Contents of Current Legal Periodicals

September 15, 2014, #1421
JOURNALS  J – P

To view table of contents of all Journals listed below, scroll down
To view table of contents of a specific journal, click on journal title

JOURNAL OF FORENSIC SCIENCES, v. 59, no. 4, July, 2014
JOURNAL OF LAND USE AND ENVIRONMENTAL LAW, v. 29, no. 1, Fall, 2013
THE JOURNAL OF LEGAL HISTORY, v. 35, no. 2, August, 2014
JOURNAL OF TAXATION, v. 121, no. 1, July, 2014
JUDICATURE, v. 97, no. 6, May – June, 2014
JURIMETRICS, v. 54, no. 3, Spring, 2014
KENTUCKY LAW JOURNAL, v. 102, no. 4, 2013 – 2014
LAW PRACTICE MAGAZINE, v. 40, no. 4, July – August, 2014
LAW/TECHNOLOGY, v. 47, no. 2, 2014
LITIGATION, v. 40, no. 4, Summer, 2014
LOYOLA LAW REVIEW, v. 60, no. 1, Spring, 2014
MEDICINE, SCIENCE, AND THE LAW, v. 54, no. 1, January, 2014
MICHIGAN LAW REVIEW, v. 112, no. 8, June, 2014
NATURAL RESOURCES & ENVIRONMENT, v. 28, no. 4, Spring, 2014
NEW CRIMINAL LAW REVIEW, v. 17, no. 3, Summer, 2014
NEW YORK INTERNATIONAL LAW REVIEW, v. 27, no. 2, Summer, 2014
NEW YORK STATE BAR ASSOCIATION JOURNAL, v. 86, no. 6, July – August, 2014
NEW YORK UNIVERSITY JOURNAL OF LEGISLATION AND PUBLIC POLICY, v. 17, no. 2, 2014
PROBATE & PROPERTY, v. 28, no. 4, July – August, 2014
PSYCHOLOGY, PUBLIC POLICY, AND LAW, v. 20, no. 1, February, 2014
Most colleges and universities of all sizes have an endowment, a fund that provides a stream of income and maintains the corpus of the fund in perpetuity. Organizations with large endowments, such as colleges, universities, and private foundations, all finance a significant part of their operations through the return received from the investment of this capital. This article examines the legal framework for endowment investing, endowment investing policies, their evolution to more sophisticated and riskier strategies, and the consequences evinced during the financial crisis of 2008 and beyond. It traces the approaches to endowment investing and chronicles the rise and, if not the fall, the challenges to modern portfolio management. It examines the impact of endowment losses on colleges and universities and their constituencies, as well as the problem of trustee deference to boards' investment committees. This article concludes that universities have learned little from the financial crisis and are more invested in illiquid, nontransparent assets than before the financial crisis. Finally, this article recommends the establishment of board level risk management committees to evaluate endowment investing policies.
Something Corporate: The Case for Treating Proprietary Education Institutions like Corporations

Christopher J. Ryan, Jr.

Postsecondary education, particularly proprietary postsecondary education, has become a product-driven industry. As such, the law must apply the same accountability standards on these schools that it requires of other proprietary entities. Because the states are best positioned to regulate the institutions within their own borders, they must seize the opportunity to regulate any industry that has proliferated at the expense of its consumers because of a business model that eschews disclosures about its operations. As the cases regarding the deceptive trade practices of proprietary education institutions continue to funnel through our nation’s courts, the argument for legislation requiring these institutions to disclose vital investment information to potential consumers must be given due consideration. This article examines the history of and distinction between proprietary schools and traditional postsecondary schools, the modern reality of the educational marketplace, and the organizational structure of proprietary schools, positing that the regulation of the proprietary education industry is more akin to regulating a traditional corporation than regulating a traditional postsecondary school. Ultimately, this article concludes that a fiduciary duty, existing between proprietary education institutions and their students, must supplant the academic abstention doctrine, which has long been a fixture in the court system, and finds that historical causes of action against proprietary schools are inadequate in the modern context. This article also contends that the states are better positioned to regulate harmful trade practices of proprietary schools than the federal government and makes a realistic and modern recommendation for the regulation of proprietary educational institutions.
A Double-Edged Sword: Student Loan Debt Provides Access to a Law Degree but May Ultimately Deny a Bar License

Kaela Raedel Munster 285

Since the 1980s, law school tuition has risen dramatically. As a result, by early 2013, the average law school graduate could expect to graduate with debt near or exceeding $100,000, not including any debt accumulated during his or her undergraduate endeavors. Like many aspects of the legal profession, the Character and Fitness assessment, required by state bar boards of admission, has not evolved to reflect current, economic and social trends, as student loans are an integral and necessary resource used by many to attend law school. Due to the increasing costs and grim financial prospects associated with the pursuit of a law degree, reform is necessary in each state's perception of student debt as a factor in a Character and Fitness assessment, specifically the applicant's financial irresponsibility determination. This article will evaluate the bar admissions process, with a specific focus on the Character and Fitness assessment and the considerations that are taken into account by a Character and Fitness Committee before it issues a finding of financial irresponsibility. It will also examine the Loan Repayment Assistance Programs (LRAP) that are in place at the state, federal, and law school level and will argue that these programs are insufficient to address the large amounts of debt that graduates can accumulate while pursuing a law degree. This article will further discuss whether a legal education is a wise investment, as well as analyze the various class action suits against law schools for their alleged misrepresentations of employment and salary data. Finally, this article will consider possible reforms that bar admissions boards should adopt to treat student loan debt separately from a determination of financial irresponsibility that adapts to meet the demands of twenty-first century lawyers.

NOTE
ARTICLES

The Issue of Donor Standing and Higher Education: Will Increased Donor Standing Be Helpful or Hurtful to American Colleges and Universities?

