

BASEBALL AND THE LAW: CASES AND MATERIALS – A REVIEW

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As a law professor, I see many new casebooks each year. I do not remember when I enjoyed reading a new one more, and I certainly have not reserved shelf space in my den for any other recent casebook. *Baseball and the Law*, by Louis H. Schiff and Robert M. Jarvis, changes things. It could be used as the text for a very interesting class, but more than that, this is a book that every lawyer who is also a baseball fan (or any kind of sports fan) will enjoy reading and referencing.

The book begins with an introductory chapter that features noted baseball writer Roger Abrams with a short piece entitled “Even the Best Lawyers Must Know Baseball,” followed by several informative notes.¹ Next comes a piece from the Arkansas Law Review entitled “Baseball and the Legal Profession.”² Howard Brill, law professor and long time Faculty Athletics Representative at the University of Arkansas, Fayetteville, wrote that piece. After more notes comes a photograph of U.S. Supreme Court Justice Sonia Sotomayor throwing out the first pitch at a Yankees game in 2009.³

The first case in the book is dated 1878 and relates to a patent for the leather covering of a baseball.⁴ Other cases in the Chapter One cover labor-management disputes and feature players including Hall of Famer Nap Lajoie, early Yankee star Hal Chase, and Cardinal outfielder Curt Flood.⁵ Perhaps even more interesting is the transcript of Yankee Manager Casey Stengel testifying at a U.S. Senate hearing on baseball’s antitrust

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¹ Louis H. Schiff & Robert M. Jarvis, *BASEBALL AND THE LAW: CASES AND MATERIALS* 3-10, (Carolina Academic Press, 1st ed. 2016).

² *Id.* at 10.

³ *Id.* at 15.

⁴ *Id.* at 16.

⁵ *See id.* at 18-78.

exemption.⁶ Be sure to read the note following the testimony to see what Mickey Mantle said.⁷

Chapter Two focuses on the office of the Commissioner of Baseball. The office, of course, grew out of the 1919 World Series, when eight Chicago White Sox players, including “Shoeless” Joe Jackson, accepted payments from notorious gamblers to throw the series to the Cincinnati Reds. Naturally, this chapter looks at player conduct issues including gambling (by Pete Rose)⁸, drug abuse (Steve Howe and Alex Rodriguez)⁹, and off field behavior (John Rocker)¹⁰. Notes bring out details about names like Bonds, Sosa, McGwire, which are familiar to baseball fans.

It is also fun to read about owners like Ted Turner (Braves), George Steinbrenner (Yankees), Marge Schott (Reds), and Charles O. Finley (A’s) and their battles with the commissioner.¹¹ (Did anyone else remember that in 1992 Commissioner Fay Vincent tried to move the Cubs to the National League Western Division?) There is also a section on dealings with umpires and their unions¹² – and a photograph of Hall of Famer George Brett after being called out in the famous pine tar incident. Not to be missed in the notes to this chapter is the transcript of George Carlin’s hysterical routine “Baseball and Football.”

Chapter Three is entitled “Teams.”¹³ Sections in this chapter focus on formation and dissolution of teams, sales, relocation, nicknames, and broadcast rights.¹⁴ Readers learn about revenue and taxation, tortious interference with business, agreements with cities, bankruptcy, antitrust, valuation of team assets, trademarks and more. Because baseball emerged before radio, it was there to provide content from the beginning, and there were early legal issues about who owned what rights. Cases and notes bring forth interesting law, history, and anecdotes (including Ronald Reagan’s

⁶ See Schiff & Jarvis, *supra* note 1, at 58-60.

⁷ See *id.* at 59.

⁸ See *id.* at 98-111.

⁹ *Id.* at 112-154.

¹⁰ *Id.* at 155-169.

¹¹ See Schiff & Jarvis, *supra* note 1, at 170-197.

¹² *Id.* at 223-249.

¹³ *Id.* at 275.

¹⁴ *Id.* at 275-460.

story of calling games by reading reports as they came in over a ticker tape.)

