CURRENT CONTENTS

WEEKLY COVERAGE OF MORE THAN 700 CURRENT LEGAL AND LAW-RELATED JOURNALS

THIS ISSUE ALSO AVAILABLE AT:
http://law.wlu.edu/library/research/currcont/

A Service of the
WASHINGTON AND LEE LAW LIBRARY
Lexington, Virginia 24450
<table>
<thead>
<tr>
<th>title</th>
<th>volume</th>
<th>issue</th>
<th>date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brigham Young University Law Review</td>
<td>2004</td>
<td>1</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Campbell Law Review</td>
<td>26</td>
<td>1</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Connecticut Law Review</td>
<td>36</td>
<td>2</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>Duquesne Law Review</td>
<td>42</td>
<td>2</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>Family Advocate</td>
<td>26</td>
<td>4</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Harvard Women's Law Journal</td>
<td>27</td>
<td></td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Iowa Law Review</td>
<td>80</td>
<td>3</td>
<td>March 2004</td>
</tr>
<tr>
<td>Israel Law Review</td>
<td>36</td>
<td>1</td>
<td>Spring 2002</td>
</tr>
<tr>
<td>Journal of International Affairs</td>
<td>57</td>
<td>2</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Journal of International Arbitration</td>
<td>21</td>
<td>2</td>
<td>April 2004</td>
</tr>
<tr>
<td>Journal of Law, Economics &amp; Organization</td>
<td>20</td>
<td>1</td>
<td>April 2004</td>
</tr>
<tr>
<td>Law and Critique</td>
<td>15</td>
<td>1</td>
<td>2004</td>
</tr>
<tr>
<td>Loyola University Chicago Law Journal</td>
<td>35</td>
<td>2</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>Maine Law Review</td>
<td>56</td>
<td>1</td>
<td>2004</td>
</tr>
<tr>
<td>Natural Resources Journal</td>
<td>43</td>
<td>4</td>
<td>Fall 2003</td>
</tr>
<tr>
<td>Nebraska Law Review</td>
<td>82</td>
<td>2</td>
<td>2003</td>
</tr>
<tr>
<td>Northern Illinois University Law Review</td>
<td>24</td>
<td>2</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>St. Mary's Law Journal</td>
<td>35</td>
<td>3</td>
<td>2004</td>
</tr>
<tr>
<td>St. Thomas Law Review</td>
<td>15</td>
<td>4</td>
<td>Summer 2003</td>
</tr>
<tr>
<td>Stanford Journal of International Law</td>
<td>40</td>
<td>1</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>Taxes - The Tax Magazine</td>
<td>82</td>
<td>5</td>
<td>May 2004</td>
</tr>
<tr>
<td>Texas Law Review</td>
<td>82</td>
<td>4</td>
<td>March 2004</td>
</tr>
<tr>
<td>Thomas M. Cooley Law Review</td>
<td>20</td>
<td>3</td>
<td>2003</td>
</tr>
<tr>
<td>U.C. Davis Law Review</td>
<td>37</td>
<td>4</td>
<td>April 2004</td>
</tr>
<tr>
<td>UMKC Law Review</td>
<td>72</td>
<td>1</td>
<td>Fall 2003</td>
</tr>
<tr>
<td>University of Cincinnati Law Review</td>
<td>72</td>
<td>2</td>
<td>Winter 2003</td>
</tr>
<tr>
<td>Urban Lawyer</td>
<td>36</td>
<td>1</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>Whittier Law Review</td>
<td>25</td>
<td>3</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>William Mitchell Law Review</td>
<td>30</td>
<td>3</td>
<td>2004</td>
</tr>
<tr>
<td>Yale Law Journal</td>
<td>113</td>
<td>6</td>
<td>April 2004</td>
</tr>
</tbody>
</table>
ARTICLES

A Good Old Habit, or Just an Old One? Preferential Tax Treatment for Reorganizations
Tariv Brauner .................................................................................................................... 1

Copyright and Information Theory: Toward an Alternative Model of "Authorship"
Alan L. Durham .................................................................................................................. 69

Overoptimism and Overborrowing
Richard M. Hynes .......................................................................................................... 127

COMMENTS

Alternatives in Accretion: Why There Is Not Yet an Appropriate Solution to the Application of Accretion Law to Mineral Estates
Daniel K. Brough ............................................................................................................. 169

A Proposed Solution to Jury Confusion in Patent Infringement Cases Involving Means-Plus-Function Claims
Tony Caliendo .................................................................................................................... 209

Operation Executive Freedom (of Contract): Following the Executive's Fiduciary Obligation from Manges to Magruder in Mineral Leasing
John B. Fowles .................................................................................................................. 235

NOTE

The Power of the Bankruptcy Court to Enjoin Creditor Claims Against Nondebtor Parties in Light of 11 U.S.C. § 524(e): In re Dow Corning Corp.
Jason J. Jardine .................................................................................................................. 283
TABLE OF CONTENTS

ARTICLE

NORTH CAROLINA’S (F)(1) MITIGATING CIRCUMSTANCE: DOES IT TRULY SERVE TO MITIGATE? ................................................................. 1
Ashley P. Maddox

NOTE

THE IRRATIONAL USE OF RATIONAL BASIS REVIEW IN LAWRENCE V. TEXAS: IMPLICATIONS FOR OUR SOCIETY ....................... 21
Susan Austin Blazier

COMMENTS

CRIMINAL DEFENDANTS DEEMED INCAPABLE TO PROCEED TO TRIAL: AN EVALUATION OF NORTH CAROLINA’S STATUTORY SCHEME ........................................ 41
Jennifer L. Morris

