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>Alberta Law Review</td>
<td>42</td>
<td>2</td>
<td>October 2004</td>
</tr>
<tr>
<td>Cardozo Arts &amp; Entertainment Law Journal</td>
<td>22</td>
<td>2</td>
<td>2004</td>
</tr>
<tr>
<td>Catholic Lawyer</td>
<td>43</td>
<td>2</td>
<td>2004</td>
</tr>
<tr>
<td>Cornell Law Review</td>
<td>90</td>
<td>1</td>
<td>November 2004</td>
</tr>
<tr>
<td>European Environmental Law Review</td>
<td>13</td>
<td>11</td>
<td>November 2004</td>
</tr>
<tr>
<td>Fordham Law Review</td>
<td>73</td>
<td>2</td>
<td>November 2004</td>
</tr>
<tr>
<td>International Review of the Red Cross</td>
<td>86</td>
<td>855</td>
<td>September 2004</td>
</tr>
<tr>
<td>Journal of African Law</td>
<td>48</td>
<td>2</td>
<td>2004</td>
</tr>
<tr>
<td>Journal of Legal History</td>
<td>25</td>
<td>3</td>
<td>December 2004</td>
</tr>
<tr>
<td>Minnesota Law Review</td>
<td>89</td>
<td>1</td>
<td>November 2004</td>
</tr>
<tr>
<td>Notre Dame Law Review</td>
<td>79</td>
<td>5</td>
<td>October 2004</td>
</tr>
<tr>
<td>St. Thomas Law Review</td>
<td>16</td>
<td>4</td>
<td>Summer 2004</td>
</tr>
<tr>
<td>Tax Management Compensation Planning Journal</td>
<td>32</td>
<td>12</td>
<td>December 2004</td>
</tr>
<tr>
<td>Tax Adviser</td>
<td>35</td>
<td>12</td>
<td>December 2004</td>
</tr>
<tr>
<td>Texas Law Review</td>
<td>83</td>
<td>1</td>
<td>November 2004</td>
</tr>
<tr>
<td>Trial</td>
<td>40</td>
<td>13</td>
<td>December 2004</td>
</tr>
<tr>
<td>Uniform Commercial Code Law Journal</td>
<td>37</td>
<td>2</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>University of Chicago Law Review</td>
<td>71</td>
<td>4</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Washington Law Review</td>
<td>79</td>
<td>4</td>
<td>November 2004</td>
</tr>
</tbody>
</table>
# Alberta Law Review

## Table of Contents

**Volume 42, No. 2 (October 2004)**

### Articles

<table>
<thead>
<tr>
<th>Title</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Kyoto, Constitutional Law and Alberta's Proposals</em></td>
<td>Nigel D. Bankes and Alastair R. Lucas</td>
<td>355</td>
</tr>
<tr>
<td><em>Liberté, Égalité, Argent: Third Party Election Spending and the Charter</em></td>
<td>Andrew Geddis</td>
<td>429</td>
</tr>
<tr>
<td><em>The Use of Extrinsic Evidence in the Interpretation of Written Agreements in Alberta</em></td>
<td>Tom F. Mayson</td>
<td>499</td>
</tr>
</tbody>
</table>

### Comments

<table>
<thead>
<tr>
<th>Title</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Schmeiser v. Monsanto: A Case Comment</em></td>
<td>Edward (Ted) Yoo and Robert Bothwell</td>
<td>553</td>
</tr>
<tr>
<td><em>Abdicating Responsibility: The Unprincipled Use of Deference in Lavoie v. Canada</em></td>
<td>Alyn James Johnson</td>
<td>561</td>
</tr>
</tbody>
</table>

