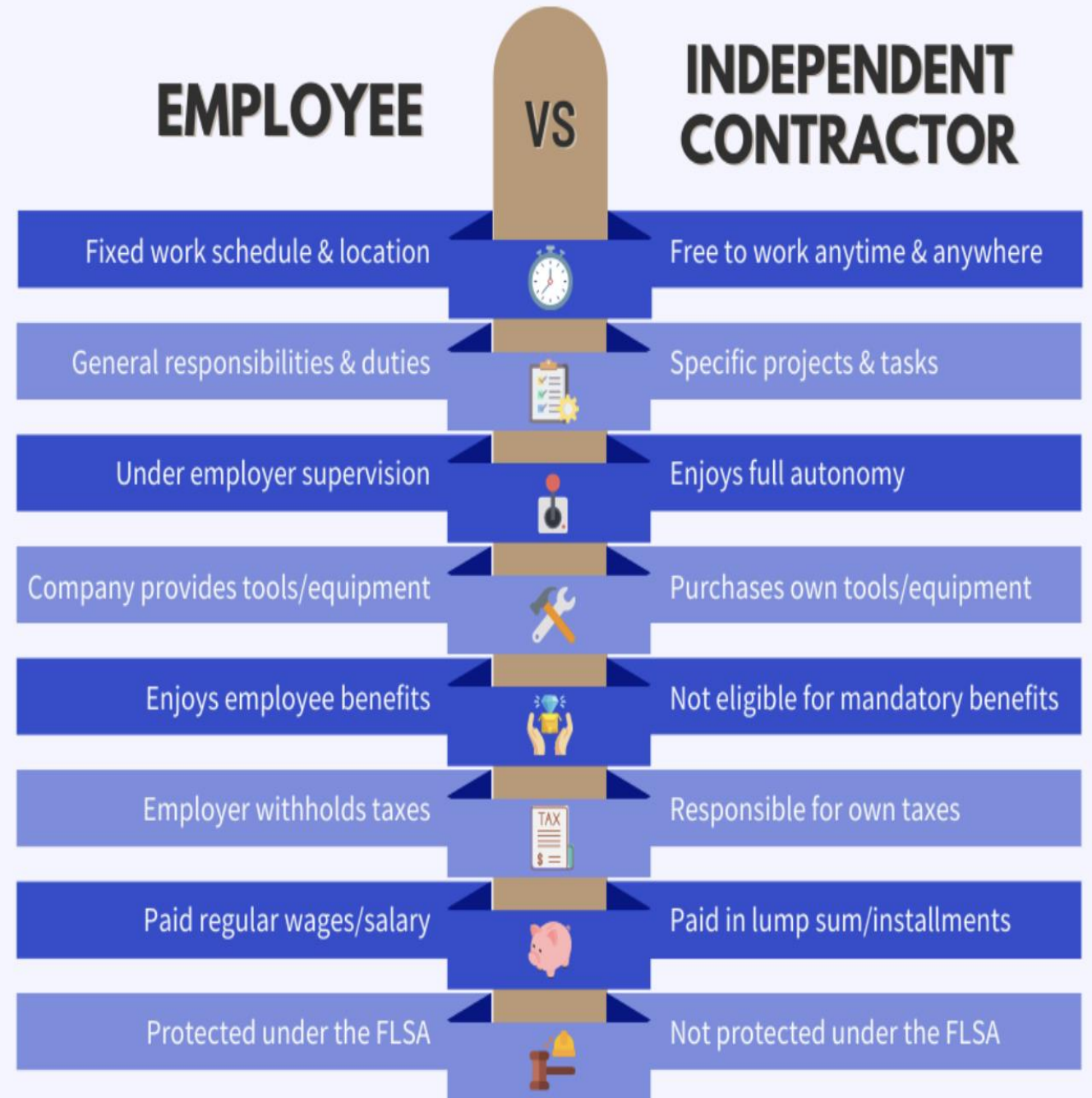
PLAYER CONTRACTS

- UNDERSTANDING EMPLOYER-EMPLOYEE VERUS CONTRACTOR RELATIONSHIP
- NATIONAL LEVEL CONTRACTS
- CLUB LEVEL CONTRACTS
- FRANCHISE CONTRACTS

