

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

BASEBALL AND THE RULE OF LAW

With

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And hosted by

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Program description

You've seen him many times on C-SPAN, now see him live! Come join Professor Paul Finkelman from Albany Law School as he presents his nationally famous class on "Baseball and the Rule of Law". Who says that NJ CLE can't be fun? Perfect for attorney baseball fans as well as sports and entertainment lawyers.

This video version of the live CLE offers 1.5 credits worth of overview of the intersection of law and baseball. Unlike our other video presentations, this lesson plan does not mirror the content of the video, as the video provides highlights of a wide-ranging live discussion that played out over the course of four hours.

I. Introduction

- **“In baseball you get to try and try again” – each game, each season, each at bat, each inning, each year**
- **Law is the same – you can try again**
- **There are two seasons for lawyers who are baseball fans**
 - **April – October – baseball season**
 - **October until when baseball picks up again – Supreme Court season**
- **Rhythms of baseball and the law shape our world**
- **“our modern legal culture” is tied to baseball – our national past time**

II. Baseball and the Legal Education of American Youth

- **Respect for judges and courts through watching baseball**
- **Watching baseball results in understanding the rules of law and respect for the legal system**
- **The judge of a baseball game**
- **Umpire makes a call**
- **Player may argue without expecting immediate results**
- **The call will not change**
- **the “rule of law” has been stated by the umpire’s call**
- **player argues not to change the current call but to hopefully bring the umpire’s attention to the issue for another play**
- **umpire may explain his call, i.e. why a strike**
- **ball player learns from the umpire’s call just as an attorney learns from a judge’s ruling**
- **player then knows what to expect from the next play, i.e. the strike zone is smaller or lower, etc.**
- **consistency and predictability are necessary parts of the umpire’s call, just as a judge’s rulings**
- **people learn from watching that it is ok to assert your rights and that even if you don’t win you still have that right**
- **players may anger the umpire and receive fine or suspension**
- **lawyers and litigants are required to respect the judge – contempt citations are issues to those that do not demonstrate this respect**
- **different umpires, just like judges, use different means to make their calls**
- **this illustrates that there are rules but they are subject to interpretation and flexible**

- **rule of law is the rule of judges who interpret – thus different outcomes depending on the judge**
- **baseball creates “players, fans, and citizens who accept the rule of law” by umpires**
- **baseball shows us that society has rules and laws but they are based on interpretations of umpires/judges**
- **legal interpretations are part of baseball and therefore we accept different interpretations of the law as well**

III. Baseball and American Legal Culture

- **in our society we look to lawyers and judges to resolve our problems both private and public**
- **The Mayflower Compact was a contract and a constitution**
- **The Declaration of Independence is a legal brief**
- **The Constitution is a political document**
- **Lawyers are pervasive throughout our history**
- **Baseball, therefore, is highly legalistic**
- **Elaborate rules**
- **Highly trained panel of judges/umpires to interpret rules**
- **Every pitch requires a ruling**
- **There is a ruling for every hit**
- **Each umpire has a jurisdiction**
- **“mini-Supreme Court” of umpires during the World Series**
- **Rules of baseball have developed like the common law – from experience not logic**
 - **Infield fly rule is an anti-fraud device**
 - **Ground rule double**
 - **Rules on fan interference**
 - **Distance from home to first**
 - **Height of pitcher’s mound**
- **Umpires interpret the rules, much like common law judges**
 - **Some umpires allow a higher, lower, or wider strike zone**
 - **Similarly some judges are more lenient, or more strict**
 - **Some judges allow attorneys leeway while others do not**
 - **Some umpires allow more leeway to complaining players or managers than others**
- **The umpire as a “cop on the beat”**
 - **When manager goes to mound for a time out and the umpire sits and waits to see what is going to happen**

- **Much like a police officer who feels it is necessary to step in, the umpire begins to walk to the mound and the crowd disperses**
- **Managers and players are like lawyers and litigants**
 - **Managers argue how the rule should be applied to the play**
 - **Managers may go by the strict language of the rules while the umpire/judge goes by the common law interpretation**
- **Ability to appeal**
 - **Umpires may reverse each other on whether a batter swung at the ball**
 - **Appeal is only allowed if the issue is brought to the umpire/judge's attention**
 - **The player must appeal the ruling before the next pitch or it is too late**
 - **Res judicata**
- **“Baseball is like a legal case”**
 - **No time limitations, unlike other sports**
 - **Each side gets to present its case (several times)**
 - **Time to approach the “bench”**
 - **Time for side bars**
 - **Time to talk to players/clients**
 - **Ball game can go as long as necessary for both sides to present their case**
- **Baseball and law have ethical standards**
 - **Disciplinary sanctions**
 - **Permanent disbarment or banishment**
 - **Must respect the call of the umpire = abide by rules of the judge**
- **The culture of baseball equates to the culture of the rules of law**
 - **Argue a call and appeal to another umpire**
 - **Accept the call and hope for a better outcome next time**
 - **Ability to argue or litigate comes from what we learned on the baseball field**
 - **No other game has as many rules**
 - **Learn to manipulate rules to our benefit**
- **Baseball has famous heroes who were also outlaws – used the rules to their advantage**
- **“stealing a base” – legal implications**
 - **Law of adverse possession – base is sitting in empty field and runner openly and notoriously takes possession of it**