### Book Reviews

<table>
<thead>
<tr>
<th>Title</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Milestones in the Law of Unjust Enrichment,</em> Peter Birks</td>
<td>Robert Chambers</td>
<td>575</td>
</tr>
<tr>
<td><em>This Little Connie Goes to Market: Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform,</em> Kerry Rittich</td>
<td>Annalise Acorn</td>
<td>583</td>
</tr>
<tr>
<td><em>The Lawyer's Myth: Reviving Ideals in the Legal Profession,</em> Walter Bennett</td>
<td>F.C. DeCoste</td>
<td>597</td>
</tr>
</tbody>
</table>
CONTENTS

ARTICLES

   Clay Calvert & Robert Richards 247

Market Fundamentalism and the TRIPS Agreement
   Thomas F. Cotter 307

Musical Copyright Law: Past, Present and Future of Online Music Distribution
   Robert J. Delchin, J.D. 343

"Equitable Remuneration" in Copyright Law: The Amended German Copyright Act as a Trap for the Entertainment Industry in the U.S.?
   Reto M. Hilfy & Alexander Peukert 401

The Reissue Recapture Doctrine: Its Place Among the Patent Laws
   Stephen G. Kunin & Kenneth M. Schor 451

The Unusual Suspects: Unscrambling Satellite Piracy
   David V. Lampman, II 553

Copyright Protection for Federally Funded Research: Necessary Incentive or Double Subsidy?
   Samuel E. Trosow 613

NOTE

"When a Nation is at War": A Context-Dependent Theory of Free Speech for the Regulation of Weapon Recipes
   Liezl Irene Pangilinan 683
A biannual journal devoted to timely legal problems having ethical, jurisprudential, philosophical, canonical, or theological implications.

CONTENTS

ARTICLES

ABORTION, BISHOPS, EUCHARIST, AND POLITICIANS: A QUESTION OF COMMUNION
Gregory C. Sisk
Charles J. Reid, Jr. ................................................................. 255

THE SPIRITUALITY OF COMMUNION: A RESOURCE FOR DIALOGUE WITH CATHOLICS IN PUBLIC LIFE
Amelia J. Uelmen ................................................................. 289

BORN AGAIN ON DEATH ROW: RETRIBUTION, REMORSE, AND RELIGION
Michael A. Simons ................................................................. 311

FINDING MARRIAGE AMIDST A SEA OF CONFUSION: A PRECURSOR TO CONSIDERING THE PUBLIC PURPOSES OF MARRIAGE
Randy Lee ............................................................................. 339

TAKING LIBERALISM AND RELIGIOUS LIBERTY SERIOUSLY: SHIFTING OUR NOTION OF TOLERATION FROM LOCKE TO MILL
James R. Beattie, Jr. ................................................................. 367

NOTES

THE CONSTITUTIONALITY OF POLYGAMY PROHIBITIONS AFTER LAWRENCE V. TEXAS: IS SCALIA A PUNCHLINE OR A PROPHET?
Joseph Bozzuti ................................................................. 409

PRESIDENT NIXON'S PRESIDENCY: THE HONORABLE KEVIN THOMAS DUFFY
Timothy John Casey ................................................................. 443
DEDICATION

LEE E. TEITELBAUM ........................................ DARIUS D. HUSSEIN 1
& CARL E. SCHNEIDER

ARTICLES

THE PLURALISTIC FOUNDATIONS OF
THE RELIGION CLAUSES ....................... STEVEN H. SHIFFRIN 9

IS THE PRESIDENT BOUND BY THE
GENEVA CONVENTIONS? ......................... DEREK JINKS & DAVID SLOSS 97

NOTES

GARA-MENDING THE DOCTRINE OF
FOREIGN AFFAIRS PREEMPTION ............ JOSEPH B. CRACE, JR. 203

PROSECUTORIAL DISCRETION AS AN
ETHICAL NECESSITY: THE ASHCROFT
MEMORANDUM’S CURTAILMENT
OF THE PROSECUTOR’S DUTY
TO “SEEK JUSTICE” ......................... AMIE N. ELY 237
Contents

