CURRENT CONTENTS

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<table>
<thead>
<tr>
<th>Title</th>
<th>Volume</th>
<th>Issue</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Journal of Legal History</td>
<td>46</td>
<td>1</td>
<td>January 2004</td>
</tr>
<tr>
<td>Boston University Law Review</td>
<td>84</td>
<td>4</td>
<td>October 2004</td>
</tr>
<tr>
<td>Brooklyn Law Review</td>
<td>69</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Business Law Today</td>
<td>14</td>
<td>2</td>
<td>Nov./Dec. 2004</td>
</tr>
<tr>
<td>Catholic University Law Review</td>
<td>53</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Clearinghouse Review</td>
<td>38</td>
<td>5-6</td>
<td>Sept./Oct. 2004</td>
</tr>
<tr>
<td>Columbia Journal of Law and Social Problems</td>
<td>38</td>
<td>1</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Columbia Law Review</td>
<td>104</td>
<td>6</td>
<td>October 2004</td>
</tr>
<tr>
<td>Cumberland Law Review</td>
<td>34</td>
<td>3</td>
<td>2003-2004</td>
</tr>
<tr>
<td>Defense Counsel Journal</td>
<td>71</td>
<td>4</td>
<td>October 2004</td>
</tr>
<tr>
<td>Denver University Law Review</td>
<td>81</td>
<td>2</td>
<td>2003</td>
</tr>
<tr>
<td>Drake Journal of Agricultural Law</td>
<td>8</td>
<td>3</td>
<td>Fall 2003</td>
</tr>
<tr>
<td>Election Law Journal</td>
<td>3</td>
<td>4</td>
<td>Winter 2004</td>
</tr>
<tr>
<td>European Environmental Law Review</td>
<td>13</td>
<td>10</td>
<td>October 2004</td>
</tr>
<tr>
<td>Family Law Quarterly</td>
<td>38</td>
<td>2</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Federal Law Review</td>
<td>32</td>
<td>2</td>
<td>2004</td>
</tr>
<tr>
<td>Florida State University Law Review</td>
<td>32</td>
<td>1</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Fordham Law Review</td>
<td>73</td>
<td>1</td>
<td>October 2004</td>
</tr>
<tr>
<td>George Mason Law Review</td>
<td>12</td>
<td>3</td>
<td>Spring 2004</td>
</tr>
<tr>
<td>Hastings Law Journal</td>
<td>55</td>
<td>5</td>
<td>May 2004</td>
</tr>
<tr>
<td>Human Life Review</td>
<td>30</td>
<td>3</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Human Rights Quarterly</td>
<td>26</td>
<td>4</td>
<td>November 2004</td>
</tr>
<tr>
<td>John Marshall Law Review</td>
<td>37</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Journal of Maritime Law and Commerce</td>
<td>35</td>
<td>4</td>
<td>October 2004</td>
</tr>
<tr>
<td>Journal of Supreme Court History</td>
<td>29</td>
<td>3</td>
<td>2004</td>
</tr>
<tr>
<td>Journal of the Patent and Trademark Office Society</td>
<td>86</td>
<td>10</td>
<td>October 2004</td>
</tr>
<tr>
<td>Journal of World Trade</td>
<td>38</td>
<td>5</td>
<td>October 2004</td>
</tr>
<tr>
<td>Marquette Law Review</td>
<td>88</td>
<td>1</td>
<td>2004</td>
</tr>
<tr>
<td>Marquette Law Review</td>
<td>88</td>
<td>2</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Michigan Law Review</td>
<td>102</td>
<td>5</td>
<td>March 2004</td>
</tr>
<tr>
<td>Nebraska Law Review</td>
<td>83</td>
<td>1</td>
<td>2004</td>
</tr>
<tr>
<td>Oklahoma Law Review</td>
<td>57</td>
<td>2</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Osgoode Hall Law Journal</td>
<td>42</td>
<td>2</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Practical Real Estate Lawyer</td>
<td>20</td>
<td>6</td>
<td>November 2004</td>
</tr>
<tr>
<td>QLR</td>
<td>23</td>
<td>2</td>
<td>2004</td>
</tr>
<tr>
<td>Tax Management International Journal</td>
<td>33</td>
<td>11</td>
<td>November 2004</td>
</tr>
<tr>
<td>Taxes - The Tax Magazine</td>
<td>82</td>
<td>11</td>
<td>November 2004</td>
</tr>
<tr>
<td>Trial</td>
<td>40</td>
<td>12</td>
<td>November 2004</td>
</tr>
<tr>
<td>University of Cincinnati Law Review</td>
<td>72</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>University of Michigan Journal of Law Reform</td>
<td>37</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>University of Richmond Law Review</td>
<td>39</td>
<td>1</td>
<td>Annual Survey 2004</td>
</tr>
<tr>
<td>VBA News Journal</td>
<td>30</td>
<td>6</td>
<td>October 2004</td>
</tr>
<tr>
<td>Wisconsin Law Review</td>
<td>2004</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Women Lawyers Journal</td>
<td>89</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Women's Rights Law Reporter</td>
<td>25</td>
<td>1</td>
<td>Fall/Winter 2003</td>
</tr>
<tr>
<td>Yale Journal of Law &amp; the Humanities</td>
<td>16</td>
<td>1</td>
<td>Winter 2004</td>
</tr>
</tbody>
</table>
The AMERICAN JOURNAL of LEGAL HISTORY

Volume XLVI January 2004 No. 1

ARTICLES

A Case of Injustice? The Trial of John Bellingham Kathleen S. Goddard 1


The Transition from Colonialism to Independence Erwin C. Surrency 55

BOOK REVIEWS

Christopher L. Tomlins and Bruce H. Mann, Eds., The Many Legalities of Early America Al Brophy 82

Mark Weitz, Clergy Malpractice in America: Nally v. Grace Community Church of the Valley Stephen M. Feldman 84

Barbara Young Welke, Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920 David E. Bernstein 86


D. Alan Orr, Treason and the State: Law, Politics, and Ideology in the English Civil War Barbara Donagan 89

Russ Versteeg, Law in Ancient Egypt J.G. Manning 91


Thomas E. Buckley, S.J., The Great Catastrophe of My Life: Divorce in the Old Dominion Diane Miller Sommerville 96

Mark M. Carroll, Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823-1860 Michael Widener 98
<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wendy Kline, <em>Building a Better Race: Gender, Sexuality and Eugenics from the Turn of the Century to the Baby Boom</em></td>
<td>Shannon Beets</td>
<td>106</td>
</tr>
<tr>
<td>Karen R. Merrill, <em>Public Lands and Political Meaning: Ranchers, the Government, and the Property between Them</em></td>
<td>Gordon Morris Bakken</td>
<td>110</td>
</tr>
<tr>
<td>Maria E. Montoya, <em>Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840-1900</em></td>
<td>Peter L. Reich</td>
<td>111</td>
</tr>
<tr>
<td>H. Jefferson Powell, <em>A Community Built on Words: The Constitution in History and Politics</em></td>
<td>Roberta Sue Alexander</td>
<td>113</td>
</tr>
<tr>
<td><strong>BOOKS RECEIVED</strong></td>
<td></td>
<td>117</td>
</tr>
</tbody>
</table>
ARTICLES

Demystifying Dilution
—Thomas R. Lee ................................................................. 859

The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault
—Michelle J. Anderson ......................................................... 945

NOTES

The Inadequacy of the Broad Collateral Attack: Stephenson v. Dow Chemical Company and Its Effect on Class Action Settlements
—Kevin R. Bernier .............................................................. 1023

Injury-Free, but Money for Me: Whether the Civil Rights Act of 1991 Permits Punitive Damages in the Absence of Compensatory Damages
—Miller B. Brownstein ......................................................... 1049

Overstepping One’s Bounds: The Department of Labor and the Family and Medical Leave Act
—Caitlyn M. Campbell .......................................................... 1077

Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.: Necromancy, Judicial Activism, and the Well-Pleased Complaint Rule
—Andrew G. Heinz .............................................................. 1103
TABLE OF CONTENTS

DAVID G. TRAGER PUBLIC POLICY SYMPOSIUM:
OUR NEW FEDERALISM? NATIONAL AUTHORITY AND
LOCAL AUTONOMY IN THE WAR ON TERROR

<table>
<thead>
<tr>
<th>Section</th>
<th>Author</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>Susan N. Herman</td>
<td>1201</td>
</tr>
<tr>
<td>The Vigor of Anti-Commandeering</td>
<td>Ann Althouse</td>
<td>1231</td>
</tr>
<tr>
<td>Doctrine in Times of Terror</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welcome to the Dark Side: Liberals</td>
<td>Ernest A. Young</td>
<td>1277</td>
</tr>
<tr>
<td>Rediscover Federalism in the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wake of the War on Terror</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Empowering States When It</td>
<td>Erwin Chemerinsky</td>
<td>1313</td>
</tr>
<tr>
<td>Matters: A Different Approach to Preemption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Incarceration of Federal</td>
<td>Ronald K. Chen</td>
<td>1335</td>
</tr>
<tr>
<td>Prisoners After September 11:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whose Jail Is It Anyway?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Converse § 1983 Suits in Which</td>
<td>Vikram David Amar</td>
<td>1369</td>
</tr>
<tr>
<td>States Police Federal Agents:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>An Idea Whose Time Has</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrived</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Roots of Printz: Proslavery</td>
<td>Paul Finkelman</td>
<td>1399</td>
</tr>
<tr>
<td>Constitutionalism, National Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforcement, Federalism, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Cooperation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE

In Defense of the “Old” Public Health: The Legal Framework for the Regulation of Public Health

Richard A. Epstein 1421

NOTES

Edelman v. N2H2: At the Crossroads of Copyright and Filtering Technology

Brian R. Fitzgerald 1471

Making Sure Children Find Their Way Home: Obligating States Under International Law to Return Dependent Children to Family Members Abroad

Amity R. Boye 1515

COMMENT

Federal Maritime Commission v. South Carolina Ports Authority: Judicial Incursions into Executive Power

Gregory Wicker 1555
Well, at least the dog's awake. But she'd better bark: Your personal information is being sucked away over the Internet. Check our mini-theme on privacy, starting on page 13.

Here we go again: The man behind the curtain is having a tough time dealing with your client's just-so-perfect privacy policy. See page 19.
You’ve no doubt heard about “spyware.” That’s a start. But what can you do about it and is your client’s company doing bad things with it? Look further on page 33.

