

# Baseball and the Law: A Selected Annotated Bibliography, 1990–2004\*

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*Ms. Osborne presents an annotated bibliography covering books and articles that is designed to assist the researcher in finding current information on the law and its implications for the game of baseball.*

“Baseball was made for kids, and grown-ups only screw it up.”  
—Bob Lemon, Hall of Fame Pitcher<sup>1</sup>

¶1 From the appointment of a federal district court judge, Kennesaw Mountain Landis, as the first commissioner of baseball to the intermittent threats of players’ strikes beginning in the 1970s, the law has been inextricably linked with baseball. For any scholar interested in the full story of our national pastime, the law plays a vital role. From the Chicago grand jury’s involvement in the Black Sox scandal of 1919 to Curt Flood’s legal challenge of baseball’s reserve clause, the law, whether for better or worse, has done much to shape the game.

¶2 This bibliography is designed to assist the researcher in finding current information on the law and its implications for the game of baseball. It includes only books and articles published between 1990 and 2004. Not included are articles found in *American Law Reports* or books and articles that do not deal primarily with the legal aspects of the game.

## Books

Abrams, Roger I. *Legal Bases: Baseball and the Law*. Philadelphia: Temple University Press, 1998.

Developing an all-star baseball law team, Abrams presents what he believes to be the nine most important issues regarding baseball and the law. Each chapter covers one of the issues and the person who is most linked to that topic. Beginning with Columbia-trained lawyer and professional baseball player John Montgomery “Monte” Ward, Abrams looks at the origins of organized baseball

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1. DAVID H. NATHAN, *BASEBALL QUOTATIONS* 4 (1991).

and Ward's organization of the first players' union. In the succeeding chapters, he provides insight into such other issues as collective bargaining and baseball crimes, closing with baseball's labor problems in the 1990s.

Abrams, Roger I. *The Money Pitch: Baseball Free Agency and Salary Arbitration*. Philadelphia: Temple University Press, 2000.

This is an insightful look at the role that money has played and continues to play in major league baseball. Abrams provides a historical perspective by looking at the shrewd salary negotiations of Ty Cobb in the era before salary arbitration. He also discusses the economics of the game and the role that player performance and geography can play with regard to player salaries. Of particular interest are two separate chapters dedicated to free agency and salary arbitration.

Duquette, Jerold J. *Regulating the National Pastime: Baseball and Antitrust*. Westport, Conn.: Praeger Publishers, 1999.

For baseball fans, the summer of 1994 will forever be remembered, not because of record-breaking home runs or perfect games pitched, but rather the work stoppage that ultimately led to the cancellation of the World Series. Duquette provides an in-depth look at baseball's exemption from federal antitrust law, offering a comprehensive study of the topic. Looking at this problem in a historical context, Duquette covers baseball from the progressivism of the late 1800s to the work stoppage of the 1990s.

Edmonds, Edmund P., and William H. Manz. *Baseball and Antitrust: The Legislative History of the Curt Flood Act of 1998, Public Law No. 105-297, 112 Stat. 2824*. Buffalo, N.Y.: William S. Hein & Co., 2001.

For students of baseball and the ramifications of law on the game, the Curt Flood Act of 1998<sup>2</sup> is one of the most important pieces of legislation passed by Congress. In this three-volume set, Edmonds and Manz have put together the definitive work with regard to the legislative history of this Act.

Helyar, John. *Lords of the Realm: The Real History of Baseball*. New York: Villard Books, 1994.

As a reporter with the *Wall Street Journal*, Helyar was assigned to cover the business of sports. This book is the product of those articles, and the content is primarily based on interviews with hundreds of people involved in the business of baseball. Helyar covers baseball from its beginnings as a game to the current state of affairs, explaining along the way how business has shaped the sport into the game we know today.

Jennings, Kenneth M. *Swings and Misses: Moribund Labor Relations in Professional Baseball*. Westport, Conn.: Praeger Publishers, 1997.

Jennings has written an interesting book covering a wide variety of subjects relating to baseball and labor relations. Most chapters focus on specific instances of labor unrest and how they affected the game. Jennings looks at the economic concerns of owners affecting negotiations from 1993 to 1996, collective bargaining after the World Series cancellation in 1994, and other labor issues of the

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2. Pub. L. No. 105-297, 112 Stat. 2824 (1998) (codified at 15 U.S.C. § 26b (Supp. II 2002)).

1990s. Also included is a helpful table of the chronology of events in baseball's labor relations activities from 1992 to 1997.

Koor, Charles P. *The End of Baseball As We Knew It: The Players Union, 1960–81*. Urbana, Ill.: University of Illinois Press, 2002.

Koor looks at the legal and business decisions during the pivotal era of 1960–81 which changed baseball and shaped it into the game that is played today. Focusing on the rise in power of the players' union, a chapter is also devoted to the historic Curt Flood decision.<sup>3</sup> Of note to those interested in the business of professional sports in the modern era is a discussion of the parallels between the Major League Baseball Players Association and the Professional Footballers Association in England.

Marburger, Daniel, ed. *Stee-Rike Four! What's Wrong with the Business of Baseball?* Westport, Conn.: Praeger Publishers, 1997.

Written by a group of economists, this book is the outcome of a 1991 conference on the economics of baseball held at Middlebury College. The book is divided into five parts, each dealing with issues that have not only economic consequences on the game of baseball, but legal consequences as well. These topics include collective bargaining, free agency, and antitrust. Several interesting statistical tables covering a wide variety of subjects are included.

Miller, Marvin. *A Whole Different Ball Game: The Sport and Business of Baseball*. Secaucus, N.J.: Birch Lane Press, 1991.

Looking at the business side of baseball also involves looking at the legal side of the game. In this book, Miller, who served as executive director of the Major League Baseball Players Association from 1966 to 1982, examines the labor conflicts in major league baseball and the formation of the players' union. No book on baseball law and business is complete without addressing the issue of Curt Flood, and Miller devotes an entire chapter to Flood's challenge of baseball's reserve clause. Miller also discusses the various strikes that have occurred in the game as well as the lockout of 1990.

McKelvey, Richard G. For *It's One, Two, Three, Four Strikes You're Out at the Owners' Ball Game*. Jefferson, N.C.: McFarland & Co, 2001.

No word causes more fear in the heart of a baseball fan than strike. This brief volume focuses on labor and management problems within the game of baseball. Pointing out that labor/management problems in baseball can be traced back as far back as the 1900s, not just the late 1960s as most people believe, McKelvey provides helpful background information on the labor problems within the game. With overviews of the strikes of 1981 and 1985, and a chapter devoted to collusion decisions and a lockout, this is an informative and useful addition to the body of work covering labor problems within the national pastime.

Pietrusza, David. *Judge and Jury: The Life and Times of Kennesaw Mountain Landis*. South Bend, Ind.: Diamond Communications, 1998.

As the first commissioner of Major League Baseball, Judge Kennesaw Mountain Landis holds an important place in both baseball's history and its link to the law.

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3. Flood v. Kuhn, 407 U.S. 258 (1972).

Pietrusza has written an interesting book about an interesting man. Going beyond previous works written about Landis, this book looks at the events throughout his life that shaped him, from his birth in Millville, Ohio, to the years he served on the federal bench.

Staudohar, Paul D., ed. *Diamond Mines: Baseball and Labor*. Syracuse, N.Y.: Syracuse University Press, 2000.

Held each year in June, the Cooperstown Symposium on Baseball and American Culture provides an opportunity for scholars in a variety of fields to come together to share their research and work about baseball. This book is a collection of essays selected from papers delivered at various meetings of this symposium. The subjects covered range from collective bargaining to the baseball strike of 1994–95. Of particular note to the legal researcher is the essay by William W. Wright and Mick Cochrane titled “Baseball’s Antitrust Exemption: While the Lawyers Warmed Up in the Bullpen, the Game was Called Due to the Reign of Compromise.”

Waller, Spencer Weber, Neil B. Cohen, and Paul Finkelman, eds. *Baseball and the American Legal Mind*. New York: Garland Pub., 1995.

This collection of articles, essays, cases, and testimony deals not only with the legal issues related to baseball, but also the nexus of baseball and legal thought. With the inclusion of the infamous law journal article, “A Comment on the Common Law Origins of the Infield Fly Rule,”<sup>4</sup> part 1 attempts to show the parallels between baseball rules and the development of the rules of law. Other parts cover baseball and antitrust law, labor law, intellectual property, and torts. Specific items include Casey Stengel’s hilarious 1958 testimony before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, articles on labor and organized baseball, and a book review titled “When Lawyers Slept: The Unmaking of the Brooklyn Dodgers.”<sup>5</sup> This collection poignantly ends with *Chicago National League Ball Club, Inc. v. Thompson*,<sup>6</sup> the case that led to night baseball at Wrigley Field.

Ward, Ettie, ed. *Courting the Yankees: Legal Essays on the Bronx Bombers*. Durham, N.C.: Carolina Academic Press, 2003.

Ward has compiled a work that is both interesting and entertaining. This volume is a collection of works by legal scholars that covers a wide spectrum of legal topics relating to baseball, with a particular focus on the New York Yankees. Beginning with chapter 1, “Joe Dimaggio (and His Lawyer),” this book looks at the enormous role that the law has had in shaping America’s pastime. While it is not necessary for the reader to be a student of the law to enjoy this book, anyone with a love of baseball will enjoy reading about both the famous players and the pivotal incidents that have seen the law and baseball intersect. From the pine tar incident involving George Brett to chapters on Yogi Berra and Micky Mantle, this book is a must read for anyone interested in baseball and the law.

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4. Aside, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975).

5. Robert M. Jarvis, *When the Lawyers Slept: The Unmaking of the Brooklyn Dodgers*, 74 CORNELL L. REV. 347 (1989) (reviewing NEIL J. SULLIVAN, *THE DODGERS MOVE WEST* (1987)).

6. 483 N.E.2d 1245 (Ill. 1985).

Weiler, Paul C. *Leveling the Playing Field: How Law Can Make Sports Better for Fans*. Cambridge, Mass.: Harvard University Press, 2000.

Harvard law professor Paul C. Weiler presents an in-depth view of what can be done to make all professional sports better for the millions of fans who follow the NFL, NBA, NHL, and MLB. While this book does not specifically focus on Major League Baseball,<sup>7</sup> several chapters deal extensively with issues that are intrinsic to the game. Among these is chapter 9, "Opening the Flood-Gates," which presents a history and explanation of baseball's antitrust exemption and the legal battle that eventually led to the passage of the Curt Flood Act.<sup>8</sup> Additionally, Weiler addresses baseball-related issues such as civil rights (Jackie Robinson), drugs in sports (Steve Howe), and gambling (Pete Rose and the Black Sox Scandal).

Zimbalist, Andrew S. *Baseball and Billions: A Probing Look Inside the Big Business of Our National Pastime*. New York: Basic Books, 1994.

While dealing primarily with the business side of baseball, this book inevitably considers various issues of importance to the legal aspects of the game as well. Economist Zimbalist begins by addressing Monte Ward's role in the organization of the Brotherhood of Professional Baseball Players. He then goes on to address franchise finances, player salaries, and the future of baseball. He includes many statistical tables covering a wide variety of topics including hitters' salaries and major league baseball expansions.

## Articles

### *Antitrust*

Abrams, Roger I. "Before the Flood: The History of Baseball's Antitrust Exemption." *Marquette Sports Law Journal* 9 (1999): 307–13.