Nicole Amaya Watson

Colleges and universities depend heavily on the charitable support of alumni, parents, and friends for the operation of their schools. Larger gifts, however, tend to be accompanied with a purpose—and certain restrictions. Donors of such gifts expect that their contributions will be administered in exactly the same way as they had intended. Sometimes, however, this is not the ultimate result. In such cases, the issue becomes whether a donor may bring suit to enforce the terms of a charitable donation. This Note will look broadly at the issue of donor standing—specifically, how it pertains to charitable donations to colleges and universities. It will also address judicial characterization and enforcement of charitable donations and analyze the case law that surrounds the issue of donor standing, ultimately focusing on how similar donations have had divergent outcomes depending on the jurisdiction. This Note will also analyze the legislative side of the issue, looking particularly at statutory divergence regarding how charitable donations are classified among various jurisdictions, as well as address possible ways to reconcile the jurisdictional differences on donor standing by looking to scholarly debate on the issue. Finally, this Note concludes by arguing that while changes in current legislation may help to create a more transparent system, they must be done in light of past judicial precedent.

BOOK REVIEWS


William E. Thro


Michael A. Olivas
Contents

Papers


Forensic Informativity of ~3000 bp of Coding Sequence of Domestic Dog mtDNA—HELEN ANGLEBY, MATTIAS OSSKARSSON, JUNFENG PANG, YA-PING ZHANG, THOMAS LEITNER, CAITLYN BRAHAM, LARS ARVESTAD, JOAKIM LUNDEBERG, KRISTEN M. WEBB, AND PETER SAVOLAINEN 898

A Comparison of the Effectiveness of Swabbing and Flossing as a Means of Recovering Spermatozoa from the Oral Cavity—KATHERINE A. ROBERTS, DONALD J. JOHNSON, SHERILLYNN CRUZ, HEATHER SIMPSON, AND ALAN SAFER 909

A PCR marker Linked to a THCA synthase Polymorphism is a Reliable Tool to Discriminate Potentially THC-Rich Plants of Cannabis sativa L.—CHRISTINA STAGINNUS, SIEGFRIED ZÖRNTLEIN, AND ETIENNE DE MEIJER 919

Progress Toward the Determination of Correct Classification Rates in Fire Debris Analysis II: Utilizing Soft Independent Modeling of Class Analogy (SIMCA)—ERIN E. WADDELL, MARY R. WILLIAMS, AND MICHAEL E. SIGMAN 927

Cyclic Pentanone Peroxide: Sensitivity and Suitability as a Model for Triacetone Triperoxide—MARK S. BAlI, DAVID ARMITT, LYNN WALLACE, AND ANTHONY I. DAY 936

Characterization of Blue Pigments Used in Automotive Paints by Raman Spectroscopy—JANINA ZIEBA-PALUS AND ALEKSANDRA MICHALSKA 943

Virtual Tool Mark Generation for Efficient Striation Analysis—LAURA EKSTRAND, SONG ZHANG, TAYLOR GRIEVE, L. SCOTT CHUMBLEY, AND M. JAMES KREISER 950

The Average Direct Current Offset Values for Small Digital Audio Recorders in an Acoustically Consistent Environment—BRUCE E. KOENIG, AND DOUGLAS S. LACEY 960

Forensic Analysis of MTBE Contamination Using Basic Hydrogeologic Concepts—THOMAS BOVING 967

Modern Scientific Evidence Pertaining to Criminal Investigations in the Chosun Dynasty Era (1392–1897 A.C.E.) in Korea—YUN SIK NAM, SUNG-OK WON, AND KANG-BONG LEE 974

Fatal Falls from Height in Taiwan—TUZU-AN PENG, CHIEN-CHANG LEE, JASPER CHIA-CHENG LIN, CHIA-TUNG SHUN, KAI-PING SHAW, AND TE I WENG 978

A Comparison of Hypothermic Deaths in South Australia and Sweden—FRONA M. BRIGHT, CALLE WINSKOG, MELISSA WALKER, AND ROGER W. BYARD 983

The Effect of Previous Traumatic Injury on Homicide Risk—RUSSELL L. GRIFFIN, GREGORY G. DAVIS, EMILY B. LEVITAN, PAUL A. MACLENNAN, DAVID T. REDDEN, AND GERALD MOWIN JR 986

Effects of Ketamine on the Development of forensically important Blowfly Chrysomya megacephala (F.) (Diptera: Calliphoridae) and its Forensic Relevance—ZHOU LU, XIANDUN ZHAI, HAIMEI ZHOU, PU LI, JINQI MA, LING GUAN, AND YAONAN MO 991

Taphonomic Marks on Pig Tissue Due to Cadaveric Coleoptera Activity Under Controlled Conditions—NOELIA J. ZANETTI, ELENA C. VISCIARELLI, AND NÉSTOR D. CENTENO 997

Mental Capacity in Patients Involuntarily or Voluntarily Receiving Psychiatric Treatment for an Acute Mental Disorder—GABRIELE MANDARELLI, LORENZO TARSIATI, GIOVANNA PARMIGIANI, GIAN M. POLSELLI, PAOLA FRATI, MASSIMO BIONDI, AND STEFANO FERRACUTI 1002

Mental Illness and Legal Fitness (Competence) to Stand Trial in New York State: Expert Opinion and Criminal Defendants’ Psychiatric Symptoms—EUGENE LEE, RICHARD ROSNER, AND RONNIE HARMON 1008

Attention-Deficit/Hyperactivity Disorder in Young French Male Prisoners—ANNE GAFFAS, CÉDRIC GALÉRA, VIRGINIE MANDON, AND MANUEL P. BOUVARD 1016

