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Ted Curtis

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THE FLOOD ACT'S PLACE IN BASEBALL LEGAL HISTORY

TED CURTIS*

What effect will the Flood Act *really* have on Major League Baseball? Will the limited repeal of the league's storied antitrust exemption change the game that we see on the field each summer? Perhaps it is best to judge the new law not just by its current suggested potential, but by examining its possible place in baseball legal history. Let us then look at nine important legal issues in the last century of professional baseball.

1ST INNING—1902:

NAP LAJOIE AND BASEBALL UNIFICATION

In the early part of the century, amidst a scathing battle between the existing National League (NL) and the new American League (AL), Connie Mack's Philadelphia Athletics convinced brilliant second baseman Napoleon Lajoie¹ to jump from the NL's Philadelphia Phillies to Mack's AL club.²

The Phillies would have none of it, suing to secure their rights to Lajoie. Though a local Philadelphia court refused to grant the Phillies an injunction, the Supreme Court of Pennsylvania overturned that finding. In *Philadelphia Ball Club v. Lajoie*, the court ruled that the Phillies would be irreparably harmed if the team's uniquely skilled second baseman were permitted to jump ship.³ Lajoie "may not be the sun in the baseball firmament," the court found, "but he is certainly a bright, particular star."⁴

* Ted Curtis is an attorney, educator and journalist in South Florida. He is legal counsel for the University of South Florida and an adjunct professor of sports management at Lynn University in Boca Raton. Mr. Curtis currently serves as the News Editor of the Sports Lawyers Association's *THE SPORTS LAWYER* and as a legal columnist for *REFEREE* magazine and *THE NATIONAL SPORTS WEEKLY*. Covering sports, business and the law as a freelance journalist for nearly a decade, Mr. Curtis' work has appeared in dozens of magazines including *SPORTS ILLUSTRATED*, the *USGA'S GOLF JOURNAL*, the *ABA JOURNAL*, and *MERIDIAN: MIDWAY AIRLINES MAGAZINE*.

1. Baseball's Hall of Fame calls him "one of most graceful performers of his or any era." 1998 NATIONAL BASEBALL HALL OF FAME ANNUAL PROGRAM, at 70.

2. Lajoie had played one season for the Phillies in 1901, winning the first of his three batting titles with a .422 average. *Id.*

3. 202 Pa. 210, 51 A. 973 (1902).

4. *Id.*

In a critical move to the success of the American League, stubborn AL commissioner Ban Johnson refused to honor the ruling. Instead of sending Lajoie back to the Phillies, Johnson transferred Lajoie to his own league's Cleveland Blues.⁵ Unable to be reached by the not-quite-long-enough jurisdictional arm of the law in Ohio,⁶ Lajoie remained in the American League for the rest of his career—and the AL had won.⁷ Lajoie's Hall of Fame superstardom helped to build the American League into a legitimate power and led to the unification of the two leagues which created modern-day Major League Baseball.

2ND INNING—1931:
LANDIS AND COMMISSIONER AUTHORITY

In the Roaring '20s, Fred Bennett rode lots of buses. After being acquired by minor league Tulsa, the young outfielder moved among the St. Louis Cardinals major league club, and minor league teams in Milwaukee and Wichita Falls.

In September, 1929, Wichita Falls sold Bennett's contract outright to the Cardinals for \$5,000.00—notwithstanding the fact that the Pittsburgh Pirates had offered the minor league franchise twice that amount for the promising player.

Baseball Commissioner Kenesaw Mountain Landis smelled something fishy. Indeed, the salty commissioner's investigation turned up quite a player-control scheme—St. Louis Cardinals owner Phil Ball owned the Major League franchise, *as well as* Tulsa, Wichita Falls and a half-interest in Milwaukee.

Landis ruled that while this multi-ownership did not expressly violate Baseball's rules, Ball's "secret control" of all four teams was a covert means to retain control over Bennett to the detriment of the other clubs. Finding that Ball's actions were not "in the best interests of baseball," Landis ordered Ball to either play Bennett in the majors, sell his contract to a team not held by the Cardinals owner or release the player outright.