Melissa K. Walker
ARTICLES

CONNECTICUT UNAUTHORIZED PRACTICE
Laws and Some Options for Their Reform .................. Quintin Johnstone 303

STRESS IN LAW STUDENTS: A COMPARATIVE STUDY OF FIRST-YEAR, SECOND-YEAR, AND THIRD-YEAR LAW STUDENTS .................. Nancy J. Soonpaa 353

I BELIEVED MY EMPLOYER AND DIDN'T SELL MY COMPANY STOCK: IS THERE AN ERISA (OR '34 ACT) REMEDY FOR ME? .................. Susan J. Stabile 385


"RETROACTIVITY": WHAT CAN WE LEARN FROM THE ODD CASE OF MICHAEL SKAKEL? ........ Lewis Kurlantzick 511

EXPRESSIVE ACTIVITY, TRUE THREATS, AND THE FIRST AMENDMENT .................. Jennifer Elrod 541

NOTES

A RIGHT TO CONTRACT FOR JUDICIAL REVIEW OF AN ARBITRATION AWARD: DOES FREEDOM OF CONTRACT APPLY TO ARBITRATION AGREEMENTS? .............. Milana Koptiovsky 609
The Archaeological Resources Protection Act—Twenty Five Years Later

Roberto Iraola .................................................. 221

In 1979, Congress passed the Archaeological Resources Protection Act ("ARPA") to protect archaeological resources and sites found on Indian and public lands and to promote the study and evaluation of these resources through increased cooperation between governmental authorities, the professional archaeological community, and private individuals. Now twenty-five years old, ARPA has been one of the principal federal laws used to protect archaeological resources. The article examines the few reported decisions which have interpreted some of the key criminal and civil penalty provisions under ARPA, as well as the application of the Sentencing Guidelines to criminal violations under the Act.

The Bill of Rights after September 11th: Principles or Pragmatism?

Christopher E. Smith ............................................. 259

Under the traditional rhetoric about the Bill of Rights and its importance for the maintenance of individual liberty and a democratic society, the document and its individual provisions are portrayed as embodying principles that must be respected and preserved in order to prevent the risk of excessive governmental power. By contrast, the assertion that rights can shrink and perhaps even disappear during a war or other emergency portrays a pragmatic view of rights that characterizes
them, in some sense, as luxuries that must be set aside during certain historical eras. The article addresses these competing perspectives on the Bill of Rights to examine their implications for law and public policy in a post-September 11 world.

Comments

**THE SARBANES-OXLEY ACT: HOW A CURRENT MODEL IN THE LAW OF UNINTENDED CONSEQUENCES MAY AFFECT SECURITIES LITIGATION**

*Kourtney T. Cowart* .............................................................. 293

**CRITIQUE OF THE JUVENILE DEATH PENALTY IN THE UNITED STATES: A GLOBAL PERSPECTIVE**

*Lori Edwards* ................................................................. 317

**BALANCING THE PROTECTION OF CHILDREN AGAINST THE PROTECTION OF CONSTITUTIONAL RIGHTS: THE PAST, PRESENT AND FUTURE OF MEGAN'S LAW**

*Maureen S. Hopbell* .......................................................... 331

Recent Decisions

**THE DUE PROCESS CLAUSE DOES NOT PROHIBIT THE MANDATORY DETENTION OF A CRIMINAL RESIDENT ALIEN PENDING DEPORTATION AND REMOVAL PROCEEDINGS: DEMORE V. HYUNG JOON KIM**

*Nathan Chase* ................................................................. 355

**A LAW SCHOOL'S NARROWLY TAILORED USE OF RACE IN ADMISSIONS DECISIONS, TO FURTHER A COMPELLING INTEREST IN OBTAINING THE EDUCATIONAL BENEFITS THAT FLOW FROM A DIVERSE STUDENT BODY, DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT: GRUTTER V. BOLLINGER**

*Lorrie Lee Cherillo* .......................................................... 375

**IN PROVING A PHYSICIAN'S NEGLIGENCE, RELIANCE ON THE DOCTRINE OF *RES IPSA LOQUIRITUR* MUST BE ACCOMPANIED BY EXPERT TESTIMONY REGARDING A PHYSICIAN'S APPLICABLE STANDARD OF CARE AND THE BREACH OF THAT STANDARD: TOOGOOD V. ROGAL**

*Justin J. Landfair* ........................................................... 395
Features

10 Going to Trial
Building your case with facts and focus
by Ronald W. Nelson

12 View From the Bench
by Howard I. Lipsey

15 Marshaling the Evidence
by Barbara Ellen Handschu & Terri L. Weiss
Retrieve Family Records...17
Client-Generated Documents...19

22 The Direct Examination of a Parent
by Gary N. Skoloff & Jonathan W. Wolfe

24 Dig Deep into Child Abuse Allegations
by Edith Croxen

28 Parenting Plans
How to settle on appropriate access
by Robin M. Deutsch & Arline S. Rotman

34 E-Visiting & Other Long-Distance Links
by M. Dee Samuels & Randall Friesen
Relocation Cases...36
My Long-Distance Life...37
by Nick Sheff

40 When Should Custody Orders Be Modified?
Flexibility versus stability
by Linda D. Ethod

42 Anticipating Abductions
Flight-risk factors and what can be done
by Stanley S. Cluwar
Flight-Risk Assessment Checklist...45