Kinematics of Signature Writing in Healthy Aging—MICHAEL P. CALIGURI, CHI KIM, AND KELLY M. LANDY 1020

Sudden or Unnatural Deaths Involving Anabolic-androgenic Steroids—SHANE DARKE, MICHELLE TOROK, AND JOHAN DUFLOU 1025

879
The Ratio of 6β-Hydroxycortisol to Cortisol in Urine as a Measure of Cytochrome P450 3A Activity in Postmortem Cases—LOTTE M. LANG AND KRISTIAN LINNET

Technical Notes
National Academy of Sciences “Standardization”: On What Terms?—ANN W. BUNCH
The Use of an Alternate Light Source for Detecting Bones Underwater—ANGI M. CHRISTENSEN, KEVIN J. HORN, AND VICTORIA A. SMITH
Internal Validation of Human Mitochondrial DNA Quantification Using Real-Time PCR—MARC L. SPROUSE, NICOLE R. PHILLIPS, MARK F. KAVLICK, AND RHONDA K. ROBY
Optimization of Human mtDNA Control Region Sequencing for Forensic Applications—VÉRONIQUE BOURDON, CAROLYN NG, JESSICA HARRIS, MECHTHILD PRINZ, AND ELI SHAPIRO
Simultaneous Detection of Human Mitochondrial DNA and Nuclear-Inserted Mitochondrial-origin Sequences (NumtS) using Forensic mtDNA Amplification Strategies and Pyrosequencing Technology—BRITTANIA J. BINTZ, GROVES B. DIXON, AND MARK R. WILSON
Analysis of Positive Control STR Experiments Reveals that Results Obtained for FGA, D3S1358, and D13S317 Condition the Success Rate of the Analysis of Routine Reference Samples—VALENTINE MURIGNEUX, ANNE·BEATRICE DUFOUR, JEAN R. LOBRY, AND LAURENT PENE
Swabs as DNA Collection Devices for Sampling Different Biological Materials from Different Substrates—TIMOTHY J. VERDON, ROBERT J. MITCHELL, AND ROLAND A. H. VAN OORSCHOT
Constructing STR Multiplexes for Individual Identification of Hungarian Red Deer—ZOLTAN SZABOLCSI, BALAZS EGYED, PETRA ZENKE, ZSOLT PADAR, ADRIENN BORSY, VIKTOR STEGER, ERZSEBET PASZTOR, SANDOR CSANYI, ZSUZSANNA BUZAS, AND LASZLO OROSZ
Optimization of Headspace Solid-Phase Microextraction Technique for Extraction of Volatile Smokeless Powder Compounds in Forensic Applications—KAH HAW CHANG, CHONG HOOF YEW, AND AHMAD FAHMI LIM ABDULLAH
The Class Characteristic Mark of the H&M Mu!-T-Lock Picking Tool in Toolmarks Examination—NIKOLAI VOLKOV, NIR FINKELSTEIN, YEHUDA NOVOSELSKY, AND TSADOK TSAH
Distortion in Fingerprints: A Statistical Investigation using Shape Measurement Tools—H. DAVID SHEETS, ANNE TORRES, GLENN LANGENBURG, PETER J. BUSH, AND MARY A. BUSH
Observational Case Series: An Algorithm Incorporating Multidetector Computed Tomography in the Medicolegal Investigation of Human Remains after a Natural Disaster—PHILIP J. BERRAN, EDWARD L. MAZUCHOWSKI, ABUBAKR MARZOUK, AND H. THEODORE HARCKE

Case Reports
Sudden Death in Marfan Syndrome—BASAPPA S. HUGAR, SHIVARAMAREDDY PRAVEEN, SUNIL K. KAINOOR, AND AKSHITH RAJ S. SHETTY
Persistence of Biological Traces at Inside Parts of a Firearm from a Case of Multiple Familial Homicide—CORNELIUS COURTS, BRITTA GAHR, BURKHARD MADEA, AND CHRISTIAN SCHYM
Philemon and Baucis Deaths: Case Reports and Postmortem Biochemistry Contribution—CHRISTELLE LARDI, GREGORY SCHMIT, SANDRA BURKHARDT, PATRICE MANGIN, AND CRISTIAN PALMIERE
Endobronchial/Tracheal Metastasis and Sudden Death—ROGER W. BYARD
Spontaneous Rupture of the Gall Bladder: An Unusual Forensic Diagnosis—DOROTHY E. DEAN, JENNIFER M. JAMISON, AND JASON L. LANE
Ketoacidosis and Adrenocortical Insufficiency—CRISTIAN PALMIERE, SÉBASTIEN DE FROIDMONT, PATRICE MANGIN, DOMINIQUE WERNER, AND JOHANNES A. LOBRINUS
Attenuated Total Reflectance Fourier Transform Infrared Spectroscopy Analysis of Red Seal Inks on Questioned Document—YUN SIK NAM, JIN SOOK PARK, NAK-KYOUNG KIM, YEONHEE LEE, AND KANG-BONG LEE
Letters to the Editor
Recognition/Appreciation of Guest Reviewers—2013—MICHAEL A. FEAT
Authors’ Response—FREDERIC SAVALL, FABRICE DEDOUIT, DANIEL ROUGE, AND NORBERT TELMON
Author’s Response—TED VOSK

Book Reviews
Review of: Manual of Forensic Taphonomy—ERIC J. BARTELINK
Review of: Human Identity and Identification—BRUCE E. ANDERSON
Review of: Death and Accident Investigation Protocols—NICHOLAS L. BATALIS
Review of: Forensic Approaches to Buried Remains—LAURA C. FULGINITI
Review of: Introduction to Forensic DNA Evidence for Criminal Justice Professionals—KRISTA E. LATHAM
Review of: The Human Skeleton in Forensic Medicine, 3rd edn—DIANE L. FRANCE
ENVIROMENTAL LAW DISTINGUISHED LECTURE:
Racing to the Top: How Regulation Can Be Used to Create Incentives for Industry to Improve Environmental Quality ........................................ Wendy Wagner 1