This is an excellent article on baseball's antitrust exemption. Abrams discusses the 1914 and 1915 seasons, and actions by Major League Baseball owners to stop players from transferring to the Federal League. Also discussed is Marvin Miller and the development of the players' union.

Abramson, Dan. "Baseball and the Court." *Constitution* 4 (Fall 1991): 68–75.

Abramson provides a historical look at baseball's antitrust exemption, reviewing events in the 1880s that led to the exemption, including a ploy headed by William Hubert in 1879 to give club owners control of their players.

Bautista, Phillip R. "Congress Says 'Yooou're Out!!!' To the Antitrust Exemption of Professional Baseball: A Discussion of the Current State of Player-Owner

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7. "Although there is no legal entity known as Major League Baseball, this term is commonly used to refer to the joint operations of the American League of Professional Baseballs Clubs, Inc. and National League of Professional Baseball Clubs, Inc." *Minnesota Twins P'ship v. State*, 592 N.W.2d 847, 849 n.1 (Minn. 1999) (citing discussion of 1903 agreement between American and National Leagues in Joseph J. McMahon, Jr. & John P. Rossi, *History and Analysis of Baseball's Antitrust Exemption*, 2 VILL. SPORTS & ENT. L.F. 213, 230–31 (1996)).

8. Pub. L. No. 105-297, 112 Stat. 2824 (1998) (codified at 15 U.S.C. § 26b (Supp. II 2002)).

Collective Bargaining and the Impact of the Curt Flood Act of 1998.” *Ohio State Journal on Dispute Resolution* 15 (2000): 445–82.

Bautista takes an in-depth look at collective bargaining in baseball including both its evolution and its current state. He discusses the impact of the Curt Flood Act<sup>9</sup> on the collective bargaining process.

Borteck, Andrew. “The Faux Fix: Why a Repeal of Major League Baseball’s Antitrust Exemption Would Not Solve Its Severe Competitive Balance Problems.” *Cardozo Law Review* 25 (2004): 1069–1109.

Borteck presents an interesting look at antitrust and the scope of Major League Baseball’s current exemptions. Additionally, he addresses baseball’s competitive imbalance and the role antitrust plays in it.

Brand, Stanley M. “The Case for the Minor League Baseball Antitrust Exemption.” *Antitrust* 14 (Spring 2000): 31–32.

When Congress passed legislation in 1998 affecting Major League Baseball’s antitrust status, it left in place Minor League Baseball’s antitrust exemption. This article looks at the way Congress passed this legislation and how this became a classic study in antitrust policy making.

Brand, Stanley M., and Andrew J. Giorgione. “The Effect of Baseball’s Antitrust Exemption and Contraction on Its Minor League System: A Case Study of the Harrisburg Senators.” *Villanova Sports & Entertainment Law Journal* 10 (2003): 49–68.

An interesting study of the impact of Major League Baseball’s antitrust exemption on minor league teams. The article looks at the effect of contraction when coupled with the antitrust exemption and how the repeal of the exemption could lead to the elimination of minor league teams.

Burns, Charles Matthew. “The Scope of Major League Baseball’s Antitrust Exemption.” *Stetson Law Review* 24 (1995): 495–536.

This note discusses the historical development of baseball’s antitrust exemption in the U.S. Supreme Court and examines how the exemption has been transformed due to lower federal and state courts and the differing interpretations of the exemption by these courts.

Butterman, Alexander H. “Baseball’s Antitrust Exemption and an Owner-Imposed Salary Cap: Can They Coexist?” *Entertainment and Sports Lawyer* 12 (Fall 1994): 2–3.

This article looks at baseball’s exemption in the context of the game’s financial problems. Butterman speculates about the possibility of salary caps in baseball.

Cackowski, Alison. “Congress Drops the Ball Again: Baseball’s Antitrust Exemption Remains in Place.” *DePaul-LCA Journal of Art and Entertainment Law* 5 (1994/1995): 147–55.

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9. *Id.*

An in-depth look at the effect of the antitrust exemption on Major League Baseball. This article focuses on the 1972 *Flood v. Kuhn*<sup>10</sup> case as well as the other major cases that have considered antitrust and baseball.

Dellapenna, Joseph W. "The Phoenix Phillies v. The Philadelphia Phillies: A Recently Discovered Opinion on 'Baseball' and the 'Antitrust' Exemption." *Villanova Sports & Entertainment Law Journal* 5 (1998): 233–57.

Written in the form of a court opinion (purportedly "unearthed" by the author), this article discusses the issue of antitrust in baseball. At issue in the "case" is whether baseball franchises that generate large amounts of money should be subject to the same antitrust regulations that govern traditional businesses.

Dodge, John C. "The Baseball Monopoly as Public Utility: Is it Time for Regulation." *Entertainment and Sports Lawyer* 13 (Spring 1995): 3–6.

While baseball is not a necessary commodity such as energy or water, this article suggests that baseball follow a public utility model with regard to regulation. Beginning with a brief history of the game, Dodge addresses what could be done to solve many of baseball's problems by enacting private regulation following a public utility commission model.

Dodge, John. "Regulating the Baseball Monopoly: One Suggestion for Governing the Game." *Seton Hall Journal of Sport Law* 5 (1995): 35–67.

Each year as spring training commences, baseball fans everywhere eagerly await baseball's opening day. Opening day also brings to the public eye the many problems facing the business of baseball. This article addresses baseball's immunity from federal antitrust laws, with the author suggesting that baseball's management reinstate the Major League Baseball Commission.

Edmonds, Edmund P. "The Curt Flood Act of 1998: A Hollow Gesture After All These Years?" *Marquette Sports Law Journal* 9 (1999): 315–46.

This article looks at Curt Flood's courageous stand challenging baseball's reserve clause. Edmonds outlines the 1998 Curt Flood Act<sup>11</sup> as well as decisions that have limited baseball's antitrust exemption. Additionally, he discusses congressional commentary and nonstatutory labor exemptions.

Edmonds, Edmund P. "Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemptions." *Thurgood Marshall Law Review* 19 (1994): 627–61.

In this article, Edmonds looks at the trilogy of Supreme Court cases that established Major League Baseball's exemption from federal antitrust laws. Additionally, he discusses actions by the United States Congress to address the exemption.

George, William D., and Sidney S. Liebesman. "Baseball's Antitrust Brief: Petitioner's Brief." *Villanova Sports & Entertainment Law Forum* 2 (1995): 167–88.

This is the text of the petitioner's brief from the Reimel Competition, an intra-school competition held at Villanova University School of Law to foster written

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10. 407 U.S. 258 (1972).

11. 112 Stat. 2824.

and oral advocacy skills through appellate argument. In 1994–95, the competition addressed Major League Baseball's exemption from the Sherman Antitrust Act<sup>12</sup> with regard to franchise relocation.

Gould, Mark, T. "Baseball's Antitrust Exemption: The Pitch Gets Closer and Closer." *Seton Hall Journal of Sport Law* 5 (1995): 273–89.

Gould looks at Major League Baseball's antitrust exemption by first discussing the issue of revenue sharing. He then offers a history of the exemption along with a review of the court decisions that have upheld it.

Grossman, Y. Shukie. "Antitrust and Baseball—A League of Their Own." *Fordham Intellectual Property, Media and Entertainment Law Journal* 4 (1993): 563–97.

While much has been written about Major League Baseball's antitrust exemption, this article takes a different approach than most by advocating that Congress take no measures to eliminate the exemption. Devoting part 3 of this note to the case of *Piazza v. Major League Baseball*,<sup>13</sup> Grossman criticizes the decision's narrow interpretation of baseball's exemption.

Guarisco, John W. "'Buy Me Some Peanuts and Cracker Jacks,' But You Can't Buy the Team: The Scope and Future of Baseball's Antitrust Exemption." *University of Illinois Law Review* (1994): 651–82.

By pointing out how baseball is unique among professional sports, both in the way the game is played and in its relation to the law, Guarisco launches into a discussion of Major League Baseball's exemption from antitrust laws. This note looks at both Supreme Court and lower court decisions that have analyzed the exemption.

Hylton, J. Gordon. "Why Baseball's Antitrust Exemption Still Survives." *Marquette Sports Law Journal* 9 (1999): 391–402.

While the Curt Flood Act<sup>14</sup> did limit baseball's exemption with regard to antitrust laws and the reserve clause, it left in place many other exemptions. Hylton discusses the limited effect of the Act and why the exemptions still remain.

Judge, Joanne. "Baseball's Antitrust Brief: Petitioner's Brief." *Villanova Sports & Entertainment Law Forum* 2 (1995): 189–211.

This is the text of the Respondent's Brief from the Reimel Competition, an intra-school competition held at Villanova University School of Law to foster written and oral advocacy skills through appellate argument. In 1994–95, the competition addressed Major League Baseball's exemption from the Sherman Antitrust Act<sup>15</sup> with regard to franchise relocation.

Kohm, Joseph A. "Baseball's Antitrust Exemption: It's Going, Going . . . Gone!" *Nova Law Review* 20 (1996): 1231–54.

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12. Act of July 2, 1890, ch. 647, 26 Stat. 209.

13. 831 F. Supp. 420 (E.D. Pa. 1993).

14. 112 Stat. 2824.

15. 26 Stat. 209.



Kohm looks at discussions held during the 1994 Major League Baseball strike with regard to whether baseball would be better off if it lost its judicial exemption from antitrust laws. Kohm also considers the effects of exemption on various components of the game.

Latwin, Joseph L. "De Minimis: Baseball's Antitrust Exemption." *Westchester Bar Journal* 19 (Winter 1992): 71–81.

This succinct article gives an interesting historical review of the baseball antitrust issue, beginning with New York's antitrust laws which were passed in 1897. Additionally, he reviews the purchase of the Federal League's contracts by baseball owners in 1915 and the ensuing lawsuit which involved the Baltimore Orioles.<sup>16</sup>

Marvine, Charles D. "Baseball's Unilaterally Imposed Salary Cap: This Baseball Cap Doesn't Fit." *University of Kansas Law Review* 43 (1995): 625–60.

This comment looks at the 1994 strike and the legality of the owners' unilateral imposition of a salary cap. Marvine also traces the steps necessary to find this salary cap illegal under federal antitrust law and looks at the Major League Baseball antitrust exemption.

Mathewson, Alfred Dennis. "Ali to Flood to Marshall: The Most Triumphant of Words." *Marquette Sports Law Journal* 9 (1999): 439–44.

Mathewson presents his thoughts on the Curt Flood Act<sup>17</sup> as well as the case brought against baseball by Flood.<sup>18</sup> Additionally, the author reflects upon the similarities between Flood's stand on the reserve clause and Muhammad Ali's refusal to be drafted into the United States Army.

McDonald, Kevin. "Anti-Trust and Baseball: Stealing Holmes." *Journal of Supreme Court History* 21 (1998): 88–128.

This is an entertaining look at how Major League Baseball came to have an antitrust exemption. McDonald looks at the antitrust exemption in a historical context beginning with Oliver Wendall Holmes, Jr. and his decision in the case of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*.<sup>19</sup>

McGettigan, Marianne. "The Curt Flood Act of 1998: The Players' Perspective." *Marquette Sports Law Journal* 9 (1999): 379–89.

As part of a symposium on the Curt Flood Act,<sup>20</sup> McGettigan provides the players' perspective with regard to the Act. Issues addressed include why the Act was needed to protect players, the process involved in passing the legislation, and whether the Supreme Court will be afforded the opportunity to look at the application of antitrust laws to Major League Baseball.

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16. *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922).

17. 112 Stat. 2824.

