

PART I

FUNDAMENTALS



This Part comprises four chapters. Chapters 1 and 2 examine, respectively, what sports and games are, and whether they have an “essence” or nature. Chapter 3 canvasses many of the goals that sports and games, as a class, commonly pursue. Chapter 4 reviews the core levers that a gamewright could deploy to realize the sport’s or game’s goals. Command of these general matters will aid the student when we turn, in Part II, to basic topics in game design.

CHAPTER 1

WHAT IS (A) SPORT?



Consider the following ten activities: baseball, tennis, golf, horse racing, gymnastics, weightlifting, bodybuilding, boxing, chess, and mountaineering. Which are sports?

Seemingly nobody questions whether baseball and tennis are sports. They are paradigmatic cases. If offered a definition of sport that excluded these activities, one would reasonably doubt that the proposed definition is one of sports at all. Yet the sport-ness of each of the other eight activities just mentioned has been contested. Each has been described as a sport by some people and challenged by others. And the list of borderline or contested cases could be expanded greatly. Croquet, poker, auto racing, ultimate, bridge, competitive cheer, League of Legends, darts, diving, ice dancing, ballet, penny-pitching, three-legged races, the egg-and-spoon race, mixed martial arts, fly fishing, deer hunting, long jumping, ski jumping, 100-meter running, 100-meter freestyle swimming, marathon running, and competitive eating—which are sports? Which are games? Which are both? Which are neither?

This chapter addresses these initial definitional or conceptual questions. It also explores why, if at all, they should matter.

Let's begin with the definitions of sport offered by two powerful organizations, each of which is periodically called upon to determine whether a particular activity counts as a sport and therefore should be brought within its sphere of administration: the National Collegiate Athletic Association (NCAA), and the International Olympic Committee (IOC). The NCAA defines a sport as "an institutional activity involving physical exertion with the purpose of competition versus other teams or individuals within a collegiate competition structure." NCAA EMERGING SPORTS FOR WOMEN PROCESS GUIDE, <https://tinyurl.com/y3dz64fl>. And a 2002 report of the IOC's Programme Commission endorsed the "commonly accepted" view that "sport is physical exertion in the conduct of competition." REVIEW OF THE OLYMPIC PROGRAMME AND THE RECOMMENDATIONS ON THE PROGRAMME OF THE GAMES OF THE XXIX OLYMPIAD, BEIJING 2008, Report by the Programme Commission Chairman, Franco Carraro, to the IOC Executive Board, August 2002, § 2.5.

These are strikingly similar definitions, containing two core elements: a sport is an activity that involves (1) physical exertion and (2) competition. But whether or not this is an adequate definition for NCAA and IOC purposes, it is plainly not an acceptable general definition. Take barroom brawling. That's an activity that involves physical exertion and competition, but it's not a sport. Therefore, the NCAA/IOC definition is overinclusive. Even if we add in the NCAA's idea that a sport must be institutionalized, it does not completely solve the problem for, again, not all activities that meet even these conditions are sports. Warfare is a competitive activity involving physical exertion that is also highly institutionalized, subject to an extensive set of rules. But it's not a sport. Auditions for a dance troupe or symphony also satisfy these three conditions but are not sports. So the definition remains overinclusive. The definition may be underinclusive too, for it is not obvious that all sports are institutionalized. (Did, say, snowboarding become a sport only when it became institutionalized and competitive structures developed?)

One possible response is that sports are a special type of *game*. On this common view, sports have three necessary and sufficient conditions. They are: (1) games that involve (2) physical exertion and (3) competition.

This seems to be an improvement. It seems to promise the benefit of excluding from sport the counterexamples (such as warfare and auditions) we have just offered. But in order to evaluate this proposed definition of sport more carefully, we need to know, of course, what games are. And, as it happens, that is the subject of longstanding philosophical controversy, thanks in large part to the eminent twentieth-century philosopher Ludwig Wittgenstein.

At least since Socrates, it has been accepted that a “**true definition**” of a thing consists of the set of necessary and sufficient attributes that the thing possesses. A definition of this sort frequently assumes the form of “genus and differentia,” which is to say that it starts by identifying the general category in which the thing falls and then specifies the attributes that, in combination, differentiate it from all other members of the category. A *chair*, for example, might be defined (to a first approximation) as “a piece of furniture [the genus] designed to be sat upon by one individual at a time [the differential].” Indeed, the proposed definition of sports under consideration—that sports are games involving physical exertion and competition—fits this model too.