48 Seeking Appellate Review
Practice pointers for custody cases
by Donna Wickham Furth

abaonet.org/family/advocate/client.html

From the Editor
Trials and Tribulations
by Willard H. DaSilva

Tools of the Trade
Have You Googled Lately?
By Stephen J. Harhai

Hot Tips
Generating Referrals and Educating the Judge
by Charles H. Robertson & Randall M. Kessler

8 Fast Forward
The Client Scorecard
by Mark Powers

53 Bibliography
Custody Litigation

55 Section Highlights
Index to Advertisers...33

ABA SECTION OF FAMILY LAW
SERVING AS THE NATIONAL LEADER IN THE FIELD OF MARITAL AND FAMILY LAW
KNOWLEDGE • EXPERTISE • NETWORKING
FAMILY ADVOCATE (ISSN 0363-7103) is published quarterly by the Section of Family Law, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611. Periodicals postage paid at Chicago, IL, and additional mailing offices. Subscriptions for Section members ($16) are included in their dues. An attorney who is not a member of the association and requests Section membership will be furnished an application for Association membership as well. Institutions and non-ABA members may subscribe to Family Advocate for $39.50 a year, $44.50 outside the U.S. and its possessions. Per copy price for members and nonmembers is $12.50. Quantity discounts are available. Requests for subscriptions and back issues should be sent to Deborah J. Estabrook, Editor, 1600 S. Maa St., Racine, WI 53403. Reprint requests should be sent to Nicole Mazzio, ABA Rights and Permissions, 750 N. Lake Shore Drive, Chicago, IL 60611. Correspondence should be sent to Willard H. DaSilva, Editor, in Chief, 585 Stewart Ave., Garden City, NY 11530. Advertising Representatives: John M. O'Hearn, Advertising Sales Director, 312/988-6114; Anne Burton, Business Manager, 312/988-6115. Address all advertising orders, contracts, and materials to ABA Publishing Advertising-PPMA, 750 N. Lake Shore Drive, Chicago, IL 60611. Phone: 312/988-6115. Postmaster: Send address changes to Family Advocate, Central Records, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611. Neither authors' views nor advertisers' claims have been approved or endorsed by the ABA House of Delegates, the Board of Governors, the Family Law Section, or the Family Advocate Editorial Board; accordingly, they should not be construed as representing the policy or preferences of the ABA. © 2004 American Bar Association.

*Effective May 14, 2004, new ABA address: 321 N. Clark St., Chicago, IL 60601-4717.
Contents

Articles

Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for Both Occupational Segregation and Economic Analysis of Law
Scott A. Moss

Queering Legal Education: a Project of Theoretical Discovery
Kim Brooks
Debra Parkes

The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation
Beverly Balos

Pelvic Exam Prerequisite to Hormonal Contraceptives: Unjustified Infringement on Constitutional Rights, Governmental Coercion, and Bad Public Policy
Heather S. Dixon

A Return to Life: The Right to Identity and the Right To Identify Argentina’s "Living Disappeared"
Lisa Avery

Book Reviews

The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke. By Elizabeth Warren & Amelia Warren Tyagi

When Women Kill: Questions of Agency and Subjectivity. By Belinda Morrissey

Celebration 50 Articles

A Compilation in Commemoration of Celebration 50

The Changing Complexion of Harvard Law School
Justice Ruth Bader Ginsburg

Celebration 50: Keynote Address
Janet Reno

Celebration 50: What I Learned at Harvard Law School
Pamela Thomas-Graham
Guiding Principles for Picking Parents
   Elizabeth Bartholet 323

Same-Sex Marriage: An Issue of Constitutional Rights
   Not Moral Opinions
   Brenda Feigen 345

Reversing the Failure of the Foster Care System
   Betsy Krebs
   Paul Pitcoff 357

Two Harvard Women: 1965 to Today
   Mary J. Mullarkey 367

The Women of 1964: Paving the Way
   Judith Richards Hope 381

The Road Less Traveled: Becoming an Immigration Attorney
   Margaret D. Stock 387

Challenging the Hypothetical II: Leading the Way to Effective Diversity
   Jamienne S. Studley 397
TABLE OF CONTENTS

ARTICLES

ARTICLE III AND THE CAUSE OF ACTION

ANTHONY J. BELLIA JR. 777

ALTERNATIVE SANCTIONS AND THE FEDERAL TAX LAW: SYMBOLS, SHAMING, AND SOCIAL NORM MANAGEMENT AS A SUBSTITUTE FOR EFFECTIVE TAX POLICY

MICHAEL S. KIRSCH 863

THE UNIQUENESS OF FOREIGN AFFAIRS

JIDE NZELIBE 941

NOTES

AQUACULTURE AND POLLUTANTS UNDER THE CLEAN WATER ACT: A CASE FOR REGULATION

SEAN M. HELLE 1011

NO FAPE FOR CHILDREN WITH DISABILITIES IN THE MILWAUKEE PARENTAL CHOICE PROGRAM: TIME TO REDEFINE A FREE APPROPRIATE PUBLIC EDUCATION

WILLIAM N. MYHILL 1051

IOWA SCHOOL COUNSELORS HAD BETTER GET IT RIGHT!