5. See HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 156 (1971).

6. See *id.*, at 315. The Phillies' unsuccessful effort to convince a Cleveland court to hold Lajoie in contempt of the Pennsylvania injunction was dismissed for lack of jurisdiction. As for Lajoie, the Indians kept him out of the jurisdiction: When Cleveland came to Philadelphia to play the A's, Lajoie spent the time relaxing in nearby Atlantic City, New Jersey. See *id.*

7. Lajoie hit better than .300 in 17 of his 21 Major League seasons, batted over .350 ten times, and finished with a lifetime average of .339. The Woonsocket, Rhode Island native was elected to the National Baseball Hall of Fame in 1937. HALL OF FAME PROGRAM, *supra* note 2, at 70.

Ball sued the commissioner, claiming that Landis had overstepped his authority.

On April 21, 1931, federal district court judge Walter C. Lindley disagreed, ruling that Landis' decision was within the "best interests" powers afforded under the governing National Agreement.⁸ The court determined that baseball owners intended "to make the commissioner an arbiter" and "to vest the commissioner jurisdiction to prevent any conduct destructive"⁹ to the game.

The result: the authority of baseball's commissioner was secured.¹⁰ Future commissioners would use this "best interests" power to effect real change in the game, from suspending players and coaches¹¹ to disciplining owners¹² to intervening into umpire-league labor relations.¹³

3RD INNING—1938: OF PIRATES AND PAY-PER-VIEW

In the days before television, fans only could enjoy Major League Baseball by attending a game or by listening to the radio. In the 1930s, Pirates fans' choice was either Forbes Field or NBC broadcasts on local radio stations KDKA and WWSW.

But then, in 1938, rival local radio station KQV stealthfully began broadcasting their own accounts of Pirates games. The station paid observers to perch atop the rooftops adjoining Forbes Field, to peer into the stadium, and to report the play back to the station, which would then offer play-by-play of the game. Contending that their proprietary rights in the broadcasts of the games had been violated, the Pirates sued the station.

8. *Milwaukee American Ass'n v. Landis*, 49 F.2d 298 (N.D. IL 1931).

9. *Id.* at 302.

10. Bennett's brief Major League career ended with a 32-game stint for the Pittsburgh Pirates in 1931. James Fred Bennett's final stats: two seasons of service, 27 hits in 97 Major League at-bats. JOHN THORN & PETE PALMER, *TOTAL BASEBALL* 960 (1989).

11. Albert B. "Happy" Chandler suspended loudmouth Dodgers manager Leo Durocher for the entire 1947 season, and Landis even suspended Babe Ruth for 40 days in 1922 after the baseball hero ignored Landis' edict outlawing barnstorming tours. See SEYMOUR, *supra* note 5, at 392.

12. Bowie Kuhn nullified Oakland Athletics owner Charles Finley's firesale of Reggie Jackson, Ken Holtzman, Vida Blue, Joe Rudi and Rollie Fingers. See Joseph Durso, *Kuhn Voids Player Sales; Finley Threatens to Sue*, N.Y. TIMES, June 19, 1976, at A22.

13. When a potential umpires strike threatened to interfere with the 1984 National League playoffs, Peter Ueberroth intervened in the negotiations and helped to broker a new labor contract just prior to the World Series. See PETER UEBERROTH (with RICHARD LEVIN & AMY QUINN), *MADE IN AMERICA: HIS OWN STORY*, 372-73 (1985).