33 Just a tad intrusive?
Spyware and the Internet
Brad Slutsky and Sheila Baran

39 Security has been breached: Now what?
A look at banks and information theft
Michael J. Dunne and Russell F. Smith III

45 Privacy north of the border
10 things you should know about Canadian personal information laws
Brian C. Keith

51 Protecting personal information — over there
A look at privacy in the European Union
Alison Wetherfield

57 Beware strangers bearing gift cards
Some wholesale advice for your retail clients
Judith Rinearson and Chris Woods
CATHOLIC UNIVERSITY LAW REVIEW

VOLUME 53 NUMBER 4 SUMMER 2004

SYMPOSIUM ON ENSURING THE CONTINUITY OF GOVERNMENT IN TIMES OF CRISIS

Opening Remarks
Lloyd N. Cutler ................................................................. 943

Introduction
Norman J. Ornstein ........................................................... 945

Continuity of Congress: A Play in Three Stages
Howard M. Wasserman .................................................... 949

Presidential Succession and Congressional Leaders
John C. Fortier and Norman J. Ornstein .............................. 993

The Least Vulnerable Branch: Ensuring the Continuity of the Supreme Court
Randolph Moss and Edward Siskel .................................. 1015

Ensuring the Continuity of Government in Times of Crisis: An Analysis of the Ongoing Debate in Congress
James C. Ho .................................................................... 1049

The Continuity of Government
Colloquy and Question & Answer Session ....................... 1073

COMMENTS

Tossing Its Hat in the Ring: With Summerlin v. Stewart, the Ninth Circuit Exposes the Harmful Ambiguity Caused by Ring v. Arizona
Gillian T. DiFilippo .......................................................... 1091

Daniel Z. Herbst ............................................................... 1125

They Took My Child! An Examination of the Circuit Split over Emergency Removal of Children from Parental Custody
Alyson Oswald ................................................................. 1161

Regulating Corporate Governance: Amended Rules of Professional Conduct Allow Lawyers to Make the World a More Ethical Place
Catharine E. Stark ............................................................. 1195
Contents

About This Issue ........................................ Inside Front Cover

Frontline Lawyering: Defending the Attack on
Immigrant Communities After September 11 .......... 238
By Sin Yen Ling
After September 11, 2001, engaging in a multipronged defense strategy, particularly in
defense of immigrants, has become critical. The Asian American Legal Defense and
Education Fund has been frontline lawyering to challenge the secret detention and spe-
cial registration of immigrants suspected of terrorism because of their national origin.

Developing Cultural Competence in Legal Services Practice .......... 244
By Mayia Thao and Mona Tawatao
Legal aid programs’ lack of cultural competence may seriously affect the lives of peo-
ple of color and people with limited English proficiency. Advocates must develop
ways of fostering cultural competence within the legal services community and the
legal profession at large.

Immigration Trends: A Quick Look at the Numbers .......... 249
Compiled from the Urban Institute
After a proportional decline from the beginning of the twentieth century until about
the 1970s, immigrants now constitute a growing percentage of the U.S. population
and are disproportionately poor and legally vulnerable. Immigrants are dispersed
widely throughout the United States, and immigrant families commonly include
members whose status varies from citizen to undocumented. Citizen children of
undocumented parents are often eligible for benefits, including free legal assist-
tance, even when their parents are not.

Representing Immigrants: What Do LSC Regulations Allow? .......... 253
By Sara Campos, Sheila Neville, and Linton Joaquin
Federal laws enacted in 1996 restricted further the representation of immigrants by pro-
grams funded by the Legal Services Corporation (LSC). The Trafficking Victims
Protection Act of 2002 expanded the categories of immigrants that LSC grantees may rep-
resent with LSC funds. If battered immigrants or “mixed families” are involved, legal
services may be provided without regard to immigration status. LSC regulations specify
the immigrant categories that LSC-funded programs may represent.

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or otherwise, without the prior written permission of the publisher.
Enforcing Language Access Rights: Trends and Strategies ................ 265
By Jane Perkins, Mary R. Mannix, Jack Daniel, and Wanda Boonnurnswongse Hasadsri
For thirty years, federal civil rights policies have required federal agencies and federally funded entities to ensure that national-origin minorities with limited English proficiency have meaningful access to government services and activities. The mandate arises from Title VI of the Civil Rights Act of 1964. Despite the U.S. Supreme Court's rollback of Title VI enforcement in *Alexander v. Sandoval*, Executive Order 13166 and Department of Justice guidelines continue to recognize language access requirements. Strategies to ensure language access include complaints to the Office for Civil Rights, negotiation with state and local agencies, and state and local legislation.

Serving Clients with Limited English Proficiency: Resources and Responses ................ 276
By Patricia Hanrahan
A year ago the Legal Services Corporation (LSC) convened, from both LSC-funded and other legal aid programs, a group of poverty lawyers, all of whom had worked with immigrant clients, to discuss how programs might improve their services to clients with limited English proficiency. The group developed protocols and recommendations incorporated into a draft program letter posted on the Legal Resource Initiative page of LSC's www.lri.lsc.gov.

Using Technology to Serve Low-Income Immigrants' Needs Better .......... 282
By Gabrielle Hammond
Technology offers tools to help advocates reach untapped networks and remove barriers and isolation often faced by newer immigrant communities. Three such tools are Geographic Information Software mapping, videoconferencing, and the Internet.

Indigenous Farmworker Project: Legal Protection for California's Isolated Farmworkers ........... 289
By Jack Daniel, Alegria de la Cruz, Mike Meuter, and Jeff Ponting
The most marginalized workers in rural California, indigenous farmworkers suffer countless wage and labor safety violations. The Indigenous Farmworker Project helps California Rural Legal Assistance meet the linguistic, cultural, and legal challenges posed by advocating on behalf of this emerging farmworker community.

Overview of Immigration and the Law ................ 293
Edited by Sally Kinoshita
Immigration rights are in a state of change as a result of the newly created Department of Homeland Security. The legal impact of the federal agency reorganization remains uncertain. Who is an admissible alien? Who is removable? What legal protection provisions remain under the Immigration and Naturalization Act?

Family-Based Immigration ................ 302
By Charles Wheeler
Family-sponsored immigration allows close relatives of U.S. citizens and lawful permanent residents to immigrate to the United States. Family members may immigrate either as "immediate relatives" of U.S. citizens or through the family preference system (limited by annual quotas). Under the family preference system, the U.S. citizen or lawful permanent resident must file a petition for an alien relative and may undergo a marriage interview.
Special Citizenship Issues ............................................. 310
By Rebecca Bernhardt
Preventing a client’s deportation may call for proving that the client is already a U.S. citizen. Advocates should understand the rules of citizenship by acquisition and derivation. Those advising immigrants should note the potential problem of conflicting birth certificates, certain risks in seeking naturalization, and the use of habeas petitions to stall deportation until citizenship is proved.

The Legacy of Jenny Flores: Detained Immigrant Children .............. 316
By Katina Ancar
A child’s journey from El Salvador to the United States led to a lawsuit revealing unconstitutional detention policies by the Immigration agency and improving the rights of detained immigrant children. However, advocacy is needed to ensure that the Flores v. Meese settlement terms are incorporated into the Unaccompanied Alien Child Act of 2004 and that detained immigrant children’s rights are not trampled upon by the new Department of Homeland Security.

Special Immigrant Juvenile Status: A Life Jacket for Immigrant Youth ... 323
By Darryl L. Hamm
Under the Special Immigrant Juvenile Provision of the Immigration and Nationality Act, enacted in 1990, certain undocumented youths may obtain lawful immigrant status. Although thousands of youths have benefited from the law over the past fourteen years, the immigration agency’s implementation of the law is inconsistent and at times creates difficulties for applicants.

Protecting the Labor and Employment Rights of Immigrant Workers .... 329
By Rebecca Smith, Cynthia Mark, and Anita Sinha
Labor protection laws are especially important for immigrants who are concentrated in the low-wage labor market, often in the most dangerous jobs. Immigrants face particular obstacles in enforcing their rights under laws such as the National Labor Relations Act and the Fair Labor Standards Act, and undocumented workers are even more vulnerable than others to intimidation and retaliation by employers. The U.S. Supreme Court decision in Hoffman Plastic Compounds Inc. v. National Labor Relations Board exacerbated barriers to employment rights for immigrants, but much opportunity remains for advocates to ensure that immigrant workers receive the full scope of the protection rights to which they are entitled.

Barriers in Immigrant Laborers’ Access to Workplace Rights .......... 345
By Anita Sinha
Although immigrant workers in theory have the same employment rights as other workers, immigrants face barriers in enforcing their rights in the workplace. Three of these barriers are “no-match” letters from the Social Security Administration to employers, employment verification systems that are established under the Illegal Immigration Reform and Immigration Responsibility Act and that give employers access to government databases in order to verify work authorization, and worksite raids by immigration and other authorities. Low-wage immigrant workers are especially vulnerable, but well-informed advocates can help them enforce employment rights.
Access to Identification Documents for Immigrants: Restrictions Undermine Public Policy Goals ........................................ 350
By Tyler Moran
Various identification documents are nearly essential to conducting daily life in the United States, and immigrants who lack such documents face huge challenges. Social security numbers, individual tax identification numbers, foreign consular identification cards, and driver’s licenses are all available to some immigrants and can help them negotiate bureaucracies, become employed, find housing, obtain health care, report crimes, and more.

An Honest Day’s Work: Day Labor Advocacy in the United States ........ 355
By Rebecca Smith
Day laborers, who generally are hired for the duration of a particular job in the landscaping, construction, manufacturing, or service sectors, are commonly subjected to egregious workplace exploitation. Employers often assign them dangerous tasks, delay payment of their wages, underpay them, and deduct questionable expenses from their pay. Activists conduct participatory research projects and surveys of day laborers; propose and draft local, state, and federal legislation; litigate cases of abuse; and develop nonprofit day labor centers.

Serving Farmworkers ........................................................................ 367
By Susan Reed and Ilene J. Jacobs
Cultural and geographic isolation, along with transience, limits farmworker access to legal assistance. Farmworkers, often immigrants, have legal needs ranging from employment, health and safety, housing, public benefits, and immigrant matters to language access. Migrant legal aid programs apply the Migrant and Seasonal Agricultural Worker Protection Act, Fair Labor Standards Act, Trafficking Victims Protection Act, and other federal and state laws to assist farmworkers.

Immigration Policy and Low-Wage Workers: The Farmworker Case .... 375
By Bruce Goldstein
The pending Agricultural Job Opportunity, Benefits and Security Act arose from a nine-year struggle among farmworkers, agricultural employers, and their allies in Congress over immigration policy. The debate and the compromises, over issues such as “legalization” of undocumented workers, “guest worker” immigration policy, and reform of the H-2A program, may hold lessons for low-wage worker advocates generally.