SHERMAN P. WILLIS 1093
CONTENTS

Lionel Cohen Lecture 2002
Civil Liberties in an Age of Terrorism ............ David Pannick 1

Articles
The Legacy of Fiest Revisited - A Critical Analysis of the Creativity Requirement .................. Guy Pessach 19
Cyclical Market Power ............................. Amitai Aviram 103
Shock-Incarceration Programs in Israeli Sanctioning Policy: Toward a New Model of Punishment ............ Tomer Einat 147

Case Notes
The “Assigned Residence” Case: Kipah Ajuri et al v. IDF Commander in The West Bank et al ........................ Reuven (Ruvi) Ziegler 179

Book Review
Murder, Inheritance, and All That is in the Bible - Book Review of To Kill and Take Possession - Law, Morality and Society in Biblical Stories, Daniel Friedmann .......... Haim H. Cohn 197
Editors' Foreword

Contributors

BORDERS

1 The Challenge of Worldwide Migration
   Michael W. Doyle

7 Divided Lands, Phantom Limbs:
   Partition in the Indian Subcontinent, Palestine, China, and Korea
   Jonathan D. Greenberg

31 Mexican Hometown Associations and Development Opportunities
   Manuel Orozco, with Michelle Lapointe

53 Crossings: Mexico and New York
   Photo-essay by Michael Kamber

IDENTITY

63 The Imagination of Land and the Reality of Seizure:
   Zimbabwe's Complex Reinventions
   Stephen Chan and Ranka Primorac

81 The Language Divide: Identity and Literary Choices in Modern Tibet
   Patricia Schiaffini

99 Migration of the Russian Diaspora After the Breakup of the Soviet Union
   Timothy Heleniak

119 An Interview with Manthia Diawara
RIGHTS

129 Remembering the Country of Their Birth: Indigenous Peoples and Territoriality
Maivân Clech Lâm

151 Palestinians: The Land and the Law, An Inverse Relationship
Roger Heacock

ANDREW WELLINGTON CORDIER ESSAY

169 The Pamir Paradox: Water Insecurity and Hunger at the Source of Central Asia’s Rivers
Daniel J. Gerstle

BOOK REVIEWS

Edited by Edward Newman and Joanne van Selm
Reviewed by Matthew S. Winters

186 “Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict”
By Michael Fischbach
Reviewed by Andrea L. Stanton

190 “We, the People of Europe? Reflections on Transnational Citizenship”
By Étienne Balibar, translated by James Swenson
Reviewed by Ioannis N. Grigoriadis

192 “International Migration and Sending Countries: Perceptions, Policies and Transnational Relations”
Edited by Eva Østergaard-Nielsen
Reviewed by Sarah Dryden-Peterson
Journal of
INTERNATIONAL ARBITRATION

Volume 21 April 2004 Number 2

The Conduct of an International Arbitration: Do the Rules Make a Difference? Claudia Salomon 103
The Global Information Society and Online Dispute Resolution: A New Dawn for Dispute Resolution Mohamed Wahab 143
The State of International Commercial Arbitration in Southern Africa: Tangible Yet Tantalizing Progress David Butler 169
Applicable Time Zones for Deadlines in International Arbitration Proceedings Gerhard Wegen and Stephan Wilcke 205

NOTES AND CURRENT DEVELOPMENTS

Arbitration in Latvia: Urgent Need for Statutory Reform Ziedonis Udris and Inga Kalevskaja 211
Due Process in Arbitration: A Finnish Perspective Matti Kurkela 221
<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>JODI DEAN</td>
<td>Zizek on Law</td>
<td>1–24</td>
</tr>
<tr>
<td>EUGENE MACNAMEE</td>
<td>Girls and Boys</td>
<td>25–43</td>
</tr>
<tr>
<td>NATHAN MOORE</td>
<td>So You Love Me</td>
<td>45–64</td>
</tr>
<tr>
<td>JÖRN AHRENS</td>
<td>A Question of Species. Astonishment at the Beginning of the Human Being</td>
<td>65–78</td>
</tr>
<tr>
<td>MICHAEL PANTAZAKOS</td>
<td>The Unlying God: Law Inspired and Inspiring in Plato's Ion and St. Paul's Letter to Titus</td>
<td>79–90</td>
</tr>
<tr>
<td>Erratum</td>
<td></td>
<td>91</td>
</tr>
<tr>
<td>Instructions for Authors</td>
<td></td>
<td>93–97</td>
</tr>
</tbody>
</table>
CONTENTS

ARTICLES

The Politically Active Church ................. Douglas H. Cook 457

Valuation in Veterinary Malpractice .......... Rebecca J. Huss 479

Against Supercompensation:
A Proposed Limitation on the Land
Buyer’s Right To Elect Between
Damages and Specific Performance
as a Remedy for Breach of Contract .......... Jonathan Levy 555

“You Can’t Make Me!”:
How Expectations of Parental
Control over Adolescents
Influence the Law .......................... Judith G. McMullen 603

NOTE

Internet Filters and the First
Amendment: Public Libraries
After United States v. American
Library Association ......................... Leah Wardak 657
MAINE LAW REVIEW

CONTENTS

Volume 56 No. 1  2004

Symposium: Topics in Law and Technology

ANNUAL LAW AND TECHNOLOGY LECTURE
Freeing The Mind: Free Software and the Death of ........................................ 1
Proprietary Culture
Eben Moglen

Articles

Desperately Seeking Solutions: Using Implementation-Based Solutions for the Troubles of Information Privacy in the Age of Data Mining and the Internet Society ........................................................................................................ 13
Tal Z. Zarsky

An Economic Analysis of the Law Surrounding Data Aggregation in Cyberspace ..................................................................................................................... 61
Jonathan M.H. Short

Scientific Evidence and Forensic Science Since Daubert: Maine Decides to Sit Out the Dance ................................................................. 101
Thomas L. Bohan

Comment

Protective Claims for Refund: Protecting the Interests of Taxpayers and the IRS ........................................................................................................ 149