18. *Flood v. Kuhn*, 407 U.S. 258 (1972).

19. *Fed. Baseball Club*, 259 U.S. 200.

20. 112 Stat. 2824.

McMahon, Joseph J., Jr., and John P. Rossi. "A History and Analysis of Baseball's Three Antitrust Exemptions." *Villanova Sports & Entertainment Law Forum* 2 (1995): 213–59.

A look at the plight of one economically troubled team provides the basis for the author's argument that the future of Major League Baseball hinges upon the economics of the various ball clubs. Additionally, the *Piazza* decision<sup>21</sup> is discussed in this insightful look at the history of Major League Baseball's antitrust exemption.

Roberts, Gary. "A Brief Appraisal of the Curt Flood Act of 1998 From the Minor League Perspective." *Marquette Sports Law Journal* 9 (1999): 413–37.

This article provides a very good overview of the impact of the Curt Flood Act<sup>22</sup> on baseball and antitrust law. Specifically, the author looks at baseball's minor leagues and concludes that the Act, coupled with the case of *Brown v. Pro Football, Inc.*,<sup>23</sup> will actually strengthen baseball's antitrust immunity.

Roberts, Gary. "On the Scope and Effect of Baseball's Antitrust Exclusion." *Seton Hall Journal of Sport Law* 4 (1994): 321–36.

This article looks at the treatment of baseball by Congress with regard to antitrust laws. Roberts points out that other major league sports are treated differently with regard to antitrust and then presents his view of how antitrust should be applied to baseball.

Scheible, Eric C. "No Run. No Hits. One Error: Eliminating Major League Baseball's Antitrust Exemption Will Not Save the Game." *University of Detroit Mercy Law Review* 73 (1995): 73–102.

An insightful look at the business problems facing Major League Baseball. Scheible proposes that baseball's antitrust exemption should not be repealed, but rather that baseball should solve its labor woes using federal labor laws that are already in place.

Selig, Allan. "Major League Baseball and its Antitrust Exemption." *Seton Hall Journal of Sport Law* 4 (1994): 277–86.

This publication is actually the text of the testimony given at a congressional hearing<sup>24</sup> by Commissioner of Baseball Allan (Bud) Selig. At issue are antitrust laws and their effect on the relocation of Major League Baseball franchises.

Shacknai, Don. "Sports Broadcasting and the Antitrust Laws: Stay Tuned for Baseball After the Bulls Romp in Court." *Sports Lawyers Journal* 1 (1994): 1–46.

An insightful look at television broadcasting rights in Major League Baseball. This article discusses the developing law of broadcast rights in light of cases involving the NCAA<sup>25</sup> and the Chicago Bulls,<sup>26</sup> as well as the concept of revenue sharing by big-market owners with the owners of teams in smaller markets.

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21. *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

22. 112 Stat. 2824.

23. 518 U.S. 231 (1996).

24. *Baseball Antitrust Immunity: Hearing Before the Subcomm. on Antitrust, Monopolies and Business Rights of the Comm. on the Judiciary*, 102d Cong. (1992).

25. *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984).

26. *Chicago Prof'l Sports Ltd. v. Nat'l Basketball Ass'n*, 754 F. Supp. 1336 (N.D. Ill. 1991).

Smith, Larry C. "Beyond Peanuts and Cracker Jacks: The Implications of Lifting Baseball's Antitrust Exemption." *University of Colorado Law Review* 67 (1996): 113-41.

Smith looks at issues before Congress regarding baseball's antitrust exemption. He discusses the history of antitrust laws, developments affecting the continued viability of the exemption, and potential legislation and its effects on labor and collective bargaining.

Spander, Deborah L. "The Impact of *Piazza* on the Baseball Antitrust Exemption." *UCLA Entertainment Law Review* 2 (1995): 113-56.

This comment looks at actions taken by the proposed buyers of the San Francisco Giants and their lawsuit against Major League Baseball alleging violation of federal antitrust laws. Spander discusses the baseball draft and restraints in the minor league system in light of the *Piazza* decision.<sup>27</sup> Ultimately, she sets forth a solution for a less-restrictive baseball draft and minor league system.

Sullivan, Morgan A. "A Derelict in the Stream of Law: Overruling Baseball's Antitrust Exemption." *Duke Law Journal* 48 (1999): 1265-1304.

With the passage of the Curt Flood Act<sup>28</sup> in 1998, Congress clarified antitrust issues involving Major League Baseball players. The Act did not, however, address such issues as franchise relocation. This article provides a framework for the elimination of baseball's antitrust exemption and looks at the Supreme Court's willingness to re-examine outdated antitrust precedents.

Szuchman, David M. "Step up to the Bargaining Table: A Call for the Unionization of Minor League Baseball." *Hofstra Labor and Employment Law Journal* 14 (1996): 265-312.

Szuchman focuses on Major League Baseball's antitrust exemption and the effect of these laws on baseball's minor leagues. The note further addresses the restrictive conditions placed on minor league baseball players and the continued use of the reserve system in the minor leagues.

Turland, Kathleen L. "Major League Baseball and Antitrust: Bottom of the Ninth, Bases Loaded, Two Outs, Full Count and Congress Takes a Swing." *Syracuse Law Review* 45 (1995): 1329-89.

This note discusses baseball's antitrust exemption in a historical perspective. The author looks at efforts to remove baseball's exemption and presents ways that Congress could improve current laws regarding franchise relocation and the preservation of the minor league structure.

Zeck, Brian F. "Is This the Bottom of the Ninth for Baseball's Antitrust Exemption? A Proposed Removal of the Exemption and Analysis of Player Restraints in an Exemption-Free Environment." *Cleveland State Law Review* 43 (1995): 693-727.

Zeck looks at baseball's antitrust exemption and at the reasoning behind the Supreme Court's rulings upholding the exemption. He also discusses the conflict

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27. *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

28. Pub. L. No. 105-297, 112 Stat. 2824 (1998) (codified at 15 U.S.C. § 26b (Supp. II 2002)).

between labor laws and antitrust laws and how labor disputes are resolved in other major sports.

Zimbalist, Andrew. "Baseball Economics and Antitrust Immunity." *Seton Hall Journal of Sport Law* 4 (1994): 287–320.

Zimbalist not only provides an insightful historical look at baseball's immunity from federal antitrust laws, he also looks at the owners' justification for the exemption and how the National Football League came to accept free agency for its players.

### *Baseball outside the United States*

Duncan, Casey. "Stealing Signs: Is Professional Baseball's United States-Japanese Player Contract Agreement Enough to Avoid Another 'Baseball War'?" *Minnesota Journal of Global Trade* 13 (2003): 87–122.

This note discusses the agreement reached in 1998 between Major League Baseball and Japan's Nippon Professional Baseball League. This agreement, called the Posting System, was designed to regulate player transactions between the two countries. Additionally, this note discusses the financial ramifications of the agreement, enforcement of personal service agreements, and shortcomings of the Posting System.

Hill, Samuel R. "Baseball In Canada." *Indiana Journal of Global Legal Studies* 8 (2000): 37–72.

While baseball is the quintessential American sport, this article traces the little known history of baseball in Canada. Also discussed are the modern day problems facing baseball in Canada, including the currency exchange rate, apathetic fans, and the small-market, large-market disparity.

Ikei, Masaru. "Baseball, Besuboru, Yakyu: Comparing the American and Japanese Games." *Indiana Journal of Global Legal Studies* 8 (2000): 73–79.

In this interesting article, Masaru Ikei looks at the history of baseball in Japan. Tracing baseball's Japanese roots to 1873 when missionary Horace Wilson introduced the game, this article explains how only baseball among foreign sports has reached an unprecedented level of popularity among the Japanese.

### *Comparative Law*

Braver, Andrew F. "Baseball or Besoburo: The Implications of Antitrust Law on Baseball in America and Japan." *New York Law School Journal of International & Comparative Law* 16 (1996): 421–54.

Comparing the antitrust laws of the United States and Japan, this note examines the differences between the two countries with regard to antitrust and baseball. Additionally, this note explores the current status of antitrust laws and the game of baseball, and examines what effect these laws may have on how the game is played in the future.

Gould, William B., IV. "Baseball and Globalization: The Game Played and Heard and Watched 'Round the World (With Apologies to Soccer and

Bobby Thompson).” *Indiana Journal of Global Legal Studies* 8 (2000): 85–120.

In this article, Gould discusses the global expansion of baseball, not only in the traditional hotbed of the Caribbean, but also in Europe. Specifically, he discusses the antitrust and labor law controversies that are linked to the global growth of baseball and considers how the outcome of these cases will affect the game.

Greenwood, Jon S. “What Major League Baseball Can Learn From Its International Counterparts: Building a Model Collective Bargaining Agreement for Major League Baseball.” *George Washington Journal of International Law & Economics* 29 (1995): 259–96.

Writing after the 1994 Major League Baseball work stoppage, Greenwood evaluates alternative models to fix baseball’s collective bargaining agreement. Presented are three basic systems: Major League Baseball in the United States, the Japanese Baseball League, and the Football Association of England.

Gurdak, Natalie M. “Baseball, Hot Dogs, Apple Pie, and Strikes: How Baseball Could Have Avoided Their Latest Strike by Studying Sports Law from British Football.” *Tulsa Journal of Comparative & International Law* 3 (1995): 121–39.

The 1994 baseball strike was no different than those that affect other labor organizations in which the root cause is money. Gurdak explains how baseball players and owners could possibly have avoided the 1994 strike by studying the history of labor relations in British football.

Robbins, William S. “Baseball’s Antitrust Exemption—A Corked Bat for Owners?” *Louisiana Law Review* 55 (1995): 937–72.

An insightful comparison of the labor histories of Major League Baseball and the National Football League, this article notes how NFL players used the courts to gain free agency while MLB players used collective bargaining to achieve the same result.

Taylor, Stephanie L. “Baseball as an Anomaly: American Major League Baseball Antitrust Exemption—Is the Australian Model a Solution?” *Seton Hall Journal of Sport Law* 5 (1995): 359–88.

This article looks at the problems faced by Major League Baseball and baseball’s antitrust exemption. The model of the Australian Football League is presented as a solution to some of baseball’s problems. In this context, Taylor looks at Australia’s system of judicial review in “restraint of trade” and sports.

### *Culture and Baseball*

Abrams, Roger I. “Constructing Baseball: Boston and the First World Series.” *Cardozo Law Review* 23 (2002): 1597–1608.

Abrams looks at baseball and its role in building a cohesiveness among immigrants in the early twentieth century. He argues that the shared experience of baseball led to a common set of understandings among the diverse ethnic groups found in Boston at the turn of the century.

Echevarria, Roberto Gonzalez. "The Magic of Baseball." *Indiana Journal of Global Legal Studies* 8 (2000): 145–65.

In the keynote lecture of the Indiana University symposium, "Baseball in the Global Era: Economic, Legal and Cultural Perspectives," Echevarria explores the potential of baseball to become an American import to other countries. Echevarria discusses the development of baseball as the national game.

Fidler, David P. "Baseball in the Global Era: Economic, Legal, and Cultural Perspectives." *Indiana Journal of Global Legal Studies* 8 (2000): 1–7.

Fidler explains how the globalization of baseball has led to the exploitation of children and young men by Major League Baseball.

### *The Curt Flood Act*

Calabrese, J. Phillip. "Recent Legislation: Antitrust and Baseball." *Harvard Journal on Legislation* 36 (1999): 531–45.