Country Report
Denmark 290

The EU Marine Oil Pollution Regime – Recent Developments
Wang Hui 292

Back to Basics – Recent Considerations on the “Re-use” and “Regeneration of Waste”
David Pocklington 303

Book Review 308

Eurobrief 310
FORDHAM LAW REVIEW

VOLUME LXXIII  NOVEMBER 2004  NUMBER 2

CONTENTS

SYMPOSIUM: THE SECOND AMENDMENT AND THE FUTURE OF GUN REGULATION: HISTORICAL, LEGAL, POLICY, AND CULTURAL PERSPECTIVES

EDITORS' FOREWORD ............................................ 475

KEYNOTE ADDRESS

PUTTING THE GUN CONTROL DEBATE IN SOCIAL PERSPECTIVE .............. Erwin Chemerinsky 477

Panel I: Historical Perspectives

A WELL REGULATED RIGHT:
THE EARLY AMERICAN ORIGINS OF GUN CONTROL .................. Saul Cornell 487

and Nathan DeDino

COLLECTIVE RESPONSIBILITIES, PRIVATE ARMS, AND STATE REGULATION:
TOWARD THE ORIGINAL UNDERSTANDING... James A. Henretta  529

THE PERSISTENCE OF RESISTANCE:
CIVIC RIGHTS, NATURAL RIGHTS, AND PROPERTY RIGHTS IN THE HISTORICAL DEBATE OVER “THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS”......David Thomas Konig 539

Panel II: Legal Perspectives

IDENTITY POLITICS AND THE SECOND AMENDMENT ................. Michael C. Dorf 549

ELITES, IDENTITY POLITICS, GUNS, AND THE MANUFACTURE OF LEGAL RIGHTS....... Calvin Massey  573

Panel III: Public Policy Perspectives

PRINCIPLES FOR EFFECTIVE GUN POLICY .... Philip J. Cook 589
and Jens Ludwig
COOK AND LUDWIG’S *PRINCIPLES FOR EFFECTIVE GUN POLICY*: 
AN EXTENSION TO SUICIDE PREVENTION  ...... Deborah Azrael  615

GUNS, CRIME, AND THE IMPACT OF 
STATE RIGHT-TO-CARRY LAWS  .......... John J. Donohue  623

**Panel IV: Cultural Perspectives**

ON GUN REGISTRATION, THE NRA, 
ADOLF HITLER, AND NAZI GUN LAWS: 
EXPLODING THE GUN CULTURE WARS 
(A CALL TO HISTORIANS) ............ Bernard E. Harcourt  653

POLICY, POLITICS, AND PARADOX: 
The Institutional Origins of the 
Great American Gun War .......... Kristin A. Goss  681

RESPONSE TO BERNARD E. HARcourt’S 
ON GUN REGISTRATION, THE NRA, 
ADOLF HITLER, AND NAZI GUN LAWS: 
EXPLODING THE GUN CULTURE WARS 
(A CALL TO HISTORIANS) ............ Deborah Homsher  715

DON’T KNOW MUCH ABOUT HISTORY, 
POLITICS, OR THEORY: A COMMENT ...... Robert J. Spitzer  721

**Essays**

*Euclid Lives? The Uneasy Legacy of Progressivism in Zoning* .......... Eric R. Claeys  731

**Yes, Thankfully, Euclid Lives** .......... Charles M. Haar 
and Michael Allan Wolf  771

**Note**

A RETURN TO PRACTICALITY: 
REFORMING THE FOURTH COX 
EXCEPTION TO THE FINAL 
JUDGMENT RULE GOVERNING 
SUPREME COURT CERTIORARI 
REVIEW OF STATE COURT 
JUDGMENTS  .......... Gayle Gerson  789
EDITORIAL

La globalisation: approche du phénomène et ses incidences sur l'action humanitaire
JEAN-LUC BLONDDEL

The ICRC's approach to contemporary security challenges: A future for independent and neutral humanitarian action
PIERRE KRAHENBÜHL