Case Note

Natural Resources Journal

Published four times per year by the University of New Mexico School of Law

Vol. 43 Fall 2003 No. 4

The isolation of scholars in various fields concerned with resources problems continues to be a principal impediment to progress....[R]esources problems are so complex that traditional lines of approach prove inadequate....Rarely do we find the work of the lawyer and the non-lawyer appearing side by side....The primary function of the [new] Journal is to meet this need....

from the Foreword of Volume 1, No. 1, 1961

INTRODUCTION ix

ESSAY

Some Modest Suggestions for Improving Implementation of the National Environmental Policy Act

Dinah Bear 931

ARTICLES

Calculating Wetland Mitigation Banking Credits: Adjusting for Wetland Function and Location

Matthew H. Bonds & Jeffrey J. Pompe 961

Public Goods Provision: Lessons from the Tellico Dam Controversy

Louis P. Cain & Brooks A. Kaiser 979

Moving from Conflict to Collaboration: Watershed Governance in Lake Tahoe

Mark T. Imperial & Derek Kauneckis 1009

The Economics of Total Maximum Daily Loads

Keith Keplinger 1057

Evaluating Incentive Mechanisms for Conserving Habitat

Gregory M. Parkhurst & Jason F. Shogren 1093
STUDENT WRITING

Hip Deep: A Survey of State Instream Flow Law from the Rocky Mountains to the Pacific Ocean

Jesse A. Boyd 1151

BOOK REVIEWS

The State of the Natural Resources Literature
Recent Developments in the Literature on Conflict Negotiation and Cooperation over Shared International Fresh Waters

Shlomi Dinar & Ariel Dinar 1217

Reviews

Silver Fox of the Rockies
By Daniel Tyler

Sandra K. Davis 1287

Ecological Climatology: Concepts and Applications
By Gordon B. Bonan

David S. Gutzler 1291

By Slavko Bogdanovic

Uday V. Joshi 1296

BOOKS RECEIVED

1299

INDEX VOLUME 43

1305
### TABLE OF CONTENTS

**Articles**

*“What’s Love Got To Do With It?”—
“It’s Not Like They’re Your
Friends for Christ’s Sake”:
The Complicated Relationship
Between Lawyer and Client*  
*Robert J. Condlin  211*

*Constitutional and Other Issues in the
Application of the Nebraska
Uniform Trust Code to
Preexisting Trusts*  
*John M. Gradwohl  312
William H. Lyons*

*Congress and Accounting Scandals: Is
the Pot Calling the Kettle Black?*  
*Cheryl D. Block  365*

*Should Marital Property
Rights Be Inalienable?
Preserving the Marriage
Ante*  
*Julia Halloran McLaughlin  460*

*Patient Advocacy and Termination
From Managed Care
Organizations. Do State Laws
Protecting Health Care
Professional Advocacy
Make Any Difference?*  
*Linda C. Fentiman  508*

**Note**

*The Frequency of Redistricting in
Nebraska and the Balance
Between One Person, One Vote
and Electoral Stability:
How Often Is Too Often?*  
*David J.A. Bargen  575*
Northern Illinois University
Law Review

Volume 24 Spring 2004 Number 2

ARTICLES

A Decade of Spouse-Based Immigration Laws: Coverture’s
Diminishment, but Not Its Demise
Janet Calvo .......................................................... 153

This article argues that legacies of coverture and the resulting legal inequality
of women remain in spouse-based immigration laws even after several
legislative attempts to address some of the underlying issues. First, there
has not been a rejection of the notion of spousal control that underlies
coverture. The power to petition, which controls the ability of a non-citizen
spouse to live and work and have custody of children in the United States,
is basically still the prerogative of a citizen or resident spouse. Second, the
mail-order bride business continues without significant limitation on the
ability of citizens or residents to dominate and abuse their immigrant
wives. Third, while some avenues of relief have been afforded to abused
spouses, these changes are insecure because the legislative goal of rejecting
domestic violence has subsequently disappeared from the legislative
consciousness leading to proposals that would undermine that objective.
Coverture in spouse-based immigration has therefore not met its demise
and the law continues to sanction the domination of husbands over wives
and the underlying gender inequality that this promotes.

The Illinois Estoppel Doctrine Revisited: How Promptly Must an
Insurer Act?
Stanley C. Nardoni and John S. Vishneski, III .................................. 211

This article discusses three recent decisions of the Supreme Court of Illinois
on the Illinois Estoppel Doctrine, which holds that an insurer that breaches
its duty to defend will be estopped from denying coverage in any action by
the insured to collect policy proceeds. The article explains how these
decisions resolve disputes about the scope of the doctrine but leave open a
crucial issue concerning an insurer’s ability to protect against estoppel by
promptly seeking a declaratory judgment as to its duties. The article
observes that Illinois Appellate Court decisions conflict on the standard
for testing the timeliness of such a declaratory action. The article evaluates
the approaches taken on that question and recommends a resolution. A
prior article by the same authors on the estoppel doctrine also appears as
an appendix.
COMMENTS

The Role of the IRA in Retirement Savings: A Critical Examination with Suggestions for Improvement
Rebecca C. Davenport ................................................................. 255

This comment scrutinizes the role IRAs play in retirement savings by presenting the current law in key areas with a focus on those aspects which call for improvement. Suggestions for improvement include eliminating the back-loaded Roth variety of IRA, encouraging lawmakers to make changes to promote IRA savings among low- and moderate-income individuals, and changing the taxation of IRA withdrawals. While the IRA is the focus of the comment, the suggestions for change are geared toward enhancing the overall retirement landscape.