IMAGE RIGHTS

ENDORSEMENT CONTRACTS

EMPLOYEE VERSUS INDEPENDENT CONTRACTOR



EMPLOYEE VERSUS INDEPENDENT CONTRACTOR: WHY IT MATTERS TO PLAYERS

CHURCH BOYS MAY EMPLOY A
PLAYER (FOR THE LEAGUE,
TOURNAMENT)

A FRANCHSIE MAY SIMPLY
PROVIDE A TIME BOUND
CONTRACT

- Different Working Hours
- Benefits of SSF (Gratuity, Provident Fund, Insurance) is not Available
- Leave Policy is not Applicable (unavailability is specifically excluded)
- Different Tax Slab versus 15% deduction of tax

CLAUSES PROVIDING DIFFERENCES

"Employee acknowledges that they are employed by the Company as an at-will employee, subject to the policies, procedures, and benefits outlined in the Employee Handbook. The Company retains the right to control and direct the manner, means, and details of the Employee's work, including work hours, duties, and performance standards."

Contractor acknowledges that they are an independent contractor and not an employee of the Company. The Contractor retains the sole right to control and direct the manner, means, and details of performing the services under this Agreement. The Contractor is responsible for their own tools, equipment, and expenses and shall not be entitled to participate in any employee benefits offered by the Company.

UNDERSTANDING PLAYER CONTRACTS

PLAYERS DUTIES

- *FITNESS: except to the extent prevented by injury or illness to maintain a high standard of physical fitness at all times and not to indulge in any activity sport or practice which might endanger such fitness or inhibit his mental or physical ability to play practise or train;*
- *EXCLUSIVITY: The Player agrees that he shall not undertake or be engaged in any other employment or be engaged or involved in any trade business or occupation or participate professionally in any other sporting or athletic activity without the prior written consent of the Club. ‘*
- *FOLLOW RULES: Required to follow necessary rules and regulations of the Club, Association and National Governing Bodies*

PLAYER BENEFITS

BASIC SALARY (LINKED TO BENEFITS LIKE DASHAIN LEAVE, TERMINATION PAY, BONUS, SOCIAL SECURITY FUND)

DEARNESS ALLOWANCE

SOCIAL SECURITY FUND BENEFITS

BONUSES AND INCENTIVES

LEAVE (SICK LEAVE, ANNUAL LEAVE, PREGNANCY LEAVE)

PLAYERS RIGHTS

RIGHT AGAINST UNFAIR DISMISSAL

Notice Period: Minimum 30-day written notice for termination initiated by either Club or Players. The notice period can be waived by mutual agreement or by paying a month's salary in lieu of notice.

Severance Pay: Employers are obligated to provide severance pay of one month's salary for each year of service in case of layoffs.

Compensation for Unfair Termination: Termination without a valid reason or without following due process by Clubs can result in breach. Players can seek compensation can be up to three months' salary. Labor Courts have the authority to adjust this amount based on the specific circumstances of the case.

Employee Reinstatement: Employees can file a complaint with the Labor Office within 45 days of the termination date. The Labor Office will attempt to resolve the issue through conciliation. If conciliation fails, the employee has the right to file a lawsuit in the Labor Court within 35 days of receiving the Labor Office's decision.