Medicaid Coverage of Emergency Medical Conditions ...................... 384
By Jane Perkins
Medical facilities that provide emergency services to noncitizens are reimbursed through the emergency Medicaid program, and the federal Medicaid Act defines the term “emergency medical condition.” Despite years of regulatory and judicial interpretation of this definition, coverage questions persist in the areas of residency requirements, requests for verification of eligibility, coverage of pregnancy-related services, duration of emergency medical conditions, and relief for disproportionate providers.
Immigrants’ Eligibility for Federal Benefits .......................... 393
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed some of the most severe eligibility restrictions on benefits on lawfully present immigrants who had been receiving Supplemental Security Income and food stamps. In the late 1990s Congress restored coverage to some of the immigrants who had been receiving these benefits when the 1996 welfare law was passed. Two tables offer a user-friendly overview of immigrants’ eligibility for federal public benefits.

Illinois’s New SSI Replacement Program for Refugees and Asylees:
An Advocacy Success Story .............................................. 402
By Dan Lesser
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act were particularly harsh for legal immigrants. In 2003 refugees and asylees who had been unable to complete the naturalization process and become U.S. citizens began to lose their Supplemental Security Income benefits. Illinois advocates crafted a state-funded state program to replace the federal benefit this group lost.

Immigrants’ Access to Financial Services ............................. 412
By Michael A. Frias
Most foreign-born Hispanics who send money home to Latin America regularly do not have a bank account, and immigration status and lack of documentation are the principal reasons for not having one. Banks have to consider alternative forms of identification if they intend to reach “unbanked” immigrants.

Guide to Consumer Rights for Immigrants ........................... 420
The National Consumer Law Center’s Guide to Consumer Rights for Immigrants is a user-friendly manual for immigrant and consumer advocates alike.

Tax Assistance for Immigrants ........................................ 421
By Iris E. Coloma-Gaines
Immigrants may lack familiarity with their rights and responsibilities under the U.S. tax system and frequently fall victim to untrained or unscrupulous tax preparers. Failure to file income tax returns can affect a person’s immigration plans, and improper filing can cause large debts to the Internal Revenue Service. Training and funding are available for advocates to help low-income immigrants prepare tax returns and represent them when tax problems arise.

Immigration Options for Immigrant Victims of Domestic Violence .... 427
By Julie E. Dinnerstein
Immigration issues are a key aspect of working with noncitizen victims of domestic violence. Knowing the common barriers that immigrant victims fleeing domestic violence face, the various immigration status, and possible immigration law remedies will put the advocate in the best position to serve immigrant clients.

FEATURE:

Specialized Litigation and Support Centers .......................... Inside Back Cover
ESSAYS

A POST-BLAKELEY ERA OR POST-BLAKELEY ERROR? .................. 1

BLAKELEY'S POTENTIAL .................................................. 19

NOTES

BOYS WILL BE BOYS? AN ANALYSIS OF MALE-ON-MALE HETEROSEXUAL SEXUAL VIOLENCE ........................................ 37
This Note attempts to address the questions of what role gratification plays in defining sexual offenses, using the Mepham football team attacks as a case study and comparing that incident with Abner Louima's police brutality suit. In September 2003, upperclassmen on the Mepham High School football team attacked and sodomized three underclassmen. Pennsylvania law, under which the Mepham players were charged, and federal law implicated in the Louima case provide two different perspectives on what requisite intent defines a touch as "sexual." Pennsylvania law relies on sexual gratification, whereas federal law has expanded the intent requirement to include humiliation and degradation. This Note argues that a reliance on sexual gratification as the requisite intent obscures the power dynamics in a sexual assault due to the sexual nature of the crime, such that the perpetrators are seen to be acting out their sexual desires. Likewise, media representations tend to characterize the perpetrators of these crimes as "perverts" who are "sexually twisted." Federal law provides a positive example of how to account for the power of sexuality in labeling an act a sex crime, but also acknowledges other motivations besides sexual gratification.

THE PHARMACEUTICAL INDUSTRY'S RESPONSIBILITY FOR PROTECTING HUMAN SUBJECTS OF CLINICAL TRIALS IN DEVELOPING NATIONS ..................................................... 67
Pharmaceutical companies increasingly perform clinical trials in developing nations. Governments of host nations see the trials as a way to provide otherwise unaffordable medical care, while trial sponsors are drawn to those countries by lower costs, the prevalence of diseases rare in developed nations, and large numbers of impoverished patients. Local governments, however, fail to police trials, and the FDA does not monitor trials in foreign countries, resulting in the routine violation of international standards for the protection of human subjects. This Note proposes independent accreditation of those
institutions involved in clinical trials — the institutional review boards which oversee trial protocol; the organizations, such as pharmaceutical companies, which sponsor the trials; and the research organizations that conduct the trials. Accreditation, similar to that used in the footwear and apparel industries, would increase the transparency of pharmaceutical trials and would enable the United States government and consumers to hold trial sponsors accountable for their actions.

**RULE PRAGMATISM: THEORY AND APPLICATION TO QUALIFIED IMMUNITY ANALYSIS**

Legal pragmatism is often contrasted to legal methodologies that call for the application of rules. Such juxtaposition suggests that a legal pragmatist would resist adopting any rule of decision making. This Note challenges that notion by explicating rule pragmatism, which employs rules justified not by their pedigree but rather by their producing good results in the aggregate. To illustrate rule pragmatism, the Note analogizes to rule utilitarianism and other concepts in moral philosophy. The Note also contrasts rule pragmatism with other rule-based methodologies. Finally, the Note argues that the Supreme Court took a rule pragmatic position in *Saucier v. Katz* by requiring a two-step analysis of qualified immunity claims. By contrast, the Second Circuit continues to take an act pragmatic approach to qualified immunity analysis, abandoning the two-step analysis when it doubts that following the rule would produce optimal results.
CONTENTS

IN MEMORIAM—MALCOLM STEIN  
Louis Lowenstein  1427

ARTICLES

EMBEDDED OPTIONS AND THE CASE AGAINST COMPENSATION IN CONTRACT LAW  
Robert E. Scott 1428
George G. Triantis

THE CONSTITUTIONALITY OF INTERNATIONAL DELEGATIONS  
Edward T. Swaine 1492

NOTES

THE NBA LUXURY TAX MODEL: A MISGUIDED REGULATORY REGIME  
Richard A. Kaplan 1615

"THE REPORTS OF MY DEATH ARE GREATLY EXAGGERATED": ADMINISTERING SECTION 5 OF THE VOTING RIGHTS ACT AFTER GEORGIA V. ASHCROFT  
Meghann E. Donahue 1651

ESSAYS

OUR STRUCTURAL CONSTITUTION  
J. Harvie Wilkinson III 1687

IS SECTION 5 OF THE VOTING RIGHTS ACT A VICTIM OF ITS OWN SUCCESS?  
Samuel Issacharoff 1710

HOW NOT TO COUNT VOTES  
John Copeland Nagle 1732
Volume 40, Number 5

Contents

421 The Limits of the Judicial Reform of Prisons: What Works; What Does Not
Fred Cohen

466 Racial Segregation as a Prison Initiation Experience
Hans Toch and James R. Acker

Edna Erez

501 Assessing Hudson v. McMillian Ten Years Later
Darrell L. Ross

518 Massachusetts and the Changing Debate on the Death Penalty
Evan J. Mandery

523 Significant Federal Court Decisions

528 Selected State Court Decisions

533 From the Legal Literature

541 Book Review
CONTENTS

BIOETHICS SYMPOSIUM
   National and Global Implications of Genetically-Modified Organisms: Law, Ethics & Science

   ANDHRA PRADESH, INDIA, AS A CASE STUDY
   in PERSPECTIVES ON GMO'S .......... Elizabeth Bowles 415

ENGINEERING A SOLUTION TO MARKET FAILURE:
   A DISCLOSURE REGIME FOR GENETICALLY MODIFIED ORGANISMS ................. Luke Brussel 427

RELEVANCE OF GENETICALLY MODIFIED CROPS TO DEVELOPING COUNTRIES ....... C.S. Prakash and Gregory Conko 437

THE WTO BIOTECHNOLOGY DISPUTE .......... Marsha Echols 445

ARTICLE

Ex Parte Baron Services, Inc.—
   THE ALABAMA SUPREME COURT OSTEINSIBLY REJECTS THE APPLICATION OF MARKETABILITY DISCOUNTS TO THE DETERMINATION OF THE FAIR VALUE OF SHARES OWNED BY A DISSENTING SHAREHOLDER IN A CLOSELY HELD CORPORATION .... William M. Lawrence and Chad J. Post 465

BOOK REVIEW

Judge Noonan's J'accuse . . . . Brannon P. Denning 477

COMMENTS

EMPLOYMENT INVOLVEMENT PROGRAMS: THE TIME HAS COME TO AMEND SECTION 8(a)(2) OF THE NLRA ...... 503

WHO WANTS SOME WATER: THE ONGOING BATTLE FOR THE KLAMATH RIVER BASIN AND THE NEED FOR MODERATE INSTITUTIONAL CHANGE TO END THE WAR ............... 531
WHAT SHOULD WE DO WITH THEM:
THE SUPREME COURT ANSWERS THE "VERY DIFFERENT
QUESTION" OF INADMISSIBLE ALIENS AND
8 U.S.C.A. SEC. 1231(A)(6) ......................... 561

CASENOTES

CONSTITUTIONAL LAW—CRUEL AND UNUSUAL
PUNISHMENT—SENTENCING OF REPEAT FELON TO
TWENTY-FIVE YEARS TO LIFE UNDER CALIFORNIA'S
THREE STRIKES LAW NOT PROHIBITED BY EIGHTH
AMENDMENT ........................................... 595

CONSTITUTIONAL LAW - FREEDOM OF SPEECH - STATE
STATUTES MAY PROHIBIT CROSS BURNING PERFORMED
WITH THE INTENT TO INTIMIDATE WITHOUT VIOLATING
THE FIRST AMENDMENT .............................. 607
**ANNOUNCEMENTS AND DEPARTMENTS**

- Table of Contents .................................................. 322-323
- IADC Officers and Board of Directors .................................................. 324
- President’s Page: Celebrating the IADC’s 85th Anniversary .............................. 325
  *By George S. Hodges*
- Defense Counsel Journal .................................................. 328
- IADC 2005 Midyear Meeting .................................................. 329
- Calendar of Legal Organization Meetings .................................................. 330
- Privacy Project Phase II (book) .................................................. 331
- IADC Tenets of Professionalism .................................................. 332
- Advocacy in the 21st Century (book) .................................................. 333
- Reviewing the Law Reviews .................................................. 429
- Index to Vol. 71 of Defense Counsel Journal .................................................. 438

**FEATURE ARTICLES**

- **BYTES, BITS AND BUCKS: COST SHIFTING** .................................................. 334
  *AND SANCTIONS IN E-DISCOVERY*
  *By John M. Barkett*
  *In the electronic forest, sanctions can abound, but good faith will help counsel*

