### Interp

#### Business practices are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97 (KERRY LYNN MACINTOSH-Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline accessed online via KU libraries, date accessed 8/27/21)

These new and revised articles reflect a strong trend toward choosing default rules4 that codify existing business practices.5 [[BEGIN FOOTNOTE 5]] 5. In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-205(2). [[END FOOTNOTE 5]] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

### Baseball not a business

#### 1. for the purpose of antitrust, baseball isn’t a business

Davidson and Turmel 16 (Davidson, Dan; Turmel, Stacey. “STATE ANTITRUST IMMUNITY: DECONSTRUCTING THE PARKER DOCTRINE” , .Southern Law Journal; Edmond Vol. 26, Iss. 1, (Spring 2016): 1-18. Accessed online via KU libraries, date accessed 12/17/21)

The antitrust laws were enacted in the "Robber Baron" era in an effort to assure a more competitive national economy by barring various unreasonable restraints of trade. Over time a number of activities were exempted from antitrust coverage, some by statute and others by judicial opinions. For example, labor unions' and farm cooperatives2 were exempted by statute. Major league baseball was exempted by judicial opinion, the Court deciding that professional baseball was not a business enterprise, nor was it involved in interstate commerce.3 According to the Court, "personal effort not related to production is not a subject of commerce. That which in its consummation is not commerce does not become commerce among the states because... transportation [between the states] takes place."4

### Baseball exemption not a business practice

#### 2. baseball is an anomaly—there’s nothing else like it

Grow 10 (Nathaniel Grow, "Defining the Business of Baseball: A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption," U.C. Davis Law Review 44, no. 2 (December 2010): 557-624.

For nearly ninety years, professional baseball has had the unique distinction of being the only professional sport to enjoy a judicially created exemption from federal antitrust law. Under the exemption, the activities of both Major League Baseball ("MLB") - professional baseball's highest level of competition - and the lower ranked, socalled "minor leagues" are generally shielded from antitrust law. Originating from the United States Supreme Court's 1922 opinion in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,' the Court has affirmed baseball's antitrust exemption on two subsequent occasions: first in the 1953 case of Toolson v. New York Yankees, and later in the 1972 case of Flood v. Kuhn. In those opinions, the Supreme Court affirmed baseball's exemption on the basis of both stare decisis concerns and congressional inaction,' despite acknowledging that the exemption is an "aberration" and an "anomaly."'

#### That violates “practice”: it requires repeated and customary action as the usual mode—an outlier doesn’t constitute a practice

Ohio Court of Appeals 59 (YOUNGER-judge. Opinion in City of Defiance v. Nagel, 108 Ohio App. 119 - Ohio: Court of Appeals 1959, Google scholar caselaw, date accessed 8/25/21)

As used here, the noun, "practice," means an actual performance habitually engaged in; often, repeated, or customary action; usage; habit; custom; or the usual mode or method of doing something. Therefore, in this instance, the practice of doing something cannot be proved by the proof of or the admission of one single act. Criminal statutes and ordinances are to be strictly construed.

#### The reason the court excluded was due to baseball as America’s pastime and games as exhibitions—violates business

Barnett 10 (Larry D. Barnett- Professor, School of Law, Widener University, “ARTICLE: THE PUBLIC-PRIVATE DICHOTOMY IN MORALITY AND LAW”, 18 J.L. & Pol'y 541, 566. 2010. Lexis accessed online via KU libraries, date accessed 2/2/22)

To combine the above, a business is a recurring, 98 profit-seeking activity of a person (human being or entity). In addition, the society in which the activity occurs must identify the activity as a business rather than as a form of relaxation or a means of amusement. A business, consequently, has the purpose of obtaining an economic return and is an activity that society classifies as a business.

#### It doesn’t even extend to other sports—it’s literally only baseball

Rodenberg and Eagleman 11 (Ryan M. Rodenberg; Andrea N. Eagleman, "Uneven Bars: Age Rules, Antitrust, and Amateurism in Women's Gymnastics," University of Baltimore Law Review 40, no. 4 (Summer 2011): 587-606. Accessed online via KU libraries, date accessed 12/19/21)

The interaction between sports and antitrust began inauspiciously. In 1922, the Supreme Court granted Major League Baseball an antitrust exemption based on a finding that the interstate commerce aspects of the sport were merely incidental to the staging of professional ballgames.7 ' Although subsequently described as an "anomaly," 7 7 an "aberration confined to baseball,"" and a "derelict in the stream of law,"7 9 the 1922 Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs case has yet to be explicitly overruled by Congress or the Supreme Court.o Baseball's peculiar antitrust exemption did not extend to other sports, however. In International Boxing Club v. United States, the Supreme Court concluded that there was no unique aspect in sports meriting an across-the-board exemption from federal antitrust laws." After boxing was found nonexempt, other sports were similarly deemed subject to antitrust scrutiny, including basketball,8 2 football, hockey,84 golf,85 and tennis.86

#### The oddest exemption

Feldman 14 (Gabe Feldman, "A Modest Proposal for Taming the Antitrust Beast," Pepperdine Law Review 41, no. 2 (2014): 249-266. Accessed online via KU libraries, date accessed 12/19/21)

For nearly a century, the sports industry has been intellectual kryptonite for antitrust jurisprudence. Although sports leagues have not been granted blanket antitrust immunity,' courts have afforded them often-puzzling deference under the law. The most bizarre manifestation of this deference was Major League Baseball's anomalous antitrust exemption.2 Not far behind the much-ridiculed baseball trilogy, however, is the muddled, incoherent deference to the NCAA under section I of the Sherman Act.