Among the interesting cases in Chapter Three is an action by the state of Wisconsin that tried to prevent the Braves from moving from Milwaukee to Atlanta (followed by an interesting note about the attempt by Maryland to use eminent domain to prevent the Colts from leaving Baltimore).¹⁵ There is also a case brought by a softball team that tried to enjoin the Arizona team from using the nickname “Diamondbacks,”¹⁶ and the case that explains why the California Angels became the Los Angeles Angels of Anaheim.¹⁷ (The notes point out that in an interesting mix of Spanish and English, Los Angeles Angels technically translates as “the Angels Angels.”)

Among the interesting points brought up in the notes are not only the now-retired mascots Chief Wahoo from the Indians and Chief Noc-A-Homa from the Braves, but also issues created by throwback jerseys. The Astros were once known as the Colt .45s, and their jerseys had a pistol. The pistol was removed from throwback jerseys. Similarly, when the Tampa Bay Rays wore throwback jerseys from a former minor league team, the Tampa Bay Smokers, the team removed a cigar from the jersey. There is also an interesting discussion of the legitimacy of the L.A. Dodgers using Brooklyn throwback jerseys. These issues of whitewashing history can make for good classroom debates.

Chapter Four is entitled “Stadiums.”¹⁸ Issues include funding and location of new stadiums as well as some interesting notes on the uses of the former location. A particularly interesting case from 1983 involves the Yankees plan to play its home opening series in Denver due to concern that New York was not keeping old Yankee Stadium in good condition. The city responded with a motion for a preliminary injunction, and the order reads as if the judge was a true Yankees fan. A series of notes following that case provide more information about Yankees and their stadiums.¹⁹

¹⁵ *Id.* at 304-320.

¹⁶ *See* Schiff & Jarvis, *supra* note 1, at 366-373.

¹⁷ *Id.* at 374-391.

¹⁸ *Id.* at 461.

¹⁹ *Id.* at 501-505.

Not to be outdone, a Chicago judge's order in a case brought by Cynthia Schoeneck, who had been employed by the Cubs as "ball person" but was being terminated because the position was being eliminated, follows.²⁰ At the start of the order, Judge Zagel recounts "indignities recently inflicted upon followers of the Chicago National League Ball Club, Inc.: the introduction of night games at Wrigley Field; the trading of [Hall of Famer] Lou Brock; the departure of Cy Young winner Greg Maddox," and the termination of the position which (as explained in a long note following the case) was commonly known as "ball girl."²¹ As the author of this review is discovering, it is hard to write about baseball without, well, writing about baseball. That is what makes this book so fun to study or to flip through.

This chapter has a minimum wage violation case brought against the Detroit Tigers²², a taxpayer lawsuit brought by plaintiffs who apparently were *not* fans of the Baltimore Orioles²³, litigation over night games in Wrigley Field²⁴, free speech areas around Coors Field in Denver²⁵, disorderly conduct by fans (along with notes regarding beer sales at stadiums)²⁶, and injuries sustained at the game (including a death caused by a foul ball and an eye injury caused by a hotdog thrown by a mascot).²⁷

Chapter Five is entitled "Players."²⁸ It starts with an issue unfamiliar to many fans; at least it was to this reviewer. After World War II, federal law provided that certain veterans were entitled to return to their jobs. Returning veteran Al Niemiec, however, was released from his team. His suit for reinstatement makes for an interesting introduction to the discussion of discrimination in professional sports.²⁹ While most of the cases deal with the rights of retired and foreign players, a long note section covers Jackie Robinson and the "color line" that he broke.³⁰

²⁰ *Id.* at 506-512.

²¹ *See* Schiff & Jarvis, *supra* note 1, at 506-512.

²² *Id.* at 513-521.

²³ *Id.* at 521-527.

²⁴ *Id.* at 528-535.

²⁵ *Id.* at 536-545.

²⁶ *See* Schiff & Jarvis, *supra* note 1, at 546-563.

²⁷ *Id.* at 564-608.

²⁸ *Id.* at 609.

²⁹ *Id.* at 609-623.

³⁰ *See id.* at 627-637.