Judicial Campaign Speech Restrictions in Light of Republican Party of Minnesota v. White
Julie Schuering Schuetz ............................................................. 295

In the United States Supreme Court decision Republican Party of Minnesota v. White, a five-to-four majority struck down a judicial campaign speech restriction designed to uphold the impartiality and integrity of the judiciary and left remaining restrictions in serious doubt. This comment examines judicial campaign speech restrictions and suggests, in light of White, alternatives for states with elected judicialities that wish to maintain the impartiality and integrity of their judicialities. After exploring the tension between a state’s compelling interest in maintaining an impartial judiciary and a judicial candidate’s First Amendment rights, one possible alternative for dealing with judicial campaign speech that presents itself is the unofficial campaign conduct committee. Through private group action, neither the integrity of the judiciary nor a candidate’s right to free speech will be compromised.

TWENTY-SECOND ANNUAL NORTHERN ILLINOIS UNIVERSITY COLLEGE OF LAW PRIZE MOOT COURT COMPETITION

Thirty-six students participated in the Twenty-Second Annual Northern Illinois University College of Law Prize Moot Court Competition. Each team of students submitted a brief, and participated in at least two rounds of oral arguments. The field of participants was narrowed through the quarter-final and semi-final rounds to two teams that participated in the final arguments. These students advanced to the Final Round based on brief scores and oral scores from the semi-final arguments. The briefs were judged separately and the best petitioner’s brief and best respondent’s brief are published in this issue of the NORTHERN ILLINOIS UNIVERSITY LAW REVIEW.
Best Petitioner’s Brief
    Patrice Koch and Kimberly Meyers ........................................... 353

Best Respondent’s Brief
    Laura Anderson and Andrea Donaldson ........................................ 383
ARTICLES

STRANDED IN THE WASTELAND OF UNREGULATED ROADWAY POLICE POWERS: CAN "REASONABLE OFFICERS" EVER RESCUE US?
Keith S. Hampton .................................................. 499

UNITED STATES v. BEAN: SHOVELING AFTER THE ELEPHANT?
Pannal Alan Sanders .................................................. 555

PUNISHMENT EVIDENCE: GRUNSFELD TEN YEARS LATER
Edward L. Wilkinson .................................................. 603

RECENT DEVELOPMENT

DECRIMINALIZING SEXUAL CONDUCT: THE SUPREME COURT RULING IN LAWRENCE v. TEXAS
Jessica A. Gonzalez .................................................. 685

COMMENTS

THE SEAT BELT DEFENSE IN TEXAS
Brian T. Bagley ..................................................... 707

FOR ANY REASON OR NO REASON AT ALL:
RECONCILING EMPLOYMENT-AT-WILL WITH THE RIGHTS OF TEXAS WORKERS AFTER MISSION PETROLEUM CARRIERS, INC. v. SOLOMON
Jason P. Lemons ..................................................... 741

FAMILY VIOLENCE PROTECTIVE ORDERS IN TEXAS AND APPELLATE REVIEW: ARE THEY MEANT FOR EACH OTHER?
Manuel C. Maltos ..................................................... 781
DOMESTIC VIOLENCE ISSUE

ARTICLES

Human Capabilities and Human Authorities:
A Comment on Martha Nussbaum's
Women and Human Development ...........................................Robin West 757

Marriage and Domestic Violence in the United
States: New Perspectives About Legal Strategies
to Combat Domestic Violence...........................................Lynn D. Wardle 791

The Battered Women Syndrome in Florida:
Junk Science or Admissible Evidence? .................Judge Jay B. Rosman 807

The Myth of Machismo:
An Everyday Reality
For Latin American Women...........................................Patricia M. Hernandez 859

Revisiting the Impact of California's
Mandatory Custody Mediation Program
on Victims of Domestic Violence
Through a Feminist Positionality Lens.................Lauri Boxer-Macomber 883
STANFORD JOURNAL OF INTERNATIONAL LAW
Winter 2004 Volume 40 No. 1

CONTENTS

ARTICLES

MODELS WANTED: THE SEARCH FOR AN EFFECTIVE RESPONSE TO HUMAN TRAFFICKING

Elizabeth M. Bruch 1

THE CONSTITUTION, RECONCILIATION, AND TRANSITIONAL JUSTICE: LESSONS FROM SOUTH AFRICA AND ISRAEL

Aeyal M. Gross 47

BETWEEN PROMISE AND PERFORMANCE: REVISITING STATES’ OBLIGATIONS UNDER THE AFRICAN HUMAN RIGHTS CHARTER

Nsongurua J. Udombana 105

NOTE

QUANDARY ON THE YALU: INTERNATIONAL LAW, POLITICS, AND CHINA’S NORTH KOREAN REFUGEE CRISIS

Benjamin Neaderland 143

BOOK NOTES 179
<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Code Sec. 41 Research Credit Final Regulations</td>
<td>An interview with Steve Arkin</td>
</tr>
<tr>
<td>31</td>
<td>Bonus Depreciation—New Regulations</td>
<td>By Charles J. Reichert</td>
</tr>
<tr>
<td>45</td>
<td>Avoiding Taxes by Avoiding Deductions</td>
<td>By Nicole E. Ballard, Cherie J. O'Neil and Donald P. Samelson</td>
</tr>
<tr>
<td></td>
<td><strong>Columns</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Tax Trends</strong></td>
<td>By Mark A. Luscombe</td>
</tr>
<tr>
<td></td>
<td><strong>International Tax Watch</strong></td>
<td>By Gregg D. Lemein and John D. McDonald</td>
</tr>
<tr>
<td></td>
<td><strong>Individuals and Passthrough Entities</strong></td>
<td>By Susan Kalinka</td>
</tr>
<tr>
<td></td>
<td><strong>Asset Protection, Privacy and AML Compliance</strong></td>
<td>By Charles M. Bruce, Lewis D. Solomon and Lewis J. Saret</td>
</tr>
</tbody>
</table>
Texas Law Review
Volume 82, Number 4, March 2004