**True
Definition
vs. Family
Resemblance**



In his posthumous *Philosophical Investigations*, however, Wittgenstein challenged the idea that all concepts have essences, or can be defined by true definitions. Instead, he introduced the notion of *family resemblance* concepts, an idea that he illustrated with the concept of game:

66. Consider for example the proceedings that we call “games”. I mean board-games, card-games, ball-games, Olympic games, and so on. What is common to them all?—Don’t say: “There must be something common, or they would not be called ‘games’”—but look and see whether there is anything common to all.—For if you look at them you will not see something that is common to all, but similarities, relationships, and a whole series of them at that. To repeat: don’t think, but look!—

Look for example at board-games, with their multifarious relationships.

Now pass to card-games; here you find many correspondences with the first group, but many common features drop out, and others appear.

When we pass next to ball-games, much that is common is retained, but much is lost.—

Are they all ‘amusing’? Compare chess with noughts and crosses [i.e., tic-tac-toe]. Or is there always winning and losing, or competition between players? Think of patience [i.e., solitaire]. In ball games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and skill in tennis.

Think now of games like ring-a-ring-a-roses; here is the element of amusement, but how many other characteristic features have disappeared! sometimes similarities of detail.

And we can go through the many, many other groups of games in the same way; can see how similarities crop up and disappear.

And the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities.

67. I can think of no better expression to characterize these similarities than “family resemblances”; for the various resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc. etc. overlap and criss-cross in the same way. But it is not clear that games can be defined in this fashion.—And I shall say: ‘games’ form a family.

LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 95 (1953). Wittgenstein’s notion of “**family resemblance**” categories, though highly controversial in some circles, won wide acceptance in others. In particular, many scholars accepted that no set of necessary and sufficient conditions could serve as a definition of our concept of a game. A Canadian philosopher, Bernard Suits, challenged that claim in his 1978 book, *The Grasshopper: Games, Life and Utopia*.^a

On Suits’s account, games are rule-governed activities that satisfy four conditions: (a) a participant pursues a goal describable as a state of affairs, (b) using only those means permitted by the rules, (c) where those rules exclude more efficient in favor of less efficient means of realizing the goal, and (d) in which the participant accepts the limitations to make the activity possible. “Playing a game,” in Suits’s shorthand, “is a voluntary attempt to overcome unnecessary obstacles.”^b

^a Some question whether Suits really did challenge Wittgenstein’s claim. They read Suits not as having attempted to define the concept as the community of ordinary users had already employed it, but rather as having proposed a *stipulated* definition of game for certain purposes. And Wittgenstein doesn’t deny that we could do *that*.

^b BERNARD SUITS, *THE GRASSHOPPER: GAMES, LIFE AND UTOPIA* 55 (1978). For a broadly similar proposal, see KATIE SALEN & ERIC ZIMMERMAN, *RULES OF PLAY: GAME DESIGN FUNDAMENTALS* 80 (2004) (“A game is a system in which players engage in an artificial conflict, defined by rules, that results in a quantifiable outcome.”). And an even earlier analysis that has much in common with Suits’s was offered by a pioneering philosopher of sport, S.L. Clemens, who described the success of a boy named Tom in managing to get his peers to perform a task that had been assigned to him:

He had discovered a great law of human action, without knowing it—namely, that in order to make a man or a boy covet a thing, it is only necessary to make the thing difficult to attain. If he had been a great and wise philosopher, like the writer of this book, he would now have comprehended that Work consists of whatever a body is obliged to do, and that Play consists of whatever a body is not obliged to do. And this would help him to understand why constructing artificial flowers or performing on a tread-mill is work, while rolling ten-pins or climbing Mont Blanc is only amusement. There are wealthy gentlemen in England who drive four-horse passenger-coaches twenty or thirty miles on a daily line, in the summer, because the privilege costs them considerable money; but if they were offered wages for the service, that would turn it into work and then they would resign.

MARK TWAIN, *THE ADVENTURES OF TOM SAWYER* ch. 2 (1876).

