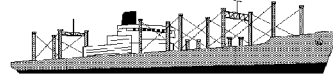
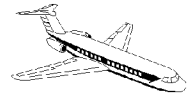




Rollin' On [®]



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THE INFIELD FLY RULE: UNDERSTANDING THE EVOLUTION OF COMMON LAW

Our American system of law and justice derives from English common law. The law has evolved over the centuries on a parallel track with changes in society in general. The changes can be glacial in time and quite opposite of today's world as experienced by our youthful population, where with cell phones, texting, email and the internet, everything is instant, a not-now-but-right-now world.

We should be cognizant of what drives those changes. Common law is judge-made and therefore evolves outside the laws that come from the legislature, or from the executive branch of government. These three branches of government work together but operate apart from each other.

In order to understand how changes might occur, we can take a look at a rule that pertains to the consummate American sport of baseball, which, however, has English roots and thus works well for our inquiry. Over the years, an infield fly rule has developed. The rule is lengthy so a quick though incomplete summary is provided: An infield fly is a fair fly ball (not including a line drive or a bunt) which can be caught with ordinary effort, when first and second, or first, second or third base, are occupied, before there are two outs. The umpire is required to immediately declare, while the ball is in the air, an infield fly for the benefit of the runners. If the ball is near the baselines, the umpire declares

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"Infield fly, if fair." The batter is then declared out. There is much more, too much to print here, but this is enough for our immediate purposes.

The purpose of the rule is to prevent someone from intentionally dropping the ball and thus doubling up a base runner who thought the ball would be caught.

Before going further, credit must be given to William Stevens, a former east coast attorney, now deceased, who discussed the rule in a published law review article.

As Mr. Stevens noted, the infield fly rule came about due to the confluence of four factors, the first of which was the sporting approach to the game of baseball: a person does not act in a manner so unexpected as to constitute trickery, and does not attempt to profit by his/her own unethical conduct. The common law follows the same concept of fair play, or due process.

The second factor is that this principle of fair play must be written so that it applies to those persons who may not otherwise buy into this code of conduct. The common law thus developed rules which allowed persons to enforce the code of conduct.

This brings us to the third factor, which empowered the referee to make a call that may not fit within a particular rule. This power was limited, but it was final and not subject to appeal. So it is with the judge, who is empowered to make findings of fact which are usually binding and not subject to review.

Finally, the fourth factor is that the rule was developed piece by piece over a long period of time. So it is with the common law, where it is developed one case at a time, with reliance upon precedent to address ever changing circumstances. These precedents can then in turn prompt legislative action, to further adjust or tweak the law to make it better.

Public \$\$ for private changes: Trying to understand

Notwithstanding earlier comments stated above, some changes seem to come from out of nowhere and thus hit like a ton of bricks. Witness the City of Portland's recent decision to include sex change operations as a part of the its medical benefits package for its employees. Many people are simply not wired to understand how a public entity would spend public money on a very expensive elective change. It seems to take the removal of preexisting conditions to an extreme. In the meantime, thousands of Oregonians cannot afford insurance for necessities.

So it is with the common law, which is usually based upon state law. There is also federal common law which applies in some instances, such as transportation (I obtained a favorable ruling in the mid-90's from the Oregon Court of Appeals on an interstate transportation, federal common law case).

Common law is deeply rooted in our society and is here to stay. Our life experiences make it grow.

That's it for now. Until next time, keep the cargo rollin'!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation