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The Faculty Lounge

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The Baseball Rule

Today is Major League Baseball's [opening day](#), a tradition that dates back to the 19th century. But this season is unique because it will likely be safer for fans than any other in the sport's modern history.

In response to a [recommendation from the Commissioner's Office](#), all 30 Major League Baseball stadiums have installed [longer nets](#) to keep more foul balls out of the stands. Baseball acted in belated reaction to the fact that annually more than 1,700 spectators at major league games suffer injuries from errant bats and balls. Some of the injuries can be severe, including [shattered skulls and brain swelling](#).

The expanded stadium netting represents an important step forward in fan safety. However, the longer nets still do not protect all the dangerous seating areas. For example, the seats along the foul lines beyond the dugouts remain unprotected and vulnerable to line drives. Moreover, about [42 million fans](#) annually attend games at more than [200 Minor League Baseball stadiums](#), few of which have safety precautions to match those of Major League Baseball stadiums. The bottom line, therefore, is spectators at professional baseball games across the country still face the risk of injury from broken bats and foul balls.

Yet, as an [article](#) in yesterday's *New York Times* points out, almost every state extends to professional baseball teams broad immunity against lawsuits arising from spectator injuries caused by bats or balls. Beginning in the early 1900s, state courts adopted an "assumption of risk" doctrine that deprives fans of the right to sue teams for failing to keep them safe from foul balls and errant bats during games. As long as the teams adopt minimal safeguards, such as nets immediately behind home plate, they enjoy a remarkable degree of immunity from personal injury suits.

Contrary to popular belief, the immunity does not stem from the famous "watch at your own risk" disclaimer on the back of tickets but rather—as a Massachusetts court explained in [a 2004 case](#)—because the risk posed by balls and bats is "sufficiently obvious" that "a person of ordinary intelligence would perceive the risk." With a few notable exceptions, the courts for over 100 years have consistently employed the assumption of risk doctrine to protect professional baseball teams, even as the same judges have increasingly rejected the doctrine in other contexts.

The "[Baseball Rule](#)," as it is known, is therefore quite controversial. In a fascinating new article in the *William & Mary Law Review*, "[The Faulty Law and Economics of the 'Baseball Rule.'](#)" Prof. [Nathaniel Grow](#) and Zachary Flagel make a persuasive case against the Baseball Rule, applying the analytical tools of law and

economics to the problem of spectator injuries. Among other things, Grow and Flagel point out that in the cozy confines of modern baseball stadiums, fans sit [much closer to the action](#) than even 25 years ago. Equally important, modern players are [taller, heavier, and more powerful](#) than players of previous eras, when the Baseball Rule first developed. Consequently, foul balls and broken bats enter the stands today at a much greater velocity than they did decades ago. The heightened risk that 21st century baseball games pose to spectators is thus a simple and inescapable matter of physics.

Making matters worse, modern stadiums—overrun with scoreboards, light shows, mascots, loud music, gift promotions, and a relentless army of food and beer vendors—create almost constant distractions as a routine part of the fan experience, a far cry from the comparatively sedate spectator experience of the [Cy Young](#), [Babe Ruth](#), and [Joe DiMaggio](#) eras. Thus, by Major League Baseball's design, fans pay less attention to the action at the plate than ever before. The inevitable result is serious fan injuries from bats and balls.

Accordingly, Grow and Flagel argue that courts should impose much greater liability on baseball teams for spectator injuries, including ideally the adoption of a strict liability regime or at least an expanded definition of the “most dangerous area” at ballparks. They also sensibly advocate that the courts impose on baseball teams a duty to warn fans of the specific nature of the risk posed by each seating area.

Baseball would incur only modest costs from further enhancing fan safety, especially when viewed in the broader financial context. Major League Baseball's [annual revenues exceed \\$10 billion](#), a figure only surpassed in the sports industry by the National Football League's [\\$14 billion](#) in annual revenues. Baseball can easily afford to make stadiums safer for fans. As Grow and Flagel conclude, therefore, the time has come to force “teams to fully internalize the costs of the accidents their games produce.”

It's a very engaging and timely article, well worth reading regardless of your area of legal specialty. You don't even have to like baseball to enjoy the Grow-Flagel article.

But I must say, after reading the article, I'm definitely sitting high up in the second deck the next time I go to a Major League Baseball game.

Posted by [Anthony Gaughan](#) at 10:58 PM in [Law and Economics](#), [Sports](#) |