An illustration will help. Monopoly is a game, on this account, because each participant aims at the state of affairs in which she alone of the players has money remaining; and each pursues that goal in accordance with rules that issue instructions (such as that players take turns moving tokens around a board, and pay money to other players under specified circumstances) and that confer powers (such as those of purchasing and improving properties), all while proscribing such more efficient means as taking another player's cash when she's not looking.

Sprints are also games, says Suits, because they too employ inefficient means to a goal. The goal, he proposes, is to be the first to pass one's body through a designated vertical plane in space. The inefficiencies imposed by the rules include the following: competitors must start some specified distance from the plane that constitutes the "finish line"; they may not use jet packs or a range of other devices that could speed their movement; they may not cut across the infield; they may not start before an official signal, available to all competitors, announces the start of competition; they may not obstruct the other competitors; etc. Finally, sprinters accept these rules in order to make the activity of competing in a sprint possible and not, say, because they believe they are obligated to do so.

Many sport philosophers have agreed that *games* are as Suits defined them and that *sport* describes the subset of games that involve some more-or-less specified character of physicality. Many others, however, have criticized Suits's account of games as both under- and overinclusive. It is underinclusive, critics say, because it fails to capture paradigmatic games like children's games of role-playing and make-believe. See, e.g., Norman Geras, *Games and Meanings*, in HILLEL STEINER AND THE ANATOMY OF JUSTICE: THEMES AND CHALLENGES 185–200 (Stephen de Wijze et al., eds., 2009). And it is claimed to be overinclusive for including some activities—religious rituals, for example—that very few people would deem games, on reflection. See Mitchell N. Berman, *Sprints, Sports, and Suits*, 40 J. PHIL. SPORT 163 (2013).

Let us suppose for the moment that games are as Suits defined them and that all sports are games. That would still not leave us home free, however, for now we must address the additional two conditions that are said to be necessary: competitiveness and "physical exertion."

Do all sports involve competition? Consider "outdoor sports" such as fly fishing, deep sea fishing, and hunting. Consider "adventure sports" such as hang gliding, BASE jumping, and spelunking. Consider parkour, a discipline developed from military obstacle-course training.

Do all sports involve physical exertion? For years, the international chess and bridge federations lobbied the IOC to recognize chess and bridge as sports, a prerequisite (but not a guarantee) under the Olympic Charter for inclusion in the Olympic Games. This wasn't frivolous: the August 14,

1972 cover of *Sports Illustrated* featured the great chess champion Bobby Fischer. In 1999, a committee agreed. But in response to criticisms, the IOC changed course three years later, endorsing the definition quoted earlier and concluding that so-called “mind sports”—a category that it defined as being “sports where the physical elements are not necessarily performed by the player in the conduct of the competition”—should not be eligible for inclusion in the Olympic Games, and that the Charter be amended to that effect.^c

Was the IOC right to insist that sports require physical exertion? Even if so, is it clear that chess and bridge lack physical exertion? Consider recent research concluding that, due to the demands of mental stress, competitive chess players can burn up to 6,000 calories each day of a multi-day tournament. According to one expert, “Grandmasters sustain elevated blood pressure for hours in the range found in competitive marathon runners.” Aishwarya Kumar, *The Grandmaster Diet: How to Lose Weight While Barely Moving*, ESPN.com (Sept. 13, 2019). As Annie Duke, 2004 World Series of Poker Champion, noted: “People don’t realize how much you have to take care of your core. . . . Poker is very profitable when you play with an edge. When you’re tired, you don’t have that.”^d

Are chess, bridge, and poker sports? If not, is that because sports must involve “physical exertion,” and these games don’t? Or is it because sports require a different type of physicality—not physical exertion, exactly, but something else—and that chess and similar games lack the right type of physicality? If that is so, what is the physical ingredient that sports require and that these games lack? Physical “prowess”? The exercise of gross motor skills? Athleticism?

COMMENTS AND QUESTIONS

1. *A problem of method.* How do you determine whether a proposed definition of sport—the ones already mentioned, or any other—is satisfactory? Notice how we have proceeded thus far in this chapter. We have tested proposed definitions against specific types of activities, adjudging that a definition is good to the extent it includes activities that are sports and excludes activities that aren’t sports, and bad to the extent it includes activities that are not sports and excludes activities that are. For example, we objected

^c The IOC has not yet taken such definitive action, but neither bridge nor chess has been admitted to the Games. In the meantime, the International Mind Sports Association has initiated what it envisioned as a quadrennial World Mind Sports Games. The inaugural event, held in Beijing shortly after the 2008 Olympics, drew 2,763 competitors from 143 countries in bridge, chess, checkers, go, and Chinese chess; the 2012 Games were not quite so successful, but they still drew about 2,000 competitors from 95 countries. The Games have not been held since. World Mind Sports Games, *2008 WMSG Results*, <https://tinyurl.com/yxbsh6tl>.

