Law and the Business of Baseball
Judge Louis H. Schiff, adjunct professor
Hamline University School of Law
Saturday, July 20, 2013 "Tom Kelly Room", Target Field; 8:00 am – 3:45 pm
Sunday, July 21, 2013, Hamline University School of Law, Courtroom; 8:00 am – 3:45 pm
One academic credit

Course Description:

By looking through the lens of baseball, this course will explore the dynamic relationship baseball and law have enjoyed for more than 180 years. Baseball is a highly legalistic game which involves much more than just the two teams playing. Participants will study the origins of the game and how the rules of baseball parallel statutes. Baseball is more than just the national pastime. It is a business that affects the nation.

A close examination will be given as to the role attorneys have played in the formation of organized leagues and the roles they have played in labor and management. Particular attention will be dedicated to reading of cases involving the rights of owners and players to enter into contracts; the power of the baseball commissioner; the integration of baseball; litigation regarding ownership of balls and bats that have made their way into the stands; litigation arising under tort law for the responsibility of team owners; litigation over baseball memorabilia; and how baseball rules and gamesmanship teach players and fans the nature of judicial interpretation and function.

An important note from your instructor:

This is baseball, so it will be fun! Take your time and explore each inning. Read the mandatory material, then go back, and read the suggested material. Spend at least 1 hour per inning reading the mandatory material. Some innings may take less time, some may take more time; just like real baseball --- there is no clock! Your reading needs to take place before the course. (This is less time than you would likely spend in a one credit course spread over a semester). The suggested material will enable you to take a deeper look and gain a greater understanding of each topic. Many of the cases are quick reads. I have spent hundreds of hours reading and gathering materials for this course. I cannot cover every aspect of law and baseball in a two-day program. It is possible, depending on class discussions, not every inning will be covered. This program is just the start of a "conversation" we will have at Hamline for years to come. Like in any team sport, the more prepared you are, the better this course will be for all! You are invited to wear your favorite baseball regalia! Play ball!

Text: (required)

Legal Decisions that Shaped Modern Baseball (**LDSMB**), Patrick J. Thorman, McFarland & Company, Inc, (2012).

Preparation for the course:

Course participants must have read the assigned material marked **mandatory**, **prior to class**, in order to ensure and engage in a proper learning environment. Students are strongly encouraged to read the suggested readings and view the suggested films. Please make sure to have access in class (paper or electronic) to the mandatory readings.

Attendance: Because this course is compressed into two days, attendance is required. Lack of attendance will result in a grade of F. If you will be unable to be in attendance for the entire course, please contact me to discuss the feasibility of you remaining enrolled in the class.

Grades and original paper:

Your grade is based on an original paper of your own which is due no later than 11:50 pm CDT, **Monday, August 12, 2013.** Because there are only 22 days between the ending of the class, and the due date of your original paper, it is strongly recommended that you begin to **start your research and begin your rough draft of your original paper before the course begins.** This course has been posted on the Hamline – TWEN web pages. Links to the course material can be found on the Law and the Business of Baseball page.

The love of baseball and strong writing skills are important. Papers **must** be submitted electronically through the Hamline anonymous grading system. Your paper should reflect your personal interest and be based on an aspect of Law and the Business of Baseball. The paper **must** draw on the theoretical materials presented in the course readings, class discussion, as well as outside research such as case law, books, journal articles or law review articles. The paper **shall** be between 12 and 15 double-spaced pages, including **mandatory** footnotes, and bibliography. Students **must** use Times New Roman 12 point type. Final graded papers will be returned to the Office of the Registrar and will be disposed of if not picked up after 1 year.

The Lineup:

FIRST INNING: Base ball before it was a game. A look at base ball from the 1700's through the first professional team in 1869, and just who invented this game.

Mandatory reading: "The 'Secret History' of Baseball's Earliest Days," Fresh Air NPR, March 16, 2011, http://www.npr.org/2011/03/16/134570236/the-secret-history-of-baseballs-earliest-days.