RIGHT TO BENEFITS

- MINIMUM WAGE (SHOULD NOT BE LESS THAN NPR 17,300)
- OVERTIME PAY
- LISTING IN SOCIAL SECURITY FUND (MANDATORY NO IFs.. CONTRIBUTED JOINTLY BY PLAYER (11%) AND EMPLOYING CLUB (20%))
- DASHAIN ALLOWANCE
- SEVERANCE PAY (AT THE TIME OF TERMINATION)

LEAVE	DAYS
ANNUAL LEAVE	Upto 20 days paid
PUBLIC HOLIDAY	Up to 13 daya paid
SICK LEAVE	Up to 12 days paid
MATERNITY LEAVE	14 days including International Women Labor Day for female employees

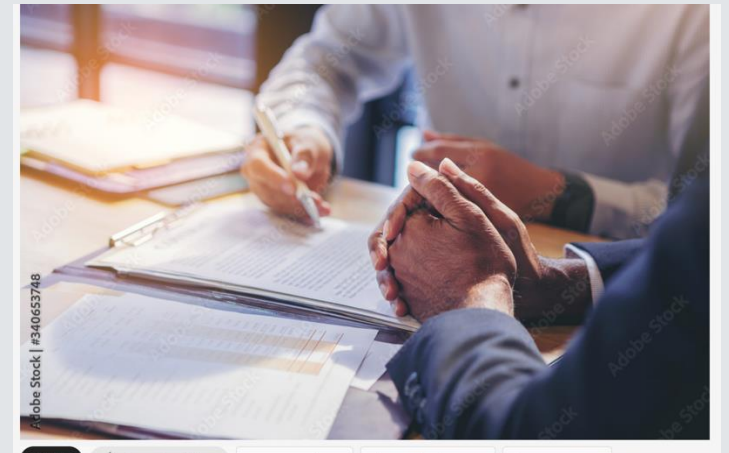
PLAYER NON-PAYMENT AND REMEDIES

Ensure Ensure You have A WRITTEN CONTRACT
WITH PARTIAL PAYMENT UPFRONT

Raise Raise Issue to the Club

FILE FILE COMPLAINT TO THE LABOR
OFFICE

FILE FILE CLAIM ALSO SEEKING INTEREST
IN UNPAID SUMS IN COURTS



ENDORSEMENT CONTRACTS (WHAT TO LOOK FOR AS A PLAYER)



COMPENSATION



Players need to ensure that the compensation structure is fair and clearly defined (cash payments, royalties, bonuses, product supply, etc.).



Endorsement payment can be a **fixed annual payment** or **performance-based bonuses** for achievements such as MVP awards, championship wins, or social media promotions.



LeBron signed a lifetime deal with Nike reportedly worth over \$1 billion. The deal includes royalties on his signature shoe line, ensuring long-term financial benefits. Players should negotiate royalty clauses instead of just a lump sum to maximize future earnings.

EXCLUSIVITY CLAUSE



Players must be cautious of clauses that limit them from endorsing other brands, as this can impact their income potential.



A soccer player signs a deal with a Noodles (Wai Wai). If the contract has an **exclusivity clause**, they cannot endorse competing brands like Current. However, the player should negotiate **category-specific exclusivity** to retain flexibility.



David Beckham had a long-term endorsement deal with Pepsi, which prevented him from endorsing Coca-Cola or any other soft drink brand. After his Pepsi deal ended, Beckham chose to partner with Diageo's whisky brand (Haig Club), showing how category-specific exclusivity can provide more opportunities.

MORALITY CLAUSE



Players should ensure morality clauses are not too broad and only apply to **major misconduct** that could harm the brand's reputation.

A basketball player signs a deal with a luxury watch brand. The brand wants the right to terminate the contract for any **behavior deemed inappropriate**. The player should narrow the clause to **criminal convictions** or **public scandals**.

Tiger Woods & Nike

After Tiger Woods' personal scandal in 2009, many sponsors dropped him due to morality clauses. However, **Nike** continued its partnership, likely due to **lenient terms in their morality clause**.

TERMINATION PROVISIONS



Brands may terminate the contract due to performance issues, moral scandals, or even external circumstances. Players should seek **grace periods, partial payments, or severance packages.**



A tennis player signs a deal with a clothing brand. The contract includes a **termination clause** stating the deal can be terminated if the player **drops out of National Cricket Team**. The player should negotiate a **grace period of 12 months** to regain their ranking and ensure they receive **partial payment** if terminated early.