^d *Looking Bluff*, SPORTS ILLUSTRATED (Jan. 1, 2007) (noting that “a strong midsection helps improve posture and avoid back pain during hours of sitting”). *But cf.* John L. Jackson, Jr., *New Rules: You Gotta Have Balls, So Poker Is Not a Sport*, THE ROOT (Apr. 25, 2008) (“the activity might take a ton of practice and even stamina, but so does a long calculus exam”).

to the definitions offered by the NCAA and IOC by observing that they incorrectly include non-sport activities such as warfare and auditions for the American Ballet Theatre. Is this how you have tried to evaluate whether a proposed definition is satisfactory? (If not, how have you proceeded?) If so, how do you respond to the worry that the approach is circular? That is to say, how can you start with the idea that some activity—warfare, pitching pennies, the javelin throw, musical chairs, the 100m dash—is or is not a sport without first knowing what sports are, or what the correct definition of sport is?

The standard answer invokes the “**method of reflective equilibrium,**” an approach to the management and refinement of one’s beliefs predicated on the idea that we best justify our beliefs in a range of domains, not by reasoning forward from premises that we accept as foundational and immune from criticism, but by continually revisiting and adjusting our judgments about diverse propositions in an effort to produce a coherent and mutually supporting network of beliefs. When applied to ethical judgments, for example, reflective equilibrium counsels that we seek coherence among our considered judgments about the rightness or wrongness of particular acts (e.g., it’s permissible to turn the trolley), mid-level rules or principles (e.g., it’s wrong to intentionally cause the death of an innocent person), and the even more abstract or general theoretical considerations or commitments that shape, determine, or constitute the rules and principles (e.g., utilitarianism). Of critical importance, no class of judgments is categorically epistemically privileged over another class of judgments: judgments, say, that “*this* is wrongful” and that “one should act only in accordance with a maxim that one wishes would become a universal law” are, in principle, revisable in light of each other, and in light of all other judgments the agent has or may come to have. Reflective equilibrium is a dominant mode of reasoning in law, as it is in moral philosophy. For a careful explanation of the method, and of the criticisms it has attracted, see Norman Daniels, *Reflective Equilibrium*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Summer 2020 ed.).

Reflective
Equilibrium



2. *In or out?* Put aside precise definitions for the moment and just consider the following activities, many of which have already been mentioned in this chapter: bridge, chess, poker, baseball, basketball, golf, dressage, auto racing, Ultimate, competitive cheer, League of Legends, darts, mountaineering, diving, gymnastics, ice dancing, ballet, boxing, MMA, fly fishing, deer hunting, long jumping, ski jumping, 100-meter running, 100-meter freestyle swimming, distance running, weight lifting, bodybuilding, competitive eating, competitive cheffing, beer pong, arm wrestling, thumb wrestling, foosball. Which of these do you intuitively think of as sports? Which of these do you intuitively think of as games?^e

^e You might be interested to compare your views on some of these activities, and on others, with those who participated in a *Deadspin* poll, the results of which, and commentary, are available at Barry Petchesky, *Poll Results: What’s a Sport and What’s Not?*, <https://tinyurl.com/yx5kaqz>.

3. *Of sports and games.* Are all the activities you would consider sports also games? Consider the short foot races we call “sprints.” Do you believe that Suits’s account of sprints is accurate? If you asked a sprinter what her goal was, do you think she would say it was to pass her body through the designated vertical plane before the other sprinters? Would she say, as Suits suggests, that she accepts restrictions, such as not being able to start before the official signal or cut across the infield, “solely because there is a rule against it”? Would she more likely say that her goal is to run a designated course faster than other competitors? More generally, consider other competitions that measure time to complete a task or cover a distance, distance thrown or jumped, or weight lifted. Is the athlete’s goal to achieve a given state of affairs, or *to achieve it in a certain way*? And if it is the latter, what are the inefficiencies in achieving these goals that athletes accept in these contests?