On August 8, 1938, the federal district court for the Western District of Pennsylvania held in *Pittsburgh Athletic Co. v. KQV Broadcasting Co.*,¹⁴ that the Pirates "have a legitimate right to capitalize on the news value of their games by selling exclusive broadcasting rights to companies."¹⁵ Finding that the station's actions constituted "unfair competition," the court enjoined KQV from continuing its pirate Pirate broadcasts.¹⁶

It was not long after *KQV* that television found its way into American culture, and soon when local broadcasts evolved into national telecasts. Today, with international broadcasting, satellite feeding, cable broadcasting and highly sought-after exclusive network television rights, baseball broadcasting has become a multi-billion dollar industry and one of the most important factors in the growth of Major League Baseball.¹⁷

4TH INNING—1949:

THE HOUSING ACT BREAKS BROOKLYN'S HEART

On August 10, 1955, seeking a new stadium for Da Bums, Brooklyn Dodgers owner Peter O'Malley wrote to city officials requesting that New York assist the owner in constructing a new stadium to replace outdated and cramped Ebbets Field, pursuant to the Housing Act of 1949. Title I of that post-war recovery law encouraged local government to work to invest in new "public purpose" projects.

But days later, famed New York City architect Robert Moses—who, at the time, served as the city's Housing Act administrator—rejected O'Malley's proposal, deciding that the proposed Dodgers ballpark could not be developed as a Title I project.¹⁸

For two years, O'Malley and Moses struggled over the applicability of Title I to the Dodgers stadium issue. Finally, in September, 1957, New York City Corporation Counsel Peter Brown issued an opinion which hypothesized that the Dodgers could get their new stadium notwithstanding Title I if the city bought the land on which O'Malley wanted to

14. 24 F. Supp. 490 (W.D. Pa. 1938).

15. *Id.* at 492.

16. *Id.* at 490.

17. And, of course, what would a televised baseball game be without an announcer stumbling through the disclaimer: "Any publication, rebroadcast, retransmission, or any other use of the pictures, descriptions and accounts of this game without the express written consent. . . ."

18. "I can only repeat what we have told you verbally and in writing," Moses wrote, "namely that a new ball field for the Dodgers cannot be dressed up as a Title I project." NEIL SULLIVAN, *THE DODGERS MOVE WEST* 48 (1987).

place his new facility and then re-sold the property to the Dodgers owner.

By then, however, it was too little too late, for O'Malley already was in the final stages of talks with Los Angeles officials to move the Dodgers to California. On October 8, 1957, the Dodgers agreed to leave town. Brooklyn—and perhaps all of Major League Baseball, which soon became an intracontinental game—was never the same again.¹⁹

5TH INNING—1967: NO PEPPER

On September 13, 1957, as yet another lost Cubs season wound down,²⁰ 13-year-old David Maytnier bought a ticket in Wrigley Field's front row, just a few seats down the outfield line from the Cubs dugout.

During the sixth inning of the doubleheader's nightcap, struggling Cubs pitcher Robert Rush started throwing in the bullpen—located in outfield foul territory on the Cubs side of the field—to work out some kinks in his delivery.²¹ Kinks still well intact, Rush sent a wild bullpen pitch soaring over the head of his catcher. The ball struck Maytnier on the right side of his head, seriously injuring the young fan.

Maytnier sued the Cubs to recover for his injuries. A jury awarded the fan \$20,000.00 in damages.²²

A full ten years after the initial injury, an Illinois appeals court upheld the jury's verdict. Finding that the facts of the case, including the fact that “no protective was provided by the defendant Chicago Cubs in the area in proximity to said bullpen,” and that the jury's decision simply was not “erroneous and unwarranted,” the court allowed the verdict against the Cubs in Maytnier's favor to stand.²³

19. As Robert Jarvis, a professor at the Shepard Broad Law Center at Nova Southeastern University suggests, “had the Bar challenged Robert Moses' reading of the Housing Act of 1949 or had Peter Brown made his alternative suggestion sooner, the Dodgers probably would still be playing in Brooklyn.” Robert M. Jarvis, *When the Lawyers Slept: The Unmaking of the Brooklyn Dodgers*, 74 *CORNELL L. REV.* 347, 357 (1989).

20. The Cubs would finish the 1957 NL schedule 62-92, last in the National League for the second straight season. See THORN & PALMER, *supra* note 10, at 853-54.

21. A Cub for ten seasons, Rush won just six of 22 decisions in 1957. A fairly successful strikeout pitcher, Rush had won at least ten games for Chicago in seven of his previous nine seasons with the Cubs. See *id.* at 1912.