ARTICLES:
Recent Developments in Hydraulic Fracturing Regulation and Litigation .............................. Keith B. Hall 29
The State of State and Local Governmental Relations as it Impacts the Regulation of Oil and Gas Operations: Has the Shale Revolution Really Changed the Rules of the Game? ........................................ Bruce M. Kramer 69
Permitting Shale Gas Development ......................................... Emily A. Collins 117

STUDENT COMMENT:
Concentrating on Healthy Feeding Operations: The National School Lunch Program, “Cultured Meat,” and the Path to a Sustainable Food Future ........................................ Kevin Schneider 145

RECENT DEVELOPMENTS: ........................................ Erik Woody 185
THE JOURNAL OF
LEGAL HISTORY

Volume 35 August 2014 Number 2

Contents

Articles

Notes on Contributors 93

‘Not without the Consent and Goodwill of the Common People’: The Community as a Legal Authority in Medieval Sweden Mia Korpiola 95

Reshaping Contractual Unfairness in England 1670–1900 Warren Swain 120

Passive Observers or Active Participants? Jurors in Civil and Criminal Trials Niamh Howlin 143

Medieval Welsh Law and the Mid-Victorian Foreshore Huw Pryce and Gwilym Owen 172

Book Reviews

Lord Mansfield: Justice in the Age of Reason
By Norman Poser Ian Ward 200

Making Legal History: Approaches and Methodologies
Edited by Anthony Musson and Chantal Stebbings Louise Hague 203
<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Material participation by trusts: questions remain after Frank Aragona Trust</td>
<td>Michael T. Donovan and Timothy G. Stewart</td>
</tr>
<tr>
<td>15</td>
<td>Recent guidance on accounting for sales-based royalties and vendor chargebacks</td>
<td>W. Eugene Seago</td>
</tr>
<tr>
<td>25</td>
<td>Final regulations on trust administration expenses—no surprises</td>
<td>Philip N. Jones</td>
</tr>
<tr>
<td>30</td>
<td>Gateway Hotel Partners: decision illustrates the disguised sale quandary</td>
<td>Richard M. Lipton</td>
</tr>
<tr>
<td>3</td>
<td>Late-breaking developments</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>No marital deduction where the spouse was not the beneficial owner</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Shares contributed by private foundation to unrelated charities allowed retained shares to be permitted holdings</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Proposed alternative basis recovery method for installment sale was reasonable</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Arrangement to acquire property constituted a qualified exchange accommodation arrangement</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Extended warranties were insurance contracts for federal income tax purposes</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>LLC member who provides services. Partner, employee, or both?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New “Killer B” guidance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Captive insurance deduction</td>
<td></td>
</tr>
</tbody>
</table>
The Journal of the American Academy of Psychiatry and the Law
Volume 42, Number 2

SPECIAL SECTION
Introduction to the Special Section on DSM-5 and Forensic Psychiatry  
Cheryl D. Wills and Liza H. Gold ................................................................. 132
Commentary: DSM-5 and Forensic Psychiatry  
Paul S. Appelbaum .................................................................................. 136
DSM-5 and Personality Disorders: Where Did Axis II Go?  
Robert L. Trestman .................................................................................. 141
DSM-5 and Posttraumatic Stress Disorder  
Andrew P. Levin, Stuart B. Kleinman, and John S. Adler .... 146
DSM-5 and Neurocognitive Disorders  
Joseph R. Simpson .................................................................................. 159
DSM-5 and Neurodevelopmental and Other Disorders of Childhood and Adolescence  
Cheryl D. Wills ....................................................................................... 165
DSM-5 and the Assessment of Functioning: The World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0)  
Liza H. Gold ......................................................................................... 173
DSM-5 and Psychotic and Mood Disorders  
George F. Parker .................................................................................... 182
DSM-5 and Paraphilic Disorders  
Michael B. First ..................................................................................... 191

REGULAR ARTICLES
Amnesia for Violent Offenses: Factors Underlying Memory Loss and Recovery  
Natalie M. Pyszora, Tom Fahy, and Michael D. Kopelman ...................................................... 202
Commentary: Dissociative Amnesia and the Future of Forensic Psychiatric Assessment  
Robert P. Granacher, Jr. .......................................................................... 214
Recognizing Misleading Pharmaceutical Marketing Online  
Julian De Freitas, Brian A. Falls, Omar S. Haque, and Harold J. Bursztajn ...................................................... 219

ANALYSIS AND COMMENTARY
Frye's Backstory: A Tale of Murder, a Retracted Confession, and Scientific Hubris  
Kenneth J. Weiss, Clarence Watson, and Yan Xuan ...................................................... 226
Ferguson v. Florida: Rationally Understanding Competence to be Executed?  
Christopher S. Wadsworth, William J. Newman, and Paul R. S. Burton ...................................................... 234

LEGAL DIGEST ........................................................................................................ 242

BOOKS AND MEDIA ............................................................................................. 267

LETTERS .................................................................................................................. 275

Volume 42, Number 2, 2014
The Journal of the Legal Profession

Volume 38, 2014

Table of Contents

Articles

The Changes in Legal Infrastructure: Empirical Analysis of the Status and Dynamics Influencing the Development of Collaborative Law Around the World  
Dr. Paola Cecchi-Dimeglio and Peter Kamminga

The Growth and Importance of Outsourced E-Discovery: Implications for Big Law and Legal Education  
Chris D. Birkel