In assessing the accuracy or usefulness of Suits’s definition, does it matter how an athlete herself would characterize her goals, if they *can* be characterized in the way Suits suggests? And if the answer to that question is negative, is Berman right that Suits’s definition would include religious rituals as games?

And what follows from all of this? Should sprints be deemed not to be games, but still considered sports, which means that not all sports are games? Or should sprints be deemed to be athletic competitions but not to be sports or games, which preserves the possibility that all sports are games but perhaps at the cost of violating common parlance? Or should we conclude that Suits’s definition of games is not cogent—and, if so, that Wittgenstein was right all along?

4. *“Mind sports.”* Should poker, chess, and bridge, or any of them, be considered sports? Is the IOC Programme Commission’s emphasis on whether there is physical exertion “in the conduct of competition” useful? Is dressage, a recognized Olympic sport, truly a sport by this criterion given that, while the horse certainly exerts itself, the rider should be relaxed and appear effort-free while giving minimal aid to the horse?

Is the Programme Commission’s use of the term “mind sports” coherent? That is, can mind sports be a subcategory of sports under the Commission’s understanding of what a sport is, even though in a mind sport “the physical elements are not necessarily performed by the player in the conduct of the competition”?

Although we have grouped chess, bridge, and poker together, are there any useful distinctions to be drawn within that set? Notice that chess and bridge require no physicality at all, for they do not even require corporality (embodiedness): proverbial “brains in a vat” could compete at these games. In contrast, one might argue that because discerning an opponent’s “tells,” and hiding or overcoming one’s own, are part of the essence of poker, real poker, unlike real chess and bridge, requires an embodied agent. (On this view, internet poker is a degenerate form of that game, whereas internet chess is

still ordinary chess.) Do you agree? Is this distinction meaningful for purposes of assessing whether any of these games are sports?

5. *Esports*. In League of Legends, the most popular esports in the world, two teams of five players compete against each other, engaging in virtual combat until one team conquers the other. In 2018, 99.6 million unique viewers tuned in to watch the League of Legends World Championship finals, the culmination of an annual event in which the best teams from all over the world compete for fame, glory, and millions of dollars in prize money. See 2018 EVENTS BY THE NUMBERS, <https://tinyurl.com/y34zk9t5>. For comparison, an estimated 103.4 million viewers tuned in to watch the 2018 Super Bowl. Superbowl LII: Ratings for football's biggest game lowest since 2009, CBSNEWS.COM, (Feb. 5, 2018) <https://tinyurl.com/yblrp2bq>. To be successful, players in League of Legends must key in complex sequences of buttons and move their mouse quickly, frequently, and on a moment's notice. One way of gauging a player's activity in League of Legends and other similar esports is through their physical "actions per minute" (APM). In some esports, the best professional players routinely take over 300 actions per minute. See *Actions per minute*, WIKIPEDIA, <https://tinyurl.com/y6tghdmh>. Are esports sports mind sports, or just games? One common reason given for the argument that esports are not true sports is that, similar to mind sports, they lack some physical component actual sports must possess. See, e.g., Eric Johnson, *Video Games on ESPN? It's Time to Stop Pretending eSports Are 'Real' Sports*, VOX, (Apr. 27, 2015) <https://tinyurl.com/y65sbgbb> (arguing that while esports are "competitions," they should not be considered sports because they lack "easily intelligible physical prowess"). Is this right? Does it matter at all that top esports athletes routinely take over five physical actions per second, often for over 30 minutes at a time? Or are finger speed and hand dexterity simply not the right type of physical actions to properly constitute a sport? Similarly, does it matter at all that almost as many people watch the League of Legends World Championship as watch the Super Bowl? Is an esports that requires a high level of APM and that has a significant fan base "more of a sport" than an esports that is less APM-intensive or that doesn't have a fan base at all?

6. *Objective scoring and simple machines*. Sports economist Rodney Fort maintains that sports must use objective scoring and involve only simple machines, if any at all. Ashlee A. Cassman, *Bring It On! Cheerleading vs. Title IX: Could Cheerleading Ever Be Considered an Athletic Opportunity Under Title IX, and if So, What Implications Would That Have on University Compliance?*, 17 SPORTS L. J. 245 (2010) (citing posting of Howard Wasserman to Sports Law Blog (Dec. 28, 2008)). Is this an improvement? The first condition would rule out barroom brawling and warfare—but also gymnastics, figure skating, diving and most "combat sports" like boxing, among others. Fort's second condition, though embracing baseball bats and tennis racquets, rules out cars and horses, for example; thus, it renders auto racing and horseracing—the latter of which has been dubbed "the sport of kings"—not sports at all.

