Volume 100 | Issue 5

2002

## **Front Matter**

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

#### **Recommended Citation**

Michigan Law Review, *Front Matter*, 100 MICH. L. REV. i (2002). Available at: https://repository.law.umich.edu/mlr/vol100/iss5/1

This Front Matter is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

## VOLUME 100 2001-2002

The University of Michigan Law School

Michigan Law Review Ann Arbor, Michigan 48109-1215

Vol. 100, No. 5

March 2002

#### **CONTENTS**

### **ARTICLES**

Venture Capital on the Downside:	
Preferred Stock and Corporate	
CONTROL	891
(E) RACING THE FOURTH AMENDMENT Devon W. Carbado	946
THE CAUSATION FALLACY: BAKKE	
AND THE BASIC ARITHMETIC OF	
SELECTIVE ADMISSIONS	1045
NOTES	
REVENUE BONDS AND RELIGIOUS EDUCATION:	
The Constitutionality of Conduit	
Financing Involving Pervasively	
SECTARIAN INSTITUTIONS	1108
KEEPING COURTS AFLOAT IN A RISING	
Sea of Litigation: An Objective	
Approach to Imposing Rule 38	
SANCTIONS FOR FRIVOLOUS APPEALS Scott A. Martin	1156
LOCATING INEVITABLE DISCLOSURE'S PLACE	
IN TRADE SECRET ANALYSIS Jennifer L. Saulino	1184
RECENT BOOKS	
BOOKS RECEIVED	1215

Copyright © 2002 by The Michigan Law Review Association

Copyright © 2002 by the Michigan Law Review Association. Except where otherwise expressly provided, the author of each article and Note in this issue has granted permission for copies of that article or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) the author and the *Michigan Law Review* are identified; (iii) prior written notice of the use is given to the Michigan Law Review Association; and (iv) proper notice of copyright is affixed to each copy.

Michigan Law Review (ISSN 0026-2234) is published monthly in October, November, December, February, March, May, June, and August. Subscriptions: United States, \$50 per year in advance, eight numbers; Foreign, \$60. Editorial and Business Offices: Hutchins Hall, 625 S. State St., Ann Arbor, Michigan 48109-1215; 734/764-0542 (Editorial); 734/763-5870 (Business); 734/647-5817 (Fax). Internet Address: <a href="http://www.law.umich.edu/JournalsandOrgs/mlr/">http://www.law.umich.edu/JournalsandOrgs/mlr/</a>>. Periodicals postage paid at Ann Arbor, Michigan, and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, Hutchins Hall, 625 S. State St., Ann Arbor, Michigan 48109-1215.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$8, Book Review \$14, and Special Issues \$10, post-paid, at Editorial and Business Offices.

Volumes 1 through 95, as well as single issues in those volumes, are available in printed and microform from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

Indexed and abstracted in PAIS International.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (17th ed. 2000) and *The Chicago Manual of Style* (14th ed. 1993). We regret that we can return only those manuscripts for which we receive postage and handling fees of \$3.50 for first-class and \$1.50 for special fourth-class mail.

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

#### Winter 2002

#### Administrative Officers

B. Joseph White, B.S., M.B.A., Ph.D., Interim President of the University Paul N. Courant, B.A., M.A., Ph.D., Interim Provost and Executive Vice-President for Academic Affairs

JEFFREY S. LEHMAN, A.B., J.D., M.P.P., Dean

Evan H. Caminker, B.A., J.D., Associate Dean for Academic Affairs

Suellyn Scarnecchia, B.A., J.D., Associate Dean for Clinical Affairs

Virginia B. Gordan, B.A., J.D., Assistant Dean for International Programs

Sarah C. Zearfoss, A.B., J.D., Assistant Dean and Director of Admissions

David H. Baum, B.A., J.D., Assistant Dean of Students

Charlotte H. Johnson, B.A., J.D., Assistant Dean for Financial Aid

Susan M. Guindi, B.A., J.D., Assistant Dean for Career Services

George L. Follansbee, Jr., A.B., J.D., Assistant Dean for Development and Alumni Relations

