THE JOURNAL OF ARTS MANAGEMENT, LAW, AND SOCIETY, v. 43, no. 3 July – September, 2013

JOURNAL OF CONSTITUTIONAL LAW IN EASTERN AND CENTRAL EUROPE, v. 20, no. 1, 2013

THE JOURNAL OF EURASIAN LAW, v. 6, no. 1, 2013

JOURNAL OF FORENSIC SCIENCES, v. 58, no. 5, September, 2013


KENTUCKY LAW JOURNAL, v. 101, no. 4, 2012 – 2013

LAW AND CONTEMPORARY PROBLEMS, v. 76, no. 2, 2013

NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS, v. 45, no. 3, Spring, 2013

NORTH DAKOTA LAW REVIEW, v. 88, no. 4, 2012

PHILOSOPHY & PUBLIC AFFAIRS, v. 41, no. 3, Summer, 2013

PROBATE & PROPERTY, v. 27, no. 5, September – October, 2013

REAL ESTATE FINANCE, v. 30, no. 2, Fall, 2013

REASON, v. 45, no. 6, November, 2013

REGULATION, v. 36, no. 3, Fall, 2013

RUTGERS LAW JOURNAL, v. 43, no. 4, Spring – Summer, 2013

RUTGERS LAW REVIEW, v. 65, no. 3, Spring, 2013

SANTA CLARA LAW REVIEW, v. 53, no. 3, 2013

SOUTHERN CALIFORNIA LAW REVIEW, v. 86, no. 4, May, 2013

STANFORD JOURNAL OF LAW, BUSINESS & FINANCE, v. 18, no. 2, Spring, 2013

THE TAX LAWYER, v. 66, no. 3, Spring, 2013
The Journal of Arts Management, Law, and Society
Volume 43, Number 3, July–September 2013

SPECIAL ISSUE: Conference on Social Theory, Politics & the Arts
Guest Editor: Kevin V. Mulcahy

Introduction
Executive Editor's Introduction

Kevin V. Mulcahy

Articles
Differences in Cultural Policy and Its Implications for Arts Management:
Case of Puerto Rico

Javier José Hernández-Acosta

Resurgence or Deterioration? The State of Cultural Unions in the 21st Century

Rachel Shane

The Informal Economy and the Arts: A Two-Country Perspective

Stephen Boyle and Carmen Joham

Commentary
The Value of Cultural Otherness—Towards a New Pluralism

Lisa Philip-Harbutt
CONTENTS

EUROPE AND THE UKRAINIAN PARLIAMENTARY ELECTIONS OF 2006

Nathaniel Copsey 1

CONSTITUTIONAL “UNIVERSALISM” AS AN ELEMENT OF PLURALISM IN POSTCOMMUNIST LAW

András sajó 23

A PRODUCT OF THEIR BARGAINING ENVIRONMENT: EXPLAINING GOVERNMENT DURATION IN CENTRAL AND EASTERN EUROPE

Lee Savage 49

THE IMPACT OF SEMI-PRESIDENTIALISM ON DEMOCRATIC CONSOLIDATION: CASES OF POLAND AND UKRAINE

87
The Journal of Eurasian Law
Volume 6 № 1 (2013)

Table of Contents

ARTICLES

The Right to Effective Counsel in Plea Bargaining in Estonia: A Comparison between a Member State of the European Union and the United States

........................................Annilee Soo and George M. Dery III 1

A Single European Rail Market: Shadow Decision for Gazprom

.................................................................Eric Engle 41

DOCUMENTS OF NOTE

Case of Khodorkovskiy and Lebedev v. Russia
[Part 1——¶¶ 1-457]

........................................European Court of Human Rights 55

REGIONAL DEVELOPMENTS IN BRIEF

........................................................................................................ 161
Contents

Papers
Microscopic Analysis of Sharp Force Trauma in Bone and Cartilage: A Validation Study—CHRISTIAN CROWDER, CHRISTOPHER W. RADWATER, AND JEANNETTE S. FRIDIE 1119
Stature Estimation from Foramen Magnum Region in Chinese Population—YAMING CUI AND JIZONG ZHANG 1127
Weight References for Burned Human Skeletal Remains from Portuguese Samples—DAVID GONÇALVES, EUGÊNIA CUNHA, AND TIM J. U. THOMPSON 1134
Statistical Challenges in the Quantification of Gunshot Residue Evidence—ROMAIN GAURIOT, LAWRENCE GUNARATNAM, ROSSANA MORONI, TAPANI REINIKAINEN, AND JUKKA CORANDER 1149
Sudden Death Due to Hydatid Disease: A Six-Year Study in the Northern Part of Tunisia—MEHDI BEN KHEIJLI, MOHAMED ALLOUCHIE, AHMED BANASRI, FATMA GLOULOU, ANIS BENZARTI, MONGI ZHIOUA, SLIM HAOUIET, AND MONCEF HAMDOUN 1163
Causes of Sudden Death in Patients with Obstructive Sleep Apnea—MINGCHANG ZHANG, LING LI, DAVID FOWLER, ZIQIN ZHAO, DENGMING WEI, YANG ZHANG, AND ALLEN BURKE 1171
Seasonal Variation of Carcass Decomposition and Gravelsol Chemistry in a Cold (Dfa) Climate—JESSICA MEYER, BRIANNA ANDERSON, AND DAVID G. CARTER 1175
Particularities Regarding the Etiology of Sepsis in Forensic Services—DAN DERMEINGIU, GEORGE CRISTIAN CURCA, MIHAI CLAȘU, AND SORIN HOSTIUC 1183
Necropsy Findings in Dogs that Died During Grooming or other Pet Service Procedures—ANNA CAROLINA BARBOSA ESTEVES MARIA, ALEXANDRE APARECIDO MATTOS DA SILVA REGO, AND PAULO CESAR MAIORKA 1189
Characteristics of Medical Examiner/Coroner Offices Accredited by the National Association of Medical Examiners—MITCHELL WEINBERG, VICTOR W. WEIDEN, SETH WEINBERG, AND DAVID FOWLER 1193
Experimental Effect of Shots Caused by Projectiles Fired from Air Guns with Kinetic Energy Below 17 J—ANNA SMEDRA-KAŹMIERSKA, MACIEJ BARZDO, MACIEJ KĘDZIERSKI, ŁUKASZ ANTOSZCZYK, STEFAN SZRAM, AND JAROSŁAW BERENT 1200
Prevalence of Depression, Anxiety, Stress, and Anger in Turkish Prisoners—YENER UNVER, MEHMET YUCE, NURAN BAYRAM, AND NAZAN BİGEL 1210
The Antisaccade Task Performance Deficit and Specific CNV Abnormalities in Patients with Stereotyped Paraphilia and Schizophrenia—ANNA V. KRENSKAYA, MAXIM Y. KAMENSKOV, VADIM V. MYAMLIN, VLADIMIR Y. NOVOTOTSKY-VLASYOV, AND ANDREY A. TKACHENKO 1219
GABA Receptors, Alcohol Dependence and Criminal Behavior—CLAUDIO TERRANOVA, MARIANNA TUCCI, DANIELA SARTORE, FABIANO CAVARZERAN, LAURA DI PIETRA, LUISA BARZON, GIORGIO PALU, AND SANTO D. FERRARA 1227
Variability in the Blood/Breath Alcohol Ratio and Implications for Evidentiary Purposes—DENA H. JAFFE, MAYA SIMAN-TOV, ASHER GOPHER, AND KOBIE PELEG 1233