- **PRACTICAL CONSIDERATIONS FOR NATIONAL** .................................................. 357
  *COORDINATING COUNSEL IN COMPLEX LITIGATION*
  *By Christopher N. Weiss*
  *The role of national coordinating counsel is multifaceted and take charge*

- **AN OVERVIEW OF LONE PINE ORDERS** .................................................. 366
  *IN TOXIC TORT LITIGATION*
  *By James P. Muehlberger and Boyd S. Hoekel*
  *Requiring plaintiffs to produce specifics early preserves judicial resources*
PUBLICAN IN ENGLAND USES EC COMPETITION .......................... 374
LAW TO RECOVER IN ENGLISH COURT
By Marjorie Holmes and Paula Lennon
Crehan upstages Courage by challenging a tie arrangement with a brewing giant

IS THE ECONOMIC LOSS RULE IN PERIL? COURTS, .................. 379
NEGligence AND THE ECONOMIC LOSS WOLVES
By Daniel London
Departures fails understand adjudication problems in non-personal injury cases

UNCERTAINTY IN FEDERAL REMOVAL PROCEDURE: ............... 388
THE RIDDLE OF THE "OTHER PAPER"
By Adam C. Clanton
Litigants are in a quandary about what triggers the 30-day period for removal

INTERNATIONAL ARBITRATION AND PUNITIVE DAMAGES: ...... 402
DELOCALIZATION AND MANDATORY RULES
By Darlene S. Wood
Whether punitive damages can be awarded in commercial cases is important

ANNUAL SURVEY OF FIDELITY AND SURETY LAW, ............... 412
2003, PART II
By Bettina Brownstein, R. Earl Welbaum, Randall I. Marmor and Roger P. Sauer
Edited by Charles W. Linder Jr.
2003 cases in construction and financial institution bonds and sureties’ remedies

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CONTENTS

FOREWORDS
Hail Bill Beaney .................................................. Robert B. Yegge 213
Bill Beaney’s Continuing Relevance ......................... Alan K. Chen 217

ARTICLES
Section 5 of the Voting Rights Act: A Once and Future Remedy? .......................................................... Michael J. Pitts 225
The Rehnquist Court and Horizontal Federalism: An Evaluation and a Proposal for Moderate Constitutional Constraints on Horizontal Federalism .................................................. Scott Fruehwald 289
Workers’ Compensation and Vocational Rehabilitation Benefits for Undocumented Workers: Reconciling the Purported Conflicts Between State Law, Federal Immigration Law, and Equal Protection to Prevent the Creation of a Disposable Workforce .......... Robert I. Correales 347
Transitions to Constitutional Democracy and the Fate of Deposed Despots .... Walter F. Murphy 415
The Waite Court at the Bar of History .......................... Donald Grier Stephenson, Jr. 449

COMMENTS
Running the Gauntlet: Once is Enough When Running for Your Life .................................................. Amber Abbuhl 497
The Cruel and Unusual Reality of California’s Three Strikes Law: Ewing v. California and the Narrowing of the Eighth Amendment’s Proportionality Principle .................................................. Sara J. Lewis 519

BOOK REVIEW
The Death Penalty in the United States and its Future .................................................. Christa Schuller 547
ARTICLES

The Bumpy Ride Towards the Establishment of "a Fair and Market-Oriented Agricultural Trading System" at the WTO: Reflections Following the Cancun Setback
Melaku Geboye Desta

Increased Scientific Capacity and Endangered Species Management: Lessons from the Red Wolf Conflict
Joshua M. Duke and Laura A. Csoboth

The Farm and Ranch Lands Protection Program: An Analysis of the Federal Policy on United States Farmland Loss
Michael R. Eitel

The Wetlands Reserve Program: Charting A Course Through the WRP
Brian J. Oakey

The Dose Makes the Poison: Are Pesticides Defective Products?
George S. Smith and Barbara Rasco

Clarifying the Alphabet Soup of the TBT and the SPS in the WTO
Norbert L.W. Wilson

NOTES

It Takes Money to Make Money: A Beginning Farmer's Loan Tool Box
Patrick B. Dillon

State Tort Liability For Failure to Protect Against Bioterrorism
Jason E. McCollough
EDITORIAL

The Party Line
Daniel H. Lowenstein and Richard L. Hasen

ORIGINAL ARTICLES

If Terrorists Attacked Our Presidential Elections
John C. Fortier and Norman J. Ornstein

Can the Federal Government Reform the Presidential Nomination Process?
William G. Mayer and Andrew E. Busch

Looking for Standards (in All the Wrong Places): Partisan Gerrymandering
Claims after Vieth
Richard L. Hasen

A Post-Vieth Strategy for Litigating Partisan Gerrymandering Claims
James A. Gardner

The Two Sides of Money in Politics: A Synthesis and Framework
Michael Bailey

The Impact of Term Limits on Lawmaking in the City of New York
Eric Lane

BOOK REVIEWS

Competitive, Deliberative, and Rights-Oriented Democracy
Richard H. Pildes reviewing Richard A. Posner, Law, Pragmatism, and Democracy

Deliberative Democracy: An Empirical Note
Response by Richard A. Posner

Averting Crisis: The Role of the Supreme Court Justices in the 1876 Election
Terri Bimes reviewing William H. Rehnquist, Centennial Crisis: The Disputed Election of 1876

FULL-TEXT CASE

Metts v. Murphy, 363 F.3d 8 (1st Cir. 2004) (en banc)

Instructions for Authors can be found at the back of the issue and on our website at www.liebertpub.com.
European Environmental Law Review

Volume 13 No 10 October 2004

Contents

Country Reports
Belgium, Hungary

Access to Environmental Information and the German Blue Angel – Lessons to be Learned?
Renate Gertz

The EU Emission Trading Directive
Bent Ole Gram Mortensen

Book Review
Environmental Liabilities by Brian Jones and Neil Parworth
Valerie Fogelman

Eurobrief

258
268
275
284
286
Table of Contents
Volume 38 Number 2 Summer 2004

vii Editor’s Note

Symposium on Elder Law

213 Still Part of the Clan: Representing Elders in the Family Law Practice
Sy Moskowitz

247 Protecting the Older Client in Multi-generation Representations
Carolyn L. Dessin

269 The Practical Aspects of Practicing Elder Law: Creating an Elder-Friendly Office
Rebecca C. Morgan

291 De Facto Custodians: A Response to the Needs of Informal Kin Caregivers?
Elizabeth Barker Brandt

315 Domestic Partner and Non-marital Claims Against Probate Estates: Marvin Theories Put to a Different Use
Paul J. Buser

339 A White Paper: An Analysis of the Law Regarding Same-Sex Marriage, Civil Unions, and Domestic Partnerships

427 Same-Sex Marriage: The Cultural Wars and the Lessons of Legal History
Charles P. Kindregan, Jr.

Book Review

449 The Unfinished Business of Modern Court Reform: Reflections on Children, Courts, and Custody by Andrew I. Schepard
Nancy Ver Steegh
ARTICLES
Reach-Through Rights in Biomedical Patent Licensing: A Comparative Analysis of their Anti-Competitive Reach
JANE NIELSEN
169

Due Process, Judicial Power and Chapter III in the New High Court
FIONA WHEELER
205

So Far So Good?: A Critical Evaluation of Racial Vilification Laws in Australia
DAN MEACHER
225

A Century of Judicial Style: Changing Patterns in Judgment Writing on the High Court 1903–2001
MATTHEW GROVES AND RUSSELL SMYTH
255

COMMENTS AND REVIEW ESSAY
The Developing Role of the Governor-General: The Goldenness of Silence
GREG CRAVEN
281

Responsibility for Rights: The ACT Human Rights Act
CAROLYN EVANS
291

Taking Delight in Being Contrary, Worried About Being a Loner or Simply Indifferent: How Do Judges Really Feel About Dissent?
ANDREW LYNCH
311

BOOK REVIEW
Moral Rights and their Application in Australia
MATTHEW RIMMER
331
# TABLE OF CONTENTS

## ARTICLES
- **Relaxing the Ban: It's Time to Allow General Solicitation and Advertising in Exempt Offerings**
  - William K. Sjostrom, Jr.
  - Page 1
- **Politics Not as Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board**
  - Paul M. Secunda
  - Page 51
- **An Argument for Imposing Disclosure Requirements on Public Companies**
  - Michael D. Guttenberg
  - Page 123

## COMMENTS
- **Seeing Over the Brick Wall: Limiting the Illinois Brick Indirect Purchaser Rule and Looking at Antitrust Standing in Campos v. Ticketmaster Corp. Through a New Lens**
  - Seth E. Miller
  - Page 197
- **Price Squeeze in a Deregulated Electric Power Industry**
  - Greg Goelzhauser
  - Page 225
- **Curing Causation: Justifying a "Motivating-Factor" Standard Under the ADA**
  - Seam Park
  - Page 257

## RECENT DEVELOPMENTS
- **Introductory Remarks**
  - Page 279
FEDERAL LAW

CONSTITUTIONAL LAW—
CONFRONTATION CLAUSE—
REESTABLISHING THE SIXTH AMENDMENT
RIGHT TO CONFRONT WITNESSES—
UNITED STATES SUPREME COURT
OVER-turns CRIMINAL CONVICTION BECAUSE
TESTIMONIAL EVIDENCE USED AT TRIAL VIOLATED
the CONFRONTATION CLAUSE—

ENVIRONMENTAL LAW—
CLEAN WATER ACT—
UNITED STATES SUPREME COURT
HOLDS THAT A POINT SOURCE NEED NOT BE
the ORIGINAL SOURCE OF POLLUTION
TO SATISFY THE JURISDICTIONAL
REQUIREMENT OF THE CLEAN WATER ACT—
South Florida Water Management District v.
Miccosukee Tribe of Indians, 124 S. Ct. 1537 (2004)............. 286

CONSTITUTIONAL LAW—
FIRST AMENDMENT—
ELEVENTH CIRCUIT
USES BOTH PRIOR RESTRAINT
AND CONTENT-BASED ANALYSES
TO HOLD ST. JOHNS COUNTY SIGN
ORDINANCE UNCONSTITUTIONAL—
Cafe Erotica of Fla., Inc. v. St. Johns County,
360 F.3d 1274 (11th Cir. 2004)........................................... 291

STATE LAW

CONSTITUTIONAL LAW—
DUE PROCESS—
FLORIDA SUPREME COURT
HOLDS THAT DESTRUCTION OF CITRUS TREES
PURSUANT TO THE CITRUS CANKER LAW
DOES NOT VIOLATE DUE PROCESS—
Haire v. Florida Department
of Agriculture and Consumer Services,
870 So. 2d 774 (Fla. 2004)................................................. 297