#### Professors Emeriti of Law

Francis A. Allen, A.B., LL.B., J.D., LL.D., Edson R. Sunderland Professor of Law
Olin L. Browder, A.B., LL.B., S.J.D., James V. Campbell Professor of Law
Alfred F. Conard, A.B., LL.B., LL.M., J.S.D., LL.D.,
Henry M. Butzel Professor of Law
Luke K. Cooperrider, B.S., J.D.
Samuel D. Estep, A.B., J.D.
Robben W. Fleming, B.A., LL.B., LL.D.
Whitmore Gray, A.B., J.D., LL.D.
Jerold H. Israel, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
John H. Jackson, B.A., J.D.,
Hessel E. Yntema Professor of Law
Charles W. Joiner, A.B., J.D.
Frank R. Kennedy, A.B., LL.B., J.S.D.,
Thomas M. Cooley Professor of Law

MARVIN L. NIEHUSS, A.B., LL.B.
WILLIAM J. PIERCE, A.B., J.D.
ROY F. PROFFITT, B.S., J.D., LL.M.
JOHN W. REED, A.B., LL.B., LL.M., LL.D.,
JUR.SC.D.,
Thomas M. Cooley Professor of Law
TERRANCE SANDALOW, A.B., J.D.,
Edson R. Sunderland Professor of Law
THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor
of Law
RUSSELL A. SMITH, A.B., J.D.
ERIC STEIN, J.U.D., J.D., DR.H.C.,
Hessel E. Yntema Professor of Law
PETER O. STEINER, A.B., M.A., PH.D.

#### Professors of Law

Professor
Layman E. Allen, A.B., M.P.A., LL.B.
Reuven S. Avi-Yonah, B.A., A.M., Ph.D.,
J.D.,
Irwin I. Cohn Professor of Law
Omri Ben-Shahar,\* B.A., LL.B., LL.M.,
Ph.D.
Evan H. Caminker, B.A., J.D.
David L. Chambers, A.B., LL.B.,
Wade H. McCree, Jr. Collegiate Professor
of Law
Sherman J. Clark,\* B.S., J.D.
Edward H. Cooper, A.B., LL.B.,
Thomas M. Cooley Professor of Law
Steven P. Croley, A.B., J.D., M.A.
Rebecca S. Eisenberg,\* B.A., J.D.,
Robert and Barbara Luciano Professor of
Law
Phoebe C. Ellsworth, A.B., Ph.D.,
Kirkland and Ellis Professorship in Law
Merritt B. Fox,\* B.A., J.D., Ph.D.,
Alene and Allan F. Smith Professor of Law
Richard D. Friedman, B.A., J.D., D.Phil.,
Ralph W. Aigler Collegiate Professor of Law
Bruce W. Frier, B.A., Ph.D.,
Henry King Ransom Professor of Law
Thomas A. Green, B.A., Ph.D.,
John Philip Dawson Collegiate Professor of
Law
Samuel R. Gross, A.B., J.D.

JAMES C. HATHAWAY,\* LL.B., LL.M., J.S.D.

MICHAEL A. HELLER, A.B., J.D. DONALD J. HERZOG, A.B., A.M., PH.D., Edson R. Sunderland Professor of Law Roderick M. Hills, Jr., B.A., J.D. Robert L. Howse, B.A., LL.B., LL.M. DOUGLAS A. KAHN, B.A., J.D., Paul G. Kauper Professor of Law YALE KAMISAR,\* A.B., LL.B., LL.D. Clarence Darrow Distinguished University Clarence Darrow Distinguishea University Professor of Law
THOMAS E. KAUPER,\* A.B., J.D., Henry M. Butzel Professor of Law
JAMES E. KRIER, B.S., J.D., Earl Warren DeLano Professor of Law
JEFFREY S. LEHMAN, A.B., J.D., M.P.P.
RICHARD O. LEMPERT, A.B., J.D., PH.D. Eric Stein Distinguished University Professor of Law KYLE D. LOGUE, B.A., J.D. CATHARINE A. MACKINNON,\* B.A., J.D., Elizabeth A. Long Professor of Law DEBORAH C. MALAMUD,\* B.A., J.D. James E. and Sarah A. Degan Professor of Ronald J. Mann, B.A., J.D.
Roy F. and Jean Humphrey Proffitt Research Professor of Law WILLIAM I. MILLER, B.A., PH.D., J.D. Thomas G. Long Professor of Law SALLYANNE PAYTON, A.B., LL.B.