1115
Journal of Forensic Sciences

Technical Notes

Sexual Dimorphism in Ulna: An Osteometric Study from India—RAASHI SRIVASTAVA, VINEETA SAINI, RAJESH KUMAR RAI, SHASHIKANT PANDEY, TEH BAHADUR SINGH, SUNIL KUMAR TRIPATHI, AND ABHAY KUMAR PANDEY 1251

Applicability of Cranial Models in Urethaea Resin and Foam as a Substitute for Bone: Are Synthetic Materials Reliable?—ENRICO MCCUNO, DAVIDE PORTA, FRANCESCA MAGLI, ALFREDO CIGADA, REMO SALA, DANIELE GIBELLI, AND CRISTINA CATTANEO 1257

Tattoos and Human Identification: Investigation into the Use of X-Ray and Infrared Radiation in the Visualization of Tattoos—HELEN CLARKSON AND WENDY BIRCH 1264

Lemonade from Lemons: The Taphonomic Effect of Lawn Mowers on Skeletal Remains—DC MARTIN, GRETCHEN R. DABBES, AND LINDSEY G. ROBERTS 1273

Formulae for Estimating Skeletal Height in Modern South-East Asians—TIMOTHY F. GOCHA, GIUSEPPE VERCELOTTI, LARA E. MCCORMICK, AND TRACI L. VAN DEEST 1279

Forensic or Archaeological Issue: Is Chemical Analysis of Dental Restorations Helpful in Assessing Time Since Death and Identification of Skeletonized Human Remains?—KSENJA ZELIC, DANIELA DIONIC, OLIVERA NESKOVIC, MLOVAN STOILKOVIC, SLOBODAN NIKOLIC, VLADIMIR ZIVKOVIC, AND MARINA DJURIC 1284


Capturing Finger and Palm Impressions Using a Hand Cream and Thermochromic Paper—JOHN W. BOND 1297

Establishing Correspondence in Wood: The Challenge and Some Solutions?—GERARD M. COURTIN AND SCOTT I. FAIRGRIEVE 1300

Qiagen’s Investigator™ Quantiplex Kit as a Predictor of STR Amplification Success from Low-Yield DNA Samples—JACQUELINE T. THOMAS, REBECCA M. BERLIN, JESSICA M. BARKER, AND TRACEY DAWSON CRUZ 1306

A Simple Computer-assisted Quantification of Contrast in a Fingerprint—SZYMON MATUSZIEWSKI AND MICHAŁ SZAFAŁOWICZ 1310

Microwave Selective Thermal Development of Latent Fingerprints on Porous Surfaces: Potentialities of the Method and Preliminary Experimental Results—ROBERTO ROSA, PAOLO VERONESI, AND CRISTINA LEONELLI 1314

Spectrophotometric and Spectrophotometric Analysis of Two Analogous Drugs in Pharmaceutical Formulations and Biological Fluids—AKRAM M. EL-DIADAMY AND ISMAIL I. ALI 1322

The Use of Near-Infrared Photography to Image Fired Bullets and Cartridge Cases—DARRELL STEIN AND JORN CHI CHUNG YU 1330

Quantified Explosives Transfer on Surfaces for the Evaluation of Trace Detection Equipment—MAGGIE TAM, PIERRE PIOLON, AND HAFID ZAKOUNI 1336

Dental Age Assessment in Children: A Comparison of Four Methods in a Recent French Population—VANESSA URZEL AND JAROSLAV BRUZEK 1341

Dynamics of Ninhydrin-Reactive Nitrogen and pH in Gravels during the Extended Postmortem Interval—BRIANNA ANDERSON, JESSICA MEYER AND DAVID O. CARTER 1348

Workplace Assessment of Targeted Violence Risk: The Development and Reliability of the WAVR-21—J. REID MELLO, STEPHEN G. WHITE, AND STEPHEN HART 1353

Case Reports

Application of Infrared and Raman Spectroscopy in Paint Trace Examination—JANINA ZIEBA-PALUS AND BRATA M. TRZCIŃSKA 1359

Subarachnoid Hemorrhage and Carbon Monoxide Exposure: Accidental Association or Fatal Link?—FABIO DE-GIORGIO, VINCENZO M. GRASSI, MASSIMO MUCISI, CESARE MANCUSO, ERNESTO D’ALOA, AND VINCENZO L. PASCAI 1364

Black Esophagus: Acute Esophageal Necrosis in Fatal Haloperidol Intoxication—PETR HEINA, MICHAELA UBOLOVA, AND VICTOR VOŘÍŠEK 1367

Complex Suicide by Self-stabbing with Subsequent Drowning in the Sea—MICHAEL KALISZAN, KAROL KARNECKI, EWA TOMCZAK, TOMASZ GOS, AND ZIHONG JANKOWSKI 1370

Sudden Unexpected Death Due to Gravels’ Disease During Physical Altercation—DENGMING WEL, XIAOGANG YUAN, TIAN TONG YANG, LIN CHANG, XIANG ZHANG, ALLEN BURKE, DAVID FOWLER, AND LING LI 1374

First Report of Blassaxipia plinthopyga (Diptera: Sarcophagidae) from a Human Corpse in the U.S.A. and a New State Geographic Record Based on Specimen Genotype—JEFFREY D. WELLS AND JOSHUA L. SMITH 1378

Anaphylaxis After the Injection of Buprenorphine—CASSIE L. BOGS, MARY G. RIPLE, ZABULLAH ALI, MELISSA BRASSELL, BAREY LEVINE, REBECCA JUFER-PHIPPS, SUZANNE DOYON, AND DAVID R. FOWLER 1381

Suicidal Nitrogen Inhalation by use of Scuba Full-Face Diving Mask—LUBOMIR STRAKA, FRANTISEK NOVOMESKY, ANTON GAVEL, JURAJ MLYNAR, AND PETR HEINA 1384
Journal of Forensic Sciences

Click here to return to Journal list J-Y

Vol. 58, No. 5
September 2013
CODEN JFSCA

Posttraumatic Stress Disorder: Protective and Risk Factors in 18 Survivors of a Plane Crash—ROBERTO CATANESI, VITO MARTINO, CHIARA CANNONI, GIUSEPPE TROCCOLI, IGNAZIO GRATTAGLINO, GIANCARLO DI VILLA, AND FELICE CARABELLESE 1388

Methyl tert-Butyl Ether (MTBE) Detected in Abnormally High Concentrations in Postmortem Blood and Urine from Two Persons Found Dead Inside a Car Containing a Gasoline Spill—RITVA KARINEN, VIGDIS VINDENES, INGE MORILD, LENE JOHNSON, ILAH LE NYGAARD, AND ASBJÖRG S. CHRISTOPHERSEN 1393

Possible Fatal Acetaminophen Intoxication with Atypical Clinical Presentation—FABIO DE-GIORGIO, MARIA LODISE, MARCELLO CHIAROTTI, ERNESTO D’ALOIA, ARNALDO CARBONE, AND LUCA VALERIO 1397

Letter to the Editors


Authors' Response—JOSEPH L. PETERSON, MATTHEW J. HICKMAN, KEVIN J. STROM, AND DONALD J. JOHNSON 1403


Authors' Response—DENA H. JAFFE 1406

Book Review

Review of: Forensic Ecology Handbook from Crime Scene to Court—KRISTA E. LATHAM 1407
INTRODUCTION
Melvin I. Urofsky

ARTICLES

Slouching Towards Roth: Obscenity and the Supreme Court, 1945-1957
Whitney Strub

Tom Clark under Fire: The Consequences of Congressional Investigations of Supreme Court Justices
Craig Alan Smith

Tom Clark’s Transition from Attorney General to Supreme Court Justice
Alexander Wöhl

October Term 1963: “The Second American Constitutional Convention”
L.A. Powe, Jr.