CONSTITUTIONAL LAW—
RIGHT TO REMAIN SILENT—
FLORIDA SUPREME COURT
HOLDS THAT A PROSECUTOR’S COMMENTS
MUST BE EVALUATED
WITHIN THE ENTIRE CONTEXT
IN WHICH THE COMMENTS ARE MADE—
State v. Jones, 867 So. 2d 398 (Fla. 2004).......................... 300
CIVIL PROCEDURE—
  FLORIDA SUPREME COURT
  HOLDS THAT UNELABORATED ORDERS
  DENYING RELIEF IN CONNECTION
  WITH AN EXTRAORDINARY WRIT
  PETITION ARE NOT DECISIONS
  ON THE MERITS WHICH WOULD
  LATER BAR THE LITIGANT
  FROM PRESENTING THE ISSUE
  UNDER THE DOCTRINES OF RES JUDICATA
  OR COLLATERAL ESTOPPEL—
  Topps v. State, 865 So. 2d 1253 (Fla. 2004).............................. 304

TORTS—
  FLORIDA SUPREME COURT
  INVOKES THE “UNDERTAKER’S DOCTRINE”
  TO CREATE A TORT DUTY TO THE PUBLIC
  FOR ENTITIES RESPONSIBLE
  FOR MAINTAINING STREETLIGHTS—
  Clay Electric Cooperative, Inc. v. Johnson,
  873 So. 2d 1182 (Fla. 2003).................................................. 308
FORDHAM LAW REVIEW

VOLUME LXXIII  OCTOBER 2004  NUMBER 1

CONTENTS

ESSAY
The Philip D. Reed Lecture Series

ONLY YESTERDAY: REFLECTIONS ON
RULEMAKING RESPONSES TO E-DISCOVERY  Richard Marcus  1

PANEL DISCUSSIONS

JUDICIAL CONFERENCE ADVISORY COMMITTEE ON
THE FEDERAL RULES OF CIVIL PROCEDURE

CONFERENCE ON ELECTRONIC DISCOVERY

PANEL ONE: TECHNICAL ASPECTS OF DOCUMENT
PRODUCTION AND E-DISCOVERY  Joan E. Feldman,
George J. Socha, Jr., and Kenneth J. Withers  23

PANEL TWO: RULES 33 AND 34:
DEFINING E-DOCUMENTS AND THE
FORM OF PRODUCTION  Hon. Shira Ann Scheindlin,
David R. Buchanan,
Adam I. Cohen,
Hon. James C. Francis IV,
and Paul M. Robertson  33

PANEL THREE: RULES 26, 33, AND/OR 34:
BURDENS OF PRODUCTION: LOCATING
AND ACCESSING ELECTRONICALLY
STORED DATA  Robert G. Heim,
Hon. John M. Facciola,
Robert M. Hollis,
Gregory S. McCurdy,
and Joseph M. Sellers  53

PANEL FOUR: RULE 37 AND/OR A NEW
RULE 34.1: SAFE HARBORS FOR E-DOCUMENT
PRESERVATION AND SANCTIONS  Andrew M. Scherffius,
Thomas Y. Allman,
Stephen G. Morrison,
Laura Lewis Owens,
and Anthony Tarricone  71

Panel Six: Rules 26 and/or 34: Protection Against Inadvertent Privilege Waiver .............. Edward H. Cooper, Sheila L. Birnbaum, Daniel J. Capra, Jonathan M. Redgrave, and Joseph R. Saveri

Panel Seven: Rulemaking and E-Discovery: Is There a Need to Amend the Civil Rules? ............ Myles V. Lynk, Allen D. Black, Carol Heckman, Carol Hansen Posegate, and H. Thomas Wells, Jr.


Articles

The Supreme Court and Congress's Power to Enforce Constitutional Rights: An Overlooked Moral Anomaly... Robert J. Kaczorowski

Past as Prologue: Reconciling Recidivism and Culpability ...... Michael Edmund O'Neill, Linda Drazga Maxfield, and Miles D. Harer

Is There a Right to Have Something to Say? One View of the Public Domain ........ Diane Leenheer Zimmerman
CONTENTS

ARTICLES

STALKING THE JETS AND THE SHARKS:
EXPLORING THE CONSTITUTIONALITY
OF THE GANG DEATH PENALTY ENHANCER .......... H. Mitchell Caldwell
Daryl Fisher-Ogden 601

THE LAW AND ECONOMICS OF EMPLOYEE
INFORMATION EXCHANGE IN THE
KNOWLEDGE ECONOMY ............................. Rafael Gely
Leonard Bierman 651

GETTING SERIOUS ABOUT USER-FRIENDLY
MASS MARKET LICENSING FOR SOFTWARE .... Robert W. Gomulkiewicz 687

SOME ASSEMBLY REQUIRED: THE APPLICATION
OF STATE OPEN MEETING LAWS TO EMAIL
CORRESPONDENCE .................................. John F. O’Connor
Michael J. Baratz 719

CASENOTES

WHEN THE LIGHTS GO OUT: THE IMPACT OF
HOUSE BILL 6 ON REGIONAL TRANSMISSION
ORGANIZATIONS AND THE RELIABILITY OF
THE POWER GRID .................................... Michael Coyne Mateer 775

“THE WHOLE SITUATION IS A SHAME, BABY!”—
NCAA SELF-REGULATIONS CATEGORIZED AS
HORIZONTAL COMBINATIONS UNDER THE
SHERMAN ACT’S RULE OF REASON STANDARD:
UNREASONABLE RESTRAINTS OF TRADE OR AN
UNFAIR JUDICIAL TEST? .............................. Michael B. LiCalsi 831
The Disenchantment of Logically Formal Legal Rationality, or Max Weber’s Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought

Duncan Kennedy

Max Weber began his sociology of law with a description of the then present of Western legal thought, along with a brief summary of its previous stages. Professor Kennedy’s appreciation of Weber’s sociology of law begins with a summary description of the Western legal thought of Weber’s time as it looks from our present one hundred years later, emphasizing the contrast between the mainstream of his time, now called Classical Legal Thought, and its critics in the “social current.” He then presents Weber’s sociology of law, comparing and contrasting his approach with that of the social current. According to Professor Kennedy, the most striking thing about Weber’s sociology of law, from the perspective of legal theory a century after he wrote, is his ambivalent endorsement of legal formalism. This entailed rejection of the social current’s critique, a critique that is close to universally accepted today. Professor Kennedy explains Weber’s attitude toward legal formalism as motivated by the internal requirements of his theory of domination, in which, after the demise of all earlier modes of legitimation, the Iron Cage of modernity is held together by bureaucrats defined by their adherence to that mode of legal reasoning. He then argues that Weber’s approach was inconsistent with the rationalist and decisionist strands in his own theory of modernity, a theory that helps in understanding the current situation of legal thought, if we take the un-Weberian step of applying it to legal formalism. Finally, Professor Kennedy offers an interpretation of the contemporary mode of legal thought as an episode in the sequences of disenchantment and reenchantment suggested by Weber’s philosophy of history, and uses Weberian elements to construct a distinct contemporary ideal type of legal thought. The very brief conclusion suggests the strong affiliation between Weber (read as
above) and one of the sects of modern legal theory, namely critical legal studies.

THE POLITICS OF JUDICIAL DECISION-MAKING IN EDUCATIONAL POLICY REFORM LITIGATION

William S. Koski ................................................................. 1077

Over the past thirty years, many state supreme courts have inserted themselves into state educational policy-making by striking down their states' school funding schemes pursuant to charges that the state had not provided a constitutionally equitable or adequate distribution of educational resources to schoolchildren. To date, there has been much scholarly discussion of the legal bases for these state supreme court decisions and there exists a growing body of literature studying the effects of such judicial intervention. Despite the vast legal literature and growing judicial impact research regarding educational policy reform litigation, little is known about why state supreme courts choose to intervene in educational finance policy in the first instance. This article addresses the question of why some state supreme courts overturn their states' educational finance systems, while others uphold their finance systems. Specifically, the article provides a comparative political analysis of the DeRolph v. State litigation in Ohio and the Vincent v. Voight litigation in Wisconsin, which analysis is designed to identify the factors influencing judicial decision-making in educational policy reform litigation. The article argues and provides empirical support for the proposition that the judicial decisions in such cases are affected by the policy preferences of state supreme court justices and the institutional constraints on a judiciary venturing into the complex thicket of educational policy. Although relatively unconstrained by legal doctrine and therefore free to pursue their attitudinal preferences in educational policy reform cases, state supreme courts recognize their institutional limitations and craft their decisions in light of their sister branches' policy agendas. What emerges is a pragmatic jurisprudence in which the courts inject constitutional values into an ongoing dialogue with the legislature and executive branch.

CITATION OF UNPUBLISHED OPINIONS AS PRECEDENT

Martha Dragich Pearson ...................................................... 1235

The federal courts of appeals have used "unpublished opinions" for thirty years as one method of coping with the "crisis of volume." Recent developments demonstrate that interest in this controversial practice remains high. Panels of the Eighth. ...
Ninth Circuits reached opposite conclusions regarding the propriety of the practice, and in so doing described the nature of the appellate process in remarkably different ways. Several circuits have recently amended their rules, liberalizing citation of unpublished opinions. The Advisory Committee on Appellate Rules has approved a proposed new rule permitting citation of unpublished opinions. Inasmuch as the rules regarding citation of unpublished opinions speak in terms of the "precedential" effect of such decisions, this Article examines the no-citation rules in light of the purpose and operation of the doctrine of precedent. Professor Dragich Pearson argues that limited publication and, especially, no-citation rules are fundamentally incompatible with a system based on the rule of precedent. The courts of appeals, in adopting limited publication and no-citation rules, have taken an incomplete view of the way precedent matters. Past decisions are precedents, whether or not "published," because they are historical facts. The reach of a precedent is determined not by publication but by the breadth of the deciding court's characterization of its holding. It is up to the subsequent court to determine the applicability of the precedent in a later case. The economy arguments typically advanced in support of the rules are weak and reflect a flawed understanding of precedent. Professor Dragich Pearson suggests that federal courts of appeals abandon the notion of "unpublished" decisions. Instead, the courts of appeals could use abbreviated opinions to process easy or redundant cases quickly and to limit the future effect of decisions in such cases. Citation of such opinions should be permitted for whatever they may be worth in the free market of precedents.
## Contents

