

Book Reviews: The Little White Book of Baseball Law

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BOOK REVIEWS

THE LITTLE WHITE BOOK OF BASEBALL LAW

John H. Minan & Kevin Cole

[Chicago, Illinois: American Bar Association, 2009]

248 Pages

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If you are like most people at the ballpark, you are likely focusing on the game on the field. That is because to most fans, the battles on the diamond have primarily defined baseball over its 150 years of existence. Even the most dedicated followers often do not take the time to consider the effect the battles in the courtroom have had on America's pastime. In fact, baseball has been rife with legal disputes that date back to over a century ago. These disputes have left very few areas of the law untouched, and often their outcome has had a greater effect on the game than those who play it.

In *The Little White Book of Baseball Law*, professor John H. Minan and Dean Kevin Cole of the University of San Diego Law School have compiled a collection of legal disputes that showcase the profound effect the law has had on our national pastime. Written in short story format, *The Little White Book of Baseball Law* details eighteen cases—symbolic of the eighteen innings that make up a baseball doubleheader—covering high school, college, and minor and major league baseball, while delving into such substantive legal areas as criminal law, anti-trust law, intellectual property, real property, malicious prosecution, employment discrimination, tort liability, television contracts, labor law, constitutional law, qualified immunity, and even tax law. Despite the great breadth of legal topics covered, Minan and Cole have managed to write the book to appeal to both lawyers and layman. Legal training will certainly enhance the reader's enjoyment of the book; however, no such training is needed, as the authors have done a commendable job in transforming difficult legal concepts and doctrines into an easy-to-understand format. The casual reader will certainly enjoy the book's format, as each case story can be read in isolation of the others. Each section is thorough, yet succinct, and leaves the reader seeing just how much the courtroom has been another venue for the game.

While the book is clearly written to appeal to baseball fans, the authors do

not assume the reader is well versed in the sport. This is perhaps best evidenced by their use of footnotes, of which Minan and Cole, like any good lawyers, make successful and efficient use. The legal scholar will appreciate seeing support for opinion language, statutes, and legal doctrines, while the layman will appreciate the use of explanatory footnotes, which act to prevent muddying up the otherwise flowing and easy-to-read text. Besides being used for citation, footnotes are often used to enlighten the reader about all things baseball. Minan and Cole use footnotes to explain concepts such as the unassisted triple play, the history of “Take Me Out to the Ball Game,” the story behind “Shoeless” Joe Jackson’s nickname, and even the famous Abbott and Costello baseball sketch “Who’s On First?” While the text focuses primarily on legal issues, the footnotes are where the authors’ love of baseball shows through.

Each chapter of the book tells the story of a different legal dispute that in some way involved the game of baseball. Each section is written not unlike a legal opinion—first the facts or history are laid out, then the applicable law, and finally the court’s holding and analysis. The selection of cases is diverse and the authors laudably cover eighteen different legal issues, appealing to casual baseball fans, while discussing issues only a lawyer or legal scholar will appreciate, such as qualified immunity and malicious prosecution. Each section contains very little language from the actual case opinion, and despite the book’s name, readers should not expect to come away with a complete understanding of the laws and concepts discussed. However, Minan and Cole do provide the citation for each case and encourage the reader to seek out the full opinion to learn more.

Naturally, there are several cases the authors necessarily needed to include for either their effect on the game or due to the publicity they received. Minan and Cole tell the reader that as early as 1922 baseball was before the Supreme Court of the United States, where Justice Oliver Wendell Holmes held baseball to be outside the reach of federal anti-trust law.¹ Baseball fans, who know Major League Baseball as the international sport it is today, will likely be shocked to learn that at that time, the highest court in the land viewed the business of giving exhibitions of baseball to be “purely state affairs.”² The Supreme Court even went further to hold that travel of ballplayers from state to state to play baseball was merely incidental to the business and not enough to define the game as “interstate commerce,” a finding that would have subjected baseball to anti-trust law.³ While *Federal Baseball Club of*

1. *Fed. Baseball Club of Baltimore v. Nat’l League*, 259 U.S. 200, 208-09 (1922).