Legal regulation of humanitarian assistance in armed conflict: Achievements and gaps
RUTH ABRIL STOFFELS

Moral dilemmas for humanitarianism in the era of «humanitarian» military interventions
BEAT SCHWEIZER

Contemporary challenges in the civil-military relationship: Complementarity or incompatibility?
RAJ RANA

Speaking out or remaining silent in humanitarian work
JAKOB KELLENBERGER
Affaires courantes et commentaires
Current issues and comments

611 Rwanda 1994: un témoignage: «On peut tuer autant de gens qu'on veut, on ne peut pas tuer leur mémoire»
PHILIPPE GAILLARD

629 François Bugnon's The International Committee of the Red Cross and the Protection of War Victims
MICHAEL A. MEYER

633 «Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé»: quelques réflexions préliminaires sur l'avis consultatif de la Cour internationale de Justice
ROSEMARY ABI-SAADE

Faits et documents Reports and documents

659 Politique d'assistance du CICR
Adoptée par l'Assemblée du Comité international de la Croix-Rouge le 29 avril 2004

677 ICRC Assistance Policy
Adopted by the Assembly of the International Committee of the Red Cross on 29 April 2004
694 National implementation of international humanitarian law
Biannual update on national legislation and case law, January-June 2004

Livres et articles  Books and articles

707 Récentes acquisitions faites par le Centre d'Information et de Documentation / Recent acquisitions of the Library & Research Service
# Abstracts

<table>
<thead>
<tr>
<th>Abstract</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tip-toeing through a constitutional minefield: the great Sharia controversy in Nigeria</td>
<td>Andrew Ubaka Iwobi</td>
<td>111</td>
</tr>
<tr>
<td>Institutions with responsibility for human rights protection under the African Union</td>
<td>Amanda Lloyd and Rachel Murray</td>
<td>165</td>
</tr>
<tr>
<td>Managing trade liberalization: legal system deficiencies and the political economy of contingency protection in Ghana</td>
<td>Dominic M. Ayine</td>
<td>207</td>
</tr>
<tr>
<td>Strict liability for defective products in Cameroon? Some illuminating lessons from abroad</td>
<td>Samgena D. Galega</td>
<td>239</td>
</tr>
</tbody>
</table>

# Recent Developments

<table>
<thead>
<tr>
<th>Topic</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002 Global Strategy for Plant Conservation</td>
<td>Jon Lovett</td>
</tr>
</tbody>
</table>

# Book Reviews

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customary Law in South Africa</td>
<td>Thoko Kaine</td>
</tr>
<tr>
<td>Women and Law in sub-Saharan Africa</td>
<td>Thoko Kaine</td>
</tr>
<tr>
<td>Motor Vehicle Insurance in Cameroon</td>
<td>Ray Hodgins</td>
</tr>
</tbody>
</table>
Contents

The Origins of *quare impedit*  
Joshua C. Tate  203

Law-making at *Nisi Prius* in the Early 1800s  
James Oldham  221

Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited  
Phil Handler  249

The Idea of a Trust in Zoroastrian Law  
János Jany  269

The Protection of the Contractor in Public Works Contracts in the Roman Republic and Early Empire  
Paul du Plessis  287

Migrations of Manuscripts  
J.H. Baker  315

Major Accessions to Repositories in 2003 Relating to Legal History  335

Book Reviews (see over)  343

Index to Volume 25  357
Books Reviewed

*Expectations of the Law in the Middle Ages*
by ANTHONY MUSSON
Mark Godfrey 343

*The Duel in Early Modern England: Civility, Politeness and Honour*
by MARKKU PELTONEN
Paul Mitchell 345

*Family Law in the Twentieth Century: A History*
by STEPHEN CRETNEY
Rosemary Auchmuty 348

*Law, Society, and Culture in the Maghrib, 1300–1500*
by DAVID S. POWERS
Christopher McNall 350

*Plebs and Politics in the Later Roman Republic*
by HENRIK MOURITSEN
Olga Tellegen-Couperus 352

