Duck or Bleed: An Introspective Look at the “Baseball Rule” and Its Present Day Relevance to MLB

Robin Ammon, University of South Dakota
John Miller, Troy University
Ravan Kott, University of South Dakota

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Significance of Topic
It has been estimated that approximately 1,750 spectators are injured by foul balls at Major League Baseball (MLB) games each year. These numbers indicate that two fans are injured at every three games. This means more fans are injured by foul balls per three games than batters hit by a pitch (Brenton, 2016). The century-old “baseball rule”, established in 1913, is a legal standard used to protect teams from being sued for negligence (Wells v Minneapolis Baseball, 1913). The “baseball rule” states that teams are required to provide protective screening for as many fans as who desire such screening (Akins v Glen Falls, 1981). For decades the courts have found fans, who sit in dangerous areas of the ballpark, to have assumed the risk of injury from “open and obvious” risks such as foul balls and broken bats. MLB teams have used the “baseball rule” as a defense for decades and as a result fans have been very unsuccessful in spectator injury litigation (Fried & Ammon, 2002).

Review of Literature
Approximately one half of the states subscribe to the “baseball rule” or as it is sometimes termed the “limited duty” rule and it has become a controversial issue (Juliano & Healey, 2009-2010). As baseball has evolved, this piece of legislation has remained stagnant. For example, some courts have followed the precedent that facility owners have a duty to provide a screened section for those spectators who wish to be protected (Crane v. Kansas City Baseball, 1913). Other courts have ruled that ballpark owners must only provide enough screened seats for those spectators who desire such protection (Quinn v. Recreation Park Association, 1935). Other courts have found that team and facility owners must do both (Akins v Glen Falls, 1981). On the other hand, some fans do not want to sit behind protective netting. A recent survey found that fans do not want to pay high prices for a ticket on the lower level to watch a game through a screen (Nightengale, 2017). The respondents indicated an understanding of the inherent danger, but were willing to take the risk. They preferred an unimpeded view that offers an intimate environment (Nightengale, 2017).

The areas between first and third base lines and directly behind home plate are traditionally the areas in a stadium where the greatest likelihood of foul balls or thrown bats entering the stands exists. This location is often the most protected with most screened seats situated in that area (Fried & Ammon, 2002). However, an expert witness in Costa v Boston Red Sox (2004) testified the plaintiff had 1.07 seconds to react before being hit by a foul ball. As a result, spectators have minimal amount of time to react, providing they are paying attention to what is happening on the field. Thus, when fans are seated in unprotected seats significant injuries sometimes happen. In 2015, a woman at Boston's Fenway Park was struck in the head by a piece of a broken bat (USA Today, 2017). Recent examples of a gruesome injury occurred in July, 2017, an Aaron Judge foul ball, traveling at about 105 miles per hour, struck a fan in the head (USA Today, 2017). Finally, in September 2017 a two year old girl was hit in the head by a foul ball while attending a game at Yankees Stadium. She sat with her grandfather in unprotected seats behind the third base dugout. In most cases children are accompanied by adults and have no control over where they sit nor are they capable of defending themselves against a foul ball or broken bat (Epstein, 2017).

Clarity of Purpose
The purpose of this presentation is to address the concept of the “baseball rule” and its lack of relevance in today’s game. The rule was promulgated in the 20th century to protect teams and facilities, but the sport of baseball has changed. Teams are now focusing on the overall experience fans have at the ballparks. The advent of technology has become the driving force for change in the last decade; teams want to engage with fans through social media, apps
on their phones, on field promotions and interactions with their mascots. While fans enjoy these additional amenities they are distracted from what is happening on the field. One appellate court opined “mascots are needed to make money…but are not essential to the baseball game” (Lowe v California League of Professional Baseball, 1997). In addition the judges believed the mascot caused a distraction that was not an essential aspect of the game itself leading to a spectator’s eye injury. There seems to be a mixed message. On one hand the teams and owners encourage their fans to engage in offerings that distract the fans. However, once an injury occurs the teams and owners hide often behind the antiquated legislation known as the “baseball rule”.

Future Directions
In original baseball stadiums, the area behind home plate was called the “slaughter-pen” due to a lack of protective netting (Breton, 2016). However, protection for the fans has evolved. MLB took reasonable steps in 2015 to decrease potential foul ball injuries when they recommended each team extend their protective netting to 70 feet on each side of home plate for the 2016 season (Adelman, 2017). Each team chose to extend their protective netting to at least 70 feet, and 10 teams took extra precaution and extended their netting to the ends of each dugout (Nightengale, 2017). The Major League Baseball Players Association (MLBPA) are among the strongest supporters of extending protective netting in all stadiums. They have shown concern about spectator safety and keeping players from having to live with the tragedy of injuring someone when they cannot control it (Nightengale, 2017).

Quality of Conceptual Framework
Foul balls and broken bats are inherent to the game of baseball (Fried & Ammon, 2002) yet three specific groups have the ability to prevent injuries from occurring. The first involves state legislatures when they create laws. For example, the Illinois legislature put into effect a law regarding “foul ball” injuries. The Baseball Facility Liability Act (1993) was enacted to protect public or privately owned ballparks in Illinois from lawsuits resulting from unintentional injuries caused by foul balls. Colorado (1993), Arizona (1999) and New Jersey (2006) have also passed similar legislation. The second group is the courts and their interpretation of current laws can affect the future of baseball. For example, the courts could expand the current “baseball rule” to include the new netting recommendations advocated by MLB in 2015. The final group, Major League Baseball, may choose to implement policy and recommendations at all ballparks. An example would be if they were to require protective netting at all MLB parks (Breton, 2016). This presentation will address a number of modern options regarding the restructuring of the “baseball rule” and provide evidence of which choice promises to be the most realistic.

Contribution to the Body of Knowledge
The “baseball rule” has been used a defense in premises liability cases pertaining to foul ball injuries for over 100 years. Facility managers and owners are not required to screen the entire field in order to offer a duty of reasonable care. In fact, many patrons attending a baseball game prefer to sit in sections where no screen obscures the view (Wells v Minneapolis Baseball, 1913).

While spectators may generally accept the inherent dangers involved in a sporting event, they should assume the risk of injury as long as the risks are obvious. Facility owners are only required to have screening in the area where the danger is the greatest, traditionally behind home plate (Akins v. Glen Falls City School District, 1981). However, protected seats must be provided to spectators who request such specific seating for a regular season game (Lawson v. Salt Lake Trappers, 1995).

While numerous attorneys have stayed away from spectator injury cases for fear of conflicting with the "baseball rule" or assumption of risk doctrines, there might exist some opportunities to avoid these challenges. Using state legislatures, the judicial system as well as Major League Baseball regulations this presentation will demonstrate options allowing for more opportunities for settlement or cases being allowed to go the jury.