2. JOHN H. MINAN & KEVIN COLE, *THE LITTLE WHITE BOOK OF BASEBALL LAW* 43 (2009).

3. *Id.*

Baltimore v. National League involved a different matter, many baseball fans might not know that this landmark decision laid the groundwork that shielded from legal attack baseball's "reserve system," which effectively acted to keep players in their owner's employ indefinitely. In 1972, as the authors explain in a different case selection, the Supreme Court was asked to rule on whether the aforementioned "reserve system" violated federal anti-trust law.⁴ The Supreme Court could naturally no longer claim baseball was not interstate commerce; however, the Supreme Court found that Congress's inaction in drafting legislation aimed at bringing baseball within the reach of anti-trust law was actually affirmation of the 1922 ruling of *Federal Baseball Club of Baltimore*.⁵ As such, the Supreme Court adhered to the doctrine of *stare decisis* and affirmed baseball's anti-trust exemption.⁶ The authors provide a happy ending to this section by explaining how this line of cases eventually led Congress, in 1998, to pass the Curt Flood Act, subjecting baseball matters relating to employment only to the scrutiny of federal anti-trust law.⁷

While the above cases are certainly required reading for baseball fans, it is some of the other, possibly lesser-known cases the authors have selected, that truly make the book worth reading. Baseball fans will likely find most appealing those cases that involve fans and fan behavior, as most fans can envision themselves in these types of situations.

Minan and Cole begin the book with a selection that discusses a topic that most fans have dealt with—ticket scalping. Whether new to the game or a seasoned viewer, most people have seen others hocking tickets outside of a baseball stadium. While ticket-scalping laws can vary from state to state, the reselling of baseball tickets is restricted in some respect nearly everywhere. In what is likely an effort to appeal to the fans, Minan and Cole have chosen a particular case in which a fan got the best of law enforcement.⁸ In 1999, Gary Lainer was arrested outside Boston's Fenway Park immediately after selling one extra ticket, for face value, to a fellow fan.⁹ Lainer had allegedly violated a law that prohibited the reselling of tickets without first obtaining a license.¹⁰ However, Lainer sued for unlawful arrest and violation of his constitutional rights.¹¹ The court agreed with Lainer, interpreting the law to require the seller

4. See generally *Flood v. Kuhn*, 407 U.S. 258 (1972).

5. MINAN & COLE, *supra* note 2, at 55.

6. *Id.*

7. *Id.*

8. See generally *Lainer v. City of Boston*, 95 F.Supp. 2d 17 (D. Mass 2000).

9. MINAN & COLE, *supra* note 2, at 6.

10. *Id.* at 8.

11. *Id.* at 7.

be “in the business” of reselling tickets before one needed to be licensed.¹² Therefore, because Lainer was merely attempting to sell an extra ticket, his act did not warrant his arrest.¹³ This one example certainly does not mean every casual ticket reseller is safe from prosecution, but it is a noteworthy anecdote and perhaps the authors wish to remind us to check our local ordinance before trying to swing a deal on the street.

Perhaps of greater interest to fans will be the authors’ selection of *Popov v. Hayashi*, the highly publicized legal battle over control of Barry Bonds’s 73rd homerun ball.¹⁴ While the court held that equity dictated both men were entitled to an equal share of the ball in question, it also set forth a rule for determining when a fan has a property right in a homerun ball: A spectator must retain control of a ball after any “incidental contact” with an inanimate object or another person before the ball is considered legally his property.¹⁵ The lesson learned—do not leave your glove at home.

For those who fantasize about managing their own big league team, the authors offer up *CBC Distribution and Marketing, Inc. v. MLBAM*, the recent Eighth Circuit decision deciding the ownership of player names and statistics used in fantasy baseball.¹⁶ Most notable here is the court’s decision that baseball players’ publicity rights must give way to the protections afforded by the First Amendment, partly because baseball is America’s “national pastime” and keeping records and statistics in the public domain allows fans to better appreciate the game.¹⁷

Another lesson that can be gleaned from *The Little White Book of Baseball Law* is that you should pay attention to the baseball game. To illustrate this, Minan and Cole highlight a suit brought against Major League Baseball’s Detroit Tigers by a fan who was struck in the head with a piece of a shattered bat.¹⁸ Here, the reader is taught that a baseball team generally has a limited duty to protect fans from flying objects.¹⁹ This duty generally extends only to providing protective screening in the most dangerous parts of the park, i.e. behind the backstop.²⁰ Further, a court will likely find that most fans assume the known risks of attending a baseball game, such as the fact that balls and

12. *Id.* at 9.

13. *Id.*

14. See generally *Popov v. Hayashi*, 2002 WL 31833731 (Cal. Super. Ct. 2002).

15. MINAN & COLE, *supra* note 2, at 90-91.

16. See generally *CBC Distrib. and Mktg, Inc. v. MLBAM*, 505 F.3d 818 (8th Cir. 2007).

17. MINAN & COLE, *supra* note 2, at 21.

18. See generally *Benejam v. Detroit Tigers*, 635 N.W.2d 219 (Mich. Ct. App. 2001).

19. MINAN & COLE, *supra* note 2, at 109.

20. *Id.*

bats can and do often fly into the seating area throughout the game.²¹

Some of the other issues *The Little White Book of Baseball Law* tackles include: patent infringement of the first catchers' mask design²², an enthusiastic beer vendor's efforts to legally protect his persona²³, a breach of contract dispute between ESPN and Major League Baseball²⁴, and the dangers of metal bats.²⁵ Needless to say, Minan and Cole have put together a complete roster of the most important and most interesting baseball law cases.