7. *Mutual thwarting.* The anthropologist John L. Jackson, Jr., asserts that “in a sport, your opponent has to be able to directly thwart you—by catching a ball, intercepting a pass, blocking a kick, anything. There might be clocks involved, but you can’t just be finishing something quicker than a competitor. That is a race, but it isn’t a sport.” John L. Jackson, Jr., *New Rules: You Gotta Have Balls, So Poker Is Not a Sport*, THE ROOT (Apr. 25, 2008).^f This definition would not only exclude races of virtually all sorts; like Fort’s, it would knock out competitions based on judgments of individual performance, such as gymnastics, figure skating, and diving. And it would also exclude golf. Is this a sound condition?

8. *Warranted seriousness.* One of this book’s authors has proposed that it is a necessary condition of an activity being a sport that it exhibits “warranted seriousness”:

This single condition has two components. First, there exists a recognizable community of participants whose members participate in the activity seriously, in the sense (roughly) of committing significant time and effort both in engaging in the activity and in training for it, as by seeking to improve their skills at it. That is, the activity is taken seriously by enough persons to constitute a community of serious participants. Second, this seriousness of engagement is warranted, not wholly misplaced. At a minimum . . . , an activity warrants being taken seriously if it develops and displays skills or qualities that qualify as human excellences—speed, strength, agility, hand-eye coordination, endurance, resilience, and so forth.

Mitchell N. Berman, *Sport as a Thick Cluster Concept*, in *GAMES, SPORTS, AND PLAY: PHILOSOPHICAL ESSAYS* 99, 110 (Thomas Hurka ed., 2019). The first component explains why “party games” such as sack racing, egg-and-spoon racing, and pin-the-tail-on-the-donkey are not sports despite being competitive, physical games. It also explains how activities that are not sports can become sports: because a community of committed and serious competitors arises, as is the case with competitive gaming (also called “esports”). The second component explains why the mere fact of serious engagement is insufficient to turn a game or pastime into a sport: we might adjudge that the commitment of significant time and energy to the activity is misguided. Berman invokes competitive eating as an example:

Even while competitive eating is being treated increasingly seriously by its practitioners—a seriousness of treatment that includes their exploring new speed-eating techniques and their adhering to (at least) moderately demanding training regimens—many observers would refuse to label it a sport. This resistance, I think, stems from

^f Jackson does describe his set of conditions—which also includes requirements that there be “a ball-like object . . . that organizes everyone’s attention,” and that “there must be a sense of urgency when that ball-like thing is in play”—as tongue-in-cheek. But we have found that the mutual-thwarting condition exerts a pull on some students.

the judgment that, even if competitive eaters take their competitions seriously, such seriousness of commitment is not warranted, but rather absurd or grotesque. . . . And similar things can be said about, for example, cup-stacking or thumb-wrestling; while not absurd or grotesque, they plausibly fail the *warranted seriousness* condition on the ground that the challenges they involve are trivial or silly.

Id. at 112–13. Is this right? Do you agree that the category of *sport* is an “honorific”? Do you agree with those who would dismiss competitive eating as a sport on the ground that serious engagement in competitive eating is not warranted? What standards do you apply in addressing this question? Bottom line, do you think competitive eating is a sport? Note that if the true test of an activity in North America of whether an activity is a sport is, “Does ESPN cover it?,” competitive eating qualifies.¶

9. *Your favored definition?* Do you accept any of the definitions of sport already discussed? If not, can you propose a definition of games and of sports that corresponds to your intuitive sense of how particular types of activity should be classified? If not, are there judgments about particular activities that you are prepared to abandon?