Inventing Democratic Courts: A New and Iconic Supreme Court
Judith Resnik and Dennis Curtis

Addenda to “Fair Labor: The Remarkable Life and Legal Career of Bessie Margolin,”: A Discussion of Methodology in Tallying Margolin's Supreme Court Argument Record as Well as Those of Other Pioneer Female Advocates
Mabel W. Willebrandt, Helen R. Carloss and Beatrice Rosenberg

Marlene Trestman

The Judicial Bookshelf
Donald Grier Stephenson Jr.

ILLUSTRATIONS

CONTRIBUTORS
ARTICLES

Stepping into the Gap: Violent Crime Victims, the Right to Closure, and a Discursive Shift Away from Zero Sum Resolutions
Blanche Bong Cook
671

White Collar Overcriminalization: Deterrence, Plea Bargaining, and the Loss of Innocence
Lucian E. Dervan
723

He Said, She Said, Let’s Hear What the Data Say: Sexual Harassment in the Media, Courts, EEOC, and Social Science
Joni Hersch and Beverly Moran
753

Justice Holmes’s Bad Man and the Depleted Purposes of Punitive Damages
Jill Wieber Lens
789

NOTES

Kän Bú Tái Dông: The Fair Housing Act, Language Discrimination, and Chinese Classifieds
R. Ian Forrest
839

Balancing Donor Intent with Museum Needs: Proposed Deaccession Planning Strategies for Art Bequeathed to Museums
Virginia D. Ryan
863
LAW AND CONTEMPORARY PROBLEMS

Volume 76 2013 Number 2

THE PUBLIC DIMENSION OF CONTRACT
Bertram Lomfeld & Dan Wielsch
Special Editors

FOREWORD................................................................................................. i
Bertram Lomfeld & Dan Wielsch

CONTRACT AS DELIBERATION...................................................................... 1
Bertram Lomfeld

AUTONOMY, PLURALISM, AND CONTRACT LAW THEORY.......................... 19
Hanoch Dagan

SOME PRELIMINARY REMARKS ON A LIBERAL THEORY OF CONTRACT....... 39
Thomas Gutmann

CONTRACTUAL FREEDOM, CONTRACTUAL JUSTICE, AND CONTRACT LAW (THEORY) ........................................................................................................ 57
Florian Rödl

THE VANISHING FREEDOM TO CHOOSE A CONTRACTUAL PARTNER.......... 71
Hugh Collins

CONTRACT-MANAGEMENT DUTIES AS A NEW REGULATORY DEVICE.......... 89
Lorenz Kühler

PRIVATE LAW AS BIOPOLITICS: ORDOLIBERALISM, SOCIAL MARKET ECONOMY, AND THE PUBLIC DIMENSION OF CONTRACT .............................. 105
Alessandro Somma

TRANSNATIONAL PRIVATE REGULATORY GOVERNANCE: AMBIGUITIES OF PUBLIC AUTHORITY AND PRIVATE POWER........................................... 117
Peer Zumbansen

THE LEGITIMACY OF THE CONTRACTING STATE...................................... 139
Andreas Abegg

DESIRE FOR TEXT: BRIDLING THE DIVISIONAL STRATEGY OF CONTRACT... 151
Pasquale Femina

CONTRACT COLLISIONS: AN EVOLUTIONARY PERSPECTIVE ON CONTRACTUAL NETWORKS ..................................................................................... 169
Marc Amstutz

RELATIONAL JUSTICE................................................................................ 191
Dan Wielsch
NEW YORK UNIVERSITY
JOURNAL OF INTERNATIONAL LAW AND POLITICS

VOL. 45 Spring 2013 NUMBER 3

CONTENTS

ARTICLES

Announcement of the JILP Peer Review Issue 721
Leah M. Trzcinski
Alyson M. Zureick

New Modes of Pluralist Global Governance 723
Gráinne de Búrca,
Robert O. Keohane &
Charles Sabel

The Inaugural Robert A. Kindler Professorship of Law Lecture: When Is International Law Useful? 787
Alan O. Sykes

Welcome to Professor Sykes 815
Andreas F. Lowenfeld

More Than One Way To Be of Use 821
Liam Murphy

NOTES

The Montréal Protocol in U.S. Domestic Law:
A “Bottom Up” Approach to the Development of Global Administrative Law 827
Elspeth Fainman Hans

Constitutional Provisions in the Occupier’s Interest:
Lessons from Article 9 of the Japanese Constitution 861
Matthew R. Hartz

BOOK ANNOTATIONS 901
NORTH DAKOTA LAW REVIEW

Volume 88 2012 Number 4

NORTH DAKOTA LAW REVIEW:
DOMESTIC VIOLENCE SYMPOSIUM

ARTICLES

Domestic Violence: The Evolution From a Family Problem to Legal Discipline
Peter Welte ................................................................. 863

An American Concept with Distinctly Chinese Characteristics:
The Introduction of the Civil Protection Order in China
Robin R. Runge ............................................................... 871

The Implications of Intimate Partner Violence on Ethical Mediation Practice
Kristine Paranica ............................................................. 907

Expert Testimony in Cases Involving Battered Women Who Kill:
Going Beyond the Battered Woman Syndrome
Cheryl A. Terrance, Karyn M. Plumm, and Katlin J. Rhyner.. 921

The North Dakota United States Attorney’s Office’s Anti-Violence Strategy for Tribal Communities: Working to Make Reservations Safer Through Enforcement, Crime Prevention, and Offender Reentry Programs
Timothy Q. Purdon.......................................................... 957

Employment Discrimination Against Domestic Violence Survivors:
Strengthening the Disparate Impact Theory
Denise R. J. Finlay............................................................ 989

ANNUAL INDEX.............................................................. 1013
Probate Property

September/October 2013 Vol. 27 No. 5

A Publication of the Real Property, Trust and Estate Law Section
American Bar Association

Departments

5 Section News

8 Uniform Laws Update

15 Keeping Current—Property

30 Keeping Current—Probate

47 Technology—Property

64 The Last Word

Editorial Board
Editor
Edward T. Brading
208 Sunset Drive, Suite 409
Johnson City, TN 37604

Articles Editor,
Real Property
Brent C. Shaffer
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 N. King Street
Wilmington, DE 19801

Articles Editor,
Trust and Estate
Thomas M. Featherston Jr.
Baylor School of Law
One Bear Place #97288
Waco, TX 76798-7288

Senior Associate
Articles Editors
Dave L. Cornfeld
Michael J. Glazerman
B. Taylor Mattis

Associate
Articles Editors
James L. Boring
Stephanie B. Casteel
Lynn Foster
Thomas P. Gallanis
Kathleen K. Law
John J. McCreesh IV
Alice M. Noble-Alligire
Stephanie A. Zirpoli

Departments Editor
Diane Hubbard Kennedy

Associate Departments Editor
James C. Smith

All correspondence and manuscripts should be sent to
the editors of Probate & Property.

