

# NOTHING BUT NET: IS THE “BASEBALL RULE” ABOUT TO CHANGE?

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On May 30, 2019, Chicago Cubs outfielder Albert Almora Jr. hit a line drive 106.3 MPH down the third base line and foul into the stands of the Houston Astros’ Minute Maid Park.<sup>1</sup> The ball took just 1.2 second to travel 158 feet where it struck a four-year-old girl.<sup>2</sup> Paramedics rushed her to the hospital.<sup>3</sup> Almora Jr. was visibly shaken up with tears in his eyes, and it took him a few moments to regain his composure and re-enter the batter’s box.<sup>4</sup> After the game, Almora Jr. told reporters, “Right now, obviously, I want to put a net around the whole stadium.” Cubs All-Star third baseman and former MVP and Rookie of the Year, Kris Bryant, told reporters after the game, “Let’s just put fences up around the whole field.”

This scary scene is not new to baseball. In 2017, a two-year-old girl was struck in the head by a foul ball at Yankee Stadium travelling 105 MPH causing multiple facial fractures. In 2018, a 79-year-old woman was struck in the head by

a foul ball at Dodger Stadium and she died four days later from acute intracranial hemorrhage due to blunt force trauma. In fact, analysis at Bloomberg in 2014 estimated that as many as 1,750 fans per year are injured by foul balls at Major League Baseball (MLB) games (this figure does not include the thousands of Minor League Baseball, college baseball, and other amateur leagues such as high school and Little League games per year). With the heightened media attention, will we see changes to the Baseball Rule to force baseball stadiums to increase the safety for its fans?

## THE BASEBALL RULE

The first safety net was erected behind home plate in 1879.<sup>5</sup> The first reported decision for a foul ball liability case came in Missouri in 1913: *Crane v. Kansas City Baseball & Exhibition Co.*<sup>6</sup> The same year, Minnesota decided another case: *Wells v. Minneapolis Baseball & Athletic*

*Association.*<sup>7</sup> Together, these cases became the foundation for the Baseball Rule, which posited professional baseball teams are not liable for injuries sustained by fans hit by bats or balls leaving the field of play if the team implemented minimal precautions to protect them from harm.<sup>8</sup> The Baseball Rule essentially holds stadium owners to a lower duty of care for the safety of fans compared to the reasonable duty of care owed by most property owners under the common business-invitee rule.<sup>9</sup>

Note that the Baseball Rule is different from the Assumption of Risk Doctrine. The Baseball Rule sets out the standard of care, while assumption of risk is an affirmative defense. The Baseball Rule lowers the standard of care for defendants who may ultimately win on a dispositive motion. Should the dispositive motion be defeated, the baseball stadium operator or team could then rely on the Assumption of Risk Doctrine in its defense of the claim.

## BASEBALL HAS CHANGED BUT THE BASEBALL RULE DOES NOT REFLECT THAT CHANGE

Baseball and baseball stadiums have seen tremendous change since the implementation of the Baseball Rule in 1913. Baseball players are bigger, stronger, and faster than ever before. Through June 3, 2019, MLB's StatCast recorded 1,020 line-drive foul balls with exit velocities 100+ MPH so far in the 2019 season.<sup>10</sup> Simultaneously, stadiums are shrinking the foul ball territory bringing fans closer to the game. Some calculations reveal fans today are sitting approximately 21% closer to the field than they were in 1920.<sup>11</sup> While fans are closer to the field, baseball stadiums are encouraging fans to take their eyes off the game and onto their smartphones to post pictures to their social media accounts using stadium promoted hashtags (e.g. #ThinkBlue at Dodger Stadium), offering free WIFI,<sup>12</sup> increasing the strength and speed of cellular data inside the stadiums,<sup>13</sup> and showing flashy interactive sequences on the big screen TVs surrounding the field.

With bigger, stronger players hitting harder foul balls into the stands that are closer than ever before while fans eyes are focused to their devices, MLB Commissioner Rob Manfred issued a recommendation to teams to extend their protective netting.<sup>14</sup> By the start of the 2018 season, all 30 teams expanded netting to the dugouts on either side of the field.<sup>15</sup> MLB acknowledges there is a problem. But is this enough to prevent change to the Baseball Rule? MLB hopes so.