This brief article focuses on the passage of the Curt Flood Act of 1998,<sup>29</sup> which removed, to some extent, Major League Baseball's exemption from federal antitrust laws. In this legislative review, Calabrese discusses the events surrounding the passage of the Act and indicates why, when considered in the broader context, it loses some of its luster.

Champion, Walter T., Jr. "The Baseball Antitrust Exemption Revisited: 21 Years After *Flood v. Kuhn*." *Thurgood Marshall Law Review* 19 (1994): 573–82.

Champion points out that baseball is no longer just the national pastime, it is also "big business." He explores the monopoly involved in baseball and discusses what is arguably the most important piece of legislation with regard to professional sports, the Curt Flood Act of 1998.<sup>30</sup>

Criswell, Charles Allen. "Repeal of Baseball's Longstanding Antitrust Exemption: Did Congress Strike Out Again?" *Northern Illinois University Law Review* 19 (1999): 545–65.

While this article explores the Curt Flood Act of 1998,<sup>31</sup> it goes on to explain why baseball is in an economic crisis and the role that salary arbitration has played in creating this crisis. Criswell uses several examples, among them the Montreal Expos, to explain how rising salaries are hurting small-market teams.

Wolohan, John T. "The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption." *Marquette Sports Law Journal* 9 (1999): 347–77.

After reviewing the history of Major League Baseball's antitrust exemption, Wolohan describes the Curt Flood Act of 1998<sup>32</sup> and its impact on the game, and discusses what is left of the exemption.

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

### *Drug Testing*

Rabuano, Mark M. "An Examination of Drug-Testing As a Mandatory Subject of Collective Bargaining in Major League Baseball." *University of Pennsylvania Journal of Labor & Employment Law* 4 (2002): 439–61.

While discussing drug testing in the context of Major League Baseball's collective bargaining agreement, this article also looks at drug testing in a broader sense. Rabuano reviews the treatment of drug testing in other professional sports, case law precedents regarding the topic, and reasons for baseball to implement a drug-testing program.

Rippey, Edward. "Contractual Freedom Over Substance-Related Issues in Major League Baseball." *Sports Lawyers Journal* 1 (1994): 143–75.

This article looks at the substance abuse problem among Major League Baseball players and the issue of drug testing and penalties for players who use illegal drugs. It also considers baseball's failure to distinguish between performance-enhancing and mind-altering substances, and concludes with a proposal to alter the players' agreement with regard to the use of the latter.

### *Economics*

Bakken, Larry. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: Minneapolis-St. Paul." *Urban Lawyer* 34 (2002): 363–70.

While the proposal to contract the Minnesota Twins in 2002 was successfully defeated, the next important question for the Twins is whether a baseball-only stadium will be built in the Twin Cities. After providing the history of professional ballparks in the Minneapolis-St. Paul area, Bakken looks at the two major questions facing proponents of a new ballpark: funding and location.

Caudill, David S. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects." *Urban Lawyer* 34 (2002): 331–33.

This foreword to the *Urban Lawyer* survey on stadium financing explains the relationship of such financing to baseball and the law. To this end, Caudill looks at the variety of ways that an attorney may become involved in the legal aspects of sports without being a sports agent.

Goldstein, Joel K. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: St. Louis." *Urban Lawyer* 34 (2002): 397–405.

This article looks at efforts to build a new stadium in St. Louis. Among the problems that have faced the proposed project are financing and legislative demands that what is done for St. Louis should be done for Kansas City as well. Goldstein also looks at the proposed development, Ballpark Village, that would adjoin the new ballpark and the uncertainty that surrounds this aspect of the project.

Jarvis, Robert M.. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: Miami." *Urban Lawyer* 34 (2002): 353–60.

In an interesting history of both professional football and baseball in south Florida, Jarvis discusses all of the major players involved in bringing professional sports to the area, including the important role of Joe Robbie in securing a professional football franchise in 1965.

Krauss, Michael I. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: Washington, D.C." *Urban Lawyer* 34 (2002): 407–13.

In light of the fact that at the time this article was published, Washington, D.C. had no Major League Baseball franchise, Krauss begins by outlining the various impediments to and the individuals involved in bringing a team to the city. He then discusses where the team will play and the variables involved in deciding the location of the stadium.

Pepper, Stuart M. "Senior Professional Baseball Association: A League of Our Own." *University of Miami Entertainment & Sport Law Review* 10 (1993): 307–16.

In 1989, the Senior Professional Baseball Association (SPBA) was formed, consisting of players who were retired from Major League Baseball but who still wanted to play the game. The author, a member of the SPBA, outlines the legal and economic issues involved in starting the league as well as the class action lawsuit that was filed when the league folded.

Perlmutter, Richard M. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: Boston." *Urban Lawyer* 34 (2002): 335–42.

Perlmutter outlines the part that Fenway Park plays in the mystique of the Boston Red Sox. In 1999 the Red Sox announced a vision for a new Fenway Park, no small feat for such a beloved ballpark and its famed "green monster." Perlmutter addresses the legal and political obstacles as well as the cultural aspects of building a new stadium in Boston.

Ross, Stephen F. "Light, Less-Filling, It's Blue-Ribbon!" *Cardozo Law Review* 23 (2002): 1675–1704.

The competitive balance of the game is a constant topic among baseball aficionados. This article looks at the work of the Blue Ribbon Panel on Baseball Economics which was charged to study the issue of whether revenue disparities among baseball clubs was damaging the game's competitive balance.

Semeraro, Steven. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: San Diego." *Urban Lawyer* 34 (2002): 389–96.

After briefly discussing the history of professional sports in San Diego, Semeraro describes the process of getting approval for a new stadium in San Diego, the process by which funding was acquired, and the lawsuits that have been brought as a result of the process.

Sparkes, Phillip M. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: Cincinnati." *Urban Lawyer* 34 (2002): 345–52.

Sparkes looks not only at the details of building Cincinnati's Great American Ball Park but also at the role played by the Cincinnati Bengals football team in getting both football and baseball stadiums built in the city. The involvement of Paul Brown (owner of the Bengals) and Marge Schott (owner of the Reds) and the call for an increased sales tax to fund the stadium projects is also discussed.

Ward, Ettie. "From Blueprints to Bricks: A Survey of Current Baseball Stadium Financing Projects: New York." *Urban Lawyer* 34 (2002): 371–79.



Ward looks at the two New York teams, the Mets and the Yankees, and the stadiums where the teams currently play. Discussing the financial hardships that the city of New York has faced in recent years, Ward predicts that no new stadiums will be built in the near future. Additionally, this article looks at the role politics can play in stadium financing by outlining Mayor Michael Bloomberg's announcement that there would be no funding for a new ballpark as planned by the previous mayor, Rudolph Giuliani.

Wargo, Ronald P. "Coscarart v. Major League Baseball: No Field of Dreams." *Hastings Communications and Entertainment Law Journal* 20 (1998): 877-96.

Focusing on retirement benefits for players, this article discusses the lack of financial compensation for retired players who played the game fifty years ago. Specifically, it discusses the case involving Pete Coscarat<sup>33</sup> who pursued litigation to receive pension benefits from Major League Baseball.

Yankwitt, Russell M. "Buy Me Some Peanuts and Ownership: Major League Baseball and the Need for Employee Ownership." *Cornell Journal of Law and Public Policy* 5 (1996): 401-29.

This article presents several solutions to baseball's monetary woes. Yankwitt looks at the possibility of employee ownership with the combination of union representation as a solution to many of baseball's problems.

### ***Franchise Relocation and Contraction***

Blevins, Timothy D. "Foul Ball!! *Piazza v. Major League Baseball.*" *Thurgood Marshall Law Review* 19 (1994): 677-88.

The sale of the San Francisco Giants and U.S. District Judge Padova's ruling<sup>34</sup> in favor of the original buyers, Vincent Piazza and Vincent Tirendi, is the primary case discussed in this article. Going on to address antitrust issues in other cases, Blevins also covers *Flood v. Kuhn*.<sup>35</sup>

Dale, Myron L., and John Hunt. "Antitrust and Baseball Franchises: Leaving Your Heart (and the Giants) in San Francisco." *Northern Kentucky Law Review* 20 (1003): 337-63.

This article discusses the antitrust aspects of the relocation of professional baseball teams. Also addressed is the historical perspective of baseball and antitrust and the involvement of Congress in the antitrust laws that deal with baseball.

DeClet, Rafael A., Jr. "We'll Take the Yankees: Assessing the Feasibility of a State Condemnation of Baseball's Greatest Franchise." *Marquette Sports Law Journal* 8 (1997): 53-74.

DeClet has produced an insightful study of what may be done when a professional sports team leaves its current city of residence. Since no team is linked more with a city than the Yankees with New York, this article provides options

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33. *Coscarart v. Major League Baseball*, No. C 96-1426 FMS, 1996 U.S. Dist. LEXIS 9797 (N.D. Cal. July 10, 1996).

34. *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

35. 407 U.S. 258 (1972).

as to what legal recourse the state of New York might explore should the team decide to move elsewhere.

Dorst, Julie. "Franchise Location: Reconsidering Major League Baseball's Carte Blanche Control." *Seton Hall Journal of Sport Law* 4 (1994): 553–94.

While all other professional sports are bound by federal antitrust laws, baseball has remained unique in its immunity from these laws. Dorst analyzes baseball's immunity by comparing it to situations involving franchise relocation in the NFL and the NBA.

Duff, Brian J. "Baseball's Antitrust Exemption Does Not Extend to Decisions Involving Sale and Location of Baseball Franchises." *Seton Hall Journal of Sport Law* 5 (1995): 657–61.

This article focuses on the case of *Butterworth v. National League of Professional Baseball Clubs*,<sup>36</sup> which resulted from a failed attempt by a group of investors to purchase the San Francisco Giants and move the club to Tampa Bay, Florida. In the context of this case, Duff discusses the court's adherence to the idea set forth by Congress that baseball is exempt from federal antitrust laws.

Dunning, William. "The Sale and Relocation of a Professional Baseball Franchise is an Integral Aspect of the Sport and Therefore Exempt from Antitrust Law so That Civil Investigative Demands Cannot be Enforced—*Minnesota Twins Partnership v. State of Minnesota*." *Seton Hall Journal of Sport Law* 10 (2000): 167–85.

The Curt Flood Act<sup>37</sup> served to resolve the question of baseball's antitrust exemption with regard to labor. What the Act did not change is the status of franchise ownership and relocation. This article focuses on this area of baseball and the law by considering the case of *Minnesota Twins Partnership v. State*.<sup>38</sup>

Dyer, Jennifer. "After 76 Years, Congress Lifts Baseball's Antitrust Exemption on Labor Relations But Leaves Franchise Relocation up to the Courts." *Thomas M. Cooley Journal of Practical & Clinical Law* 3 (2000): 247–85.

While the Curt Flood Act of 1998<sup>39</sup> was intended to clarify baseball's status with regard to federal antitrust laws, the Act only provides that baseball labor relations be subject to the Clayton Act.<sup>40</sup> This comment examines threats by club owners to move franchises and the recent development of state officials challenging baseball's antitrust exemption with regard to these relocations.

Gordon, Jeffrey. "Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?" *Fordham Urban Law Journal* 46 (1999): 1201–65.

In an interesting look at the relationship between franchise relocation and the antitrust laws, Gordon examines the various United States Supreme Court cases

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36. 644 So. 2d 1021 (Fla. 1994).

37. 112 Stat. 2824.

38. 592 N.W.2d 847 (Minn. 1999).

39. 112 Stat. 2824.