ABA Publishing
Director
Bryan Kay
Director, Periodicals
Claire L. Parins
Managing Editor
Rick Bright
Director, Design/Production
Nick Panos
Art Director
Andrew O. Alcala
Manager, Production Services
Sandra Johnson
Production Coordinator
Jason Stauter

Advertising Representatives
Business Manager,
Advertising Sales
Anne C. Bitting
(312) 988-6115

Address all advertising orders, contracts, and materials to
ABA Publishing Advertising Sales
321 N. Clark Street
Chicago, IL 60654-7598
(312) 988-6115.

Cover
Jim Statt

Editorial Policy: Probate & Property is designed to assist lawyers practicing in the areas of real estate, wills, trusts, and estates by providing articles and editorial matter written in a readable and informative style. The articles, other editorial content, and advertisements are intended to give up-to-date, practical information that will aid lawyers in giving their clients accurate, prompt, and efficient service.

Probate & Property (ISSN: 0161-0072) is published six times a year (in January/February, March/April, May/June, July/August, September/October, and November/December) as a service to its members by the American Bar Association Section of Real Property, Trust and
FEATURES

10 The Phantom of the Foreclosure Crisis: Cancellation of Indebtedness Taxation
   By Dustin A. Zacks

20 Whose Privilege Is It, Anyway? The Fiduciary Exception to the Attorney-Client Privilege
   By David L.J.M. Skidmore and Laura E. Morris

34 Making Easements Is Easy; Remaking Them Is Hard: Should the Law Help Out?
   By Susan F. French

39 The Rising Tide of Fiduciary Taxes—and One Capital Gains Strategy to Help Trusts from Getting Swamped
   By Mark R. Parthemere and Sasha A. Klein

43 Ethically Speaking . . . Just What Are My Obligations Under the Gatekeeper Initiative?
   By Kevin L. Shepherd

50 Don’t Means Don’t! . . . Unless It Doesn’t: Bending the Rules with Equitable Deviation
   By Virginie Roveillo

55 State Legislators, Insurers, and Courts to Homeowner Associations: We Will Not Insure Intentional Torts
   By Adam Leitman Bailey and Adam Blander

60 Whom Do You Trust with Your Picasso? Planning Considerations for Trusts That Hold Title to Works of Art
   By Michael Duffy
<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Why Undetected Market Speculation Risk Caused the Real Estate Debt Bubble: A Rebuttal on Why Collateral Debt Obligations Issuances Did Not Cause the CRE and RRE Bubbles</td>
<td>Marc R. Thompson</td>
</tr>
<tr>
<td>47</td>
<td>Impact of Home Affordable Refinance Program on Mortgage Credit Performance</td>
<td>Jiawei Zhang, Tony Tang, and Joy Zhang</td>
</tr>
<tr>
<td>54</td>
<td>Measuring the Impact of Power Lines on Home Prices: An Experimental Approach</td>
<td>Mark A. Lane, Michael J. Seiler, and Vicky L. Seiler</td>
</tr>
<tr>
<td>59</td>
<td>The New Model for Commercial Real Estate Demand</td>
<td>Paige Mueller</td>
</tr>
<tr>
<td>62</td>
<td>Extending Land Readjustment Schemes to Regional Scale: A Case Study of Regional Ring Road via Mosaicking Neighborhood Level Plans</td>
<td>Jay Mittal</td>
</tr>
<tr>
<td>74</td>
<td>Real Estate Tax Update</td>
<td>Jill H. Loftus, Alan Naragon, Edward Herald, Patrick Barrett, Christopher Jetter</td>
</tr>
</tbody>
</table>
Departments
79 Drinking for Charity
The rise of the philanthropub.
Greg Doros

Features
80 Pot Goes Legit
What the end of prohibition looks like in Colorado. Jacob Sullum

24 Colorado's Rump Prohibitionists
A Denver suburb tries to opt out of marijuana legalization. Jacob Sullum

28 Marijuana Money Muddle
How does a pot dealer pay taxes and write checks? Jacob Sullum

32 Too Stoned to Drive?
Colorado's new DUI standard threatens to treat pot smokers as public enemies—even when they're not. Jacob Sullum

36 How to Break an American City
The municipal bankruptcy mess is heading to a local government near you. Shikha Dalmia, Eric Boehm, Scott Shackford, Ed Krzyzewski, and Steven Greenblatt

48 The Scientific Case for Decriminalization
Neuroscientist Carl Hart on the fundamental ignorance that shapes our national conversation about drug policy.

Culture & Reviews
56 The Death of the Age of Stuff
Peter Bagge

Briefly Noted
59 Katherine Mangu-Ward on the Netflix series Orange Is the New Black
62 Jacob Sullum on Nathan Belofsky's Strange Medicine
64 Brian Doherty on Evans, Galbraith, and Law's Tales of the San Francisco Caecophony Society
66 Ed Krzyzewski on the film Fruitvale Station

60 Hardhats for Peace, Students for War
The surprising shape of public opinion in the Vietnam era. Jesse Walker

64 The Myth of the Better War
Faulty history lures Americans into foolish interventions. Christopher Preble

68 Meet the Vinyl Community
Welcome to a weird, wonderful world where people watch each other play old records on YouTube. Clark Stooksbury

72 Cops Give Seattle Stoners Special Doritos
Snack food helps educate about legalization at Hempfest. Peter Suderman
# CONTENTS

**Volume 36, Number 3 | Fall 2013**

---

## FOR THE RECORD

2  
The Value of Carbon  
By David A. Burton

---

## BRIEFLY NOTED

4  
The Unknown Costs of Dodd-Frank  
By Sam Batkins and Ike Brannon

6  
Immigration: Low-Skilled Workers Need Not Apply?  
By Daniel Kuehn

8  
GasLand and the Environmental Utopians  
By Michael L. Davis

9  
Small Farms, Big Costs  
By Sofie E. Miller and Cassidy B. West

10  
Electronic Cigarettes at a Regulatory Crossroads  
By Thomas A. Hemphill

12  
More Economic Freedom, More Jobs  
By Lauren R. Heller and E. Frank Stephenson

14  
Who Is Satoshi Nakamoto?  
By Pierre Lemieux

16  
Legalizing Marijuana: Minds Over Money  
By Ike Brannon

---

## FEATURES

18  
Could Dan Snyder End Publicly Financed Stadiums?  
The D.C. market is especially ripe for PSLs, making public stadium financing unnecessary.  
By Ike Brannon

24  
Kosher Certification as a Model of Private Regulation  
Third-party certification has benefits over both government regulation and unregulated markets.  
By Timothy D. Lytton

28  
Reconceptualizing Corporate Boards  
Should board members have to be “natural persons”?  
By M. Todd Henderson

32  
Climate Data vs. Climate Models  
Why do climate change assessments overlook the differences between the climate models they use and the empirical data?  
By Patrick J. Michaels and Paul C. Knappenberger

38  
Insurance as Gun Control?  
A liability insurance mandate for firearms owners may pass constitutional muster, but its effect on violent crime would be modest.  
By Stephen G. Gilles and Nelson Lund

44  
A New Approach to SSDI Reform  
More people with disabilities would return to work if they faced better incentives.  
By Jagadeesh Gokhale