Meanwhile, in Japan, where baseball is the most popular sport, every team has netting extending from foul pole to foul pole and signs are posted in the stands that graphically warn of the danger.<sup>16</sup> If a ball does clear the netting, ushers warn fans immediately with whistles and horns, something no MLB team does.<sup>17</sup> To satisfy those fans interested in catching foul balls,

Japanese teams offer "exciting seats," which are directly in the line of fire and each seat comes with a helmet and glove.<sup>18</sup>

## IS THE BASEBALL RULE ABOUT TO CHANGE?

With the recent spate of fan injuries, increased media scrutiny, and a growing voice among players to keep fans safe, MLB may have no choice but to increase fan safety by expanding safety nets farther down the foul lines. However, does this mean the courts will also begin to change the Baseball Rule? It is unlikely we will see wholesale change to the Baseball Rule, but some jurisdictions are interpreting the Baseball Rule like never before.

In 1997, a California Appeals Court allowed a claim against a minor league team, the Rancho Cucamonga Quakes, after a fan was struck by a foul ball while being distracted by the team's mascot, Tremor.<sup>19</sup> The court reasoned that mascots are not an integral part of the game and the team had a duty not to increase the inherent risks to spectators.<sup>20</sup> Furthermore, the Court held that whether a baseball stadium increased the inherent risks is an issue of fact to be resolved at trial.<sup>21</sup>

In 2005, the New Jersey Supreme Court applied traditional tort principles to the Newark Bears, an independent league team, for a fan injured by a foul ball while he was walking on the concourse.<sup>22</sup> That court drew a distinction between sitting in the seats and being anywhere else in the stadium. It held that as long as the fan is not in their seat, the proper standard of care is the business invitee rule and the stadium owner owes a duty of reasonable care.<sup>23</sup>

In 2010, a child's head was hit by a foul ball at an Albuquerque Isotopes minor league game.<sup>24</sup> The New Mexico Supreme Court adopted a "symmetrical" duty to be used for comparative negligence analysis.<sup>25</sup> It held that a spectator must exercise reasonable care to pro-

tect themselves from inherent risks and the stadium owner/occupant must exercise ordinary care not to increase that inherent risk.<sup>26</sup>

Furthermore, state legislatures are legislating spectator safety too. The Colorado Baseball Spectator Safety Act of 1993 set forth the Assumption of Risk Doctrine is not a complete defense for stadiums if the stadium "fails to make a reasonable and prudent effort to design, alter, and maintain the premises of the stadium in a reasonably safe condition relative to the nature of the game of baseball."<sup>27</sup>

## CONCLUSION

MLB is facing renewed challenges from fans, players, and the media to increase fan safety because of bigger, stronger, and faster players, fans sitting closer to the field, and a plethora of distractions encouraging fans to take their eyes off the game. With an average of 1,750 foul ball injuries per year, baseball stadium operators and insurers must plan for a future where the Baseball Rule is modified or abandoned, and fans can successfully bring tort claims. It is unknown when or if that day may come, but one thing is sure: players will continue to get stronger and faster, fan distractions will increase, and fans will continue to get injured by foul balls.