ARTICLES

The Control of Wealth in Bankruptcy
Jay Lawrence Westbrook 795

Supercommons: Toward a Unified Theory of Wireless Communication
Kevin Werbach 863

The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed
William D. Henderson 975

NOTES

Database Protection v. Deep Linking
Andrew L. Dahm 1053

Vornado Hits the Midwest: Federal Circuit Jurisdiction in Patent and Antitrust Cases After Holmes v. Vornado
Gentry Crook McLean 1091
THOMAS M. COOLEY LAW REVIEW

Volume 20  2003  Number 3

KRINOCK LECTURE

MODERN SLAVERY AND THE PRODUCTION OF CONSUMER GOODS IN A GLOBAL ECONOMY: CONSUMER CHOICE—NOT LAW—WILL TRIGGER THE NEXT DIASPORA

Mary Ross Hendriks, LL.B  ......................... 429

ARTICLES

OUTDOOR SPORT SHOOTING RANGES UNDER THE ENVIRONMENTAL GUN—THE FINAL ASSAULT OR MERELY A MANAGEABLE DILEMMA?

David G. Cotter, J.D.  ......................... 453

A FAILING GRADE: THE COURT IN ZELMAN AND ITS MISSED OPPORTUNITY TO CLARIFY THE CONFUSING STATE OF ESTABLISHMENT CLAUSE JURISPRUDENCE

Simcha David Schonfeld, J.D.  ......................... 489

COMMENTS

STORING DNA SAMPLES OF NON-CONVICTED PERSONS & THE DEBATE OVER DNA DATABASE EXPANSION

Bonnie Taylor  ......................... 509

MICHIGAN KEEPS IT WITHIN LIMITS: RELOCATION NO MORE THAN "100 MILES"

Ericka Domarew  ......................... 547
CASENOTE

THERE'S A DRIVE . . . WAY BACK . . . IT MIGHT BE . . . IT COULD BE . . . ANOTHER LAWSUIT:
POPOV v. HAYASHI

Jason Cieslik ................................................. 605

DISTINGUISHED BRIEF

BRENT VEENSTRA v.
WASHTENAW COUNTRY CLUB

Charles A. Duerr, Jr., J.D. & Linda O. Goldberg, J.D. . . . 639
# TABLE OF CONTENTS

## ARTICLES

**Hairsplitting and Complexity in Conflict of Laws:**
The Paradox of Formalism ................. *Laura E. Little* 925

**The Use of Prior Convictions After Apprendi** .................. *Colleen P. Murphy* 973

**California's Three Strikes and We're Out:**
Was Judicial Activism California's Best Hope? ......................... *Michael Vitiello* 1025

## ESSAYS

**Rethinking Miranda:** Custodial Interrogation
As a Fourth Amendment Search and Seizure .......................... *Timothy P. O’Neill* 1109

**You Make Me [Sic]: Confessions of a Sadistic Law Review Editor** ......................... *J.C. Oleson* 1135

## COMMENT

**The Bankruptcy Exception to the Discharge of Tax Debts:** The "Willfulness" Clause ............ *Patrick T. Wong* 1147

## NOTE

**HUD v. Rucker, Unconscionable Due Process for Public Housing Tenants** .................. *Evi Schueller* 1175

© 2004 by the Regents of the University of California
ARTICLES

Who Decides? Privileging Public Sentiment About Justice and the Substantive Law................................. *Jeremy Blumenthal* 1

The Lawyer’s Role: Will Uncle Sam Want You in the Fight Against Money Laundering and Terrorism?................. *Rebecca Gregory* 23

Defensive Democracy: Is it Possible to Revoke the Citizenship, Deport, or Negate the Civil Rights of a Person Instigating Terrorist Action Against His Own State?........................................... *Emanuel Gross* 51

September 11th, Iraq, and the Doctrine of Anticipatory Self-Defense ......................................................... *Lucy Martinez* 123

COMMENTS

Eliminating the Rape-Kit Backlog: Bringing Necessary Changes to the Criminal Justice System ....................... *Katherine L. Prevost O’Connor* 193

Are You Prepared for this Legal Maze? How to Serve Legal Documents, Obtain Evidence and Enforce Judgments in China................................................................. *Fang Shen* 215

NOTES

“Silent Censorship”: The School Library and the Insidious Book Selection Censor ........................................... *Kristin Huston* 241

To Speak or Not to Speak: The Interplay Between Unfair Trade Practice and Securities Laws Poses Challenges for Corporate Speech................................................................. *Ellen Pantaenius* 257

The End of Fraudulent Solicitation - Really?: The Supreme Court in *Madigan v. Telemarketing Associates* Provides That Fraudulent Statements in Charitable Solicitation are not Protected Speech .......................................................... *Kent D. Wittrock* 275
TABLE OF CONTENTS

ARTICLES

The Irony of Securities Arbitration Today: Why Do Brokerage Firms Need Judicial Protection? ........ Barbara Black 415

Using Male Circumcision to Understand Social Norms as Multipliers ....................... Sarah E. Waldeck 455