---

## IN REVIEW

52  
After the Music Stopped  
Reviewed by Vern McKinley

54  
Balance  
Reviewed by Ike Brannon

55  
Doing Bad by Doing Good  
Reviewed by George Leef

57  
The Problem of Political Authority  
Reviewed by Art Carden

59  
Simpler  
Reviewed by David R. Henderson

61  
WORKING PAPERS  
Reviewed by Peter Van Doren

---

## FINAL WORD

64  
Are Plaid Jackets Finally Going Out of Style?  
By Tim Rowland

---

### COVER:

Keith Negley
Rutgers Law Journal

Volume 43  Spring/Summer 2013  Number 4

Twenty-Fourth Issue on State Constitutional Law

Foreword

The Political Question Doctrine in State Constitutional Law

Daniel B. Rodriguez  573

Book Review

Dimensions of Constitutional Change

Jonathan L. Marshfield  593

State Constitutional Law

Developments in State Constitutional Law: 2012

617
RUTGERS LAW REVIEW

VOLUME 65  SPRING 2013  NUMBER 3

CONTENTS

ARTICLES

Rethinking Section Five: Deference, Direct Regulation, and Restoring Congressional Authority to Enforce the Fourteenth Amendment .......... 667
Tiffany C. Graham

A Better Route Through the Swamp: Causal Coherence in Disparate Treatment Doctrine ....................................................... 723
Brian S. Clarke

Learned Hand’s Two Concepts of (Judicial) Liberty ......................... 787
Justin Zaremby

NEW JERSEY DEVELOPMENTS

The Rutgers Cases and the State of the Law of State Law School Clinical Programs ................................................................. 817
Jon C. Dubin

NOTES

From Louise Brown to Baby M and Beyond: A Proposed Framework for Understanding Surrogacy ............................................. 851
Craig Dashiell

Songwriter, Side Musician, or Sucker?: The Challenge of Distinguishing Composers from Contributors Under U.S. Copyright Law and the Lessons of a Famous British Case ........................................... 891
David M. Liston

Debt Collectors Disguised as Facebook “Friends”: Solutions to Prevent Violations of the Fair Debt Collection Practices Act on Social Media Platforms ................................................................. 923
Eliberty Lopez
CONTENTS

ARTICLES

STRENGTHENING FORENSIC ALCOHOL ANALYSIS IN CALIFORNIA DUI CASES: A PROSECUTOR’S PERSPECTIVE

California law and scientific practice have fallen behind national and international scientific standards regarding the reporting of blood alcohol content (BAC) in DUI cases. The new scientific standards require crime laboratories to report BAC results with an associated uncertainty of measurement and to use equipment and standards traceable to a national or international standard. California law and regulations require neither standard. Moreover, they provide a disincentive for laboratories to keep up with current practice. If the law and regulations governing forensic alcohol analysis and reporting results remain unchanged, California could follow Washington and Michigan. In those states, courts have excluded blood results from admission into evidence for failure to follow the new scientific standards as set forth in ISO/IEC 17025:2005 and the 2009 National Academy of Science (NAS) Report titled “Strengthening Forensic Science in the United States: A Path Forward.” A similar ruling from a California court would undermine the prosecution of nearly two hundred thousand DUI cases annually. The California Legislature can avert a crisis by amending the Health and Safety Code sections governing forensic alcohol analysis and updating title 17 of the California Code of Regulations. Furthermore, the Legislature should create a mechanism by which experts review new scientific standards and report to the State with recommendations for reform.

Christopher Boscia ............................................. 733

MAKING A SOLID CONNECTION: A NEW LOOK AT RULE 10B-5’S TRANSACTIONAL Nexus REQUIREMENT

Rule 10b-5 under the Securities Exchange Act of 1934 prohibits fraud only when it is “in connection with” a securities transaction. The limit is simple in concept, but difficult in application. Courts long have struggled to determine when the requisite connection exists.

In 2009, the Fourth Circuit in SEC v. Pirate Investor LLC introduced a multi-factor framework for analyzing whether a particular fraud meets the “in connection with” requirement. The Fourth Circuit’s factors, however, represent neither mandatory requirements nor an exhaustive list of relevant considerations, and absent from the framework is a general principle for determining when to apply the factors, how to weigh them, and when other factors should be considered. Unfortunately, the Supreme Court likewise has failed to articulate a general principle for the “in connection with” requirement.

This Article attempts to fill the void left by the Supreme Court. Drawing on the Court’s few “in connection with” cases, the Article proposes a general principle to serve as a guide for applying the “in connection with” requirement. It also critically examines the Fourth Circuit’s multi-factor framework and suggests modifications so that the framework can be applied logically and efficiently and in a way that informs the application of the proposed general principle.

Thomas J. Molony ............................................. 767
ARTICLES

RETHINKING ADMINISTRATIVE LAW'S CHENERY DOCTRINE:
LESSONS FROM PATENT APPEALS AT THE FEDERAL CIRCUIT

The Chenery doctrine—a basic principle of administrative law—provides that a court reviewing an agency action may only affirm that action on the grounds articulated by the agency when it made its decision. Though the doctrine is central to mediating the separation of powers between the executive and judicial branches, relatively little scholarship has analyzed how exactly courts apply it in practice. In this Article, I examine the Federal Circuit's application of Chenery when reviewing U.S. Patent and Trademark Office (PTO) decisions to reject patent applications. This inquiry highlights inconsistencies and ambiguities in the Federal Circuit's approach that introduce a significant danger of court encroachment on congressionally delegated agency power; the very danger that the Chenery doctrine is meant to protect against. This is especially troubling given the Federal Circuit's general reluctance to defer to the PTO. I discuss ways to rethink Chenery, and I propose a better version of the Chenery doctrine based on a reconsideration of separation of powers, institutional competence, and the doctrine's costs and benefits. This rethought Chenery doctrine reflects a more cogent approach to the relationship between administrative agency and court decisions.

Amy R. Motomura .................................................. 817

REDUCED TUITION BENEFITS FOR UNDOCUMENTED IMMIGRANT STUDENTS: THE IMPLICATIONS OF A PIECENMAL APPROACH TO POLICYMAKING

In the absence of federal legislative direction on the issue of in-state tuition benefits for undocumented immigrant college and university students, state legislatures have begun passing their own laws addressing this policy arena. The development of this issue at the state legislative level constitutes a piecemeal approach to policymaking, in that there are now a multitude of legislative approaches to this issue and a wide spectrum of state laws and significant policy differences across the United States with respect to in-state tuition for undocumented immigrant students. As discussed in this Article, this piecemeal approach to policymaking has several important implications for policymakers, college and university students, and taxpayers. This Article concludes that, given the persistence of federal inaction on this issue, the piecemeal approach to policymaking in this substantive policy arena is likely to continue in the future.

Stephen L. Nelson, Kara Hetrick Glaubitz, and Jennifer L. Robinson ........................................ 897
COMMENTS

SEEKING TO EMERGE FROM SLAVERY'S LONG SHADOW: THE INTERPLAY OF TRIBAL SOVEREIGNTY AND FEDERAL OVERSIGHT IN THE CONTEXT OF THE RECENT DISENROLLMENT OF THE CHEROKEE FREEDMEN

In August 2011, the Cherokee Nation Supreme Court upheld a constitutional amendment that would require proof of Cherokee blood for citizenship. Consequently, 2800 Cherokee Freedmen lost citizenship status, and in effect, eligibility for food aid and medical services. The current controversy surrounding this decision is one of many examples of the tension between tribal sovereignty and federal limits on that sovereignty. By examining the recent disenrollment of Cherokee Freedmen, this Comment discusses the unique position of Native American tribes as simultaneously sovereign and dependent, and the appropriate role for the federal government in Indian matters. Ultimately, while Indian control over membership is essential to tribal independence, a definition of membership that relies on outdated blood quantum requirements is unjust. All current legal avenues available to the federal government and its executive agencies would not address the Freedmen’s grievances. This Comment therefore calls for federal intervention to not only redress the Freedmen’s harms, but also to redefine tribal membership in nonracial terms. This proposal would hopefully have the lasting effect of encouraging a paradigmatic shift among Native tribes, and thus, prevent such controversies in the future.