40. Ch. 323, 38 Stat. 730 (1914) (codified at 15 U.S.C. §§ 12–27, 44, 29 U.S.C. § 52 (2000)).

that have led to baseball's exemption from those laws. He also discusses the role the United States Congress has played with regard to baseball and antitrust.

Hurst, Thomas R., and Jeffrey M. McFarland. "The Effect of Repeal of the Baseball Antitrust Exemption on Franchise Relocations." *DePaul-LCA Journal of Art & Entertainment Law* 8 (1998): 263–302.

Focusing on franchise relocation, this four-part article discusses antitrust in relationship to the relocation of major league teams. While presenting a brief history of the U.S. Supreme Court cases that upheld baseball's antitrust exemption, the article also looks at sports and nonsports exemptions.

Juarez, Michael H. "Baseball's Antitrust Exemption." *Hastings Communication & Entertainment Law Journal* 17 (1995): 737–62.

In discussing baseball's antitrust exemption, Juarez looks specifically at baseball's disregard for the public interest in the context of the blocked move of the San Francisco Giants to Florida. Additionally, he discusses congressional responses to the exemption and touches on proposals to deal with it.

Lafferty, Latour Rey. "The Tampa Bay Giants and the Continuing Vitality of Major League Baseball's Antitrust Exemption: A Review of *Piazza v. Major League Baseball*." *Florida State University Law Review* 21 (1994): 1271–92.

In 1992 an offer was made to purchase the San Francisco Giants and move the team to St. Petersburg, Florida. The deal, however, did not go through because of the intervention of Major League Baseball. This article discusses the use of antitrust laws to block the team's move as well as other relevant antitrust cases.

Mack, Connie, and Richard M. Blau. "The Need for Fair Play: Repealing the Federal Baseball Antitrust Exemption." *Florida Law Review* 45 (1993): 201–20.

An in-depth look at the attempt to move the San Francisco Giants to Florida, this article presents a detailed account of the events leading up to the vote by National League owners to block the move. The article goes on to discuss the extent of baseball's antitrust exemption with regard to franchise relocation.

Mathias, Edward. "Squeeze Play: Will Baseball's Economic Problems Cause More Legal Headaches for The National Pastime?" *Sports Lawyers Journal* 5 (1998): 221–71.

Major League Baseball is constantly threatened by legal and financial woes. Mathias looks at these issues with a focus on franchise relocation. Specifically, he reviews the *Piazza*<sup>41</sup> and *Butterworth*<sup>42</sup> cases and their relation to baseball's antitrust exemption. The article also looks at financially troubled teams and tries to identify the legal issues that may arise in the future with regard to these teams.

Rosner, Scott R. "The History and Business of Contraction in Major League Baseball." *Stanford Journal of Law, Business and Finance* 8 (2003): 265–88.

This article reviews the history and justification of contraction in baseball and other professional sports. As Major League Baseball seeks to use contraction as

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41. *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

42. *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 640 So.2d. 1021 (Fla. 1994).

a way to eliminate teams, Rosner looks at how collective bargaining may affect such an approach.

Rosner, Scott. "Squeeze Play: Analyzing Contraction in Professional Sports." *Villanova Sports & Entertainment Law Journal* 10 (2003): 29–45.

Rosner has written an informative account of the history of contraction in baseball. Additionally, Rosner looks at the history of contraction in other sports as well as the goals of contraction.

Scibilia, Frank P. "Baseball Franchise Stability and Consumer Welfare: An Argument for Reaffirming Baseball's Antitrust Exemption with Regard to its Franchise Relocation Rules." *Seton Hall Journal of Sport Law* 6 (1996): 409–68.

Scibilia focuses on baseball franchise relocation and baseball's antitrust exemption, concluding that the antitrust exemption does apply to franchise relocation.

Sharon, Craig A., and Lloyd H. Mayer. "New Direction for Team Ownership? The Memphis Redbirds Baseball Foundation." *Entertainment and Sports Lawyer* 16 (Spring 1998): 1–23.

Looking at every sports fan's worst nightmare, this article discusses what happens when a professional sports team announces it is leaving town for a new city with a new stadium and a more lucrative deal. Specifically, the example of the Memphis Redbirds is outlined as is the development of the nonprofit tax-exempt professional sports team.

Staherski, J. Benjamin. "Contraction in Major League Baseball: Do Owners Have a Duty to Bargain in Good Faith with the Union Before Shutting Down or Relocating a Team?" *Penn State Law Review* 108 (2004): 881–97.

Revenue sharing is a constant topic among baseball fans. This article addresses revenue sharing within the context of contraction, specifically questioning whether team owners must negotiate with the Major League Baseball Players Association before relocating a team and how the rules of bargaining should be applied to this process.

Stein, Gilbert. "6-4-3 (Double Play)! Two Teams Out: Contraction in Baseball." *Villanova Sports and Entertainment Law Journal* 10 (2003): 1–4.

Introducing a Villanova symposium on contraction in baseball, Stein addresses the question of whether baseball is still the national pastime. He provides a brief discussion of contraction and the effect of baseball's exemption from antitrust laws.

Wolohan, John T. "Major League Baseball Contraction and Antitrust Law." *Villanova Sports & Entertainment Law Journal* 10 (2003): 5–27.

Within days of Commissioner Bud Selig's announcement in 2001 that two teams would be eliminated from Major League Baseball, lawsuits were filed in Minnesota and Florida challenging the owners' right to contract teams. Wolohan gives a brief account of the history of baseball's relationship to federal antitrust law while looking at the trilogy of Supreme Court cases relating to baseball's exemption. He also looks at the role the exemption will play in the future contraction of teams in Major League Baseball.

### *Free Speech*

Misey, Robert J. "Free Speech at the Ball Park? Major League Baseball Violates the First Amendment." *George Mason University Civil Rights Law Journal* 3 (1993): 227–67.

Heckling players is not an invention of the modern-day baseball fan. However, in recent years the ranting by fans has become increasingly violent. This article looks at the free speech issues involved when Major League Baseball attempts to censor fans.

### *Gambling*

Ostertag, Thomas J. "From Shoeless Joe to Charley Hustle: Major League Baseball's Continuing Crusade Against Sports Gambling." *Seton Hall Journal of Sport Law* 2 (1992): 19–49.

Just as Ivan Boesky is associated with greed and insider trading, both Shoeless Joe Jackson and Pete Rose will be forever linked to cheating in baseball. This article primarily focuses on insider trading in its traditional sense, but the author uses Rose and Jackson as examples of the need for business to regulate itself.

### *Globalization*

Koppett, Leonard. "The Globalization of Baseball: Reflections of a Sports Writer." *Indiana Journal of Global Legal Studies* 8 (2000): 81–84.

Written by a long-time sports writer, this article looks at two aspects of the globalization of baseball: the expansion of teams to areas outside the United States and Canada, and the influx of players from outside the United States.

Marcano, Arturo J., and David P. Fidler. "The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent." *Indiana Journal of Global Legal Studies* 6 (1999): 511–77.

This article reports that 32% of all Major League Baseball players were born outside of the United States. This, coupled with the globalization of the game, creates a situation where Major League Baseball may be a target for human rights and labor standards analysis. The article also discusses the fact that baseball is more than a game, and what globalization may ultimately mean to baseball.

### *Governance of Baseball*

Arcella, Craig F. "Major League Baseball's Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring." *Columbia Law Review* 97 (1994): 2420–69.

This note looks at the 1994 restructuring of baseball's governance structure and the premise that this restructuring will undermine favorable legal treatment of baseball by U.S. courts.

Curtis, Ted. "In the Best Interest of the Game: The Authority of the Commissioner of Major League Baseball." *Seton Hall Journal of Sport Law* 5 (1995): 5–33.

Since the appointment of Judge Kennesaw Mountain Landis to the position, it has been the job of baseball's commissioner to act in the "best interest of the game." This article explores the legal challenges that have faced baseball's commissioners from Landis to Fay Vincent and the narrowing of the scope of the commissioner's powers (including a more limited view of what "best interest of the game" means).

Durney, Jeffrey A. "The Commissioner and Major League Baseball's Disciplinary Process." *Emory Law Journal* 41 (1992): 581-631.

The position of Major League Baseball commissioner has evolved to the point where the commissioner alone has sole disciplinary authority over the game's players. In considering the disciplinary process, this article reviews not only the law of private business associations and their powers of self-governance, but also the role of the courts with regard to player discipline.

Gould, Mark T. "Fantasy Revisited: Baseball's Antitrust Exemption Gets Hit by a Pitch." *Entertainment & Sports Lawyer* 11 (Fall 1993): 11-14.

This discussion of Major League Baseball's antitrust exemption focuses primarily on the case of *Piazza v. Major League Baseball Inc.*<sup>43</sup> Gould considers both the antitrust exemption and baseball's reserve clause in the context of the *Piazza* case.

Gould, Mark T. "In Whose 'Best Interests'? The Narrowing Role of Baseball's Commissioner." *Entertainment & Sports Lawyer* 12 (Spring 1994):1-22.

The 1919 Chicago White Sox scandal led to the appointment of Judge Kennesaw Mountain Landis as baseball's first commissioner. While Landis ruled baseball with an iron hand, in subsequent years the powers of baseball's commissioner have changed considerably. This article looks at the changes and the conflict that arises when the commissioner must act in baseball's best interest.

Lavelle, Lydia. "From the Diamonds to the Courts: Major League Baseball v. the Commissioner." *North Carolina Central Law Journal* 21 (1995): 97-121.

Lavelle offers a history of the powers of the commissioner of Major League Baseball as well as an overview of the individuals who have held this office. She also discusses the case of the *Chicago National League Ball Club Inc. v. Vincent*<sup>44</sup> which sought to stop the realignment of Major League Baseball's divisions.

Reinsdorf, Jonathan M. "The Powers of the Commissioner in Baseball." *Marquette Sports Law Journal* 7 (1996): 211-55.

In this informative article on the powers of the Major League Baseball commissioner, Reinsdorf looks at the powers given to Judge Kenesaw Mountain Landis as well as subsequent changes in the duties and powers of those who have held the position since Landis.

Rosentraub, Mark S. "Governing Sports in the Global Era: A Political Economy of Major League Baseball and its Stakeholders." *Indiana Journal of Global Legal Studies* 8 (2000): 121-44.

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43. *Piazza*, 831 F. Supp. 420.

44. No. 92 Civ. 4398 (N.D. Ill. July 23, 1992) (order granting preliminary injunction) (withdrawn and vacated Sept. 24, 1992).

Rosentraub looks at how professional sports are governed and the impact of that governance on these sports, particularly baseball. After considering the history of sport as it relates to local culture and identity, he discusses how the responsibility for sports governance could be shared by international associations and national sports leagues.

Sathy, Depak. "Reconstruction: Baseball's New Future." *Seton Hall Journal of Sport Law* 4 (1994): 27–75.

In recent years Major League Baseball has been troubled by several problems, including issues pertaining to the power of the commissioner's office. This article looks at baseball's governance before the office of commissioner was created and then describes the evolution of power beginning with Judge Kennesaw Mountain Landis. Sathy makes proposals for the restructuring of the governance of baseball.

Willisch, Michael J. "Protecting the 'Owners' of Baseball: A Governance Structure to Maintain the Integrity of the Game and Guard the Principals' Money Investment." *Northwestern University Law Review* 88 (1994): 1619–50.

Addressing baseball's decline as the national pastime, this article discusses possible legal solutions designed to save the integrity of the game. Willisch's model uses a hybrid of both the current commissioner model and a corporate model to protect both team owners and the game itself.