Suggested reading: Chapters 1 and 2, "Baseball in the Garden of Eden, The Secret History of the Early Game", by John Thorn, Simon & Schuster (2011).

Suggested viewing: "Baseball, Inning One: Our Game," 1994, by Jeffrey C. Ward and Ken Burns, The Baseball Film Project, Inc.

SECOND INNING: An early study of the Reserve Clause.

Mandatory reading: LDSMB, Chapter 2 and Chapter 3; <u>Metropolitan Exhibition Co. v Ward</u>, 24 Abb. N. Cas. 393 (1890) 9 N.Y.S. 779; <u>Philadelphia Ball Club v. Lajoie</u>, 58 L.R.A. 227 (1902) 202 Pa. 210, 51 A. 973, 90 Am.St.Rep. 276; and <u>Federal Baseball Club of Baltimore</u>, <u>Inc. v National League of Professional Baseball Clubs</u>, 259 U.S. 200 (1922).

Suggested reading: *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v National League of Professional Baseball Players,* by Samuel A. Alito, Jr. 9/22/09 Baseball Res. J. 86, 2009 WLNR 26741551, Baseball Research Journal, September 22, 2009, Volume 38; Issue 2.

THIRD INNING: Black Sox scandal and the early power of the baseball commissioner. The 1919 World Series, in which 8 members of the Chicago White Sox were alleged to have intentionally lost, is considered by most baseball historians to be the biggest scandal in base

history. How was the case handled in the courts and through the Office of the Baseball Commissioner?

Mandatory reading: LDSMB, Chapter 5.

Suggested reading: "The Black Sox Scandal: An Account," by Douglas Linder (2010) http://law2.umkc.edu/faculty/projects/ftrials/blacksox/blacksoxaccount.html and "This is My Story of the Black Sox Series," by Arnold (Chick) Gandil, 9/7/1956, Sports Illustrated, http://sportsillustrated.cnn.com/vault/article/magazine/MAG1131689/index.htm.

Suggested viewing: "Eight Men Out," 1988, by Eliot Asinof and John Sayles, Orion Pictures.

FOURTH INNING: The Business of Baseball. A Minnesota Twins representative will discuss legal ramifications of the ownership and management of a professional baseball team. **Suggested reading:** "*The Business of Baseball*", by Edward Mott Woolley, July, 1912, McClure's Magazine, http://www.unz.org/Pub/McClures-1912jul-00241.

If a representative of the Twins is not available, this inning will discuss the appointment of Judge Kennesaw Mountain Landis as the first commission of baseball. Was the appointment of a lawyer as commissioner of America's Pastime good for baseball?

Suggested reading: "The Supreme Court (of Baseball), by Aaron S.J. Zolinsky, http://yalelawjournal.org/images/pdfs/1008.pdf.

FIFTH INNING: Jackie and Branch.

Mandatory reading: "Report of the Major League Steering Committee, For Submission to the National and American League at their Meeting in Chicago, 27th August 1946" signed by Commissioner Happy Chandler, read pages 18 – 20 re: "Race Question", http://libraries.uky.edu/forms/chandlerrpt.pdf.

Suggested reading: "Where Have you Gone, Jackie Robinson?: Integration in America in the 21st Century", by Kenneth L. Shropshire 38 S. Tex. L. Rev. 1043 South Texas Law Review October, 1997; "Does Baseball Deserve this Black Eye? A Dissent from the Universal Casting of Shame and Blame on Kenesaw Mountain Landis for Baseball's Failure to Sign Black Players before 1946". By Norman L. Macht, 6/22/09 Baseball Res. J. 26, Baseball Research Journal, Volume 38; "Segregated Baseball: A Kaleidoscopic Review: The Negro Leagues Excelled in a Divided Steven Racially County The by Goldman, US", http://mlb.mlb.com/mlb/history/mlb_negro_leagues_story.jsp?story=kaleidoscopic; "Integration of Negroes In Baseball," by Dan. W. Dodson, Journal of Educational Sociology, Vol. 28 No. 2 (October, 1954); and "Swinging for the Fences, Black Baseball in Minnesota," by Steven R. Hoffbeck, 2005, Minnesota Historical Society.