- **“Pick off play” equates to evicting a trespasser – wandering in the base path away from where he is legally supposed to be**
 - **“runners loitering between bases can be arrested” and picked off and sent to the bench**
- **Base stealing is acceptable but stealing the game is different**
- **Commissioner of Baseball is a “judge in equity” not a common law judge – like a czar**

IV. Baseball, Legal Scholarship, and The Courts

- ***Federal Baseball Club of Baltimore v. National League* – first Supreme Court case about baseball**
 - **Baseball is not part of interstate commerce**
 - **Baseball is purely a state affair – exhibitions**
 - **Travel to other states is a “mere incident” to the game**
 - **Professional baseball is exempt from antitrust laws**
- **Baseball has remained exempt even though the Court’s decision was wrong**
- **Antitrust laws have been applied to contract negotiations**
- **The Court has yet to reverse the *Federal Baseball Club* decision – but why?**
- **Reluctant to undermine the “special status of the national past time”**

V. Baseball and Integration

- **Baseball began to integrate while the rest of the country was segregated**
- **1930s immigrants were able to play and to excel**
- **Jackie Robinson was hired by the Brooklyn Dodger in 1947**
- **Integration in baseball was not court ordered**
- **Cleveland Indians – Larry Doby and Satchel Paige**
- **Dodgers highed Roy Campanella**
- **Willie Mays**
- **Hank Aaron**
- **Integration of baseball was “doing well by doing good”**
- **Was integration a business decision or doing the right thing?**
- **Integration in baseball demonstrated the ability for integration to work in other aspects of American life, including military and education**
- **Baseball “forced” integration**

- **When Dodgers played (with Jackie Robinson), stadium was opened to black fans**
- **When Indians (with Larry Doby) traveled to Washinton, DC, the Hotel had to allow its first black guest because the team stayed there**
- **These victories were few but significant**
- **Since baseball was a “national sport”, its integration was more significant than the integration of other sports**
- **Integration was brought into American homes on television through the World Series**
- **Baseball taught racial harmony and team work**
- **Baseball allowed for individual excellence outside of team effort while still being part of a team**
- **Early black players exemplified the team effort while being individual heroes – demonstrating team spirit and individual effort**
- **Baseball was the first American institution to integrate after World War 2**
- **Between 1947 and 1953 blacks won Rookie of the Year 5 out of 6 times**
- **The next year, SCOTUS declared segregation in public schools unconstitutional**
- **Integration in baseball demonstrated that “social change can be brought about by private enterprise, as well as by courts or legislatures”**

VI. Inequality Off the Playing Field

- **Many owners opposed integration but in the late 1940s baseball was integrated**
- **Today many administrative offices of baseball teams remains segregated**
- **Racist statements from the front office of baseball teams**
- **Larger percentage of minority players than minority managers**
- **On the field race does not matter – percentage of minority players is near the same percentage in society, but not the same for management positions**
- **Different standard for white managers and black managers – white managers who do poorly go to other manager positions, not so with black managers who get no second chance**

- **Commissioner Selig has encouraged integration in the front offices but process is slow**

VII. Baseball, Law and the Twenty-First Century

- **Baseball remains the national game**
- **Sherman Act was to create a competitive market and prevent one player from becoming too dominant**
- **There is a movement within major league baseball to increase competition, including revenue sharing**
- **Antitrust exemption for baseball may be the key for other industries where competition is not possible and not in the best interest of consumers**
- **Baseball is the “perfect game for an age of growing international trade, commerce, and contact”**
- **Baseball brought to Hawaii by American sailors in 1860s, and to Italy and Korea by American soldiers in 1940s**
- **Baseball has grown in popularity in Japan, Mexico, Central America, and the Caribbean**
- **International appeal of the game**
- **Spreading into Europe**
- **European market would include cable television rights as well as the sale of hats, balls, and other memorabilia**
- **Baseball part of Olympics**
- **Professional baseball teams across the world**
- **Someday a truly World Series**

VIII. Baseball and Business Law

- **Baseball at the professional level is a business**
- **Teams are now owned by corporations and teams are being sold for hundreds of millions of dollars**
- **No longer a “hobby”**
- **Baseball is big business**
- **Baseball has created its own laws as a result of it becoming a business**
 - **Player status**
 - **Collective bargaining**
 - **Team mobility**
 - **The “ownership” of names of defunct teams**
- **Cases about baseball have been used to teach legal concepts – property and labor law**

- **The business of baseball has encouraged cities to update, renovate, or build new stadiums in order to keep their local teams happy – political and legal issues**
- **Economic future of baseball “tied to urban planning, state and national legislation and litigation”**

IX. A Few Final Issues

- **Steroids and Drugs Use in Baseball v. American Society**
- **Gambling in the World of Baseball**
- **Baseball, Technology, Juries & the Legacy of the 19th Century**
- **Baseball and the concept of objective truth in the court room**
- **Role Reversal – Baseball was built on the Rule of Law – and the Rule of Law was later influenced by baseball.**