### *Immigration*

Cwiertny, Scott M. "The Need for a Worldwide Draft: Major League Baseball and its Relationship with the Cuban Embargo and United States Foreign Policy." *Loyola of Los Angeles Entertainment Law Review* 20 (2000): 391–428.

While there is a multitude of talented baseball players currently residing in Cuba, U.S. foreign policy precludes these players from coming to the United States to play professional baseball. This article examines the need for Major League Baseball to change the rules that now encourage teams to violate U.S. foreign policy to recruit these players, the Los Angeles Dodgers' actions in this regard, and the overall effect of the Cuban embargo on the game.

Greller, Matthew N. "Give Me Your Tired, Your Poor, Your Fastball Pitchers Yearning for Strike Three: How Baseball Diplomacy Can Revitalize Major League Baseball and United States-Cuba Relations." *American University International Law Review* 14 (1999): 1647–1712.

From Sammy Sosa to Orlando "El Duque" Hernandez, a baseball fan need not look far to find the effects of immigration law on the game. This interesting and cleverly titled comment looks at current U.S. immigration laws regarding foreign baseball players and in particular the "O" and "P" visa categories. Additionally, Greller looks at the Cuban baseball defections of the 1990s and the development of a comprehensive baseball diplomacy.

Schneider, Andrea Kupfer. "Baseball Diplomacy." *Marquette Sports Law Review* 12 (2001): 473–86.

While foreign relations between the United States and Cuba are strained, Cuban baseball players continue to defect to the United States. This article considers the

parallels between foreign diplomacy and baseball diplomacy. Additionally, this article looks at what happens when Cuban players defect to the United States to play baseball.

Spagnuolo, Diana L. "Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball." *University of Pennsylvania Journal of International Economic Law* 24 (2003): 263–87.

Spagnuolo offers an insightful look at the problems, legal and otherwise, facing players recruited from the Dominican Republic. She provides a history of baseball in the Dominican Republic while addressing the lure of Major League Baseball for players who have grown up in poverty. Spagnuolo proposes reforms for improving the recruiting system currently in place and provides the viewpoints of both players' advocates and representatives of Major League Baseball.

### *Intellectual Property*

Carrier, Kym. "Right of Publicity: *Cardtoons, L.C. v. Major League Baseball Players Association*." *Oklahoma Law Review* 15 (1998):159–73.

The right of publicity in which an individual is granted the right to profit from his or her likeness or name was challenged in the case of *Cardtoons L.C. v. Major League Baseball Players Ass'n*.<sup>45</sup> This article examines the Tenth Circuit decision in which the court ruled in favor of Cardtoon, a company engaged in the business of parody baseball cards, and looks at prior cases dealing with the right of publicity.

De Avila, Liliana. "Copyright—Compilation of Facts—The Selection of Statistics in a Baseball Outcome Predictive Pitching Form is Within the Subject Matter of Copyright." *Seton Hall Journal of Sport Law* 2 (1992): 233–52.

This article address the creation of a pitching form and the issue of whether a compilation can be afforded copyright protection. At issue is a pitching form created in 1982 by George Kregos which was published in subscribing newspapers and the creation of a similar form by the Associated Press in 1984.

Gould, Mark T. "*Cardtoons, L.C. v. Major League Baseball Players Association*: The 'Bonding' Effect of Parody." *Entertainment & Sports Lawyer* 15 (Spring 1997): 8–10.

The rights of privacy and publicity for public figures is an often-litigated subject. This article looks at the parody of public figures in light of *Cardtoons L.C. v. Major League Baseball Players Ass'n*.<sup>46</sup>

Hylton, J. Gordon, "Baseball Cards and the Birth of the Right of Publicity: The Curious Case of *Haelan Laboratories v. Topps Chewing Gum*." *Marquette Sports Law Review* 12 (2001): 273–94.

In this interesting article, Hylton provides an insightful look at the history and development of the baseball card industry. This historical look at a unique

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45. 95 F.3d 959 (10th Cir. 1996).

46. *Id.*



industry leads up to the 1953 decision of *Haelan Laboratories v. Topps Chewing Gum*<sup>47</sup> which dealt with the images of professional baseball players and the recognition of the modern right to publicity.

Ibrahim, Sanjay. "Prelitigation Threats Made with Probable Cause Enjoy the Same Level of Protection From Liability as Litigation Itself Under the Noerr-Pennington Petitioning Immunity Doctrine—*Cardtoons v. Major League Baseball Players Association*." *Seton Hall Journal of Sport Law* 10 (2000): 435–56.

This note discusses the case of *Cardtoons v. Major League Baseball Players Ass'n*.<sup>48</sup> Among the issues considered are immunity from liability for correspondence between private parties and whether a petition to the government must take the form of a complaint in order to trigger the Noerr-Pennington doctrine.

Kwok, Rebecca. "*Cardtoons v. Major League Baseball Players Association*: Fair Use or Foul Play?" *UCLA Entertainment Law Review* 5 (1998): 315–53.

Looking at the right of publicity and the parody of public figures, Kwok disagrees with the Tenth Circuit's decision in *Cardtoons v. Major League Baseball Players Ass'n*.<sup>49</sup>

Prebut, David. "Best Interests of Self Interest: Major League Baseball's Attempt to Replace the Compulsory Licensing Scheme with Retransmission." *Seton Hall Journal of Sport Law* 3 (1993): 111–47.

In an interesting look at the licensing and transmission of Major League Baseball games, this note discusses attempts by baseball to amend copyright laws to allow a system of retransmission consent. It also reviews the effect of the superstations on smaller market teams and the feasibility of abolishing the compulsory license.

Robinson, Mark A. "Injunctive Relief for Trademark Infringement is not Available When Likelihood of Confusion Does not Exist as to the Source of the Goods or Services or When an Entity Abandons a Trademark." *Seton Hall Journal of Sport Law* 4 (1994): 205–28.

In 1957 the Dodgers moved from Brooklyn to Los Angeles. The team became known as the Los Angeles Dodgers. This article looks at trademark infringement when a trademark has been abandoned.

Shahdanian, John. "Parody Contained on Trading Cards Does not Violate an Athlete's Right of Publicity." *Seton Hall Journal of Sport Law* 7 (1997): 423–48.

This note addresses the case of *Cardtoons, L.C. v. Major League Baseball Players Ass'n*<sup>50</sup> in which Major League Baseball players were parodied in cards produced by Cardtoons.

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47. 131 F.Supp. 262 (E.D.N.Y. 1955).

48. *Cardtoons*, 95 F. 3d 959.

49. *Id.*

50. *Id.*

Weinberger, James D. "Baseball Trademark Licensing and the Antitrust Exemption: An Analysis of *New York Yankees Partnership v. Major League Baseball Enterprises, Inc.*" *Columbia-VLA Journal of Law & the Arts* 23 (1999): 75–99.

This note looks at the ways in which Major League Baseball controls merchandising of team products. Specifically discussed is a suit involving the New York Yankees who signed a contract with Adidas that bypassed the standard Major League Baseball merchandising contract.

### *Jurisprudence and Baseball*

Curtis, Ted. "The Flood Act's Place in Baseball Legal History." *Marquette Sports Law Journal* 9 (1999): 403–12.

There have been many legal challenges that have shaped the game of baseball. This article looks at nine of the most important issues that have helped to form the game as we know it today. Included are discussions of the 1902 case of league jumper Napoleon Lajoie,<sup>51</sup> and *Pittsburgh Athletic Co. v. KQV Broadcasting Co.*<sup>52</sup> which dealt with broadcast rights.

Finkelman, Paul. "Baseball and the Rule of Law." *Cleveland State Law Review* 46 (1998): 239–59.

In this extremely clever and well-written article, Finkelman explains how baseball and the common law are analogous. Beginning with a description of the two seasons of the year for the baseball fan lawyer, April (the beginning of the regular season) and October (the beginning of the court's season), he explains how the development of the rule of law and the development of the rules of baseball coincide.

Irwin, Dr. Richard L. "A Historical Review of Litigation in Baseball." *Marquette Sports Law Journal* 1 (1991): 283–300.

Baseball and the law have historically been linked. This article looks at contract law, antitrust, and labor law, explaining how the law in each of these areas has affected the game of baseball.

Shropshire, Kenneth L. "The Brave New World: Baseball in the Twenty-First Century." *Entertainment & Sports Lawyer* 13 (Spring 1995): 7–8.

In this concise, informative article, Shropshire addresses ten major issues facing the game of baseball. Among those discussed are free agency, the office of the commissioner, expansion, and internationalization.

VerSteeg, Russ. "A Statutory Analysis of the 'Laws' of Little League Baseball (An Essay Urging Changes to the Little League Rules)." *Marquette Sports Law Journal* 9 (1998): 103–73.

VerSteeg presents potential changes to the current playing rules of Little League baseball. Some proposed changes are substantial, while others are minor or cosmetic. Among the changes proposed are the manager's privilege

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51. *Philadelphia Baseball Club Co. v. Lajoie*, 13 Ohio Dec. 504 (C.P. Cuyahoga Co. 1902).

52. 24 F. Supp. 490 (W.D. Pa.. 1938).

to go to the mound to confer with a player and changes to the batting order and substitution rule.

Weiss, Jason S. "The Changing Face of Baseball: In an Age of Globalization, is Baseball Still as American as Apple Pie and Chevrolet?" *University of Miami International & Comparative Law Review* 8 (1999–2000):123–82.

Today, baseball is more than a game, evidenced by the many legal issues that effect it. This article looks at the myriad of legalities related to baseball, including salary arbitration, contract negotiations, and issues involving players and coaches from foreign backgrounds.

Yablon, Charles. "On the Contribution of Baseball to American Legal Theory." *Yale Law Journal* 104 (1994): 227–42.

This article presents comparisons between the American legal system and baseball's "legal system." Yablon's thesis is that while the "real" legal system is learned through years of law school, the legal system of baseball is easily learned on playgrounds and from sports pages and television. Yablon suggests that many of the advances in the American legal system leave lawyers wondering why the law cannot be more like baseball.

### ***Labor Relations, Negotiation, and Arbitration***

Alcaro, Fredrick. "When In Doubt Get Locked Out!: A Comparison of the 2001 Lockout of the National Football League Referees' Association and the Failed 1999 Scheme of the Major League Baseball Umpires' Association." *University of Pennsylvania Journal of Labor and Employment Law* 5 (2003): 335–61.

As big businesses, professional sports leagues have experienced many of the problems associated with more traditional types of businesses, including labor strikes. This article discusses strikes by sporting officials, specifically the 1999 strike by the Major League Umpires' Association and the labor issues that resulted from it.

Chalpin, Marc. "It Ain't Over 'Til It's Over: The Century-Long Conflict between the Owners and the Players in Major League Baseball." *Albany Law Review* 60 (1996): 205–38.

For as long as professional baseball has been in existence, players and owners have been at odds over a variety of matters. In this article, Chalpin addresses the primary grievances that keep owners and players at odds, including baseball's long-standing exemption from federal antitrust laws, free agency, grievance arbitration, and salary arbitration.

Devine, James R. "Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case Study in Owner-Player Relations." *Marquette Sports Law Journal* 5 (1994): 1–82.

The Black Sox Scandal is undoubtedly one of the most infamous incidents in baseball's long and sometimes tarnished history. This article looks at the state of baseball at the time of the scandal and seeks to explain how the relationship between players and owners may have driven players to such drastic measures.