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<sup>1</sup> Neil Greenberg, *MLB's Netting Dilemma: With Current Standards, Danger is just Seconds Away*, THE WASHINGTON POST (June 5, 2019), [https://www.washingtonpost.com/sports/2019/06/05/mlbs-netting-dilemma-with-current-standards-danger-is-just-second-away/?utm\\_term=.7cfa25808ce7](https://www.washingtonpost.com/sports/2019/06/05/mlbs-netting-dilemma-with-current-standards-danger-is-just-second-away/?utm_term=.7cfa25808ce7).  
<sup>2</sup> Id.  
<sup>3</sup> Id.  
<sup>4</sup> Id.  
<sup>5</sup> J. Gordon Hylton, *A Foul Ball in the Courtroom: The Baseball Spectator Injury as a Case of First Impression*, 38 TULSA L. REV. 485, 485 (2003).  
<sup>6</sup> *Crane v. Kan. City Baseball & Exhibition Co.*, 168 Mo. App. 301, 153 S.W. 1076 (1913).  
<sup>7</sup> *Wells v. Minneapolis Baseball & Athletic Ass'n*, 122 Minn. 327, 142 N.W. 706 (1913).  
<sup>8</sup> Matthew J. Ludden, *Take Me Out to the Ballgame ... but Bring a Helmet: Reforming the "Baseball Rule" in Light of Recent Fan Injuries at Baseball Stadiums*, 24 MARQ. SPORTS L. REV. 123, 124 (2013).  
<sup>9</sup> Id.  
<sup>10</sup> Neil Greenberg, *MLB's Netting Dilemma: With Current Standards, Danger is just Seconds Away*, THE WASHINGTON POST (June 5, 2019), [https://www.washingtonpost.com/sports/2019/06/05/mlbs-netting-dilemma-with-current-standards-danger-is-just-second-away/?utm\\_term=.7cfa25808ce7](https://www.washingtonpost.com/sports/2019/06/05/mlbs-netting-dilemma-with-current-standards-danger-is-just-second-away/?utm_term=.7cfa25808ce7).

<sup>11</sup> Nathaniel Grow and Zachary Fligel, *The Faulty Law and Economics of the "Baseball Rule"*, 60 Wm. & Mary L. Rev. 59, 88 (2018).  
<sup>12</sup> Teena Maddox, *Field of Digital Dreams: Why MLB is Betting its Future on Big Data, Wi-Fi, Apps, and AR*, TECHREPUBLIC (October 26, 2017, 5:39 AM), <https://www.techrepublic.com/article/field-of-digital-dreams-why-mlb-is-betting-its-future-on-big-data-wi-fi-apps-and-ar>.  
<sup>13</sup> Corey Moore, *Dodger Stadium Gets \$100 Million Makeover with Better Cell Coverage, Bathrooms and More*, SOUTHERN CALIFORNIA PUBLIC RADIO (January 8, 2013), <https://www.scprr.org/news/2013/01/08/35558/dodger-stadium-getting-makeover>.  
<sup>14</sup> Paul Hagen, *MLB Recommends Netting Between Dugouts*, MAJOR LEAGUE BASEBALL (December 9, 2015), <https://www.mlb.com/news/mlb-issues-recommendations-on-netting/c-159233076>.  
<sup>15</sup> Tom Schad, *All 30 MLB Teams will Extend Protective Netting this Season*, USA TODAY (February 1, 2018, 9:45 AM), <https://www.usatoday.com/story/sports/mlb/injuries/2018/02/01/mlb-teams-extend-protective-netting-season/1086019001>.  
<sup>16</sup> Allen St. John, *Does Japanese Baseball have the Answer for MLB's Dangerous Foul Ball Problem?*, FORBES (September 30, 2017, 9:51 PM), <https://www.forbes.com/sites/allenstjohn/2017/09/30/does-japanese-baseball-have-the-answer-for-baseballs-dangerous-foul-ball-problem/#11014709829c>.

<sup>17</sup> Id.  
<sup>18</sup> Id.  
<sup>19</sup> *Love v. Cal. League of Prof. Baseball*, 56 Cal. App. 4th 112, 65 Cal. Rptr. 2d 105 (1997).  
<sup>20</sup> Id. at 120.  
<sup>21</sup> Id. at 123.  
<sup>22</sup> *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 185 N.J. 70, 73, 881 A.2d 700, 702 (2005).  
<sup>23</sup> Id.  
<sup>24</sup> *Edward C. v. City of Albuquerque*, 2010-NMSC-043, ¶ 1, 148 N.M. 646, 648, 241 P.3d 1086, 1088.  
<sup>25</sup> Id. at ¶ 4.  
<sup>26</sup> Id.  
<sup>27</sup> COLO. REV. STAT. § 13-21-120(5) (a) (2012).