Sepideh Mousakhani .................................................. 937

DENYING A CLASS OF ADOPTED CHILDREN EQUAL PROTECTION

In 2005, Oren Adar and Mickey Ray Smith, an unmarried same-sex couple, adopted Infant J. While J was born in Louisiana, Adar and Smith adopted J in New York. Shortly after adopting J, Adar and Smith requested from the Louisiana State Registrar an amended birth certificate listing both parents’ names. The Registrar, however, refused to issue the birth certificate with both men’s names. The Louisiana State Registrar is not the only state registrar to deny an amended birth certificate to a child adopted through interstate adoption by an unmarried and/or same-sex couple. In denying children such as J an accurate, amended birth certificate, state registrars are denying a class of adopted children the same rights and benefits as children adopted by married couples.

This Comment focuses on the equal protection question raised by the states’ actions. Through the lens of Adar and Smith’s case, this Comment addresses the unconstitutionally unequal treatment of children adopted through interstate adoptions by unmarried and/or same-sex couples. Specifically, it discusses the proper level of judicial review courts should apply in analyzing these cases—i.e. the same level of scrutiny applied in illegitimacy cases. In addition, this Comment proposes attacking the discrimination against adopted children by unmarried and/or same-sex couples at the legislative level by encouraging state and federal legislation that permits same-sex and unmarried couples to adopt.

Katherine A. West .................................................. 963
SOUTHERN CALIFORNIA LAW REVIEW

© Copyright 2013 by the University of Southern California

VOLUME 86  MAY 2013  NUMBER 4

ARTICLES

THE UNEASY CASE AGAINST COPYRIGHT TROLLS...............Shyamkrishna Balganesh  723

A TRANSACTIONAL GENEALOGY OF SCANDAL:
FROM MICHAEL MILKEN TO ENRON
TO GOLDMAN SACHS.........................William W. Bratton  783
& Adam J. Levitin

NOTES

WAIVING FAREWELL WITHOUT SAYING GOODBYE:
The Waiver of Fiduciary Duties in Limited Liability Companies in Delaware, and the Call for Mandatory Disclosure ..............Darren Guttenberg  869

JUST ANOTHER BROWN-EYED GIRL:
Toward a Limited Federal Right of Publicity Under the Lanham Act
in a Digital Age of Celebrity Dominance ..................... Susannah M. Rooney  921
Click here to return to Journal list J-Y

Stanford Journal of Law, Business & Finance

Volume 18  Spring 2013  Number 2

TABLE OF CONTENTS

Improving Contract Quality: Modularity, Technology, and Innovation in Contract Design ................................................................. 177

The Evolution of Partnerships in China from the Perspective of Asset Partitioning .................................................................................. 215

Intellectual Property Wrongs ................................................................................. 250

A Fiduciary Standard as a Tool for Dark Pool Subscribers ................................. 319

http://sjlbf.stanford.edu
CONTENTS

ARTICLES
The Relevance Games: Congress's Choices for Economic Substance Gamemakers
Charlene D. Luke ........................................................................................................551
Optimal Rules for Defined Contribution Plans: What Can We Learn from the U.S. and Australian Pension Systems?
Jonathan Barry Forman & Gordon D. Mackenzie ..............................................613
The Tax Consequences of Partnership Break-Ups: A Primer on Partnership Sales and Liquidations
Daniel L. Simmons ..................................................................................................653
Tax Evidence: A Primer on the Federal Rules of Evidence As Applied by the Tax Court
Joni Larson ...............................................................................................................733

COMMENT
Restricted Stock Units Settled After the Transition Period for Newly Publicly Held Companies: Section 162(m) Realignment of Performance and Pay for Restricted Stock Units
Seth Popick .................................................................................................................751

NOTES
Reconsidering the Classification of Illegal Income
Donald DePass ..........................................................................................................771
Dodging DOMA: The State of the Mortgage Interest Deduction for Same-Sex Couples After Sophy v. Commissioner
Eric Johnson .............................................................................................................787
The Death of Procter and Rise of Wandry: A New Era of Formula Clauses in Estate Planning
Payson Lyman ...........................................................................................................803
The Service and the APA in Dominion Resources, Inc. v. United States: A Chance at Redefinition and Mandating Administrative Law Universality
Kelsey C. Mellette ...................................................................................................819
The U.S. Supreme Court's recent ruling, finding as unconstitutional Section 3 of the Defense of Marriage Act (DOMA), which defined marriage for federal law purposes as between one man and one woman, will have a significant impact on estate planning, raising many questions for practitioners advising same-sex couples. As Michael J. Jones and Michelle L. Ward aptly express in the headline of their article on p. 39, this ruling is a "Game Changer." Their article explains the issues that some of your clients will now need to address regarding their retirement accounts. This piece, along with "Refunds and Assessments," by George D. Karibianian, p. 44, is part of a Special Report we've included this month to help you sort through the issues your same-sex clients and their relatives now face. George analyzes a client's ability to get a refund for gift and estate taxes paid before same-sex marriages were recognized. He also discusses whether the Internal Revenue Service will now be permitted to retroactively assess tax deficiencies for same-sex married couples.

This month's issue also includes our Investments Committee Report. The articles in this section help us understand some new developments in the investments arena. "Socially Responsible Investing," p. 49, by Edward J. Finley II and Andrew R. King, shows how this once marginalized area is now at the forefront of many investment decisions. "How to Invest in the Emerging Markets Now," by Gregory D. Singer, p. 56, provides insights into what to expect from these markets. Finally, "Visible and Hidden Risks," p. 60, Andrew M. Parker guides us through the world of rising interest rates and opinions on where the rates are headed, as well as what impact they will have on the financial markets. And, to supplement the articles in the Committee Report, the authors agreed to come in and discuss their topics in more detail. You can view these video discussions on our website, http://videos.wealthmanagement.com/video/Greg-Singer, http://videos.wealthmanagement.com/video/Andrew-Parker and http://videos.wealthmanagement.com/video/Edward-Finley.
On the Cover

Our cover this month, "Untitled (three-tiered perspective)" (24 in. by 29 in.) by Mark Grotjan, sold for $264,735 at Phillips' recent Contemporary Art Evening Sale in London on June 27, 2013. Grotjan works primarily in colored pencil and creates a tatticework of triangular radii, which he then fills in with a semi-random selection of colors. Though his process is highly systemic, the result is geometric designs that at first glance appear formal, but gradually seem to shift and stretch before the viewers' eyes. Grotjan is particularly interested in perspective and multiple vanishing points.

and these concepts inform a great deal of his work.

Grotjan is not the only one interested in changing perspective, however. With its recent ruling in the Windsor case, the U.S. Supreme Court has changed its long-held perspective on marriage and who can be considered a spouse, and by striking down the Defense of Marriage Act, it encouraged the states to change their perspectives as well.