Devine, James R. "The Legacy of Albert Spalding, The Holdouts of Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale and the 1994–95 Strike: Baseball's Labor Disputes are as Linear as the Game." *Akron Law Review* 31 (1997): 1–75.

This article focuses on several of the game's greats and how management at the time dealt with the holdouts of these players. Devine believes that the management style in place at the time that Cobb, DiMaggio, Koufax, and Drysdale played is still in place today and argues that this approach by management affected the baseball strike of 1994–95.

Donegan, Frederick N. "Examining the Role of Arbitration in Professional Baseball." *Sports Law Journal* 1 (1994):183–204.

Donegan examines the role of arbitration in Major League Baseball by first looking at the early history of the reserve clause. Donegan then examines the current major league arbitration process and its advantages and disadvantages, as well as specific arbitration cases.

Edelman, Marc. "Has Collusion Returned to Baseball? Analyzing Whether a Concerted Increase in Free Agent Player Supply Would Violate Baseball's 'Collusion Clause.'" *Loyola of Los Angeles Entertainment Law Review* 24 (2004): 159–84.

A very timely article on the issue of the collusion clause and the attempt by baseball clubs to flood the 2002–03 labor market with free agents. The article provides a very good discussion of the evolution of baseball's collusion clause and the settlement in the 1980s of the collusion disputes.

Fisher, Christopher J. "The 1994–95 Baseball Strike: A Case Study in Myopic Subconscious Macrocosmic Response to Conflict." *Seton Hall Journal of Sport Law* 6 (1996): 367–95.

On August 12, 1994, the Major League Baseball Players Association went on strike, wiping out the remainder of the 1994 season and eliminating post-season play. This article explains how the 1994 strike came to be and the pivotal role that lawyers played in the initiation, mediation, and resolution of the strike.

Fizel, John L. "Play Ball: Baseball Arbitration After 20 Years." *Dispute Resolution Journal* 49 (June 1994): 42–47.

Quoting Whitey Herzog, who once said that "arbitration is the strongest vehicle that players have and the worst thing that happened to owners," this article looks at baseball arbitration since its enactment in 1974. Looking at the success rate of arbitration for both players and owners, Fizel concludes that while final offer arbitration is an imperfect method of resolving salary disputes, it is nonetheless viable.

Giamporcaro, Peter F. "No Runs, No Hits, Two Errors: How Maryland Erred in Prohibiting Replacement Players From Camden Yards During the 1994–95 Major League Baseball Strike." *Loyola of Los Angeles Entertainment Law Journal* 17 (1996): 123–56.

While much has been written about the Major League Baseball strike of 1994 in general, this article focuses solely on the strike's effect in Maryland. As a result of the players' strike, the Maryland General Assembly passed legislation barring

minor league players or “scabs” from playing baseball in Baltimore’s Camden Yards.<sup>53</sup> Giamporcaro considers the constitutionality of this legislation.

Glazer, Daniel C. “Can’t Anybody Here Run This Game? The Past, Present and Future of Major League Baseball.” *Seton Hall Journal of Sport Law* 9 (1999): 339–430.

This article looks the various issues that have led to eight work stoppages since 1972, and presents alternatives to Major League Baseball’s present collective bargaining agreement.

Griffith, Clark C. “New Law Provides Optimism In the Coming Baseball Labor Negotiation.” *Antitrust* 14 (Spring 2000): 33–39.

Labor negotiations in the sports industry have provided many memorable antitrust-labor cases. The article looks at how future labor negotiations in Major League Baseball will be affected by the Supreme Court’s rulings on these types of cases.

Hylton, J. Gordon. “The Historical Origins of Professional Baseball Grievance Arbitration.” *Marquette Sports Law Review* 11 (2001): 175–84.

This article provides an excellent overview of the origins of grievance arbitration starting with the blacklisting of players in the nineteenth century. Included is a review of the John Rocker incident and a discussion of how grievance arbitration allowed Rocker to obtain a reduction in his penalty and begin the 2000 season.

Kiner, Ralph. “The Role of Unions and Arbitration in Professional Baseball.” *Hofstra Labor & Employment Law Journal* 17 (1999): 159–64.

This article is an adaptation of an address given to the New York Bar Association by former Pittsburgh Pirate Ralph Kiner, who discusses the role of unions in arbitration and his experiences with contract negotiations, pension plans, and collective bargaining.

Lipinski, Tracy. “Major League Baseball Players Ass’n v. Garvey Narrows the Judicial Strike Zone of Arbitration Awards.” *Akron Law Review* 36 (2003): 325–62.

A very thorough discussion of judicial review of arbitration awards and the issue of when a reviewing court can vacate an arbitrator’s awards. This article looks at Supreme Court decisions dealing with judicial review of arbitration awards and discusses the case of *Major League Baseball Players Ass’n v. Garvey*.<sup>54</sup>

Long, Eric I. “The 1994 Baseball Strike Revisited: A Better Impasse Analysis.” *Southern Illinois University Law Journal* 22 (1997): 117–50.

Looking at the Major League Baseball strike of 1994, this article proposes a simpler solution for parties to use in determining the existence of an impasse in bargaining.

Mandell, March. “Baseball’s First Free Agent: Nearly 100 Years Ago, Sports and Law Were Already Intertwined, and One of the First Legal Cases Involving a

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53. MD. CODE ANN., FIN. INST. § 13-723 (1992 & Supp. 1995) (abrogated Mar. 31, 1996).

54. 532 U.S. 504 (2001).

Baseball Player Unfolded Before the Courts of Pennsylvania.” *Pennsylvania Lawyer* 19 (May/June 1997): 16–18.

Mandell has written an interesting account of the case of Napoleon Lajoie,<sup>55</sup> baseball’s first free agent. Mandell also discusses some of the earliest sports lawyers, including John I. Rogers, William J. Turner, John G. Johnson, and Richard L. Dale who represented Lajoie and the National League.

Moorad, Jeffery S. “Major League Baseball’s Labor Turmoil: The Failure of the Counter-Revolution.” *Villanova Sports & Entertainment Law Journal* 4 (1997): 53–86.

The rise of the players’ association has done much to support the interest of players. This includes the attempt by baseball owners to illegally destroy the open market for free agents in the 1980s. While looking at the current status of labor relations, this article also discusses the history of labor relations in Major League Baseball.

Seabury, Susan H. “The Development and Role of Free Agency in Major League Baseball.” *Georgia State University Law Review* 15 (1998): 335–80.

An interesting look at the early development of the two-league structure, this article also looks at attempts by players to procure more favorable contracts. Additionally, *Flood v. Kuhn*<sup>56</sup> is discussed as are the events surrounding the 1994 strike.

Sica, Anthony. “Baseball’s Antitrust Exemption: Out of the Pennant Race Since 1972.” *Fordham Intellectual Property, Media & Entertainment Law Journal* 7 (1996): 295–387.

While much has been written about the 1994 Major League Baseball players’ strike, this article specifically looks at baseball in the context of employment relations. Sica also discusses the antitrust laws to which baseball has been bound and how professional football has resolved some of the same issues faced by baseball.

Spurr, Stephen J., and William Barber. “The Effect of Performance on a Worker’s Career: Evidence From Minor League Baseball.” *Industrial & Labor Relations Review* 47 (1994): 692–707.

Spurr and Barber present an interesting labor study in which they analyze the promotion, demotion, and turnover of pitchers in baseball’s minor leagues. Because of the difficulty of hard data on workers in other industries, the authors looked at baseball, an industry for which hard statistics are available.

Wassner, Brien M. “Major League Baseball’s Answer to Salary Disputes and the Strike: Final Arbitration: A Negotiation Tool Facilitating Adversary Agreement.” *Vanderbilt Journal of Entertainment Law and Practice* 6 (2003): 5–13.

This interesting note addresses the collective bargaining agreements that are increasing as a result of labor threats in professional sports. Looking at the beginnings of

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55. *Lajoie*, 13 Ohio Dec. 504.

56. 407 U.S. 258 (1972).

arbitration in the early 1960s, Wassner provides a detailed analysis of how the process has evolved into the interest arbitration and grievance arbitration used today.

Willis, Stephen L. "A Critical Perspective of Baseball's Collusion Decisions." *Seton Hall Journal of Sport Law* 1 (1991): 109–48.

Willis discusses the events that led to charges that owners had acted in collusion with regard to players who became free agents following the 1986 season. He presents alternative remedies to compensatory damages that could be awarded to players in these types of cases.

### *Large Market-Small Market Issues*

Day, Bryan. "Labor Pains: Why Contraction Is Not the Solution to Major League Baseball's Competitive Balance Problems." *Fordham Intellectual Property, Media & Entertainment Law Journal* 12 (2002): 521–82.

Day begins with several excellent examples of the problems faced by small-market teams. He addresses the correlation between overall revenue and team payroll with regard to success on the field. He also discusses the concept of contraction where teams that cannot garner support are simply eliminated.

Hamilton, Joshua. "Congress in Relief: The Economic Importance of Revoking Baseball's Antitrust Exemption." *Santa Clara Law Review* 38 (1998): 1223–54.

This comment discusses how eliminating Major League Baseball's exemption from federal antitrust laws would help to assuage the disparity between large-market and small-market teams. Furthermore, Hamilton asserts that removing the exemption would give baseball much needed stability and protect it from future work stoppages.

Martens, Kevin E. "Fair or Foul? The Survival of Small-Market Teams in Major League Baseball." *Marquette Sports Law Journal* 4 (1994): 323–73.

Using the 1965 move of the Milwaukee Braves from Milwaukee to Atlanta as an example, Martens discusses the ongoing debate regarding the survival of small-market teams. He discusses not only the importance of Major League Baseball to small-market cities, but also how the interest of franchise owners and encouragement of market competition can conflict.

Rosenthal, Jeffrey A. "The Football Answer to the Baseball Problem: Can Revenue Sharing Work?" *Seton Hall Journal of Sport Law* 5 (1995): 419–67.

The small-market, large-market disparity is an ongoing problem in Major League Baseball. This article looks at this problem in a historical context and examines considerations such as the effect of revenue sharing on fan interest. The author proposes a revenue-sharing plan that considers both economic and legal obstacles.

### *Liability*

Abrams, Roger I. "Two Sports Torts: The Historic Development of the Legal Rights of Baseball Spectators." *Tulsa Law Review* 38 (2003): 433–43.

Abrams looks at the history of spectator liability beginning with runaway chariots in the Roman Coliseum. This interesting article covers the first baseball tort as well as the first tort at the World Series, which occurred in 1903.

Gaspard, James G., II. "Spectator Liability in Baseball: Nobody Told Me I Assumed the Risk!!!" *Review of Litigation* 15 (1996): 229–50.

Each season spectators at baseball parks around the country are hit by foul balls. This note examines the many legal aspects of spectator liability in baseball.

Hylton, J. Gordon. "The Baseball Spectator Injury as a Case of First Impression." *Tulsa Law Review* 38 (2003): 485–502.

Hylton looks at the evolution of the right of spectators to sue for injuries occurring at the ballpark. This article looks at the earliest cases and discusses why it was not until the second decade of the twentieth century that the issue of injuries due to foul balls was resolved by the courts.

Tierney, Ted J. "Heads Up!: The Baseball Facility Liability Act." *Northern Illinois University Law Review* 18 (1998): 601–17.

Historically, Illinois baseball fans hit by foul balls were unable to recover damages. In 1992 this changed when a fan successfully won his case against the Chicago Cubs. Illinois promptly passed the Baseball Facility Liability Act.<sup>57</sup> The article discusses why this act should be repealed.