22. Rush was dealt away from the Cubs at the end of that 1957 season, finishing out his 127-152 career with three seasons with the Milwaukee Braves and concluding back in the Windy City with a short nine-appearance stretch with the Chicago White Sox. See *id.*

23. *Maytnier v. Rush*, 225 N.E.2d 83, 88 (App. Ill. 1967).

Though many courts have found that assumption of the risk bars recovery by a fan struck by a ball sent into the stands,²⁴ *Maytnier* is hardly alone in permitting recovery.²⁵

To be sure, tangible changes to professional baseball have resulted from these liability cases. It is no coincidence that most ballparks now place their bullpens off the field of play,²⁶ that pepper games have disappeared from baseball pre-game tradition,²⁷ that huge wrap-round batting cages have taken the place of mere chain-link backstops, and that today's admission tickets generally are larger than their predecessors if only to allow stadium operators more room on which to fit their long liability waivers.

6TH INNING—1973: FREE AGENCY

For decades, baseball's version of indentured servitude was manifested in the "reserve clause," a provision in each player contract permitting a club to re-sign the player at the agreement's expiration. Thus, a team could retain career-long rights to a player.

Major League players appeared powerless to act against the reserve clause. After all, they could not challenge the allegedly anticompetitive action on antitrust grounds since the U.S. Supreme Court, in 1973's *Flood v. Kuhn*, upheld Major League Baseball's so-called non-statutory exemption from federal antitrust laws²⁸

But in 1975, pitchers Andy Messersmith and Dave McNally took their demands to be granted their "free agency" to the league's three-panel arbitration board. With the player's and owners' reps voting along party lines, the players' fates were decided by 70-year-old arbitrator Peter Seitz, who rather surprisingly ruled in favor of the pitchers. And

24. See *Crane v. Kansas City Baseball Exhibition Co.*, 168 Mo. App. 301, 153 S.W. 1076 (1913); *Dandoff v. Metropolitan Baseball Club, Inc.*, 92 A.D.2d 461, 459 N.Y.S.2d 2 (1983).

25. See *Yates v. Chicago National League Ball Club*, 1992 Ill. App. LEXIS 550 (Ct. App. 1992).

26. At the Skydome in Toronto, pitchers are so far out of sight that coaches in the dugouts monitor their progress via closed-circuit television.

27. For those readers who have lost out on this magnificent rapid-fire combination of sport and dance, pepper is played with one batter and a few fielders. The batter sends a swinging bunt towards a fielder who scoops up the ball and throws it back at the batter, who again hits the ball with a swinging bunt at one of the other players. As a result of *Maytnier* and other cases, we now see the foreboding prohibitive sign on stadium backstops: "NO PEPPER."

28. The well-documented exemption stems from three U.S. Supreme Court cases: *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922) (where the Court found baseball exempt, ruling that the playing of professional baseball games did not involve interstate commerce); *Toolson v. New York Yankees*, 346 U.S. 356 (1953); & *Flood v. Kuhn*, 407 U.S. 258 (1972).

though Seitz was fired by Major League Baseball within minutes after the decision,²⁹ one of the first major steps towards the creation of modern-day free agency had been taken.

Few legal rulings have had such a profound effect on the game.³⁰ Free agency ended single-team dominance and created league-wide parity, helped to strengthen the players' labor resolve in creating a powerful union, necessitated the eventual creation of governance systems such as salary arbitration, and made quite certain that the faces we see in our hometown team's uniforms change from year to year.

7TH INNING—1989:

PETE ROSE AND BASEBALL'S BLACK EYE

Not since the 1919 Black Sox scandal had Major League Baseball been so blindsided by gambling allegations. In the summer of 1989, at issue were the gambling habits of one Peter Edward Rose, simply "Charlie Hustle" to Reds and Phillies fans.³¹

In a eight-volume report written by John Dowd, baseball commissioner A. Bartlett Giamatti's chief investigator, thousands of pages of betting slips, canceled checks and correspondence purported to document that Rose had wagered on Major League Baseball games, including Reds games while he was manager of the Cincinnati franchise.³²

As a late-June hearing date before Giamatti neared, Rose's attorney Robert Pitcarin demanded that the commissioner remove himself from the case.³³ When Giamatti refused, Rose filed suit in local county court in Cincinnati, challenging whether the hearing should be held at all. After three days of testimony in *Rose v. Giamatti*³⁴—and just one day before the scheduled hearing—Hamilton County Judge Norbert A.