Does it matter what sports or games are? If so, why? As Shakespeare taught, “that which we call a rose by any other name would smell as sweet.” Similarly, competitive eating and bridge, basketball and water polo are all what they are regardless of what they are called. Accordingly, one might think it pointless or distracting to focus on definitional or conceptual questions. Judge Richard Posner expressed this objection well with respect to the definition of law. “I have nothing against philosophical speculation,” he said. “But one would like it to have some pay-off; *something* ought to turn on the answer to the question ‘What is law?’ if the question is to be worth asking by people who could use their time in other socially valuable ways. Nothing does turn on it.” RICHARD POSNER, *LAW AND LEGAL THEORY IN THE UK AND USA* 3 (1997).

We agree that conceptual and definitional inquiries can distract us from what really matters; such investigations are sometimes, perhaps frequently, pointless or “arid.” Accordingly, we will not place much weight in this book on the bounds of what is a sport or a game. Most of our focus will be on activities that are sports under almost any plausible definition. We will also discuss problems concerning games that are not, or might not be deemed, sports, and occasionally we will take at least sidelong glances at competitions that lie at the fringes of these areas or even well beyond.

¶ See, e.g., *Matt Stonie upsets Joey Chestnut to win Nathan’s Hot Dog Eating Contest*, ESPN.com (Jul. 4, 2015) (observing that the contest is broadcast live “like the major sporting event its biggest fans say it has become;” and, in video clip, comparing upset of Chestnut, “a legend in the sport,” to others such as Villanova over Georgetown in 1985 NCAA men’s basketball final).

Nevertheless, there are at least three reasons that make it worthwhile at least to pose, and pause over, the question of what a sport is. We call these reasons of “rule application,” “conduct guidance,” and “conceptual analysis.”

Rule application. First, the term “sport” is sometimes used as a predicate in a law, regulation, charter or other governing standard, in which case tangible consequences will follow depending on whether some particular activity satisfies a definition of “sport.” We have already seen this at the beginning of the chapter: For an activity to be included in the Olympic Games, or to be subject to the oversight and regulation of the NCAA, it must be recognized as a “sport.” Tort statutes in many American states provide another example, granting immunity from ordinary negligence actions for persons who cause injury to others when participating in “sports” that involve physical contact.

Cheerleading, or spinoffs from it, provides an illustration. Consider *Noffke v. Bakke*, 760 N.W.2d 156 (Wis. 2009). Brittany Noffke, a high school cheerleader, was injured while performing a stunt before a basketball game. She sued, among others, Kevin Bakke, another member of the squad, claiming that he had negligently failed to spot her. But the court held that he was within the scope of a statute giving immunity from negligence actions to “[a] participant in a recreational activity that includes physical contact between persons in a sport involving amateur teams.” The court used a dictionary definition of sport as “[a]n activity involving physical exertion and skill that is governed by a set of rules or customs”; Chief Justice Abramson, writing separately, objected to heavy reliance on the dictionary but did not offer an alternative definition.^h

Conduct guidance. A second potential value of inquiring into the meaning or nature of sport is that the inquiry might shed light on the proper conduct of participants and officials. Some philosophers of law have argued, contrary to Judge Posner, that the right account of what law *is* does indeed have implications for what people should *do*—like whether ordinary citizens have a moral obligation to obey the law, and how judges should

^h In contrast to *Noffke*, a federal district court held that competitive cheer—also called “acrobatics and tumbling” or “acro”—is not a varsity sport for purposes of Title IX. *Biediger v. Quinnipiac University*, 928 F. Supp. 2d 414 (D. Conn. 2013). But the *Biediger* court did not purport to apply an abstract or general definition or account of sport, relying instead on a multi-factor test of what counts as a sport for purposes of Title IX, developed by the Office of Civil Rights in the U.S. Department of Health and Human Services.

Competitive cheer is, by virtue of legislation signed in 2015, codified at Cal. Education Code § 33353.7, an officially sanctioned high school sport in California. See California Interscholastic Sports Federation, *Competitive Cheer*, <https://tinyurl.com/yy3c93um>. USA Cheer, a sponsoring body for cheerleading, has created STUNT in an attempt to gain recognition as a sport; USA Cheer has applied to the NCAA for STUNT to be given Emerging Sport status. STUNT does away with the crowd-leading element of cheer. It pits teams head to head as they perform various components—partner stunts, pyramids & tosses, jumps & tumbling, and a team routine. About forty colleges (most at the club level) and 200 high schools compete in STUNT. STUNT THE SPORT, <https://tinyurl.com/y6x22kyh>.

interpret statutes and constitutions. A similar relationship might obtain with respect to sports. It is intuitively plausible that the nature of sport and of games might inform what cheating, gamesmanship, and sportsmanship all involve. (See Part IV.) Possibly, for example, if all sports are games (as some common definitions maintain), that will have implications for what gamesmanship is and whether it's a virtue or a vice. Likewise, a sport official might conclude that the nature of sport shapes or informs how she should interpret the written rules (e.g., in a more purposive or textual manner) or what discretion she should assume and how she should exercise it. (See Chapters 10 & 12.) To be clear, we are not contending that these connections do in fact obtain; at present, we are merely flagging the possibilities.