The Sources of Federal Preclusion Law After Semtek ........................................ Patrick Woolley 527

Advice for Lawyers: Navigating the New Realm of Federal Regulation of Legal Ethics .......... Stephen Fraidin, Laura B. Mutterperl 609

Integrating Complementary and Alternative Medical Therapies in Conventional Medical Settings: Legal Quandaries and Potential Policy Models ........ Michael H. Cohen, Mary C. Ruggie 671

ROBERT S. MARX LECTURE

Corporate Governance and Ethics in a Post Enron/Worldcom Environment ............... E. Norman Veasey 731

COMMENTS AND CASENOTES


Rethinking the Sixth Circuit's Erosion of First Amendment Rights in Rose v. Stephens .... Whitney C. Gibson 767

The Effect of the Homeland Security Act on Online Privacy and the Freedom of Information Act .... Karen E. Jones 787

A True Hollywood Story: Alternative Distributions and the Ohio Supreme Court's Dardinger v. Anthem Blue Cross and Blue Shield ........................................ Jessica Nielsen 815

The NetSurfing Split: Restrictions Imposed on Internet and Computer Usage by Those Convicted of a Crime Involving A Computer ............................ Christopher Wiest 847
The Urban Lawyer

Contents

Volume 36
No. 1
Winter 2004

ARTICLES

1  Property Rights and Local Public Goods: Toward a Better Future for Urban Communities
   AMNON LEHAVI

99  Making the Continent Safe for Investors—NAFTA and the Takings Clause of the Fifth Amendment of the American Constitution
    EDWARD J. SULLIVAN AND KELLY D. CONNOR

     FRANCOIS QUINTARD-MORENAS

191 Permit Coordination Study by the Lincoln Institute of Land Policy
     PETER A. BUCHSBAUM
WHITTIER LAW REVIEW

VOLUME 25  SPRING 2004  NUMBER 3

© COPYRIGHT 2004 BY WHITTIER LAW REVIEW

ARTICLES

WHEN ORIGINALISM FAILS
William J. Michael .............................................. 497

GLOBAL RESPONSES AND RE COURSES TO TERRORISM
Edith Y. Wu ...................................................... 521

DOES MARRIAGE MAKE GOOD BUSINESS? EXAMINING THE NOTION
OF EMPLOYER ENDORSEMENT OF MARRIAGE
Lynne Marie Kohm .............................................. 563

NOTES AND COMMENTS

CONTENT OVER FORM: THE SHIFTING OF ADOPTION CONSENT LAWS
Karen D. Laverdiere .............................................. 599

ABSOLUTE MEDIATION PRIVILEGE: PROMOTING OR DESTROYING
MEDIATION BY REWARDING SHARP PRACTICE AND DRIVING
AWAY SMART LAWYERS?
Laura A. Miles ................................................... 617

THE HOMOSEXUAL POLICY IN THE MILITARY—WILL
LAWRENCE V. TEXAS OPEN THE CLOSET DOOR?
Keira A. Poellet .................................................. 645

WHEN CAN THE GOVERNMENT FORCE SOMEONE TO BE COMPETENT:
SELL V. UNITED STATES
Scott Difurth .................................................... 667
William Mitchell
Law Review

VOLUME 30 2004 NUMBER 3

ARTICLES

Citizen Soldiers Fighting Terrorism: Reservists' Reemployment Rights
Ryan Wedlund .......................................................... 797

Joint and Several Liability in Minnesota: The 2003 Model
Michael K. Steenson .................................................. 845

The Definitional Imbalance Between Copyright and the First Amendment
Travis J. Denneson ..................................................... 895

NOTES AND COMMENTS

Comment: Pulling the Lilly from the Pond? Minneapolis Wades into Domestic Partner Benefits Legislation Once Again
Chad Bayse ............................................................. 931

Comment: The Appearance of Impropriety: Making Agreements to Arbitrate in Health Care Contracts More Palatable
Kathrine Kuhn Galle .................................................. 969

Carl V. Nowlin ......................................................... 1001

Comment: Electronic Discovery Disputes: Will the Eighth Circuit Courts Move Beyond Ad-hoc Decision Making?
Lynn Jokela .............................................................. 1031
William Mitchell Law Review
Intellectual Property Law Writing Competition:
Student Article Winner

Note: How Much Do We Value Research and Development?:
Broadening the Experimental Use Exemption to Patent
Infringement in Light of Integra Lifesciences I, Ltd. v. Merck
KGaA
Kevin Sandstrom ........................................ 1059

Book Reviews

Why Death Is Different: Minnesota’s Experiment with
Capital Punishment
Steven Z. Kaplan ........................................ 1113

Constitutional Interpretation: Just Politics or Fidelity to the
Past?
Russell Pannier ........................................ 1125

The Emperor’s New Clothes: Cloaking and Disrobing the
Supreme Court in Carrese’s The Cloaking of Power
J. Scott Johnson ........................................ 1137

Copyright © 2004 William Mitchell Law Review

Member of the National Conference of Law Reviews
The Yale Law Journal
Volume 113, Number 6, April 2004

Contents

Article
The Two Western Cultures of Privacy:
Dignity Versus Liberty

James Q. Whitman 1151

Essay
Adverse Selection in Insurance Markets:
An Exaggerated Threat

Peter Siegelman 1223

Note
Taxing Political Donations:
The Case for Corrective Taxes in Campaign Finance

David S. Gamage 1283

Policy Comment
Security with Transparency:
Judicial Review in “Special Interest” Immigration Proceedings

Rashad Hussain 1333