While the cases will at least intrigue the casual fan, the section following each case will appeal more to those reading the book to learn about baseball. After each case story, Minan's co-author Kevin Cole adds an "Umpire's Ruling." These sections attempt to connect the legal issue or rule in the preceding case to the rules of baseball. Additionally, Cole explains that this section is to highlight and explain interesting rules of baseball, the extent of which are possibly unknown to even the most knowledgeable baseball fans.²⁶ The "Umpire's Ruling" section is perhaps the most interesting aspect of the book. Not only does Cole detail various rules of baseball, citing nearly forty throughout the book, but he also explains the rationale or purpose behind a rule's existence or an umpire's ruling in a way not unlike a court's explanation of a law or legal judgment.

For example, Cole highlights and parallels the "appeal" process in both the judicial system and in baseball.²⁷ Certain baseball managers would serve themselves well by reading this section. Far too often a manager will come storming out of the dugout to protest a call where no possibility of redress is possible and where such protest is actually in violation of Major League Baseball's rules. Cole points out that the rules of baseball state, "[a] manager can 'appeal' an umpire's decision if there is a 'reasonable doubt' that the decision 'may be in conflict with the rules,' but a decision 'which involves judgment, such as, but not limited to, whether a batted ball is fair or foul, whether a pitch is a strike or a ball, or whether a runner is safe or out, is final. No player, manager, coach or substitute shall object to any such judgment decisions.'"²⁸ Naturally, the time limit for filing an "appeal" in baseball is

21. *Id.* at 111.

22. *See generally* Thayer v. Spaulding, 27 F. 66 (CC. N.D. Ill. 1886).

23. *See generally* Donchez v. Coors Brewing Co., 392 F.3d 1211 (10th Cir. 2004).

24. *See generally* ESPN, Inc. v. Office of the Commissioner of Baseball, 76 F.Supp. 383 (S.D.N.Y. 1999).

25. *See generally* Sanchez v. Hillerich & Bradley Co., 104 Cal. App. 4th 703 (Cal. Ct. App. 2002).

26. MINAN & COLE, *supra* note 2, at xiii-xiv.

27. *Id.* at 24.

28. *Id.*

much shorter than allowed in a court of law. The rules require a baseball manager to appeal before “the next pitch, play[,] or attempted play.”²⁹

The most remarkable baseball rule cited by Cole is Rule 3.09, which reads, “[p]layers of opposing teams shall not fraternize at any time while in uniform.”³⁰ Like some real laws, this rule appears to be wholly unenforced. The same rule also prohibits managers, coaches, and players from addressing spectators before or during a game.³¹ While this portion of the rule is enforced with as much regularity as the former portion, fans that know this rule may understand why their favorite player is not acknowledging their cheers, or jeers, from the bleachers.

Cole also uses this section to point to real life misinterpretations of the rules of baseball. While Cole comically analyzes the legality of the “hidden ball trick” play in the movie *Rookie of the Year*, perhaps the most notable rules gaffe involved the highly publicized act of sportsmanship by members of a womens college softball team.³² When Sarah Tucholsky injured her knee rounding first base after belting a homerun, the umpires incorrectly ruled a replacement runner would only be awarded first base, the only base she touched before becoming incapacitated.³³ As a result, the opposing team, selflessly carried Tucholsky around the bases to complete the homerun “trot.”³⁴ Cole points out that a correct interpretation of the rules would have allowed a replacement runner to proceed to the base to which the injured player was entitled—here, home plate.³⁵ The mistake resulted in one of the best feel-good sports stories of the year so perhaps the mistake was for the better.

In all, *The Little White Book of Baseball Law* is an enjoyable read. The reader will certainly come away with an appreciation for how the law has shaped baseball. It is likely the legally trained reader will enjoy this book slightly more than the average baseball fan, but Minan and Cole interjected enough baseball to appeal to those simply reading it for the love of the game.

Noel H. Johnson

29. *Id.* at 84.

30. *Id.* at 46.

31. Major League Baseball, *Official Rules*, MLB.COM, http://www.mlb.com/mlb/official_info/official_rules/game_preliminaries_3.jsp (last visited Jan. 20, 2010).

32. MINAN & COLE, *supra* note 2, at 114.

33. *Id.*

34. *Id.*

35. *Id.*