29. See Jeff Martindale & Carolyn Lehr, *Two Strikes: A History and Analysis of Major League Baseball, Its Antitrust Exemption, and the Reserve Clause*, 7 J. OF LEG. ASPECTS OF SPORT 174, 177 (1997).

30. Messersmith went to the Atlanta Braves, and completed his 12-years in the majors in 1979 with a career record of 130-99, though he won just 18 games in his final four seasons after being granted free agency. Dave McNally's long and successful career essentially ended right there. In his final season, McNally won three games in relief for the Montreal Expos in 1975, after an all-Oriole career in which he won 184 games, including 24 in 1970. See THORN & PALMER, *supra* note 10, at 1833, 1837.

31. Major League Baseball's all-time hits leader, Rose won two World Series with Cincinnati (1975, 1976) and one with Philadelphia (1980). *Id.* at 190-205.

32. See Jill Lieber & Craig Neff, *The Case Against Pete Rose*, SPORTS ILLUSTRATED, July 3, 1989, at 10.

33. See JAMES RESTON, JR., COLLISION AT HOME PLATE: THE LIVES OF PETE ROSE AND BART GIAMATTI 294 (1991).

34. Neither Rose nor Giamatti testified. See Lieber & Neff, *supra* note 32, at 10.

Nadel granted Rose's petition for an injunction blocking the hearing, ruling that Giamatti "had prejudged" the player and that any hearing would be "futile and illusory and the outcome a foregone conclusion."³⁵

After a month and a half of subsequent divisive legal wrangling,³⁶ Rose and Giamatti agreed to end the whole ugly affair, co-signing a settlement on August 23, 1989. Rose was banned from baseball for life, but the agreement contained no express statements concerning wagering on baseball.³⁷

In the end, baseball not only was left with a black eye from which it may never fully heal, but it also lost two of its most celebrated men. Over a decade after the scandal, Rose still is banned from the game. Less than a week after the Rose affair came to a conclusion, Giamatti died of a sudden heart attack at the age of 51.³⁸

8TH INNING—1993: THE DAWN OF A NEW EXPANSION

In 1992, baseball leaders in St. Petersburg, Florida made quite a stunning announcement—after nearly a decade of unsuccessful efforts to bring Major League Baseball to the Florida coastal city's existing dome, they had reached an agreement in principle to purchase the San Francisco Giants and relocate the team to Tampa Bay.

Owners had a different idea, voting to block the move. Furious potential owners including Vincent Piazza filed suit against Major League Baseball, claiming that the league's refusal to allow the franchise to relocate to Florida violated federal antitrust laws.

Of course, Major League Baseball again had a powerful retort—its triumvirate of Supreme Court cases upholding the league's antitrust exemption.

Nevertheless, in *Piazza v. Major League Baseball*,³⁹ a federal district court in Philadelphia ruled that baseball's antitrust exemption applied *only* to the now-outdated reserve clause and could not shield baseball from liability in the franchise relocation case.

35. *Id.*

36. The suit shifted legal forums as Rose sought a home-town Ohio court and Giamatti sought to remove the case to federal court. See RESTON, *supra* note 33, at 304.

37. Nevertheless, Giamatti stated to the press, "I am confronted by the factual record of Mr. Dowd. On the basis of that, yes, I have concluded that he bet on baseball." *Id.* at 304.

38. See Jerome Holtzman, *Giamatti, Scholar and Baseball Chief, Dies at 51*, N.Y. TIMES, Sep. 2, 1989, at A1.

39. 831 F. Supp. 420 (E.D. Pa. 1993).