*A History of Public Law in Germany 1914–1945*
by MICHAEL STOLLEIS
Jean Meiring 354
Minnesota Law Review

Volume 89 November 2004 Number 1

CONTENTS

FOREWORD

Reflections on Fifty Years of Progress in Civil Rights, Liberties, and Participation........Walter F. Mondale 1

ARTICLES

Regulating Oligopoly Conduct
Under the Antitrust Laws....Thomas A. Piraino, Jr. 9

"Willful Blindness" to Gender-Based Violence Abroad:
United States' Implementation of
Article Three of the United Nations
Convention Against Torture..............Lori A. Nessel 71

Contracting Around Finality:
Transforming Price v. Neal
from Dictate to Default........Christopher M. Grengs
and Edward S. Adams 163

LECTURE

Mayeenth..........................................Jim Chen 203

NOTE

Voting—Not Quite a Fundamental Right? A Look at
Legal and Legislative Challenges to Felon
Disfranchisement Laws..............Angela Behrens 231
NOTRE DAME LAW REVIEW

Volume 79 Number 5

CONTENTS

HONORING DAVID SHAPIRO

Procedure, Politics and Power:
The Role of Congress ................. Stephen B. Burbank 1677

Common-Law Compulsory Counterclaim Rule:
Creating Effective and Elegant
Res Judicata Doctrine ............... Kevin M. Clermont 1745

Restyling the Civil Rules:
Clarity Without Change .............. Edward H. Cooper 1761

How Like a Winter? The Plight of
Absent Class Members
Denied Adequate Representation .... Susan P. Koniak 1787

Continuity and the Legislative Design ..... John F. Manning 1863

Jurisdiction and Discretion Revisited .... Daniel J. Meltzer 1891

The Tidewater Problem: Article III and
Constitutional Change .............. James E. Pfander 1925
The Integration of Law and Fact in an Uncharted
Parallel Procedural Universe .......... **Stephen N. Subrin** 1981

Thomas O. Main

Punitive Damages, Descriptive Statistics, and
the Economy of Civil Litigation .......... **Stephen C. Yeazell** 2025

NOTES

Crashing by Design: Toward a Uniform
Standard for Public Place Analysis
Under Federal Copyright Law .......... **Adam Barrett Townshend** 2045

Caught in the Toils of Regulation: Tahoe-
Sierra, Ripeness, Permit Requirements,
and a Measure of Relief ................. **Adam Greenwood** 2079

Copyright, Congress, and Constitutionality:
How the Digital Millennium Copyright
Act Goes Too Far ........................ **Thomas A. Mitchell** 2115

Legislation Overlap: Should the Clean Water Act
or the Federal Insecticide, Fungicide and
Rodenticide Act Prevail When
Pesticides End Up in U.S. Waters? ....... **Meghan Rhatigan** 2183

INDEX

Volume 79 Index ............................ 2213

---

The *Notre Dame Law Review* (issn:0745-3515) is published five times annually by the Notre Dame Law School. Subscription rates will be as follows: $40.00 annually; two-year subscriptions, $75.00; three-year subscriptions, $105.00; five-year subscriptions, $175.00; single issues $12.00.

Address all correspondence concerning subscriptions to the Business Manager. Subscriptions will be automatically renewed unless a subscriber requests the Business Manager to discontinue the subscription. Notifications of address change should include both old and new addresses, with zip codes. Please allow at least one month for changes to become effective.

Editorial and Business Address: The *Notre Dame Law Review*, P.O. Box 0988, Notre Dame, Indiana 46556. Telephone: (574) 631-7097; Fax: (574) 631-6879; E-mail: ndlrev@nd.edu.

POSTMASTER: Send address changes to *Notre Dame Law Review*, P.O. Box 0988, Notre Dame, Indiana 46556. Periodical postage is paid at Notre Dame, Indiana and at additional mailing offices.

