

FIU Law Review

Volume 13

Number 5 *Micro-Symposium: Infield Fly Rule Is in Effect: The History and Strategy of Baseball's Most (In)Famous Rule*

Article 13

Spring 2019

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Online ISSN: 2643-7759

Recommended Citation

Spencer W. Waller, *The Puzzle of the Infield Fly Rule*, 13 FIU L. Rev. 961 (2019).

Available at: <https://ecollections.law.fiu.edu/lawreview/vol13/iss5/13>

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THE PUZZLE OF THE INFIELD FLY RULE

Spencer Weber Waller*

Professor Wasserman clearly loves puzzles. He explores puzzles almost daily in the classroom and in his scholarship. He teaches civil procedure, evidence, and federal courts where he explores and explains the intricate choices lawyers and judges must make as litigation proceeds through the courts. As a scholar, he has explored such topics as when certain statutory requirements should be deemed jurisdictional or substantive, how much factual information must be plead in order to raise a “plausible” claim in a federal complaint, the possibility of standing without actual damages, and whether or how injunctions should be nation-wide in scope.¹ As a proud alum of Northwestern Law School, he would have enjoyed the late Professor Harry Reese who once asked me the puzzling question: “If I had a brother, would he like cheese?”²

From his earliest days as a law teacher, Professor Wasserman began to explore the puzzle of the infield fly rule. He joined a large body of otherwise sensible people who used the infield fly rule as a lens to explore the literal and metaphoric relationship between law and baseball. Professor Wasserman hits the nail on the head when he observes that attorneys revel in the Rule’s complexity and perceived incomprehensibility.³ I would suggest that the infield fly rule is thus the Rule Against Perpetuities of sports rules.⁴

Unlike the rest of us who occasionally dabble in law and baseball matters,⁵ Wasserman brings a more thorough scholarly perspective to the

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¹ It would not surprise me if Professor Wasserman also loved crossword puzzles and has jigsaw puzzles in process strewn throughout the house. This brief review will focus instead on the intellectual puzzles in Professor Wasserman’s life.

² The desired answer appeared to be “maybe.”

³ HOWARD M. WASSERMAN, *THE INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL’S MOST (IN)FAMOUS RULE 5* (2018) [hereinafter WASSERMAN, *INFIELD FLY*].

⁴ The Rule Against Perpetuities is “a common law property *rule* that states that no interest in land [or other property] is valid unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.” Legal Info. Inst., *Rule Against Perpetuities*, CORNELL L. SCH., https://www.law.cornell.edu/wex/rule_against_perpetuities (last visited Mar. 14, 2019). At one time, my estate plan complied with the rule against perpetuities having all trusts terminate twenty-one years after the death of the last surviving member of the 1969 Chicago Cubs or their issue alive at the time of my passing. I recommend such a clause to Professor Wasserman and all Cub fans in states that still impose the rule against perpetuities.

⁵ See generally *BASEBALL AND THE AMERICAN LEGAL MIND* (Spencer Weber Waller, Neil B. Cohen & Paul Finkelman eds., 1995); Neil B. Cohen & Spencer Weber Waller, *Taking Pop Ups Seriously: The Jurisprudence of the Infield Fly Rule*, 82 WASH. U. L. REV. 453 (2004).

history, rules, and policy of our national past time in his book-length treatment of the infield fly rule. He goes beyond his many articles and other writings about the infield fly rule to bring together insights from history, law, other sports, and a deep knowledge of the game to better understand the infield fly rule and how the rule and the game of baseball can be improved.

Wasserman proposes a four part “limiting rule” to define the essence of the infield fly rule and distinguish it from most other baseball rules and most rules in other professional sports. This limiting rule goes beyond prohibiting mere opportunism or unsporting like behavior and requires:

- 1) One side of play intentionally acts contrary to ordinary athletic expectations;
- 2) The play produces a one-sided, extraordinary, and inequitable cost-benefit disparity;
- 3) There is an extraordinary and one-sided disparity in the power of each team to control or influence the play; and
- 4) The combination of factors two and three gives the advantaged team the perverse incentive to act out the first part of the rule the vast majority of the time the game situation presents itself.⁶

Wasserman uses this limiting rule as his organizing principle for the book in discussing the infield fly rule’s history, justification, analogies in other baseball rules, analogies in other sports, and an empirical analysis of its application in nearly 2,000 instances in an eight year stretch of MLB (Major League Baseball) action. His account is fascinating, convincing, and all the more impressive given the effort that went into the empirical analysis. Bravo.

I end with a small challenge. My challenge is focus on real football (the international variety known in the US as soccer). I have no problem with Wasserman’s analysis of why the poorly understood soccer offside rule is not a limiting rule as he has defined it. However, there is a different rule of the beautiful game that shares most, if not all, of the characteristics of the infield fly rule as a limiting rule.

That is the no flopping (no diving/simulation) rule in the UK Football Association.⁷ This rule prohibits any attempt to deceive the referee, most commonly by feigning injury or pretending to have been fouled (i.e., the rule

⁶ WASSERMAN, *supra* note 3, at 11–12.

⁷ There is also a no flopping rule in the National Basketball Association. *NBA Announces New Anti-Flopping Rule*, NBA (Oct. 3, 2012, 1:25 PM), <https://www.nba.com/2012/news/10/03/anti-flopping-rule/>.

prohibits a player from feigning being unlawfully tripped, tackled, or injured by the other team). The point of such deception is to trick the official in awarding a free kick, penalty kick, or at a minimum extra time on the game clock. A violation is now subject to a two-game suspension if found by the official or an independent review panel after the match.⁸ This appears to meet all the criteria set forth by Professor Wasserman and should be the subject of similar scholarly attention and empirical analysis.

Let the debate begin. I hope that Professor Wasserman will join me in obsessing over the English Premier League,⁹ as well as Major League Baseball, and continue his terrific work on the relationship between law, rules, and sports.

⁸ Marcus Christensen, *FA to Introduce Retrospective Bans for Diving from Next Season*, THE GUARDIAN (May 18, 2017, 10:15 AM), <https://www.theguardian.com/football/2017/may/18/football-association-introduce-retrospective-bans-diving-feigning-injury-next-season>.

⁹ And the Tottenham Spurs, the Chicago Cubs of the EPL. #COYS.