—David H. Lenok, Associate Legal Editor

BRIEFING
Tax Law Update

David A. Handler, partner in the Chicago office of Kirkland & Ellis LLP, and Alison E. Lothes, associate in the Boston office of Sullivan & Worcester LLP, report on:

- Private Letter Ruling 201327010; Chief Counsel Advice 201328030—What constitutes a decedent having incidents of ownership over life insurance policies, which would cause inclusion of the policy death proceeds in the estate?
- CCA 20133003—Internal Revenue Service shows a
distrust of self-cancelling installment notes, particularly those that are interest-only; and

• Morse v. Kraft et al.— Massachusetts Supreme Judicial Court approves common law trust decanting.

12/ Philanthropy
Robert F. Sharpe, Jr., president of The Sharpe Group in Memphis, Tenn., shares charitable trust opportunities available for younger donors.

14/ Fiduciary Law Update
Dana G. Fitzsimons Jr., senior vice president and fiduciary counsel at Bessemer Trust in Atlanta, Turney P. Berry, partner at Wyatt, Tarrant & Combs LLP in Louisville, Ky. and Gerard G. Brew, partner at McCarter & English, LLP, in Newark, N.J., give us the lowdown on the latest court decisions regarding fiduciary law.

FEATURES
Estate Planning & Taxation
18/ FLP Transferability Restrictions
By Glen T. Eichelberger & Brian P. Teaff
Family limited partnerships (FLPs) are often encumbered by transfer restrictions. Planning for clients who own FLP interests must encompass an analysis of those restrictions in the FLP agreement, so they can be factored into an appropriate estate plan. Failure to do so may mean unexpected estate tax liability on the death of the first spouse or even loss of the FLP interest through a buy-sell provision.

Glen T. Eichelberger is a partner at Bracewell & Giuliani in Houston.

Brian P. Teaff is an associate at Bracewell & Giuliani in Houston.

22/ Financing Long-Term Care Expenses
By Thomas J. Pauloski
For many families, the funding of future long-term care (LTC) costs is an issue of particular concern. But, there are alternatives to borrowing and self-financing to pay for LTC. This article explores three options: 1) self-insuring; 2) acquiring stand-alone LTC insurance; and 3) obtaining a hybrid product that's both a life insurance policy and an LTC rider in one wrapper.

Thomas J. Pauloski is national managing director in the Wealth Management Group of Bernstein Global Wealth Management in Chicago.

High-Net-Worth Families & Family Offices
27/ Higher Tax Rates and Investing
By Timothy M. Tallach & Bruce Paulson
Highest tax rate taxpayers in the highest tax rate states will see a top federal state marginal rate of 50 percent or more. What changes should high-net-worth families who want to manage the tax costs of investing be thinking about? For starters, consider portfolio-related actions and examine trust distribution policies.

Timothy M. Tallach is head of GenSpring Family Offices' Wealth Advisory Center in Atlanta.

Bruce Paulson is a partner at GenSpring Family Offices in Minneapolis.

33/ Paper Chase
Board members David Thayne Leibell, R. Hugh Magill, Patricia M. Soldano and Conrad Teitel summarize newly published books on estate planning.

SPECIAL REPORT
DOMA Ruling
39/ Game Changer
By Michael J. Jones & Michelle L. Ward
The U.S. Supreme Court's recent DOMA ruling has significant impact on federal tax planning for individuals who participate in retirement plans and who've entered or will enter into a same-sex marriage. Plan sponsors will also need to re-examine their procedures to ensure they're properly recognizing such marriages and complying with applicable state and federal law.

Michael J. Jones is a partner in Monterey, Calif.'s Thompson Jones LLP and chairs the Trusts & Estates Retirement Benefits Committee.

Michelle L. Ward is a partner at Keebler & Associates in Green Bay, Wisc.
44/ Refunds and Assessments
By George D. Karibjian
In addition to affecting the transfer tax marital deduction, United States v. Windsor raises two questions: 1) is a taxpayer permitted to seek a refund for prior transfer taxes paid due to the non-recognition for federal law purposes of the taxpayer's same-sex spouse? and 2) is the IRS permitted to retroactively assess tax deficiencies for same-sex married couples who engaged in common law grantor retained income trusts?

George D. Karibjian is a Senior Counsel in the Personal Planning Department in the Boca Raton, Fla. office of Proskauer Rose LLP.

COMMITTEE REPORT
Investments
49/ Socially Responsible Investing
By Edward J. Finley II & Andrew N. King
A growing canon of academic work demonstrates that socially responsible investing not only can produce similar returns to traditional investment frameworks, but also can, in many cases, achieve higher returns than those strategies. Considering environmental, social and corporate governance (ESG) factors in investment decisions has become important to tailor a portfolio to a client’s specific ESG goals and specifications. Moreover, through positive screens, ESG considerations add a framework to focus on those companies whose practices should lead to greater sustainability and superior long-term performance.

Edward J. Finley II is managing director at Deutsche Bank Trust Company Americas in New York.

Andrew N. King is assistant vice president at Deutsche Bank Trust Company Americas in New York.

56/ How to Invest in the Emerging Markets Now
By Gregory D. Singer
Many advisors have recommended that investors add to their emerging markets holdings. Unfortunately for some, this strategy hasn’t worked as planned. What’s more important is to research companies in the developing world one-by-one, to ensure the fundamentals are in place to benefit from today’s changing landscape. Investment success depends on a company-by-company analysis and an ability to see how and where companies generate revenues and profits. While emerging markets still present many compelling long-term investment opportunities, the emerging markets index itself can be a suboptimal representation of them.

Gregory D. Singer is a senior vice president at Capital Group Private Clients Services based in New York.

60/ Visible and Hidden Risks
By Andrew M. Parker
Interest rates have been low for a while, but are beginning to rise. Where are the rates headed, and what impact will they have on financial markets? Here’s a look at what the U.S. Federal Reserve has historically done to stimulate the economy, the implications of inflation and the forces of economic growth. The author also examines asset classes such as real estate investment trusts, emerging market bonds and high-dividend stocks in this climate.

Andrew M. Parker is chief investment officer at Archetype Advisors, LLC in New York.
TWENTY-FIRST CENTURY LITIGATION: PATHOLOGIES AND POSSIBILITES
A SYMPOSIUM IN HONOR OF STEPHEN YEAZELL

1384 Complexity, the Generation of Legal Knowledge, and the Future of Litigation
Ronald J. Allen

1412 Regulation by Liability Insurance: From Auto to Lawyers Professional Liability
Tom Baker & Rick Swedloff

1452 When Courts Determine Fees in a System With a Loser Pays Norm: Fee Award Denials to Winning Plaintiffs and Defendants
Theodore Eisenberg, Talia Fisher, Issi Rosen-Zvi

1494 Symmetry and Class Action Litigation
Alexandra D. Lahav

1524 Atomism, Holism, and the Judicial Assessment of Evidence
Jennifer L. Mnookin

1586 Altering Attention in Adjudication
Jeffrey J. Rachlinski, Andrew J. Wistrich & Chris Guthrie

1620 Wolves and Sheep, Predators and Scavengers, or Why I Left Civil Procedure (Not With a Bang, but a Whimper)
D. Michael Risinger