ENDORSEMENT REQUIREMENTS



Players need to ensure that product usage and promotional obligations are **reasonable and do not interfere** with their professional responsibilities.

A cricket player signs a deal with a **bat manufacturer**. The contract requires them to **use the bat in all matches and promote the brand on social media**. The player should negotiate **flexibility**, allowing for **alternate brand use in certain matches** or **less frequent promotions**.

Roger Federer & Nike/Uniqlo

In 2018, Roger Federer left Nike after 24 years to sign a \$300 million deal with Uniqlo. One reason for the switch was that **Nike required Federer to wear their shoes exclusively**, but **Uniqlo allowed him to wear any shoes he wanted**. This freedom allowed Federer to keep his **Lucrative deal with On Running shoes**, maximizing his earnings.

NON- COMPETE CLAUSE



Players must be cautious of non-compete clauses that may prevent them from endorsing competing brands even after the contract ends.



A basketball player signs a deal with a shoe brand. The contract includes a 12-month non-compete clause after termination, preventing the player from signing with another shoe brand. The player should negotiate to reduce the non-compete period to 6 months or exclude certain categories.



Kobe Bryant & Adidas to Nike
When Kobe Bryant left Adidas, he was bound by a non-compete clause, which delayed his ability to sign with Nike. He had to wait out the non-compete period, affecting his earning potential. Reducing the non-compete period would have benefited Kobe financially.