Moving Collaborative Law Beyond Family Disputes  
Sherrie Abney

Student Notes

The Modern Justice’s Dilemma: How to Harness Social Media to Garner [Reelection] Support While Maintaining Ethical Propriety  
Julian L. Bibb, IV

Are We a Government of Laws or of Men? An Assessment of Chief Justice Roy S. Moore’s Reelection and a Call for Reform in Alabama’s Judicial Election Laws  
Bradley J. Watts

New York State Bar’s New Pro Bono Requirement: Is it Worth the Uproar?  
Lauren Gessner Walker

Compilations

Recent Ethics Opinions of Significance  
Megan M. Nix
**PRESIDENT'S REPORT** 252

**EDITORIAL** 253
A Threat to Justice Everywhere

**REPORT FROM THE STATES** 255

**FOCUS** 292
Criminal Settlement Conferences on Demand—Worth It?
BY HON. R.L. GOTTISFIELD AND BOB JAMES

**BOOKS** 297
A Death at Crooked Creek: The Case of the Cowboy, the Cigarmaker, and the Love Letter
BY MARIANNE WESSON
REVIEWED BY ROBERT R. DYKSTRA

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SCITECH CORNER

Forensic Fallacies and a Famous Judge ....................... 211
JONATHAN J. KOEHLER

ARTICLE

Comparing the Use of Forensic Science Evidence in Australia, Switzerland, and the United States: Transcending the Adversarial-Nonadversarial Dichotomy ...................... 221
GARY EDMOND JOELLE VUILLE

COMMENTS

Protecting Victims of Cyberstalking, Cyberharassment, and Online Impersonation through Prosecutions and Effective Laws ..................... 277
CASSIE COX

The Sancho Effect: Why the Large Hadron Collider Won’t Destroy the Earth, and How It Could Improve Science in the Courts .................. 303
MARSHALL CHANCE PETERSON

BOOK REVIEW

The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime by Judith Flanders ..................... 319
REVIEWED BY JON M. SANDS
ARTICLES

The New Regulation of Small Business Capital Formation: The Impact—if Any—Of the JOBS Act
Rutheford B Campbell, Jr. 815

Who Can’t Raise Capital?: The Scylla and Charybdis of Capital Formation
James D. Cox 849

How Congress Killed Investment Crowdfunding: A Tale of Political Pressure, Hasty Decisions, and Inexpert Judgments That Begs for a Happy Ending
Joan MacLeod Heminway 865

IPOs and the Slow Death of Section 5
Donald C. Langevoort and Robert B. Thompson 891

The Effect of the JOBS Act on Underwriting Spreads
Usha Rodrigues 925

Direct Private Placements
William K. Sjostrom, Jr. 947

The Role of the States in the Regulation of Private Placements
Manning Gilbert Warren III 971

NOTES

Tweets from the Grave: Social Media Life After Death
Jason R. Hollon 1031

4% Absent = 100% Disaster: Why the Math Doesn’t Add Up on Fixed Attendance Leave Policies Under the FMLA
Laraclay Parker 1051
Editor's Note
What's the Big Idea?
By John D. Bowers

Perspectives
Buck Up and (Really) Innovate
By Michael Downey

FRONTLINES
10 Highlights
New Results From American Bar Foundation Research
By Hon. Bernice B. Donald

12 Simple Steps
Managing Your Reputation in an Online World
By Allison C. Shields

TECHNOLOGY
22 Product Watch
CloudLocker: Owning Your Own Cloud
By George E. Leloudis

30 Web 2.0
Finding Relief for Password Problems in the Cloud
By Tom Mighell

BIZNESS
64 Managing
Old-Fashioned CRM: The Importance of Trust
By Thomas C. Grella

66 Career Steps
Assessing and Changing Firm Culture
By Wendy L. Werner

68 Marketing
Age Over Beauty? Marketing a Law Firm's Anniversary
By Micah Buchdahl

66 Career Steps
Assessing and Changing Firm Culture
By Wendy L. Werner

72 Finance
Get Your Firm on Track With Credit Card Processing
By Richard L. Wood

74 Practice Management Advice
IT Governance: A Critical Issue for Law Firms
By Jim Calloway

80 Taking the Lead
In Emergencies the Little Things Aren't So Little
By Linda Klein

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32  The 21st-Century T-Shaped Lawyer  
Lawyers must now acquire knowledge in areas other than law to identify issues, understand concepts, contribute to teams and connect ideas across disciplines.  
By R. Amani Smathers

38  Icebergs and Sea Monsters in Treacherous Legal Seas  
Lawyering on the high seas means accepting that the winds have changed and developing early-warning systems to master them again.  
By Gerry Riskin

44  Teaching the Technology of Practice: The 10 Top Schools  
Only a few schools have made substantial and sustained efforts in educating law students on the uses of technology in law.  
By Richard Granat & Marc Lauritsen

48  The Productization of Legal Services  
Identifying and implementing new revenue sources based on nonlegal business models.  
By Dennis Kennedy

52  The Future of American Law in a Global Village  
Facing the changing challenges and opportunities in offering legal services.  
By Dan Pinnington

58  From the Free Law Trenches  
An interview of Tim Stanley on the Free Law Movement to Justia and beyond.  
By Nicholas Gaffney

SOCIALIZE  
Connect, Friend and Follow the LP Division! Visit lawpractice.org/magazine to read Law Practice magazine online.

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Managing Editor
B. Folake Alexander, LL.M.