What *could* effectively shield the league from liability, however, was giving St. Petersburg officials what they wanted—an expansion franchise—thereby making the case disappear. And while baseball's legal right to block franchise relocation continues to hang in the balance, *Piazza's* greatest impacts may have been its practical ones: the addition of two new teams arguably diluted the Major League Baseball talent pool, conceivably contributed to the breaking of numerous batting records, and resulted in scheduling irregularities which made regular-season interleague play a necessity for the first time.

9TH INNING—1998:
THE FLOOD ACT AND THE FUTURE

As you have read throughout this symposium, the Curt Flood Act of 1998, amends the Clayton Act,⁴⁰ effectuates a partial repeal of Major League Baseball's antitrust exemption, and now subjects Major Leaguers' employment to the antitrust laws.

But what effect will the new law truly have on Major League Baseball? U.S. Senator Orrin Hatch, a key player in the passage of the bill, proudly has suggested that the Flood Act will put players and owners on a critical brand new "level playing field."⁴¹ But compare the Flood Act to the other legal issues set forth in this article. History may suggest that the bill's actual effects on Major League Baseball might not quite be as staggering as some proponents of the new law have hoped.

Unlike *Lajoie*, the Flood Act does not affect the baseball playing career fates of any particular players. Unlike the *Landis-Ball* litigation or the Pete Rose scandal, the Act does not affect the relationship between a baseball commissioner and either owners or players. Unlike *KQV*, the Act does not affect baseball broadcasting. Unlike the Dodgers relocation issue or the *Piazza* case, the Act does not affect the movement of franchises.⁴² Unlike *Maytnier*, the Act does not affect baseball's stadiums or the fans. And unlike the *Messersmith-McNally* arbitration, the Act does not break brand new ground in labor relations particularly in light

40. 15 U.S.C. § 12 et seq. The Flood Act adds a new section, § 27.

41. Sen. Orrin Hatch (R-UT), SENATE JUDICIARY COMMITTEE HEARING ON MAJOR LEAGUE BASEBALL'S ANITRUST EXEMPTION, June 17, 1997.

42. The law even expressly provides: "No court shall rely on the enactment of this section," the new law states, "as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a) [relating to the employment of major leaguers]."

of *Brown v. Pro Football*,⁴³ which has been discussed in depth by other authors in this symposium.

So what is left? What other area of baseball could the new law possibly affect?⁴⁴

To be sure, perhaps the new law will effect *some* change in baseball labor relations, especially in efforts to prevent collusion among owners. Perhaps since it does not affect baseball's antitrust exemption concerning the movement of franchises, the Act somewhat unintentionally will help to assure that the league will look exactly the same 50 years from now as it does today. And, perhaps the bipartisan efforts by both labor and management to see through the law's passage at least represents a step towards slowly healing the often-acrimonious relationship between players and owners.⁴⁵

More than likely, though, when we look back on the passage of this new law a half-century from now, and as the Flood Act finds its place along baseball law's importance-barometer, it appears that the Flood Act probably will be viewed as an RBI-producing single up the middle—a rather useful, if not wildly dramatic, contribution towards the continued legal evolution of Major League Baseball—rather than a heart-stopping bottom-of-the-ninth game-winning grand slam.

43. 116 S.Ct. 2116 (1996). In *Brown*, the Court held that as long as parties to a collective bargaining process engage in conduct authorized by labor laws, they may not be sued under antitrust law for that conduct. See *Collective Bargaining In Sports After Brown V. Pro Football*, XIV THE SPORTS LAW. 1 (Special Issue) (Fall, 1996). The new law even specifies "nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws."

44. Further note that the law expressly does not apply to issues including the minor leagues, the amateur draft, franchise relocation, club ownership rules, ownership transfer, commissioner-owner relations, baseball marketing, intellectual property rights licensing, broadcasting, and the relationship between the league and its umpires.

45. Of course, following the brutal 1994 players strike, which resulted in the cancellation of much of the regular season as well as the playoffs and World Series, it is hard to imagine that union-league relations could have gotten much worse.