### ARTICLES

<table>
<thead>
<tr>
<th>Author</th>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Susan Waltz</td>
<td>799</td>
<td>Universal Human Rights: The Contribution of Muslim States</td>
</tr>
<tr>
<td>Leonard S. Rubenstein</td>
<td>845</td>
<td>How International Human Rights Organizations Can Advance Economic, Social and Cultural Rights: A Response to Kenneth Roth</td>
</tr>
<tr>
<td>Mary Robinson</td>
<td>866</td>
<td>Advancing Economic, Social, and Cultural Rights: The Way Forward</td>
</tr>
<tr>
<td>Kenneth Roth</td>
<td>873</td>
<td>Response to Leonard S. Rubenstein</td>
</tr>
<tr>
<td>Leonard S. Rubenstein</td>
<td>879</td>
<td>Response by Leonard S. Rubenstein</td>
</tr>
<tr>
<td>Marius Pieterse</td>
<td>882</td>
<td>Possibilities and Pitfalls in the Domestic Enforcement of Social Rights: Contemplating the South African Experience</td>
</tr>
<tr>
<td>Todd Landman</td>
<td>906</td>
<td>Measuring Human Rights: Principle, Practice and Policy</td>
</tr>
<tr>
<td>Paul Hoffman</td>
<td>932</td>
<td>Human Rights and Terrorism</td>
</tr>
<tr>
<td>Aileen Kavanagh</td>
<td>956</td>
<td>The Role of a Bill of Rights in Reconstructing Northern Ireland</td>
</tr>
<tr>
<td>Bronwen Manby</td>
<td>983</td>
<td>The African Union, NEPAD and Human Rights: The Missing Agenda</td>
</tr>
</tbody>
</table>
CONTENTS

Conway W. Henderson 1028 The Political Repression of Women

Kerstin Martens 1050 An Appraisal of Amnesty International’s Work at the United Nations: Established Areas of Activities and Shifting Priorities Since the 1990s

Linda Camp Keith
Steven C. Poe 1071 Are Constitutional State of Emergency Clauses Effective? An Empirical Exploration

BOOK REVIEWS

Tiyanjana Maluwa 1098 Human Rights, the Rule of Law and Development in Africa (Paul T. Zeleza & Philip J. McConnaughay eds.)

CONTRIBUTORS

Index to Volume 26 1107

Teaching Human Rights Online 1112
CONTENTS

Dedication..........................................................Julie Spanbauer  xxii

ARTICLES

SWANCC: Full of Sound and Fury,
Signifying Nothing ... Much? ..............................Jeremy Colby  1017

Separations, Blow-Outs, and Fallout:
A Treadise on the Regulatory Aftermath
of the Ford-Firestone Tire Recall ...........Kevin M. McDonald  1073

Facing the Challenge: Corruption, State
Capture and the Role of Multinational
Business.....................................................Nikolay A. Ouzounov  1181

United Nations Norms on the Responsibilities
of Transnational Corporations and Other
Business Enterprises With Regard to Human
Rights: The International Community Asserts
Binding Law on the Global Rule Makers ......Julie Campagna  1205

Medical Marijuana and Personal
Autonomy ......................................................Andrew J. Boyd  1253

COMMENTS

A Dollar Short: The Impact of the CAN-SPAM Act
of 2003 on Illinois Businesses .....................Timothy O'Brien  1289

Retaliation Against Third Parties: A Potential
Loophole in Title VII's Discrimination
Protection ..................................................Anita Schausten  1313

The Past is Another Country: Against the
Retroactive Applicability of the Foreign
Immunities Act to Pre-1952 Conduct ..........Andrzej Niekrasz  1337

"Don't Let the Sun Go Down on Me:" An
In-Depth Look at Opportunistic Business
Method Patent Licensing and a Proposed
Solution to Allow Small-Defendant Business
Method Users to Sing a Happier Tune ..........Andrea Evensen  1359
JOURNAL OF MARITIME LAW AND COMMERCE
Volume 35, Number 4, October 2004

CONTENTS

Articles:
It's Just Water: Toward the Normalization of Admiralty

................................................................. Ernest A. Young 469

Back to the Future: The New General Common Law

................................................................. Louise Weinberg 523

Good Faith in Contract: Particularly in the Contracts of Arbitration
and Chartering ................................................. William Tetley 561

Litigation Fights Back: Avoiding the Effects of Arbitration
Clauses in Charterparty Bills of Lading ...................... Martin Davies 617
Journal of the Patent and Trademark Office Society

Contents

International Copyright Law: Beyond the WIPO & TRIPS Debate .................................................. 763
Elaine B. Gin

The Death of Gorham Co. v. White: Killing It Softly with Markman ........................................ 792
Perry J. Saidman & Allison Singh

Finding Motivation, Teaching, or Suggestion in the Prior Art .................................................. 809
Harold R. Brown III

Letter to the Editor .............................................................. 853

761
# Journal of World Trade

## Volume 38 | October 2004 | Number 5

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third Party Rights and the Concept of Legal Interest in World Trade Organization Dispute Settlement: Extending Participatory Rights to Enforcement Rights</td>
<td>Ngaingoh H. Yenkong</td>
<td>757</td>
</tr>
<tr>
<td>Blend it Like Beckham—Trying to Read the Ball in the World Trade Organization Negotiations on Industrial Tariffs</td>
<td>Santiago Fernandez de Cordoba, Sam Laird and David Vanzetti</td>
<td>773</td>
</tr>
<tr>
<td>The “Multilateral Scientific Consensus” and the World Trade Organization</td>
<td>Dosa Abdel Motaal</td>
<td>855</td>
</tr>
<tr>
<td>Agricultural Trade Reforms in the Doha Round: A Developing Country Perspective</td>
<td>Prema-chandra Athukonala</td>
<td>877</td>
</tr>
<tr>
<td>Challenges and Dilemmas in Developing China’s National Biosafety Framework</td>
<td>Xueman Wang</td>
<td>899</td>
</tr>
<tr>
<td>Book Review</td>
<td>Panagiotis Delimatis</td>
<td>915</td>
</tr>
</tbody>
</table>
FOREWORD

WISCONSIN TAX POLICY: SERIOUS FLAWS, COMPPELLING SOLUTIONS
Michael K. McChrystal ....................................................... 1

ADDRESSES

TAXING THOUGHTS
Marc J. Marotta ............................................................. 5

THE DEPARTMENT OF REVENUE PERSPECTIVE
Michael L. Morgan .......................................................... 11

GENERAL ARTICLES

THE ONGOING EVOLUTION OF STATE REVENUE SYSTEMS
William F. Fox ................................................................. 19

STATE TAX REFORM: PROPOSALS FOR WISCONSIN
Richard D. Pomp ............................................................ 45

WISCONSIN TAX POLICY WITHIN A FEDERAL SYSTEM
Jere D. McGaffey ............................................................ 93

TAX INCENTIVES

THE VULNERABILITY OF USING TAX INCENTIVES IN WISCONSIN
Vada Waters Lindsey ....................................................... 107

COMMENTS ON THE VALUE OF STATE TAX INCENTIVES
Mark D. Bugher ............................................................. 129
TAXPAYER BILL OF RIGHTS ("TABOR")

THE TAXPAYER BILL OF RIGHTS: A SOLUTION TO WISCONSIN’S FISCAL PROBLEMS OR A PRESCRIPTION FOR FUTURE FISCAL CRISES?
Andrew Reschovsky ................................................................. 135

IS THERE REALLY A PROPERTY TAX CRISIS?
Jack Norman .................................................................................. 161

COMMENTS ON TAXPAYER BILL OF RIGHTS
James S. Haney ............................................................................. 173

A LOCAL GOVERNMENT VIEW OF TABOR
Joseph J. Czarnezki ........................................................................ 177

COMMENTS ON TAXPAYER BILL OF RIGHTS
Michael Butera ................................................................................ 181

ESSAY

TIEBOUT OR SAMUELSON: THE 21ST CENTURY DESERVES MORE
Edward J. Huck .............................................................................. 185

Michael K. McChrystal, Editor
Vada Waters Lindsey, Associate Editor
MARQUETTE LAW REVIEW

Volume 88  Fall 2004  Number 2

LEAD ARTICLE

THE ELECTORAL COLLEGE AND ITS MEAGER FEDERALISM
Paul Boudreaux ........................................................................... 195

ARTICLES

INVOLVED APPELLATE JUDGING
Sarah M. R. Cravens ..................................................................... 251

REDACTING RACE IN THE QUEST FOR COLORBLIND JUSTICE:
HOW RACIAL PRIVACY LEGISLATION SUBVERTS
ANTIDISCRIMINATION LAWS
Chris Chambers Goodman .............................................................. 299

ESSAY

THE LODESTAR OF PERSONAL RESPONSIBILITY
Michael B. Brennan ................................................................. 365

COMMENTS

THE ELECTRONIC WASTE RECYCLING ACT OF 2003:
CALIFORNIA’S RESPONSE TO THE ELECTRONIC WASTE CRISIS
Danielle M. Bergner .................................................................. 377

WHEN IS ROUTINE MAINTENANCE REALLY ROUTINE?
A PROPOSED MODIFICATION TO THE EPA’S NEW
SOURCE REVIEW PROGRAM
Robert A. Greco ...................................................................... 391

LIMITING CONFLICTS OF INTEREST ARISING FROM
PHYSICIAN INVESTMENT IN SPECIALTY HOSPITALS
Maureen Kwiecinski .................................................................. 413
Michigan Law Review

Vol. 102, No. 5 March 2004

CONTENTS

ARTICLES

CHEVRON AND PREEMPTION .................. Nina A. Mendelson 737

THE FOURTH AMENDMENT AND
NEW TECHNOLOGIES: CONSTITUTIONAL
MYTHS AND THE CASE FOR CAUTION .......... Orin S. Kerr 801

CORRESPONDENCE

A WORLD WITHOUT PRIVACY: WHY PROPERTY
DOES NOT DEFINE THE LIMITS OF THE RIGHT
AGAINST UNREASONABLE SEARCHES
AND SEIZURES .................................. Sherry F. Colb 889

KATZ IS DEAD. LONG LIVE KATZ .............. Peter P. Swire 904

TECHNOLOGY, PRIVACY, AND THE COURTS:
A REPLY TO COlb AND SWIRE .................. Orin S. Kerr 933

ESSAY

THE JOURNEY FROM BROWN V. BOARD OF
EDUCATION TO GRUTTER V. BOLLINGER:
FROM RACIAL ASSIMILATION TO DIVERSITY... Harry T. Edwards 944

RECENT BOOKS

BOOKS RECEIVED ................................ 979

Copyright © 2004 by The Michigan Law Review Association
TABLE OF CONTENTS

Articles

The Supreme Court’s Primary Purpose Test: A Roadblock to the National Law Enforcement DNA Database
Sandra J. Carnahan 1

Corporate Tax: The Agony and the Ecstasy
William J. Rand 39

Effect of Military Culture on Responding to Sexual Harassment: The Warrior Mystique
Michael I. Spak
Alice M. McCart 79

The English Costs War, 2000–2003, and a Moment of Repose
Stephen E. Kalish 114

Lecture

Which Way to True Justice?—Appropriate Dispute Resolution (ADR) and Adversarial Legalism
The Honorable Dorothy W. Nelson 167