<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editors’ Note</td>
<td>ii</td>
</tr>
<tr>
<td>The Reflects of Lawsuit Automation in a Labour Court and in a Common Justice Court in the State of Paraíba, Brazil: A Comparative Case Study</td>
<td>1</td>
</tr>
<tr>
<td>By Professor Cláudio Simão de Lucena Neto, Adriana Secundo Gonçalves de Oliveira, and Viviany Christine Rodrigues da Silva</td>
<td></td>
</tr>
<tr>
<td>Social Media in the Business Context</td>
<td>21</td>
</tr>
<tr>
<td>By Edward C. Wolfe and David J. Council</td>
<td></td>
</tr>
<tr>
<td>COLUMNS</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>OPENING STATEMENT</td>
<td>Our Members Share Secrets for Success</td>
</tr>
<tr>
<td>FROM THE BENCH</td>
<td>The Patent Cases Pilot Program</td>
</tr>
<tr>
<td>WITHNESS</td>
<td>Archival Research</td>
</tr>
<tr>
<td>ON THE PAPERS</td>
<td>'The Number Two Problem in Legal Writing: Solved</td>
</tr>
<tr>
<td>ADVANCE SHEET</td>
<td>Trademarks: Whose Harm Is It Anyway?</td>
</tr>
<tr>
<td>GLOBAL LITIGATOR</td>
<td>The Interplay Between the Executive and Judicial Branches in Extradition</td>
</tr>
<tr>
<td>SIDEBAR</td>
<td>The Appearance of Impropriety</td>
</tr>
<tr>
<td>SCRUPLES</td>
<td>The Scope of the Duty to Preserve</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HEADNOTES</th>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ETHICS</td>
<td>The Litigator's Monopoly</td>
<td>10</td>
</tr>
<tr>
<td>EXPERTS</td>
<td>Your Opponent Can Discover Your Experts</td>
<td>11</td>
</tr>
<tr>
<td>MARKETING</td>
<td>The Firm Brochure</td>
<td>12</td>
</tr>
<tr>
<td>ETHICS</td>
<td>&quot;Friending,&quot; Pretexting, and Private Eyes</td>
<td>13</td>
</tr>
<tr>
<td>JURY TRIALS</td>
<td>Judicial Tyranny and the Allen Charge</td>
<td>14</td>
</tr>
<tr>
<td>REPLY BRIEFS</td>
<td>The Circularity of the Fourth Amendment</td>
<td>15</td>
</tr>
<tr>
<td>ETHICS</td>
<td>Something Else We Need to Do about Arbitration</td>
<td>16</td>
</tr>
<tr>
<td>WATERGATE AND ROBERT BORK</td>
<td>HON. AVERN COHN</td>
<td>17</td>
</tr>
</tbody>
</table>
At the Crossroads

FEATURES

Taking Depositions Backwards to Win at Trial

ROBERT E. SHAPIRO
With electronic discovery supplying so much evidence, today's depositions need to lay the groundwork for winning trial themes and summary judgment motions.

Deposition Preparation: The Four Simple Rules

EDNA SELAN EPSTEIN
All clients, even sophisticated ones, need to be told how to achieve a successful deposition.

The Judge, the Special Master, and You

DAVID R. COHEN
With the court system stretched thin, more judges are appointing special masters. We explain how to work with them and how they may help you.

The Opening Statement: Taking Control of the Narrative

SUSAN E. BRUNE
Here's how to rule this crucial moment of a trial.

Sua Sponte

HON. BRENDAN SHEEHAN
A judge offers advice on successful opening statements.

New York—A New Home of International Arbitration?

BRIAN FARKAS AND MARIE CASSARD
The city has begun a multifaceted effort to attract more international arbitration.

Training the New Litigator: Some Assembly Required

LEN NIEHOFF
Responsible firms try to provide new litigators with appropriate oversight and monitored opportunities for hands-on learning.
LOYOLA LAW REVIEW

Volume 60, Number 1, Spring 2014

CONTENTS

ARTICLES

The Dignity of the Human Person: Catholic Social Teaching and the Practice of Criminal Punishment

Dora W. Klein 1

Uncertainty in Death and Taxes—The Need to Reform Louisiana's Limited Liability Company Laws

William A. Neilson 33

Sorry, You Can’t Get There From Here: The Untenable Goal of Using Short-Term Rental Real Estate To Attain Real Estate Professional Status

Ausher M. B. Kofsky 57

COMMENT

Clarifying and Improving the Law of Enclosed Estates in Modern Day Land-Scarce Louisiana

Kelsey A. Eagan 93

Art Expressed on a Living Canvas: Proposing a Balance Between the Protection of Free Expression and the Governmental Interest in Regulating the Tattoo Industry

Claire A. Noonan 137

CASENOTE

Kiobel v. Royal Dutch Petroleum Co.: The Alien Tort Statute's Presumption Against Extraterritoriality

Kaki J. Johnson 171
Review article
1 Laryngeal anomalies: Pitfalls in adult forensic autopsies
   AS Advenier, G Lorin De La Grandmaison, S Cavard, N Pyatigorskaya, D Malicier and P Chartier

Original articles
8 Coroner autopsy study of homicides in Rivers State of Nigeria: 11-year review
   CC Obiorah and CN Amakiri
15 Proceedings of the seventh Northern region paediatric colloquium
   Xanthe Barkla and Carole Kaplan
22 Screening for synthetic cannabinoids in hair by using LC-QTOF MS: A new and powerful approach to study the
   penetration of these new psychoactive substances in the population
   Rossella Gottardo, Daniela Sorio, Giacomo Musile, Elisa Trapani, Catia Seri, Giovanni Serpelloni and Franco Tagliaro
28 The chronology of third molar root mineralization in south Indian population
   Venkatesh Malek, B Manjunatha, Karthikeya Patil and BM Balaraj
35 The compassionate taking of life and assisted suicide
   A Samuels

Review article
41 Use of non-human DNA analysis in forensic science: A mini review
   Arati Iyengar and Sibte Hadi