Suggested viewing: "42", 2013, written and directed by Brian Helgeland, Warner Bros. Pictures.

SIXTH INNING: Who owns the baseball?

Mandatory reading: LDSMB, Chapter 1; "Fugitive Baseball and Abandoned Property: Who Owns the Home Run Ball?" by Paul Finkelman, 23 Cardozo L. Rev. 1609 (2002); and "Must Not Keep Balls," N.Y. Times, 7/13/1907,

http://query.nytimes.com/mem/archive-

free/pdf?res=F30E13FE3C5A15738DDDAA0994DF405B878CF1D3.

Suggested reading: Alex Popov v Hayashi: Complaint and Restraining Order / Order to Show Cause.

http://fl1.findlaw.com/news.findlaw.com/cnn/docs/sports/ppvhyshi102401cmp.pdf; and http://company.findlaw.com/press-center/2001/barry-bonds-73rd-hr-baseball-restraining-order-and-original.html.

Suggested viewing: "Up for Grabs," 2004, by Michael Wranovichs, Laemmle/Zeller Films.

SEVENTH INNING: Foul balls, Flying Hotdogs and Broken Bats: Torts Come to the Ballpark. **Mandatory reading:** LDSMB, Chapter 12; and **Please read at least 2 cases before 1951 and 2 cases after 1951:** Crane v Kansas City Baseball & Exhibition Co., 168 Mo.App. 301 (1913) 153 S.W. 1076; Edling v Kansas City Baseball & Exhibition Co., 181 Mo.App. 327 (1914) 168 S.W. 908; Cincinnati Baseball Club Co. v Eno, 112 Ohio St. 175 (1925) 147 N.E. 86, 3 Ohio Law Abs. 164, 23 Ohio Law Rep. 88; Lorino v New Orleans Baseball & Amusement Co., 16 La.App. 95 (1931) 133 So. 408; Leek v Tacoma Baseball Club, 38 Wash.2d 362 (1951) 229 P.2d 329; Benejam v Detroit Tigers, Inc., 246 Mich.App. 645 (2001) 635 N.W.2d 219; Edward C. v City of Albuquerque, 148 N.M. 646 (2010) 241 3d 1086, 2010 -NMSC- 043, 82 A.L.R.6th 695; Coomer v Kansas City Royals Baseball Corp., --- S.W.3d ---- (2013) 2013 WL 150838; Martinez v Houston McClane Co., LLC, --- S.W.3d ---- (2013) 2013 WL 941799; and Rountree v Boise Baseball, LLC, --- P.3d ---- (2013) 2013 WL 646277.

Suggested reading: "Baseball Spectators' Assumption of Risk: Is It "Fair" or "Foul"?", by Gil Fried and Robin Ammon Jr., Vol. 13 Issue 1, Marquette Sports Law Review, 2002, http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw.

Eighth Inning: The Reserve Clause, Part II, and Collusion.

Mandatory reading: LDSMB, Chapter 9, Chapter 10 and Chapter 11; <u>Toolson v New York Yankees, Inc.</u>, 346 U.S. 356 (1953); and Flood v. Kuhn, 407 U.S. 258 (1972).

Suggested reading: 2012 – 2016 Major League Baseball's Basic Agreement, http://mlb.mlb.com/pa/pdf/cba_english.pdf; "The Empire Strikes Out: Collusion in Baseball in the 1980s". Beitler, Steve 1/1/07 Baseball Res. J. 582007 WLNR 27098578, Baseball Research Journal, January 1, 2007, Volume 36 University of Nebraska Press.

Ninth Inning: Baseball on the Sabbath, doctoring baseball cards, and PES. Legal issues in the name of the game.