Notes

Not on “Shaky Grounds”: Lawrence v. Texas, 123 S. Ct. 2472 (2003), and the Constitutionality of State DOMAs Such as Nebraska’s Marriage Provision, Neb. Const. art. I, § 29
Kevin R. Corlew 179
The Nebraska Supreme Court Lets
Its Probation Department Off
the Hook in *Bartunek v. State*,
266 Neb. 454, 666 N.W.2d 435
(2003): "No Duty" as a Non-
Response to Violence Against
Women and Identifiable Victims  *Gretchen S. Obrist*  225
OKLAHOMA LAW REVIEW

VOLUME 57        SUMMER 2004        NUMBER 2

LAW SCHOOL NEWS

A Tribute to Professor Nina Miley

ARTICLE

Direct-to-Consumer Genetic Tests, Government Oversight, and the First Amendment: What the Government Can (And Can't) Do to Protect the Public's Health

Gail H. Javitt, Erica Stanley & Kathy Hudson 251

ESSAY

Justice for Iraq, Justice for All

Michael J. Frank 303

COMMENT

Antitrust in Amateur Athletics: Fourth and Long: Why Non-BCS Universities Should Punt Rather Than Go For an Antitrust Challenge to the Bowl Championship Series

Jodi M. Warmbrod 333

NOTES


Melissa J. Alcorn, Ph.D. 381

Employment Law: Desert Palace, Inc. v. Costa: Returning to Title VII’s Core Principles by Eliminating the Direct Evidence Requirement in Mixed-Motive Cases

Daniel P. Johnson 403

Pension Law: Cash Balance Pension Plans Are Not Inherently Age Discriminatory: Cooper v. IBM Personal Pension Plan Defies a Strong History of Support for the Cash Balance Design

Allison C. McGrath 429
CONTENTS

ARTICLES

CASARLANCA: JUDGMENT AND DYNAMIC ENCLAVES IN LAW AND CINEMA .......... Shulamit Almog & Amnon Reichman 201

THE CONSTITUTIONALIZATION OF QUEBEC LIBEL LAW, 1848-2004 ................. Joseph Kary 229

THE VULNERABILITY OF INDIGENOUS LAND RIGHTS IN AUSTRALIA AND CANADA ................. Kent McNeil 271

RESEARCH NOTE

POWERPOINT IN LEGAL EDUCATION: PEDAGOGICAL PARADOX—AN EXPLORATORY STUDY ............ Dave M. Muttart 303

REVIEW ESSAY

CARL SCHMITT'S NOMOS OF THE EARTH
THE NOMOS OF THE EARTH IN THE INTERNATIONAL LAW OF THE JUS PUBLICUM EUROPAEUM
BY CARL SCHMITT, TRANS. BY G.L. ULMEN ................. Mark Antaki 317

BOOK REVIEWS

CREDITOR RIGHTS AND THE PUBLIC INTEREST: RESTRUCTURING INSOLVENT CORPORATIONS
BY JANIS SARRA ......................... Stephanie Ben-Ishai 335

TOXIC CRIMINOLOGY: ENVIRONMENT, LAW AND THE STATE IN CANADA
BY SUSAN C. BOYD, DOROTHY E. CHUNN, & ROBERT MENZIES .................. Kristi Ross 343

BOOK NOTES

REVIEWS OF RECENT LEGAL PUBLICATIONS ......................... 351

VOLUME 42 NUMBER 2 SUMMER 2004
Kathleen O. McKune

The increasing use of limited liability companies ("LLCs") and capital markets in real estate lending transactions, through commercial mortgage-backed securities ("CMBS"), requires attorneys practicing in this area to understand how the special purpose entity ("SPE") is used in these transactions. This article explains who requires SPEs as part of the lending transaction; what SPEs are and what provisions the lender needs to have in the organizational documents for this entity; why SPEs are required; where you form the SPE; when you should form the SPE; and how to form the SPE so that it satisfies the lender’s requirements. Helpful forms are included.

Model Insurance Requirements For A Commercial Mortgage Loan
James E. Branigan and Joshua Stein

A commercial building makes good collateral only as long as it exists. Mortgage loan documents therefore require the borrower to carry adequate insurance. The authors provide sample insurance language for that purpose, reflecting recent developments in the law, the markets, and the world of insurance. Annotations and comments explain how and why these provisions work, their background, and some variations.

How To Perfect Equity Collateral Under Article 8
James D. Prendergast And Keith Pearson

The use of equity as collateral is a feature of mezzanine lending. Securing obligations with equity collateral brings into play both Article 8 and Article 9 of the Uniform Commercial Code. However, for many lawyers, Article 9 remains a mystery. Article 8 is totally off the screen, and may seem little more than a space saver between Article 7 and Article 9. However, not understanding Article 8 and its implications for equity collateral transactions can have a detrimental effect on your malpractice coverage premiums.

Index To Volumes 16, 17, 18, 19, and 20 (2000-2004)
A cumulative author, subject matter, and forms index.
Contents

Articles

Foreword  
Elizabeth Jennings-Lax, 359
Leslie I. Jennings-Lax  
& Ryan Poe

Estate Planning Considerations for Unmarried Same or Opposite Sex Cohabitants  
Frank S. Berall 361

Tax Consequences of Unmarried Cohabitation  
Frank S. Berall 395

Remarks of Mary Bonauto  
Mary Bonauto 411

Against Redefining Marriage: A Review and Critique of Recent Legal Developments  
William C. Duncan 427

Does Sex Make Babies? Marriage, Same-Sex Marriage and Legal Justifications for the Regulation of Intimacy in a Post-Lawrence World  
Maggie Gallagher 447

Keeping It: What’s His Is His and What’s Hers Is . . . Whose?  
E.J. Graff 473

Remarks of Maureen M. Murphy  
Maureen M. Murphy 481

The Unavoidable Influence of Religion Upon the Law of Marriage  
Charles J. Reid, Jr. 493
Legal Recognition of Same-Sex Couples: The Impact on Children and Families
Judith Stacey 529

Considering the Impacts on Children and Society of "Lesbigay" Parenting
Lynn D. Wardle 541

Remarks of Robert Wintemute: International Trends in Legal Recognition of Same-Sex Partnerships
Robert Wintemute 577

Jennifer Gerarda Brown 597
ARTICLES

- Prop. Regs. §1.951-1(e): Pro Rata Share of Subpart F Amounts Taxable to U.S. Shareholders
  by Lowell D. Yoder, Esq. and Gregory R. Walker, Esq. ............................................. 611

- Pending Protocol Will Prevent Inverted Corporations from Accessing the Barbados Treaty
  by Michael J. Miller, Esq. ................................................................................................. 643

MEXICO-U.S. TAX PRACTICE—A CROSS-BORDER VIEW

- An Examination of the Mexican Tax Reform Proposal for 2005
  by Jorge Gross, Marc Schwartz, Esq., Carole Gradwohl and Adriana Rodriguez .......... 655

LEADING PRACTITIONER COMMENTARY

- WFOEs and SPVs
  by Kenneth A. Knapp, Esq. ............................................................................................ 658

- Treaty Status of Dual-Resident Countries
  by Jerome B. Libin, Esq. ................................................................................................. 669

- Welcomethe Societas Europaea
  by David R. Tilligten, Esq. ............................................................................................ 660

- Formulary Approach to Cross-Border Taxation to Be Tested in Europe: No Transfer Pricing, No Worries?
  by James J. Moin, Esq. .................................................................................................... 662

TAX TREATIES AND INTERNATIONAL TAX AGREEMENTS

- Current Status of U.S. Tax Treaties and International Tax Agreements
  by John Venuti, Manal S. Corwin, Steven R. Lainoff, and Paul M. Schmidt .......... 665

LEGISLATION

- Current Status of Legislation Relating to International Tax Rules
  by David Benson, Esq., Michael F. Mundaca, Esq., Marjorie A. Rollinson, Esq.,
  and Peg O'Connor, Esq. ........................................ ................................. 673
CONTENTS

21  Code Sec. 277 and the Common Law Cooperative
By Clayton S Reynolds

33  The New Schedule M-3—An In-Depth Look
By John H. Ledbetter and Lucinda L. Van Alst

41  Basis of Property Acquired by Gifts
By Katherine D. Black and Jeffrey N. Barnes

45  Tax Briefing
A Look at the American Jobs Creation Act of 2004
and the Working Families Tax Relief Act of 2004

Columns

Tax Trends
By Mark A. Luscombe 3

International Tax Watch
By Gregg D. Lemein and John D. McDonald 5

Individuals and Passthrough Entities
By Susan Kalinka 7

Conferences 59
Products liability

18 Will e-discovery get squeezed?
JAMES E. ROOKS JR.
Plaintiffs' ability to obtain electronic data in discovery will be compromised if new proposed amendments to the Federal Rules of Civil Procedure are adopted. Trial lawyers should register their opposition during the comment period.

26 Governing product safety
INTERVIEW WITH SALLY GREENBERG AND JANELL MAYO DUNCAN
Government safety standards sometimes fail to protect consumers from dangerous products. Two attorneys from Consumers Union discuss how regulatory agencies can do more.

32 Ford's dangerous door-latch defects
JEFFREY G. WIGINGTON AND KEVIN R. DEAN
The automaker has known for years that its defective door-latch system allows doors to fly open in crashes. But Ford has not redesigned the latches to prevent injuries and deaths from ejections.

36 How to document a food-poisoning case
WILLIAM D. MARLER AND DAVID W. BACOCK
The contaminated food that made your client sick may be gone, but documents showing the defendant's poor food-handling practices can provide the proof you need to support the claim.

42 Automakers gloss over glass defects
PAUL J. KOMYATTE
Laminated glass has been proven safer in accidents than tempered glass, yet the auto industry has failed to make it standard equipment in all vehicles. Rely on the proof in government and industry documents to meet defenses.

Features

50 Make or break your trucking case with 'black box' data
RONALD G. BREDEMEYER
Electronic control modules record operating statistics such as speed, braking events, and time spent idling—information that can be vital to proving liability.
56 Don't let your opponent disrupt depositions
Valerie A. Yarashus and David McCormack
Find out how to maintain control of a deposition that opposing counsel constantly interrupts with objections and requests for client conferences. And know when to challenge improper use of errata sheets.

64 Harassment without words
William J. Martinez
Workplace harassment has taken a subtle turn: Harassers have learned to avoid overtly sexist or racist comments, making cases more difficult—but not impossible—to prove.

70 Great endings
Gary B. Fellersdorf
Closing argument is your opportunity to tie up your case into a neat package for jurors to take into deliberations. Here's how to deliver an exceptional summation.