Case reports
51 Forensic identification using multiple lot numbers of an implanted device
   H Takeshita, T Nagai, M Sagi, S Chiba, S Kanno, M Takada and T Mukai
54 Neck pseudo-bruising secondary to acute aortic dissection
   Anne-Sophie Advenier, Jéhanne Marchaut and Geoffroy Lorin de la Grandmaison

Law and science
58 Law and science
   Stephanie Prior

The Last Page
61 The Last Page: Answer to question from issue 53(4)
62 The Last Page: Question
CONTENTS

ARTICLES

War Is Governance:
EXPLAINING THE LOGIC OF THE LAWS OF WAR
FROM A PRINCIPAL-AGENT PERSPECTIVE............ Eyal Benvenisti
Amichai Cohen 1363

PERSONALIZING DEFAULT RULES AND
DISCLOSURE WITH BIG DATA......................... Ariel Porat
Lior Jacob Strahilevitz 1417

NOTE

INHIBITING INTRASTATE INEQUALITIES:
A CONGRESSIONAL APPROACH TO
ENSURING EQUAL OPPORTUNITY TO
FINANCE PUBLIC EDUCATION ......................... Joshua Arocho 1479

COMMENTS

TARIFFICATION OF THE COASTWISE
TRADE LAWS............................................ Keith E. Diggs 1507

FUMBLING THE FIRST AMENDMENT:
THE RIGHT OF PUBLICITY GOES 2–0 AGAINST
FREEDOM OF EXPRESSION ......................... Thomas E. Kadri 1519
FEATURES

3 Sacketts Win Right to Pre-Enforcement Review: A Victory for "Ordinary Americans"  
Theodore L. Garrett

8 The Power to Tax Economic Activity in Indian Country  
F. Michael Willis

13 Trucking and Towing Cases Illuminate Preemption Trends in the Supreme Court  
Aditi Prabhu

18 The Ripple Effect: Underlying Currents in the Short Opinion in LA County Flood Control District v. NRDC  
Marla Nelson

23 Gabelli v. SEC: Ramifications for EPA's Enforcement Programs  
Sheila D. Jones

27 Rapanos and the Clean Air Act: Linking Wetland and Single Source Determinations  
Lauran M. Sturm

31 Has Auer's Hour Arrived?  
Ben Snoeiden

36 Koontz: An Evolution—Not a Revolution—in Takings Law  
Mohammad O. Jazi

40 Burlington Northern: CERCLA and Its Ever-Changing, Unpredictable Landscape  
Greg DeGulis and Sarah Gable

44 Anti-Fracking Initiatives: Power to the People or More of the Same?  
Rebecca W. Watson and Jennifer Cadena

DEPARTMENTS

Vantage Point

Leading Edge

Inside Front Cover

2

INSIGHTS

New Rule 45  
John M. Barkett

Oil Shale Is Not Shale Oil  
Jean Feriancek

TSCA, the Anti-TSCA, and TSCA Reform  
Madeleine June Kass

Endangered Species and Trade Secrets: Part Two  
Michael Klein

EPA Acknowledges New AAI Standard  
Patrick J. Paul

LITERARY RESOURCES

60

The Back Page

64

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ARTICLES

405 Special Issue Introduction: Developmental Science in Criminal Law, Part I
   Roger J.R. Levesque

407 Rethinking the Scientific and Legal Implications of Developmental Differences Research in Juvenile Justice
   Mark R. Fondacaro

442 "What Any Parent Knows" But the Supreme Court Misunderstands: Reassessing Neuroscience’s Role in Diminished Capacity Jurisprudence
   Jamie D. Brooks

502 The Neurobiology of Decision Making in High-Risk Youth and the Law of Consent to Sex
   Jennifer Ann Drobac and Leslie A. Hulvershorn
Articles
Keeping Trusts Out of Court: Toward Arbitrating Trust Disputes in Singapore
Huai Yuan Chia ................................................................. 1
Landlocked Countries and the Law of the Sea: Economic and Human Development Concerns
Benjamin R. Hutchinson .......................................................... 35
No Longer the Sleeping Dog, the FCPA Is Awake and Ready to Bite: Analysis of the Increased FCPA Enforcements, the Implications, and Recommendations for Reform
Rouzhna Nayeri ................................................................. 73

Recent Decisions
Troma Entertainment, Inc. v. Centennial Pictures Inc. .................................................. 93
New York’s long-arm statute did not confer jurisdiction over two defendants for misappropriating plaintiff’s copyrighted films and selling them to a German company that broadcast them.

In re Application of Kreke Immobilien KG .................................................. 99
The U.S.D.C. for the S.D.N.Y. held that foreign litigants could not rely on U.S. courts to preempt discovery procedures of foreign tribunals with clear jurisdictional authority where the applicant’s request is for documents located overseas.

In re Air Crash Near Clarence Center .................................................. 107
The U.S.D.C. for the W.D.N.Y. held that New York law applied to the issue of compensatory damages in a conflict-of-laws case stemming from the death of a man’s wife in an airplane crash, even though both parties were domiciled in China at the time of the accident.

D.T.J. v. Schmirer .................................................. 113
The U.S.D.C. for the S.D.N.Y. denied petitioner’s petition for the return of his daughter to Hungary from the United States, because the daughter and respondent Schmirer established three affirmative defenses provided by the Hague Convention on the Civil Aspects of International Child Abduction.

Estate of Heiser v. Bank of Tokyo Mitsubishi UFJ .................................................. 119
Petitioners sought to enforce a judgment against entities that the U.S.D.C. for D.C. had found to be instrumentalities of the Islamic Republic of Iran. The U.S.D.C. for N.Y. held that the assets identified by the petitioners could be attached in satisfaction of a judgment and that no OFAC license was required.