1652 Gateways and Pathways in Civil Procedure
Joanna C. Schwartz

1710 Pleading and Access to Civil Justice: A Response to Twombly Apologists
A. Benjamin Spencer

1740 Teaching Twombly and Iqbal: Elements Analysis and the Ghost of Charles Clark
Clyde Spillenger

1752 Unspoken Truths and Misaligned Interests: Political Parties and the Two Cultures of Civil Litigation
Stephen C. Yeazell
# TABLE OF CONTENTS

## ARTICLES

**What Would Congress Want? If We Want to Know, Why Not Ask?**

*Danieli Evans*  
1191

**Courts Should Apply a Relatively More Stringent Pleading Threshold to Class Actions**

*Matthew J.B. Lawrence*  
1225

**False Claims Act: Incentivizing Integrity for 150 Years for Rogues, Privateers, Parasites and Patriots**

*James B. Helmer, Jr.*  
1261

**Turning a Blind Eye: Why Washington Keeps Giving in to Wall Street**

*Arthur E. Wilmarth, Jr.*  
1283

## WILLIAM HOWARD TAFT LECTURE

**The Right to Buy Health Insurance Across State Lines: Crony Capitalism and the Supreme Court**

*Steven G. Calabresi*  
1447

## COMMENTS AND CASENOTES

**The Right to “Skype”: The Due Process Concerns of Videoconferencing at Parole Revocation Hearings**

*Kacey Marr*  
1515

**No Rest for the Weary: Double Jeopardy Implications of Vacating a Defendant’s Guilty Plea**

*Andrew Cassady*  
1539

**Lewis v. Humboldt Acquisition Corp.: Inconsistent with Precedent, Inconsistent with Itself, Inconsistent with the Supreme Court**

*Evan Toebbe*  
1563

**Doe ex rel. Doe v. Elmbrook School District and the Creation of the Pervasively Religious Environment**

*Christopher C. Tieke*  
1591

**Tax Foreclosure: A Drag on Community Vitality or a Tool for Economic Growth?**

*William Weber*  
1615

**Mayo v. Prometheus: Reorganizing the Toolbox for Patent Eligible Subject Matter and Uses of Natural Laws**

*Bryan Wisecup*  
1651
FOREWORD

Hon. Adalberto Jordan 763

ARTICLES

The Non-Waivability of AEDPA Deference's Applicability
Andrew L. Adler 767

Teague New Rules Must Apply in Initial-Review Collateral Proceedings: The Teachings of Padilla, Chaidez and Martinez
Rebecca Sharpless & Andrew Stanton 795

Shoot to Kill: A Critical Look at Stand Your Ground Laws
Tamara Rice Lave 827

NOTES & COMMENTS

The Advance Directive Statute Revisited
Samuel W. Wardle 861

The Eleventh Circuit's Interpretation of Mitsubishi's Footnote 19 and the Validity of Arbitration Clauses in Union-Negotiated Collective Bargaining Agreements
Caitlin E. Burke 893

The Evans Case: A Sixth Amendment Challenge to Florida's Capital Sentencing Statute
Brendan Ryan 933

Whatever Floats the "Reasonable Observer's" Boat: An Examination of Lozman v. City of Riviera Beach, Fla. and the Supreme Court's Ruling That Floating Homes Are Not Vessels
Kathryn D. Yankowski 975

Piracy in the Courtroom: How to Salvage $500 Million in Sunken Treasure Without Making a Cent
Dave Werner 1005

Myth of Protection: Florida Courts Permitting Involuntary Medical Treatment of Pregnant Women
Lacey Stutz 1039
TABLE OF CONTENTS

ARTICLES

Of Outside Monitors and Inside Monitors: The Role of Journalists in Caremark Litigation
  Michael J. Borden ......................... 921

Are Financial Institutions Liable for Financial Crime Under the Alien Tort Statute?
  Joel Slawotsky ............................. 957

An Alternative Story of the Law and Regulation of Risk Management
  Robert F. Weber ............................ 1005

A Market For Justice: A First Empirical Look at Third Party Litigation Funding
  David S. Abrams & Daniel L. Chen .... 1075

COMMENT

The Import of “Undue Hardship” from the ADA to USERRA: Useful Guideline or Trojan Horse?
  Aaron Gingrande ......................... 1111
ARTICLES
The Supreme Court and the PPL
Montana Case: Examining the
Relationship Between Navigability and
State Ownership of Submerged Lands . . . . Richard C. Ausness 168

Planning for Fracking on the Barnett Shale:
Urban Air Pollution, Improving Health
Based Regulation, and the Role of
Local Governments . . . . . . . . . . . . . . Rachael Rawlins 226

NOTES
Minimizing Global Catastrophic and
Existential Risks from Emerging Technologies
Through International Law . . . . . . . . . Grant Wilson 307
CONTENTS

ARTICLES

Beyond the Self-Execution Analysis: Rationalizing Constitutional, Treaty, and Statutory Interpretation in International Commercial Arbitration
S.I. Strong................................................................. 499

Regulating Through Numbers: A Case Study of Corporate Sustainability Reporting
Galit A. Sarfaty........................................................ 575

Are World Trading Rules Passé?
Sungjoon Cho & Claire R. Kelly................................. 623

The Intermestic Constitution: Lessons from the World’s Newest Nation
Kevin L. Cope......................................................... 667

Notes

Silencing the Media in Sri Lanka: How the Sri Lankan Constitution Fuels Self-Censorship and Hinders Reconciliation
Clare Boronow............................................................ 725

International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction
Michael Anderson.................................................. 763
CONTENTS

F. HODGE O’NEAL CORPORATE AND SECURITIES LAW SYMPOSIUM: THE FUTURE OF CLASS ACTIONS


THE 9/11 LITIGATION DATABASE: A RECIPE FOR JUDICIAL MANAGEMENT ..................Alvin K. Hellerstein 653
James A. Henderson, Jr.
Aaron D. Twerski

DISAGGREGATING ......................Elizabeth Chamblee Burch 667

ASSEMBLING CLASS ACTIONS ..............Samuel Issacharoff 699

THE DECLINE OF CLASS ACTIONS........Robert H. Klonoff 729

BANKRUPTCY AND THE FUTURE OF AGGREGATE LITIGATION: THE PAST AS PROLOGUE?....................Troy A. McKenzie 839

THE TROUBLE WITH BASIC: PRICE DISTORTION AFTER HALLIBURTON ..........Jill E. Fisch 895

LIES WITHOUT LIARS? JANUS CAPITAL AND CONSERVATIVE SECURITIES JURISPRUDENCE ................Donald C. Langevoort 933

MERGER CLASS ACTIONS IN DELAWARE AND THE SYMPTOMS OF MULTI-JURISDICTIONAL LITIGATION ........ Adam B. Badawi 965

COMMENTARY

THE ROLE OF THE JUDGE IN NON-CLASS SETTLEMENTS ................................Howard M. Erichson 1015

MANAGERIAL JUDGING AND SUBSTANTIVE LAW ...............Tobias Barrington Wolff 1027
ARTICLES

Enough About the Constitution: 275
How States Can Regulate Health Insurance Under the ACA
Brendan S. Maher and Radha A. Pathak

Punishing Crimes of Terror in Article III Courts 309
Christina Parajon Skinner

POLICY ESSAY

The Incarceration Explosion 377
Congressman John Conyers, Jr.

NOTE

Municipal Constitutional Rights: A New Approach 389
Josh Bendor