ATLA
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12 Lawsuits fault off-label use of Neurontin in suicide cases
16 Insurers must comply with broad discovery requests, judge rules
90 Massachusetts high court certifies 'light' cigarette class action
90 Tattoo inks contain unhealthy levels of toxic metals, suit claims

97 Hours from a 'make whole' award count for FMLA eligibility
97 California agency will seek to depublish paternity ruling
99 Eleventh Circuit upholds doctors' federal class against HMOs
100 Gas company may be liable for station's sale of fuel to drunk driver
102 New government ratings confirm SUV rollover propensity

Enclosed with this issue: supplements to TRIAL
# UNIVERSITY OF CINCINNATI LAW REVIEW

**Volume 72**  
**Summer 2004**  
**No. 4**

## TABLE OF CONTENTS

**WILLIAM HOWARD TAFT LECTURE**

**The Importance of Being Positive: The Nature and Function of Judicial Review**  
*Barry Friedman*  
1257

**ARTICLES**

**A Response to Professor John Coffee: Analyst Liability Under Section 10(b) of the Securities Exchange Act of 1934**  
*Elizabeth A. Nowicki*  
1305

**The Lawyer Doth Protest Too Much, Methinks: Reconsidering the Contemporaneous Objection Requirement in Depositions**  
*E. Stewart Moritz*  
1353

**Whose Music is it Anyway?: How We Came to View Musical Expression as a Form of Property**  
*Michael W. Carroll*  
1405

**Optimizing Regulation of Electronic Commerce**  
*Joy P. Kesen & Andres A. Gallo*  
1497

**The Introduction of Biotech Foods to the Tort System: Creating a New Duty to Identify**  
*Katharine Van Tassel*  
1645

**COMMENTS AND CASENOTES**

*Sean Arthurs*  
1707

**Good Guns (and Good Business Practices) Provide All the Protection They Need: Why Legislation to Immunize the Gun Industry from Civil Liability is Unconstitutional**  
*Patricia Foster*  
1739

**Private Employers or Private Investigators? A Comment on Negligently Hiring Applicants with Criminal Records in Ohio**  
*Megan Oswald*  
1771
CONTINENTAL DRIFT: THE EUROPEAN COURT OF HUMAN RIGHTS AND THE ABOLITION OF ANTI-SODOMY LAWS IN LAWRENCE V. TEXAS  
Daniel Smith 1799

Kristin Woeste 1821
CONTENTS

ARTICLES

Campaign Finance Reform and the Social Inequality Paradox
Yoav Dotan ................................................................. 955

The Higher Calling: Regulation of Lawyers Post-Enron
Keith R. Fisher ......................................................... 1017

Foster Care Placement: Reducing the Risk of Sibling Incest
David J. Herring ...................................................... 1145

NOTES

Two Standards of Competency Are Better Than One: Why Some Defendants Who Are Not Competent to Stand Trial Should be Permitted to Plead Guilty
Jason R. Marshall .................................................... 1181

A Whole New Game: Recognizing the Changing Complexion of Indian Gaming by Removing the “Governor’s Veto” for Gaming on “After-Acquired Lands”
Brian P. McClatchey ................................................ 1227

Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation
Amy Radon .............................................................. 1275
CONTENTS

REFLECTIONS ON BROWN V. BOARD OF EDUCATION AND THE CIVIL RIGHTS MOVEMENT IN VIRGINIA

Reflections on Brown and the Future .... Oliver W. Hill, Sr., Esq. 1

The Promise of Equality:
Reflections on the Post-Brown Era in Virginia ............ The Honorable Robert R. Merhige, Jr. 11

A Call to Leadership: The Future of Race Relations in Virginia ............. Dean Rodney A. Smolla 25

Brown and the Desegregation of Virginia Law Schools ........ Professor Carl W. Tobias 39

Virginia's Next Challenge:
Economic and Educational Opportunity ...................... The Honorable Mark R. Warner 53

ANNUAL SURVEY OF VIRGINIA LAW

ESSAY

Discoverability of Healthcare
Provider Policies and Incident Reports .... Michael L. Goodman 61
Kathleen M. McCauley
Suzanne S. Duvall

ARTICLES

Civil Practice and Procedure ................. John R. Walk 87

Criminal Law and Procedure ............... Marla G. Decker 133
Stephen R. McCullough

Education Law .................... D. Patrick Lacy, Jr. 183
Kathleen S. Mehfoud
Environmental Law ......................... *Benjamin A. Thorp, IV* 203
                                            *William K. Taggart*

Family and Juvenile Law ...................... *Robert E. Shepherd, Jr.* 241

Labor and Employment Law ................. *Thomas M. Winn, III* 285
                                            *Lindsey H. Dobbs*

Professional Responsibility .................. *James M. McCauley* 315

Real Estate and Land Use Law ............... *Brian R. Marron* 357

Taxation ........................................... *Craig D. Bell* 413

Wills, Trusts, and Estates .................. *J. Rodney Johnson* 447

Workers' Compensation ....................... *Lawrence D. Tarr* 475
                                            *Salvatore Lupica*
President
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THE VIRGINIA BAR ASSOCIATION
VOLUME XXX, ISSUE 6 • OCTOBER 2004

4 • President’s Page:
Procedural ‘Roulette’: Gambling on Justice
In Virginia’s Death Penalty System
E. Tazewell Ellett

7 • ABA News Brief: Jury Symposium at W&L

8 • Legal Focus/Civil Litigation:
Factors Involved in Granting and Denying Preliminary Injunctions in Virginia State Courts
Bradfute W. Davenport

13 • Legal Focus/Civil Litigation:
Masse v. Firmstone: Limiting Parties from Rising Above Their Own Evidence
David N. Anthony

18 • John Marshall Day Observed in Richmond

19 • Young Lawyers Division:
VBA/YLD rallies to aid tropical storm victims • Cruzan attorney encourages use of advance medical directives in Charlottesville • New e-newsletter helps keep young lawyers informed

20 • Across the Commonwealth
Letters of intent for 2005-06 Virginia Law Foundation grants due in December • Virginia Indigent Defense Summit at UR next month • Community Service Program encouraged by pledges • Reserve your room for the Annual Meeting • Benos named Canada’s consul in Richmond

22 • News in Brief

22 • Professional Announcements

23 • VBA Member Benefits

24 • Calendar

On the Cover: The Isle of Wight County Courthouse (1752) at Smithfield. One hundred forty photographs of Virginia courthouses are contained in Virginia’s Historic Courthouses, written by John O. and Margaret T. Peters with a foreword by the late Justice Lewis F. Powell Jr.; photographs by John O. Peters; published by University Press of Charlottesville; and sponsored by The Virginia Bar Association. To order the book, call the VBA at (804) 644-0041 or 1-800-644-0987.
WISCONSIN LAW REVIEW

Published by the University of Wisconsin Law School

FREEDOM FROM CONTRACT SYMPOSIUM

Foreword

Omri Ben-Shahar 261

The Revocation of Offers

Melvin A. Eisenberg 271
Commentary by Charles L. Knapp 309

Taxonomy for Justifying Legal Intervention in an Imperfect World:
What To Do When Parties Have Not Achieved Bargains or Have Drafted
Incomplete Contracts

Juliet P. Kostritsky 323
Commentary by Brian Bix 379

“Agreeing to Disagree”:
Filling Gaps in Deliberately Incomplete Contracts

Omri Ben-Shahar 389

Fear of Contract

Roy Kreitner 429

Is “Freedom from Contract” Necessarily a Libertarian Freedom?

Todd D. Rakoff 477
Commentary by Iain Ramsay 495

Promissory Fraud Without Breach

Ian Ayres & Gregory Klass 507
Commentary by Kevin E. Davis 535

Self-Enforcing International Agreements and the Limits of Coercion

Robert E. Scott & Paul B. Stephan 551
Commentary by William C. Whitford 631
Commentary by David Campbell 645

Rolling Contracts as an Agency Problem

Clayton P. Gillette 679

Contracting Under Amended 2-207

James J. White 723
Commentary by Jean Braucher 753

Freedom from Contract: Solutions in Search of a Problem?

Stewart Macaulay 777

Appendix: ProCD v. Zeidenberg in Context 821
In this issue of
Women Lawyers Journal
Published by the National Association of Women Lawyers® Vol. 89 No. 4

Editor's Note
by Ellen Pansky

NAWL's 2004-2005 Executive Officers

2004 Outstanding Law Students

Equal Rights for Women in Afghanistan?
by Eva Herzer

NAWL News

Review of Texas Tornado, The Autobiography of Louise Raggio
by Selma Moidel Smith

Work-Life Balance for Attorneys: Choice, Compromise and Control
by Camille Heenan

Firms Must Address Perceptions of Gender Bias
by Lin M. Meyer

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WOMEN LAWYERS JOURNAL — SUMMER 2004 • 3
This volume is dedicated to the memories of Ruth Blumrosen and Arthur Kinoy, whose works and accomplishments embodied the mission of the Women’s Rights Law Reporter.

ARTICLE:
Sleeping with the Enemy: Mexico and Domestic Violence, Out for a Rude Awakening or Rising in Time?
Yvette Lopez .......................................................... 1

NOTE:
Gathering Dust on the Evidence Shelves of the United States—Rape Victims and Their Kits: Do Rape Victims Have Recourse Against State and Federal Criminal Justice Systems?
Jill E. Daly .......................................................... 17

SYMPOSIUM TRANSCRIPT:
Women & Men Lawyers Working Together: How to Do It Better
Foreword by Honorable Francine Axelrad ............................................. 37

MEMORIAL:
Ruth Gerber Blumrosen (1927-2004)
Annamay T. Sheppard, The Honorable Eleanor Holmes Norton and Alfred W. Blumrosen ...... 55

REPORT:
First Statistical Report on Intentional Job Discrimination Against Women
Alfred W. Blumrosen and Ruth G. Blumrosen ............................................. 63
Yale Journal of Law & the Humanities

Volume 16, Number 1
Winter 2004

Articles

Alec Walen
Criticizing the Obligatory Acts of Lawyers: A Response to
Markovits’s *Legal Ethics from the Lawyer’s Point of View* .................. 1

Ted Schneyer
The Promise and Problematics of
*Legal Ethics from the Lawyer’s Point of View* ................................... 45

Geoffrey C. Hazard, Jr.
Humanity and the Law ................................................................. 79

Daniel Markovits
Further Thoughts about *Legal Ethics from the Lawyer’s Point of View* .......... 85

Peter C. Hennigan
Property War: Prostitution, Red-Light Districts, and the
Transformation of Public Nuisance Law in the Progressive Era .............. 123

Peter Goodrich
The Immense Rumor ................................................................. 199

Note

Claudio Salas
The Case for Excluding the Criminal Confessions of the
Mentally Ill ................................................................. 243