OTHER ISSUES IN ENDORSEMENT CONTRACTS

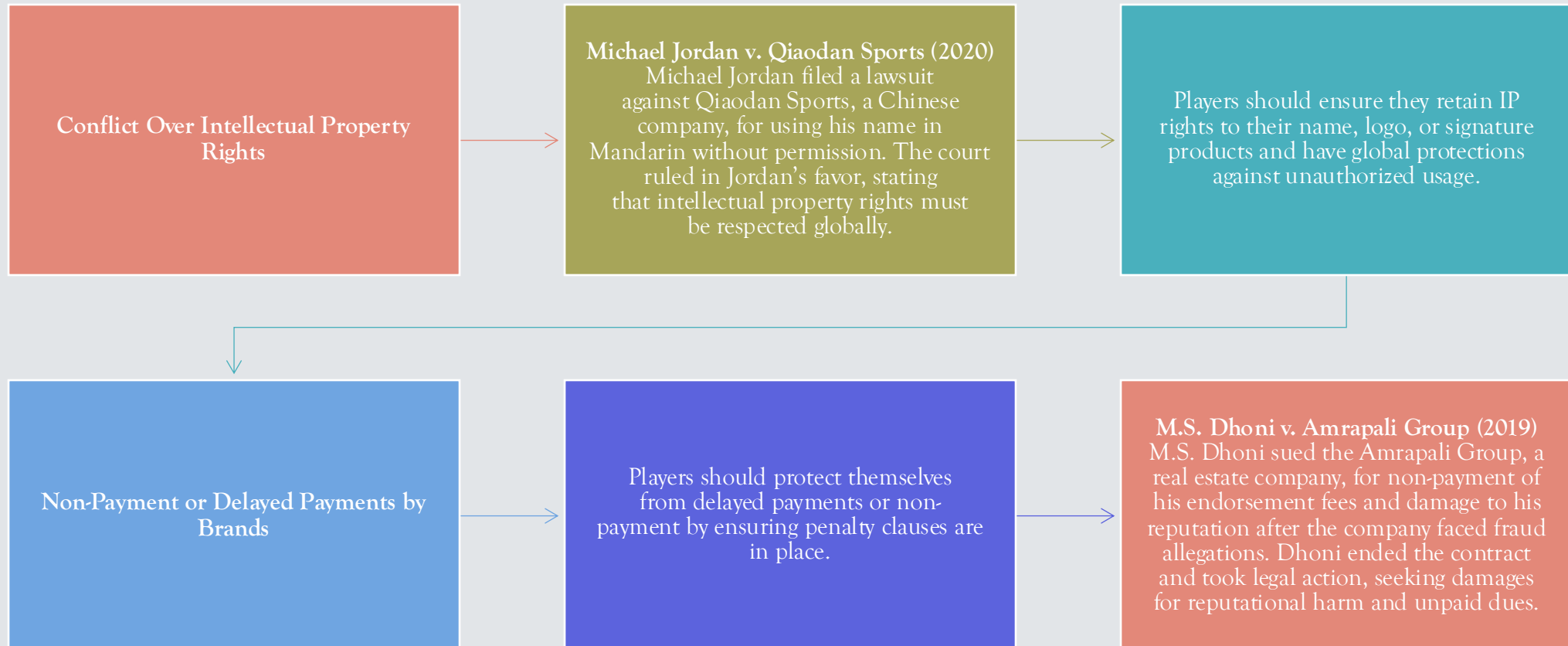


IMAGE RIGHTS



Image rights refer to the legal rights that individuals, such as athletes, celebrities, or public figures, have over their name, likeness, appearance, and other unique personal attributes.



For instance, an athlete's photograph, signature moves, or unique branding elements can be protected under image rights, preventing unauthorized parties from using them.



NEPALI LAW: SCATTERED BUT SUFFICIENT

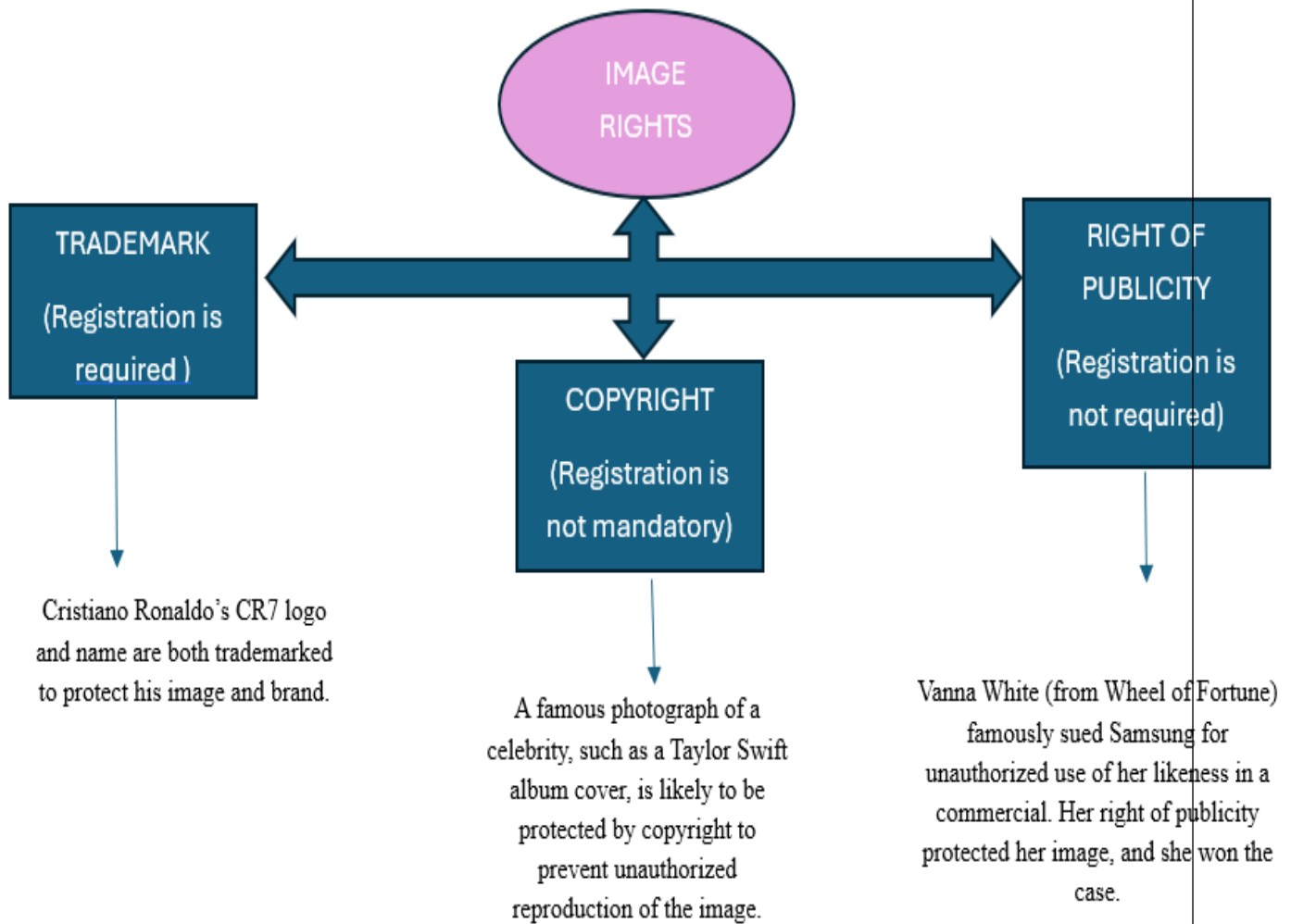
Some countries (such as Italy and France) have specific laws preventing the use of a person's image for commercial purposes.