A section on compensation sets forth the 1976 case that upheld the arbitration ruling of free agency for Andy Messersmith and Dave McNally.³¹ This case revealed the value of players on the free market and provided the impetus for player unionization, free agency, and skyrocketing salaries. Cases and notes that follow explore labor law as well as disputes between players (including Alex Rodriguez and Steve Garvey) with the union.³²

Chapter Five also deals with endorsements.³³ The first case in this section dates from 1990, but it involves Babe Ruth's images on a calendar.³⁴ Unfortunately for Ruth's heirs, he seems to have been too well known and popular for his image to be protected. As the notes point out, during his life he twice lost endorsement-related suits; one of which involved his attempt to trademark "Ruth's Home Run" candy bar.³⁵ There was too great of a chance of confusion with "Baby Ruth." The listing of popular stories about Ruth that appears in the notes makes for fun reading.³⁶

A section on taxes points out the difficulty of identifying where baseball players should pay their state income taxes.³⁷ Hall of Famer Rogers Hornsby faced this issue in 1932, and future Hall of Famer Derek Jeter settled a similar case in 2007.³⁸ Darryl Strawberry, eight times voted to the All Star team, pleaded guilty to tax evasion in 1995.³⁹ Reading his case and the notes that follow it makes one wonder what Strawberry might have done with his talent if not for his drug, alcohol, and legal problems.

With huge salaries, deferred compensation, and extensive travel, issues of alimony and child support are important legal considerations examined in the Asset Protection section of Chapter Five.⁴⁰ A case in this section involves Wil Cordero, who played in the big leagues for 14 years with seven different teams.⁴¹ He successfully got his payments reduced when his income

³¹ See Schiff & Jarvis, *supra* note 1, at 651-672.

³² See *id.* at 672-716.

³³ See *id.* at 716-725.

³⁴ *Id.*

³⁵ *Id.* at 721.

³⁶ See Schiff & Jarvis, *supra* note 1, at 721-725.

³⁷ See *id.* at 725-740.

³⁸ *Id.* at 730-731.

³⁹ *Id.* at 736-740.

⁴⁰ See Schiff & Jarvis, *supra* note 1, at 740-770.

⁴¹ See *id.* at 740-745.

dramatically fell due to his MLB career ending.⁴² A case involving seven-time MVP and all-time home run leader Barry Bonds explores the validity of prenuptial agreements.⁴³ As a long note discusses, six-time All Star Curt Schilling lost his \$50 million fortune when his video game development company went bankrupt in 2012.⁴⁴

Of course, agents are very much a part of modern professional sports. A section on this topic begins with a suit between two agencies, one alleging tortious interference with business relationships against the other.⁴⁵ Notes that follow explore the history of professional agents, licensing of agents, and NCAA restrictions on agents.⁴⁶

Chapter Five concludes with a section on injuries.⁴⁷ This section begins with a suit filed by Elliot Maddox of the Yankees who unsuccessfully sued the city of New York claiming that the field was dangerous, leading to his injury.⁴⁸ The notes that follow explore numerous other injuries and include a photograph of the famous fight in which Giants Hall of Fame pitcher Juan Marichal swung a bat at Dodger catcher John Roseboro as Hall of Fame pitcher Sandy Koufax tried to pull them apart.⁴⁹ There is also a listing of some of the better-known injuries as well as typical banned “hazardous activities” in MLB contracts (which includes playing basketball).⁵⁰

The last case in Chapter Five involves jurisdictional problems for a pitcher (Douglas Brocail) who claimed that his team (the Detroit Tigers) did not handle his arm injury appropriately.⁵¹ Unfortunately for Brocail, his claim was largely barred by the state Workers Compensation Act.⁵² The notes following the case

⁴² *Id.*

⁴³ *Id.* at 745-757.

⁴⁴ *Id.* at 743-745.

⁴⁵ *See Schiff & Jarvis, supra note 1, at 770-778.*

⁴⁶ *Id.*

⁴⁷ *See id.* at 778-802.

⁴⁸ *Id.* at 778-781.

⁴⁹ *Id.* at 781-788.

⁵⁰ *See Schiff & Jarvis, supra note 1, at 781-788.*

⁵¹ *Id.* at 788-798.