Conceptual analysis. Finally, even if you will, as law students and lawyers, have little or no occasion to worry about the meaning or nature of *sport*, you will have reason to grapple with *other* complex and abstract concepts, and the current investigation offers practice with this difficult but occasionally important skill.

In saying this, it is worth drawing to the surface a point that we have thus far papered over. We have not been searching for a definition of the **word** “sport,” so much as we have been trying to understand the nature and contours of a **concept** that roughly corresponds to that word, or a concept that the word “sport” more or less picks out. While the exact nature of concepts is a matter of controversy, roughly speaking, concepts are ideas; they are the pieces into which we carve up the world. Words are combinations of signs and sounds that refer to concepts (or to other things). In 2020, the English word “dog” corresponds to the concept DOG and so too do the Spanish word “perro” and the French word “chien.” (This shows that words and concepts are not the same: different words, same concept.) Because the meaning of a word is determined by the usage patterns of a language community, it is possible that, over time, the English word “dog” will change its meaning. If enough speakers of English come to use “dog” to mean, say, fox, then that will be the meaning of the word. At the same time, people could use another word—maybe “cat,” maybe “hippodrome”—to mean what the word “dog” currently means—namely, DOG. But if any or all of this comes to pass, none of it will entail that the concept DOG has changed. Presumably, the concept will remain what it always has been. Lexicographers study the meanings of words; philosophers (or some of them) study the nature of concepts.

But philosophers aren't the only people who are called upon to elucidate abstract concepts. Sometimes lawyers and law students are too. Many legal disputes, especially but not invariably constitutional disputes, involve whether a challenged action promotes or

Words,
Concepts,
and
Conceptions



impairs an abstract value like equality or democracy, and resolution of such disputes often turns upon how a judge understands the relevant concept. For example, much of contemporary sexual harassment law is traceable to the Supreme Court's acceptance of conceptualizations of equality and discrimination urged by feminist legal theorist Catharine MacKinnon. Similarly, attitudes toward the institution of judicial review, and toward the way it should be exercised, often turn on differing concepts of democracy—or, many would prefer to say, different **conceptions** of the same **concept**. The ability to reason productively about the contours of abstract concepts is therefore an important skill for law students to practice, and discussion of any interesting, complex concept can offer that practice.

Exercise 1

You are a sportswriter for your local newspaper. The paper's lead sports editor assigns you to write a feature on the Cigar Smoking World Championships. Held annually since 2010 in Split, Croatia, the event draws forty competitors, selected from nearly three dozen qualifying events staged across the globe, who strive to smoke a cigar for the longest time without allowing it to go out. (The world record, held by Russia's Igor Kovacic, is 3 hours 52 minutes 55 seconds.)

Five years ago, shortly after you were hired, a senior colleague on the sports desk, Alex Williams, was tasked to attend and write about the annual American Fancy Rat & Mouse Show, hosted by the American Fancy Rat & Mouse Association. Complaining that rodent shows are not sports and that writing about them is beneath their dignity as sports journalists, Williams and likeminded colleagues successfully pressured the paper's publisher to pledge in the Staff Handbook that "only articles about 'sports' or 'sport' can appear in the Sports Section."

The paper's "only sports in the 'Sports Section'" policy has not been tested in the intervening years. But Williams, now deputy sports editor, has suggested to you that cigar-smoking competitions don't qualify. Do you agree? If so, write a brief memo to the lead editor explaining why cigar-smoking competitions aren't sporting events. If not, write a brief memo to Williams explaining why they are. The event website is here: <http://csweworld.com/index.html>; an article about the 2019 Championships is Andrew Keh, *At Cigar Smoking Worlds, the Best Always Finish Last*, N.Y. TIMES, Oct. 29, 2019, at B11.