Bridas International S.A. v. Repsol, S.A. .................................................. 125
The Supreme Court, New York County, dismissed claims of Bridas International S.A. against Repsol S.A., Spain’s largest oil company, because the Noerr-Pennington doctrine insulated the defendant from liability for threatening the commencement of a lawsuit.
SO, YOU WANT TO BE AN ADJUNCT LAW PROFESSOR?
The Processes, Perils, and Potential 10
BY CATHERINE A. LEMMER AND MICHAEL J. ROBAK

DEPARTMENTS
5 President's Message
8 CLE Seminar Schedule
18 Burden of Proof
BY DAVID PAUL HOROWITZ
49 Tax Alert
BY THOMAS A. DICKERSON AND SYLVIA O. HINDS-RADIX
51 Attorney Professionalism Forum
54 New Members Welcomed
61 Index to Advertisers
61 Classified Notices
63 2014–2015 Officers
64 The Legal Writer
BY GERALD LEBOVITS

21 Writers' Block
The Journal Peeks Behind the Column to Meet One of the Nation's Most Trusted Legal-Writing Advisers: Gertrude Block
BY SKIP CARD

24 A Dog's Tale
BY DAVID B. SAXE

28 2013 Review of UM/UIM and SUM Law
BY JONATHAN A. DACHS

42 How (Not) to Make a Contract on YouTube
BY CLARA FLEBUS

46 First-Party Indemnification for Attorney Fees
BY MELISSA CURVINO AND LIAM O'BRIEN

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VOLUME 17 2014 NUMBER 2

CONTENTS

ARTICLES

The Independence of the Vice Presidency Roy E. Brownell II 297


Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public Stephen Gillers 485

Making Victims Whole: Compensation of Nuclear Incident Victims in Japan and the United States Ken Lerner & Edward Tanzman 543

NOTE

A Sustainable Budget Should Endure Any Storm Philip O. Shapiro 595
FEATURES

   By Kristen M. Lewis

20 Uniform Residential Landlord-Tenant Law:
   Changes on the Way
   By John Ahlen and Lynn Foster

31 51 Flavors: A Survey of Small Estate Procedures
   Across the Country
   By Joseph N. Blumberg

38 Learning from the Mortgage Crisis
   By Dale A. Whitman

43 Client Out of Exemption? Consider a Net Gift
   By Tiffany B. Carmona

51 The Art and Science of Updating REAs:
   Using a Scalpel Instead of a Saw
   By David J. Rabinowitz, Kathleen Dempsey Boyle, and Brad Syverson

58 Qualifying a Grantor Trust as an ESBT
   After the Sale of S Corporation Shares
   By Chris D. Saddock

61 Key Issues in Financing Mixed-Use Developments
   By Eric D. Lemont
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Articles

1 The Eyewitness Post Identification Feedback Effect 15 Years Later: Theoretical and Policy Implications
   Nancy K. Steblay, Gary L. Wells, and Amy Bradfield Douglass

19 How Attorneys Question Children About the Dynamics of Sexual Abuse and Disclosure in Criminal Trials
   Stacia N. Stolzenberg and Thomas D. Lyon

31 The Utility of the SAVRY Across Ethnicity in Australian Young Offenders
   Stephane M. Shepherd, Stefan Luebbers, Murray Ferguson, James R. P. Ogloff, and Mairead Dolan

46 Social Science and Parenting Plans for Young Children: A Consensus Report
   Richard A. Warshak

68 Sending Mixed Messages: Investor Interpretations of Disclosures of Analyst Stock Ownership
   Ahmed E. Taha and John V. Petrocelli

78 Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement
   Tom R. Tyler and Jonathan Jackson

96 Investigating the Role of the Psychopathy Checklist-Revised in United States Case Law
   David DeMatteo, John F. Edens, Meghann Galloway, Jennifer Cox, Shannon Toney Smith, Julie Present Koller, and Benjamin Bersoff

Other

ii Editorial Policy Page
18 E-Mail Notification of Your Latest Issue Online!
108 Instructions to Authors
30 Members of Underrepresented Groups: Reviewers for Journal Manuscripts Wanted
77 New Editors Appointed, 2015–2020
107 Subscription Order Form
Articles

109 Do They Matter? A Meta-Analytic Investigation of Individual Characteristics and Guilt Judgments
   Dennis J. Devine and David E. Caughlin

135 The Impact of Case Factors on Jurors’ Decisions in a Sexual Violent Predator Hearing
   Daniel Krauss and Nicholas Scurich

146 Public Intuitions About Fair Child Support Allocations: Converging Evidence for a
   “Fair Shares” Rule
   Sanford L. Braver, Ira Mark Ellman, and Robert J. MacCoun

164 Woozles: Their Role in Custody Law Reform, Parenting Plans, and Family Court
   Linda Nielsen

181 Victims Behind Bars: A Preliminary Study of Abuse During Juvenile Incarceration and
   Post-Release Social and Emotional Functioning
   Carly B. Dierkhising, Andrea Lane, and Misaki N. Natsuaki

191 Predictors of Mental Health Court Graduation
   Virginia Aldige Hiday, Bradley Ray, and Heathcote W. Wales

200 The Cognitive Underpinnings of Bias in Forensic Mental Health Evaluations
   Tess M. S. Neal and Thomas Grisso

212 The Truth-Justice Tradeoff: Perceptions of Decisional Accuracy and Procedural Justice in
   Adversarial and Inquisitorial Legal Systems
   Justin Sevier

Other

ii Editorial Policy Page
199 E-Mail Notification of Your Latest Issue Online!
iii Instructions to Authors
145 Members of Underrepresented Groups: Reviewers for Journal Manuscripts Wanted
224 New Editors Appointed, 2015–2020
134 Subscription Order Form