⁵² *Id.*

explore the inherent conflict of interest when a team employs the doctor that makes decisions about players' injuries.⁵³

Chapter Six of *Baseball and the Law* is entitled "Fans."⁵⁴ It begins with a 1972 case in which a male fan sued the Yankees because he was not given the 50-cent discount that women received on "Ladies Day."⁵⁵ He won, and thus ended a tradition that had begun in 1876.⁵⁶ The notes, however, point out that at least some teams (the A's, the Indians, and the Senators) had corrupted the original idea of Ladies Day by offering the discount for "hot pants" or halter-tops.⁵⁷ This section also has an ADA case brought against the Rockies.⁵⁸

A section entitled "Rights and Duties" explores exactly what rights a fan has.⁵⁹ The first case relates to arrest and ejection from a game, the second one involves fans seeking to intervene in a labor dispute between the players and owners, and the third one involves a theft of money that was being pooled for the purchase of season tickets.⁶⁰ In the section on "resales," cases explore the ability of teams to ban ticket scalping.⁶¹ Particularly interesting is a 2000 case that involves a veterinarian who was arrested for selling two tickets with a face value of \$18 for \$20.⁶² These cases (and one involving eBay and StubHub) present great springboards for policy-based legal discussions.

The next section of Chapter Six begins with a case from 1886 and the Detroit Base-Ball Club's efforts to keep people from watching games for free.⁶³ Following that case is a note section on "knothole" issues.⁶⁴ It seems quaint, but then comes a 2015 case between the Cubs and fans that looked into Wrigley Field from the

⁵³ *Id.* at 799-802.

⁵⁴ *See id.* at 803.

⁵⁵ *See* Schiff & Jarvis, *supra* note 1, at 803-804.

⁵⁶ *Id.*

⁵⁷ *Id.* at 804-809.

⁵⁸ *See id.* at 809-818.

⁵⁹ *See id.* at 818-838.

⁶⁰ *See* Schiff & Jarvis, *supra* note 1, at 818-838.

⁶¹ *See id.* at 838-856.

⁶² *Id.* at 841-845.

⁶³ *See id.* at 856-859.

⁶⁴ *Id.* at 859-862.

right field rooftops.⁶⁵ Perhaps the more things change, the more they really do stay the same.

A section on souvenirs begins with a case about putting value on a baseball card collection (another valuation case on sports memorabilia comes later in the chapter, as does one on autograph authentication).⁶⁶ A 2008 case concerns a male fan who unsuccessfully sued because only women were given tote bags on Mother's Day.⁶⁷ Perhaps the most interesting case, however, is the one over the ball that Barry Bonds hit for his 73rd home run in 2001.⁶⁸ The plaintiff, Alex Popov was the first fan to touch it, but it was impossible to tell whether he actually controlled (and therefore possessed) this very valuable souvenir.⁶⁹ The Solomon-like judge wrote about the case with the same dramatic prose that a sports writer might use.⁷⁰

The final section in Chapter Six is on betting.⁷¹ The first cases, from 1913 and 1967, provide a good opportunity to explore the history of sports gambling in general and baseball gambling (by fans as opposed to players) in particular.⁷² A 2002 RICO case involving baseball cards that included occasional "insert" cards that were particularly valuable raises some interesting questions about what constitutes gambling.⁷³ A 2007 case brings up (non-daily) fantasy baseball⁷⁴, and a 2010 case is centered on efforts to prevent the Delaware State Lottery from using the MLB (and other leagues) as part of the lottery.⁷⁵

The seventh and final chapter is entitled "Amateurs."⁷⁶ It starts with an interesting case from Missouri involving a high school student who was twice held back and therefore deemed ineligible to play sports his senior year (by which time he was

⁶⁵ See Schiff & Jarvis, *supra* note 1, at 862-877.

⁶⁶ See *id.* at 878-881.

⁶⁷ *Id.* at 885-888.

⁶⁸ *Id.* at 891-898.

⁶⁹ *Id.*

⁷⁰ See Schiff & Jarvis, *supra* note 1, at 891-898.

⁷¹ See *id.* at 913-936.

⁷² *Id.* at 913-921.

⁷³ *Id.* at 921-923.