### *Property Rights*

Adomeit, Peter. "The Barry Bonds Baseball Case—An Empirical Approach—Is Fleeting Possession Five Tenths of the Ball?" *Saint Louis University Law Journal* 48 (2004): 475–502.

While fans have always enjoyed the thrill of taking home a home-run ball from the ballpark, as increasing numbers of baseball records are broken, home-run balls and foul balls take on a value far beyond the sentimental. Adomeit discusses the case of *Popov v. Hayashi*<sup>58</sup> involving the ball hit by Barry Bonds for his record seventy-third home run.

Finkelman, Paul. "Fugitive Baseballs and Abandoned Property: Who Owns the Home Run Ball?" *Cardozo Law Review* 23 (2002): 1609–33.

By first looking at all of the possible owners of a coveted home-run ball, Finkelman sets the stage for a discussion of the law of abandonment and the common law of baseball. He then looks at two specific instances of home-run ball ownership: Mike Piazza and the Mets, and Barry Bonds' seventy-third home run.

Semeraro, Steven. "An Essay on Property Rights in Milestone Home Run Baseballs." *Southern Methodist University Law Review* 56 (2003) 2281–2300.

Addressing the ownership issue involved with milestone home-run balls, Semeraro refutes the theory that it is the fan who catches the ball who is the owner. He addresses both property and contract law issues, and the doctrine of accession.

Stoklas, Patrick. "*Popov v. Hayashi*, A Modern Day *Pierson v. Post*: A Comment on What the Court Should Have Done with the Seventy-third Home Run Baseball Hit by Barry Bonds." *Loyola of Chicago Law Journal* 34 (2003): 901–43.

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57. 745 ILL. COMP. STAT. 38/1 (2002).

58. No. 400545, 2002 WL 31833731 (Cal. Super. Ct. Dec. 18, 2002).



This comment looks at the theory of acquisition by capture as originally developed in the case of *Pierson v. Post*.<sup>59</sup> Applying this legal theory to current case law, the comment also looks at how the theory of acquisition was applied in the case of *Popov v. Hayashi*,<sup>60</sup> which resolved the dispute over ownership of the seventy-third home-run ball hit by Barry Bonds.

### *Race and Baseball*

Devine, James R. "The Racial Re-Integration of Major League Baseball: A Business Rather than Moral Decision; Why Motive Matters." *Seton Hall Journal of Sport Law* 11 (2001): 1–72.

While it has long been held that Branch Rickey's decision to integrate the Brooklyn Dodgers was driven solely by moral obligation, Devine offers another perspective with regard to this historic event. Examining integration in the context of history, Devine looks at the signing of Jackie Robinson by Rickey as a business decision rather than a decision driven by a moral obligation.

Kuziemko, Ilyana M., and Geoffrey C. Rapp. "Customer Racial Discrimination in Major League Baseball: Is There No Hope for Equal Pay?" *Texas Hispanic Journal of Law and Policy* 7 (2001): 119–40.

This article uses several mathematical tables to support its hypotheses about customer discrimination in baseball. Kuziemko and Rapp look at whether minority players are worth more to teams in cities with high minority populations, as well as the salaries of players in these cities.

Mathewson, Dennis. "Major League Baseball's Monopoly Power and the Negro Leagues." *American Business Law Journal* 35 (1998): 291–318.

Mathewson offers an interesting look at the demise of the Negro Baseball League, contending that the league folded for reasons unrelated to the integration of Major League Baseball. Among the reasons he suggests are weak contracts and monopoly over the markets by Major League Baseball.

Regalado, Samuel O. "Latin Players On the Cheap: Professional Baseball Recruitment in Latin America and the Neocolonialist Tradition." *Indiana Journal of Global Legal Studies* 8 (2000): 9–20.

While names like Sosa, Alou, and Galaragga are familiar to today's baseball fan, the importation of Latin American players has taken place since the 1930s. This article looks at the history of Latin American players coming to the United States, neocolonialism, and how baseball has acted much like other major industries in this regard.

Vargas, Angel. "The Globalization of Baseball: A Latin American Perspective." *Indiana Journal of Global Legal Studies* 8 (2000): 21–36.

Virtually every team in Major League Baseball has players from Latin America. This article, written by the president of the Venezuelan Baseball Players

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59. 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

60. *Popov*, 2002 WL 31833731.

Association, addresses the mistreatment by Major League Baseball of players from Latin American countries.

Williams, Jack F., and Jack A. Chambless. "Title VII and the Reserve Clause: A Statistical Analysis of Salary Discrimination in Major League Baseball." *University of Miami Law Review* 52 (1998): 461–527.

This statistical study looks at salary and racial discrimination in Major League Baseball. Reviewing rosters and revenues from the 1987–88 season, the authors conclude that there is strong evidence that the reserve system perpetuates discrimination based on race.

### *Reserve Clause*

Balfour, Alan, and Philip K. Porter. "The Reserve Clause in Professional Sports: Legality and Effect on Competitive Balance." *Labor Law Journal* 42 (1991): 8–18.

Balfour and Porter present evidence as to the impact of the reserve clause in maintaining competitive balance in the game. The article provides convincing evidence in support of its contention that the reserve clause should not be ruled illegal under the Antitrust Act.

### *Role of Agents*

Fehr, Donald. "Union Views Concerning Agents: With Commentary on the Present Situation in Major League Baseball." *Marquette Sports Law Journal* 4 (1993): 71–87.

Fehr discusses the role of agents in salary arbitration and provides background with regard to the evolution of this relationship. The article also examines how the players' union views agents and their involvement in salary arbitration and collective bargaining.

### *Salary Negotiation and Arbitration*

Abrams, Roger I. "Inside Baseball's Salary Arbitration Process." *University of Chicago Law School Roundtable* 6 (1999): 55–70.

After a brief discussion of the history of the salary arbitration process, Abrams addresses such issues as player performance.

Conti, Jonathan M. "The Effect of Salary Arbitration on Major League Baseball." *Sports Lawyers Journal* 5 (1998): 221–47.

Reviewing the history of salary arbitration in baseball, Conti does an excellent job of explaining the salary arbitration process and the controversy that surrounds it. Additionally, he explains how salary arbitration affects large- and small-market teams and explores alternatives to the current system.

Echevarria, J. Michael, and Christopher D. Cameron. "The Ploys of Summer: Antitrust, Industrial Distrust, and the Case Against a Salary Cap for Major League Baseball." *Florida State University Law Review* 22 (1995): 827–84.

The authors discuss the demands of baseball owners to institute a salary cap and the rebuttal by players that claims of financial woes on the part of owners are

akin to the cries of Chicken Little. The authors discuss both the Clayton Act<sup>61</sup> and the Sherman Antitrust Act<sup>62</sup> and contend that the demands by owners would have been declared illegal in almost any other industry.

Faurot, David, and Stephen McAllister. "Salary Arbitrations and Pre-Arbitration Negotiation in Major League Baseball." *Industrial and Labor Relations Review* 45 (1992): 697–710.

Using two primary assumptions, Faurot and McAllister provide an in-depth look at baseball salary arbitration. The authors consider the importance of final offers in pre-arbitration negotiation and the risk neutrality assumption in conjunction with the arbitrator exchangeability hypothesis. They also discuss the Major League Baseball arbitration procedure.

Gillard, John P., Jr. "An Analysis of Salary Arbitration in Baseball: Could a Failure to Change the System be Strike Three for Small-Market Franchises?" *Sports Lawyers Journal* 3 (1996): 125–40.

Gillard provides an insightful look at the large-market, small-market disparity that exists in Major League Baseball. He points out that revenue problems and salary arbitration can be traced back as far as 1898 when Cy Young played for the Cleveland Spiders.

Gould, Mark T. "Now Wait a Minute, Casey: Baseball and the Salary Cap in Light of *NBA v. Williams*." *Entertainment & Sports Lawyer* 13 (Spring 1995): 9–11.

At issue in most grievances that arise in Major League Baseball is money. This article looks at the issue of salary caps in baseball in relation to the NBA and the case of *National Basketball Ass'n v. Williams*.<sup>63</sup>

### **Taxation**

Green, Richard E. "The Taxing Profession of Major League Baseball: A Comparative Analysis of Nonresident Taxation." *Sport Lawyers Journal* 5 (1998): 273–301.

While most people would agree that professional baseball teams bring revenue to the cities where they are located, municipal governments continue to look for additional ways to generate revenue. Taxes, of course, are one way for governments to raise additional funds. This article discusses the practice of taxing the well-paid professional athlete who is not a resident of the state where the professional sport team is located.

Joannou, Doufekias. "The IRS Gets Its Money When You Do: FICA and FUTA Taxation in the *United States v. Cleveland Indians Baseball Co.*" *Tax Lawyer* 55 (2001): 319–27.

When a major league arbitration panel found that the Major League Baseball clubs had violated the collective bargaining agreement with regard to bidding on

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61. Ch. 323, 38 Stat. 730 (1914) (codified at 15 U.S.C. §§ 12–27, 44, 29 U.S.C. § 52).  
62. Act of July 2, 1890, ch. 647, 26 Stat. 209.  
63. 45 F.3d 684 (2d Cir. 1995).

free agents, the resulting settlement called for each club to pay into a settlement fund. This article deals with a Supreme Court decision<sup>64</sup> involving the Cleveland Indians and the payment of taxes on back wages.

Newkirk, Stephanie. "Foundation's Ownership of Professional Baseball Team is Fair Play Under I.R.C. Section 501(c)(3)." *University of Missouri Kansas City Law Review* 65 (1996): 263–302.

This article looks at the tax ramifications of the transfer of the Kansas City Royals from private ownership to the Greater Kansas City Community Foundation, specifically considering the charitable status of the Royals as owned by a charitable organization.

Picher, Thomas C. "Baseball's Antitrust Exemption Repealed: An Analysis of the Effect on Salary Cap and Salary Taxation Provisions." *Seton Hall Journal of Sport Law* 7 (1997): 5–68.

Picher discusses antitrust law and its application to sports as well as the trilogy of Supreme Court cases that established baseball's antitrust exemption.

### *Women in Baseball*

McPhillips, Matthew J. "'Girls of Summer': A Comprehensive Analysis of the Past, Present, and Future of Women in Baseball and a Roadmap to Litigating a Successful Gender Discrimination Case." *Seton Hall Journal of Sport Law* 6 (1996): 301–39.

With the popularity of the movie *A League of Their Own*,<sup>65</sup> the role of women in professional baseball has been brought to the forefront. This comment looks at the strides women have made in the sport while also acknowledging the glass ceiling that continues to slow further progress.

### *Miscellaneous*

Ham, Eldon. "Aside the *Aside*: The True Precedent of Baseball in Law; Law, the Residue of Luck—or, Who's *Not* on First?" *Marquette Sports Law Review* 13 (2003): 213–21.

This is a brief and entertaining article on the common law, luck, and baseball and the law. Ham looks at baseball and the law in a historical context and includes a review of the origins of baseball writing in American law.

Jarvis, Robert M. "Babe Ruth as a Legal Hero." *Florida State University Law Review* 22 (1995): 885–97.

This article discusses the two reported cases in which Babe Ruth was a party, as well as other cases that have mentioned Ruth. Also discussed are those cases where judges have made references to Ruth in their opinions. The article also discusses scholarly references that mention the Sultan of Swat.

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64. United States v. Cleveland Indians Baseball Co., 532 U.S. 200 (2001).

65. A LEAGUE OF THEIR OWN (Columbia Pictures 1992).