Mandatory Reading: In Re Rupp, 33 A.D. 468 (1898) 53 N.Y.S. 927; Griffin v Brooklyn Ball Club, 68 A.D. 566 (1902) 73 N.Y.S. 864; Ontario Field Club v McAdoo, 56 Misc. 285 (1906) 107 N.Y.S. 295; People v Roach, 61 Misc. 42 (1908) 114 Y.S. 742; People v Ebbets, 36 N.Y.Crim.R. 117 (1917) 172 N.Y.S. 599; "Bill Mastro, accused of cutting famous Honus Wagner card, has plea agreement rejected," by Michael O'Keeffe, April 9, 2013, New York Daily News, http://www.nydailynews.com/sports/i-team/judge-tosses-mastro-plea-deal-article-1.1312029?print. The Office of the Commissioner of Baseball v Biogenesis of America, et al., filed March 22, 2013, 2013 WL 1173946 (Fla.Cir.Ct.).

Suggested reading: Mastro Criminal Complaint Filed by USDOJ: http://www.justice.gov/usao/iln/pr/chicago/2012/pr0725_01a.pdf;

Suggested viewing: "30 for 30 Shorts: *Holy Grail: The T206 Honus Wagner,*" (2013), ESPN Films, http://espn.go.com/video/clip?id=8952589, (time permitting this will be shown in class). MLB's Joint Drug Prevention and Treatment Program, http://mlb.mlb.com/pa/pdf/jda.pdf.

Extra Innings: Here are additional articles you will enjoy, if you have the time.

"Baseball and the Rule of Law Revisited," by Paul Finkelman, Thomas Jefferson Law Review, Vol. 25, No. 17, 2002.

"The Sport of Courts: Baseball and the Law," Davies, Ross E., Baseball Research Journal 9/22/09, Baseball Res. J. 59 Volume 38; Issue 2.

"My Ball: Who Owns the Cricket Ball Once it Crosses the Boundary?" by Geoff Ellwand, Australian and New Zealand Sports Law Journal (2009), http://www3.commonlii.org/au/journals/ANZSportsLawJl/2009/5.pdf

Class Schedule: (topics, times and order of topics subject to modification)

Day One: Saturday, July 20, 2013.

- 8:00 8:30 *Introduction.* Course explanation; introduction of instructor and students.
- 8:30 9:30 First Inning: Base ball before it was a game.
- 9:30 10:45 **Second Inning:** An early study of the Reserve Clause.
- 10:45 10:55 **Morning Break**
- 10:55 11:55 **Third Inning:** Black Sox scandal and the early power of the Commissioner.
- 11:55 12:55 **Lunch Break**
- 12:55 1:55 Fourth Inning: The Business of Baseball or Kennesaw Mountain Landis.
- 1:55 2:00 Stretch Break.
- 2:00 3:30 Fifth Inning: Jackie and Branch.
- 3:30 3:45 **Review of Day One:** Questions. Information for Day Two.
- 6:10 **Minnesota Twins v. Cleveland Indians** @ **Target Field,** optional, information on how to purchase tickets will be sent out under separate cover.

Day Two: Sunday, July 21, 2013.

- 8:00 8:10 *Introduction: Day Two*
- 8:10 9:25 Sixth Inning: Who Owns the Baseball?
- 9:25 9:35 Seventh Inning Stretch!
- 9:35 10:55 **Seventh Inning:** Foul balls, flying hot dogs and broken bats.
- 10:55 Noon **Eighth Inning:** The Reserve Clause, Part II and Collusion.
- Noon 12:50 Lunch Break
- 12:50 1:35 **Eighth Inning continued:** The Reserve Clause, Part II and Collusion or "The Umpireless" Baseball Game: Law and Society without arbiters (guest lecturer).
- 1:35 2:35 **Breakout Groups:** Rewriting the rules.
- 2:35 3:30 **Ninth Inning:** Crime and Punishment. Baseball on the Sabbath, doctoring baseball cards and PES. Legal issues in the name of the game.
- 3:30-3:45 **Review of Day Two.** Class Questions. Review of Final Paper. Instructor will stay after 3:45 to discuss individual questions regarding the course paper.

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