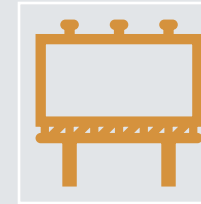
However, in Nepal there is no codified legislation that protects image rights. Players will therefore have to piece together a cause of action to prevent an unauthorized use of their image using statutes, intellectual property rights and regulatory protections (e.g. registered trademarks).



Players can make use of Individual Privacy Act, 2019; Patent, Design and Trademark Act 1965; Copyright Act 2002, Civil Code, 2074 and Criminal Code, 2074.



HOW CAN NEPALI PLAYERS PROTECT IMAGE RIGHTS?



A trademark can protect the name, likeness, signature catchphrases, or logos associated with an individual. This is particularly useful for a personal brand (e.g., a clothing line, personal merchandise, or a logo).



Copyright protects creative works, such as photographs, videos, and artworks, that feature an individual's image or likeness.

MONETIZING IMAGE RIGHTS

- Licensing is a form of monetization where individuals allow others to use their image in exchange for licensing fees, while royalties from digital media involve earning money when their likeness is used in video games, films, or other digital content. (E.g. Use of LeBron James images in NBA games, Ninja in Red bull).
- Merchandising (Discussed Earlier)



UNDERSTANDING IMAGE RIGHT CONTRACTS

1. **Defining scope of use**- outlining the specific rights granted, including the types of permitted uses (advertising, merchandising, digital content etc.), the geographic territories where the image can be used, and the media or platforms (such as social media or websites) on which the image can appear.
2. **Duration of the agreement**- should be clearly stated, including the start and end dates, along with provisions for termination in case of breach or misuse of the image. This should include cessation of usage of image rights upon termination of contract so that player is released from the contract. This will reduce the chances of questioning the holder of image rights.
3. **Fee structure**- (upfront payment, royalties, or licensing fees), payment schedules, and methods.
4. **Exclusive or Non-Exclusive**- Exclusivity clauses should be negotiated carefully. The club may want exclusivity in certain areas, but player should retain the right to negotiate personal deals that align with their image. These clauses should be carefully crafted to ensure that the player's personal brand isn't overly restricted.
5. **Approval rights**- image rights holder to ensure their image is used appropriately and aligns with their brand.
6. **Quality control provisions**- specifying the standards of products or materials using the image.
7. **Indemnification clauses**- are crucial, ensuring that one party is protected in case of legal claims arising from the use of the image.
8. **IPR clause**- The contract should also address intellectual property rights, ensuring that the image rights holder retains ownership unless an assignment is made. Provisions regarding the image rights holder's moral rights should be included, ensuring that the image is not used in a way that could harm their reputation or integrity.
9. **Dispute resolution mechanisms**- should be outlined to handle any conflicts.

THANK YOU AND KEEP IN TOUCH

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