⁷⁴ *Id.* at 923-933.

⁷⁵ See Schiff & Jarvis, *supra* note 1, at 933-936.

⁷⁶ See *id.* at 937-1006.

19).⁷⁷ The notes raise some interesting questions about cases in which players (or their parents) lie about their true age.⁷⁸ The next case explores residency rule and the consequences of using ineligible players in high school competition.⁷⁹

A section on gender begins with a case ordering Little League baseball to permit girls aged 8 to 12 to play.⁸⁰ The importance of that holding is realized with a photograph of Little League pitching star Mo'ne Davis, who was the first girl to earn a win and to pitch a shutout in Little League World Series history, on the next page.⁸¹ (In recognition of her accomplishment, she was the first Little Leaguer ever featured on the cover of *Sports Illustrated*.) The section also, of course, has a case and notes related to Title IX.⁸²

Chapter Seven also contains a case brought against a bat manufacturer over a line drive that struck the plaintiff/pitcher in the face.⁸³ The unsuccessful claim was that the bat performed too well.⁸⁴ There is also an unsuccessful case filed by the estate of a high school player who collapsed and died against the doctor who had cleared him to compete.⁸⁵ Perhaps most interestingly, a player from a high school team that lost a state playoff game sued to have an umpiring decision reversed.⁸⁶ That case, too, was unsuccessful.⁸⁷

The first case that I turned to when I first received this book was *Swanson v. Wabash College* (1987).⁸⁸ I played baseball at Wabash, and the suit claimed that the college was responsible for an injury that took place during an unsupervised fall-time practice. My head coach Mike Deal was mentioned in the decision, but the court held that the college was not responsible.⁸⁹ Another

⁷⁷ *Id.* at 937-942.

⁷⁸ *Id.* at 943-944.

⁷⁹ *Id.* at 944-949.

⁸⁰ *See* Schiff & Jarvis, *supra* note 1, at 949-956.

⁸¹ *Id.* at 957.

⁸² *Id.* at 958-967.

⁸³ *Id.* at 967-976.

⁸⁴ *Id.*

⁸⁵ *See* Schiff & Jarvis, *supra* note 1, at 976-983.

⁸⁶ *Id.* at 983-986.

⁸⁷ *Id.*

⁸⁸ *Id.* at 986-991.

⁸⁹ *Id.*

case in the same sections held that a Little League was not responsible for a violent brawl that took place in the parking lot after the game.⁹⁰

The final two cases in the book are the most disturbing. One deals with a father slapping his child after making an out.⁹¹ The incident was filmed and broadcast on the local news.⁹² The father unsuccessfully brought suit for defamation. The other case involves sexual abuse.⁹³ They are sad reminders of ugly realities, but as the notes following point out, cases such as this are far less common than stories of coaches, managers, and parents making tremendous sacrifices for young players.

This review does not begin to touch the depth of this book. As the authors put it,

“Baseball in general, and baseball law in particular, is so rich with good stories that we easily could have filled several volumes.”⁹⁴ That makes the book well worth having for any attorney who is also a fan of baseball, but more than that, this is a textbook that could provide the basis for stimulating classroom debate and discussion. The authors have even prepared a teacher’s guide that would make the course easier to teach.

The downside, of course, is that in a time of downward trends in admissions, most schools are not expanding into new areas. That, however, may create an opening for some lawyers to get the opportunity to teach. Get this book, read it, then contact the associate dean at your nearest law school and offer to teach the class as an adjunct professor. Even in times of contracting faculties, schools like to offer students a nice selection of electives, and this would be a good one. Lawyers need to know the society, and as historian Jacques Barzun said, “Whoever wants to know the heart and mind of America had better learn baseball.” *Baseball and the Law* is a good place to start. Found at:

Baseball and the Law: Cases and Materials
Louis H. Schiff and Robert M. Jarvis
Carolina Academic Press (2016).

⁹⁰ See Schiff & Jarvis, *supra* note 1, at 992-995.

⁹¹ *Id.* at 995-1001.

⁹² *Id.*

⁹³ *Id.* at 1001-1005.

⁹⁴ *Id.* at xxvi.