The *Notre Dame Law Review* invites the submission of unsolicited manuscripts, which should conform to seventeenth edition of *The Bluebook: A Uniform System of Citation*. Only finished manuscripts are considered for publication. Regrettably, manuscripts cannot be returned unless a self-addressed stamped envelope is included.

The views expressed are those of the authors and do not necessarily reflect the policies or opinions of the *Notre Dame Law Review*, its editors and staff, Notre Dame Law School, or the University of Notre Dame.

For additional information about the *Notre Dame Law Review* please visit our website at www.nd.edu/~ndlrev.
ST. THOMAS LAW REVIEW
VOLUME 16 SUMMER 2004 NUMBER 4

SYMPOSIUM ISSUE

ST. THOMAS UNIVERSITY SCHOOL OF LAW
INTERNATIONAL LAW SYMPOSIUM:
THE ALIEN TORT CLAIMS ACT

ARTICLES

Theoretical and Historical Foundations of the Alien Tort Claims Act and Its Discontents: A Reality Check ........................................ Ralph G. Steinhardt 585

International Implications of the Alien Tort Statute ..................................... Gary Clyde Hufbauer & Nicholas K. Mirokostas 607

The Alien Tort Statute: An Emerging Threat to National Security .................. Captain Mark E. Rosen, JAGC, U.S. Navy (Ret.) 627

“Corporate Social Responsibility,” Unmasked ............................................... Terry Collingsworth 669

NOTES & COMMENTS

Corporate Liability for Human Rights Violations on Foreign Soil: A Historical and Prospective Analysis of the Alien Tort Claims Controversy ......................... Gabriel D. Pinilla 687

The Alien Tort Claims Act: A Tool for Repairing Ethically Challenged U.S. Corporations ................................................................. Sonia Jimenez 721
ARTICLES

- DOL Finalizes COBRA Regulations
  by Mark L. Stember, Esq. .................................................. 351

- Unwinding SESOPs
  by Fred J. Diss, Esq. ..................................................... 362

- Hidden Costs: The Mutual Fund Scandal from Market Timing to Fee Bundling and Its Implications for Retirement Plans
  by Brian O'Hare, Esq. ...................................................... 371

INSIDE WASHINGTON .......................................................... 377

Highlights:
- Section 409A — Status of Treasury Guidance
- Guidance Expected Soon on Synthetic Equity in ESOPs

PRACTITIONER'S FORUM ...................................................... 379

PRACTITIONER'S INSIGHTS

- DOL Issues Final Automatic Rollover Regulations and Guidance on Missing Participants in Terminated Defined Contribution Plans .................................................. 381

- Ohio Court Finds that ERISA Preempts State Slayer Statute .................................................. 382

- Erroneous Belief that Execution of §83(b) Election Was Mandatory Is Not a Mistake of Fact .................................................. 383

- IRS Rules that Payment of Taxes, Administrative Expenses and Funeral Expenses from Trust Will Not Cause Creditors to Be Beneficiaries Under §401(a)(9) .................................................. 384
THE TAX ADVISER

DECEMBER 2004

BANKRUPTCY & INSOLVENCY
IRS Changes Stance on Debtors’ Pensions 779

DEPRECIATION
Defining Depreciation Limits on Qualified Non-Personal-Use Trucks and Vans 730

EMPLOYEE BENEFITS & PENSIONS
Helping Clients Generate Cashflow in Retirement Plans 729

Current Developments (Part II)
by Deborah Walker and James Lutz 756

ESTATES, TRUSTS & GIFTS
Estate Planning with Pensions 731
Good News for Surviving Spouses with Pre-1977 Property 732
Lessons of Thompson and Kimbell 733
Prop. Regs. on Predeceased Parent Rule 734

FLP Planning after Strangi, Kimbell and Thompson
by Terry Eyberg and Barbara J. Raasch 750

GAINS & LOSSES
Capital Gain on Development Property 734

GROSS INCOME
Washington’s Attorneys’ Lien Law 729

Continued On Next Page

Titles in green indicate feature articles.
Page numbers in green indicate items in Tax Clinic.

Opinions expressed in The Tax Adviser are those of the individual writers and may differ from policies of the American Institute of Certified Public Accountants, the Tax Division or its other divisions and committees. This publication is designed to provide accurate and authoritative information on the subjects covered. It is sold, however, with the understanding that the publisher, editors and authors are not engaged in rendering legal, accounting or other professional service. If specific tax advice or other expert assistance is required, the services of a competent professional person should be sought. The contents of The Tax Adviser are indexed in Accounting & Tax Database/Index, available online on Dialog, File 485, a product of Bell & Howell Information & Learning, http://www.umi.com.

A Publication of the American Institute of Certified Public Accountants
<table>
<thead>
<tr>
<th>INDIVIDUALS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Deductibility of Retirement Community Fees</td>
<td>735</td>
</tr>
<tr>
<td>Federal Tax Implications of Same-Sex Marriage</td>
<td>738</td>
</tr>
<tr>
<td>Divorce Issues and Business Succession Planning</td>
<td>744</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>S CORPORATIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>S Corporation Passive Income</td>
<td>739</td>
</tr>
<tr>
<td>S Corporations, CGES and Sec. 179</td>
<td>739</td>
</tr>
<tr>
<td>Reporting Certain Nondividend Distributions on Form 5452</td>
<td>776</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STATE &amp; LOCAL TAXES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Implications for Massachusetts Same-Sex Marriages</td>
<td>742</td>
</tr>
<tr>
<td>State Tax Residency Issues</td>
<td>770</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PASSIVE ACTIVITIES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-Rental Rule Not Affected by Grouping Activities</td>
<td>780</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRACTICE MANAGEMENT</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>E-Filing State Tax Returns</td>
<td>766</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PROCEDURE &amp; ADMINISTRATION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Teacher Severance Pay Not Subject to FICA</td>
<td>781</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Advertisers in this issue</th>
<th>792</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Tax Adviser Resource Guide</td>
<td>792</td>
</tr>
</tbody>
</table>

Titles in green indicate feature articles. Page numbers in green indicate items in Tax Clinic.
Texas Law Review
Volume 83, Number 1, November 2004

ARTICLES

The Rehnquist Court’s Two Federalisms
Ernest A. Young

Trait Discrimination as Sex Discrimination:
An Argument Against Neutrality
Kimberly A. Yuracko

BOOK REVIEW ESSAY

Was the Right to Keep and Bear Arms Conditioned on
Service in an Organized Militia?
Randy E. Barnett

reviewing
THE MILITIA AND THE RIGHT TO ARMS, OR, HOW THE
SECOND AMENDMENT FELL SILENT

NOTE

Deworming the Internet
Douglas A. Barnes
Inadequate security

20 Crime on college campuses
Amanda Farahany
College campuses might look idyllic in recruitment brochures, but they can be dangerous places. Most parents aren't aware that campuses are fraught with risks, especially for young women. Many schools' security measures fail to live up to promises to provide a safe haven for learning. Litigation based on premises theories can help ensure students' safety and their families' peace of mind.

26 Prove notice with standards and statistics
Melvin L. Hewitt
Does a lack of prior crimes on a commercial property mean the defense has the case all sewn up? Don't be so sure. Statistical models about crimes in the area and evidence about industry standards can establish foreseeability even in these tough cases.

31 Liability for security system failure
Raymond O. Bodiford
Alarm and security systems are ubiquitous in convenience stores, banks, and office buildings. These businesses rely on such systems to keep their employees and customers safe. But who is responsible when they fail? Products liability and failure-to-warn theories can help you hold a negligent security company accountable.

Features

36 Do Mom and Mom and baby make a family?
William S. Friedlander
Increasingly, same-sex couples who want to be parents are turning to adoption or reproductive technologies. But when a couple splits, tricky custody issues and evolving definitions of parenthood can leave them in legal limbo. Courts around the country are trying to untangle a thorny knot of legal questions about the rights and responsibilities of same-sex parents.

www.atla.org
TRIAL is wired: ATLA members can access and search the full text of each issue of TRIAL dating back to June 1995 by visiting ATLA's Web site at www.atla.org. Our e-mail address is trial@atla.org.
44 Fighting for military mothers' newborns
Laurie Higginbotham
and Jamal Alsaffar
The federal government is immune from lawsuits by military personnel over injuries "incident to service," so holding negligent military doctors accountable in birth injury cases can seem an insurmountable task. But it's not impossible: In some jurisdictions, you can get justice for military families by bringing a claim exclusively for the child's injuries.

President's page
9 Strength in numbers
ATLA in motion
10 Nevada ballot initiative
Letters
Supreme Court review
12 The sentencing conundrum
Books
Electronic Evidence
54 and Discovery
The Cyanide Canary

Professional services
70 Classified
Index of advertisers—
84 2004 annual index
Hearsay
96

Coming to a contract near you: the predispute jury waiver
14 Offer of judgment does not derail class action, Third Circuit holds
Second Circuit puts 'interacting with others' under ADA's ambit

Disclosure deadline passes as dispute over NHTSA data continues
Workers' comp release form does not block civil claims in California
Fifth Circuit allows case against thimerosal maker to proceed
Crime witness may claim emotional distress, says Tennessee court

Enclosed with this issue: supplements to TRIAL.
Uniform Commercial Code Law Journal

Vol. 37, No. 2 Fall 2004

A Vision of a Future World of Contract Law—Impact of European and UNIDROIT Contract Principles
Ole Lando

Principles of European Contract Law – Full Text

Judicial Highlights
Louis F. Del Duca and Patrick Del Duca

Current Literature

Mat #40178556
The University of Chicago
Law Review

Volume 71 Fall 2004 Number 4

© 2004 by The University of Chicago

ARTICLES


Agency Choice of Policymaking Form........M. Elizabeth Magill 1383

Personal Property Servitudes..................Glen O. Robinson 1449

COMMENTS

The Wasteful Duplication Thesis in Natural Monopoly Regulation....................Aditya Bamzai 1525


New Protections after Boy Scouts of America v Dale: A Private University’s First Amendment Right to Pursue Diversity..................David P. Gearey 1583

Tertiary Copyright Liability...............Benjamin H. Glatstein 1605

Appropriating Availability: Reconciling Purpose and Text under the Indian Self-Determination and Education Assistance Act...........Elizabeth M. Glazer 1637

Colorado River Water Rights: Property Rights in Transition.............Megan Hennessy 1661
Sexual Orientation: Testing the Universality of International Human Rights Law.............Holning Lau 1689

The Value of Law Review Membership............Dexter Samida 1721

Beyond Imminence: Evolving International Law and Battered Women’s Right to Self-Defense.................................Shana Wallace 1749
ARTICLE

Whistling in the Dark? Corporate Fraud, Whistleblowers, and the Implications of the Sarbanes-Oxley Act for Employment Law

Miriam A. Cherry 1029

NOTES & COMMENTS

Does Delaware’s Section 102(b)(7) Protect Reckless Directors from Personal Liability? Only if Delaware Courts Act in Good Faith

Matthew R. Berry 1125

Lucky for Life: A More Realistic and Reasonable Estate Tax Valuation for Nontransferable Lottery Winnings

Kyla C.E. Grogan 1153

Putting Flesh on the Bones of United States v. Winans: Private Party Liability Under Treaties that Reserve Actual Fish for the Tribal Taking

Lindsay Halm 1181

Making Mommies: The Washington State Court of Appeals Exceeded Its Authority by Creating a Common Law Parentage Action in In re Parentage of L.B.

Thomas G. Robinson-O'Neill 1209