Donald H. Regan, A.B., LL.B., B.Phil., Ph.D., William W. Bishop, Jr. Collegiate Professor of Law Mathias W. Reimann, Dr. Iur., LL.M., Hessel E. Yntema Professor of Law

Hessel E. Yntema Professor of Law CARL E. SCHNEIDER, A.B., J.D., Chauncey Stillman Professorship for Ethics,

Morality, and the Practice of Law A.W. BRIAN SIMPSON, B.A., M.A., D.C.L., Charles F. and Edith J. Clyne Professor of Law

E. PHILIP SOPER,\* B.A., M.A., J.D., Ph.D., James V. Campbell Professor of Law Joseph Vining, B.A., M.A., J.D.,

Harry Burns Hutchins Collegiate Professor of

Law

Law Lawence W. Waggoner,\* B.B.A., J.D.,

D.Phil.,

Lewis M. Simes Professor of Law

Peter K. Westen,\* B.A., J.D.,

Frank G. Millard Professor of Law

James Boyd White,\* A.B., A.M., Ll.B.,

L. Hart Wright Collegiate Professor of Law

James J. White, B.A., J.D.,

JAMES J. WHITE, B.A., J.D.,
Robert A. Sullivan Professor of Law
CHRISTINA B. WHITMAN,\* A.B., M.A., J.D.
Francis A. Allen Collegiate Professor of Law

#### Assistant Professors of Law

MICHAEL S. BARR, B.A., M.PHIL., J.D. SUSANNA L. BLUMENTHAL, A.B., M.A., J.D., M.PHIL. DANIEL HALBERSTAM, B.A., J.D. PETER J. HAMMER, B.S., B.A., J.D., Ph.D. Ellen D. Katz, B.A., J.D. Nina A. Mendelson, B.A., J.D. Adam C. Pritchard,\* B.A., M.P.P., J.D. Richard A. Primus, A.B., D.Phil., J.D. Mark D. West,\* B.A., J.D.

#### Clinical Professors of Law

Donald N. Duquette, B.A., J.D. Rochelle E. Lento, B.A., J.D. Paul D. Reingold, B.A., J.D.

NICHOLAS J. RINE,\* B.A., J.D. SUELLYN SCARNECCHIA, B.A., J.D. GRACE C. TONNER, B.A., J.D.

#### Clinical Assistant Professors of Law

EDWARD R. BECKER, B.A., J.D. MELISSA BREGER, B.S., J.D. MARGARET CERNAK, B.A., J.D. KENNETH D. CHESTEK, B.A., J.D. WILLIAM L. COOPER, A.B., J.D., A.M.L.S. PHILIP M. FROST, B.A., J.D. TERESA N. GUEYSER, B.S., J.D.

Paul Holland, B.A., J.D., LL.M. Bridget M. McCormack, B.A., J.D. Mark K. Osbeck, A.B., M.A., J.D. David A. Santacroce, B.A., J.D., LL.M. Anne N. Schroth, B.A., J.D. Thomas H. Seymour, B.A., M.A., J.D. Nancy E. Vettorello, B.A., M.A., J.D.

#### Affiliated Overseas Professors

HANOCH DAGAN, LL.B., LL.M., J.S.D.

BRUNO E. SIMMA, DOCTORATE OF LAW

#### Visiting Professors of Law

KARIMA BENNOUNE, B.A., M.A., J.D.
EYAL BENVENISTI, LL.B., LL.M., J.S.D.
HOWARD CHANG, A.B., M.P.A., J.D., PH.D.
TSILLA DAGAN, LL.B., LL.M.
ELLEN DANNIN, B.A., J.D.
SHELDON H. DANZIGER, B.A., PH.D.
KARTHY GOVENDER, LL.B., LL.M.
LARRY HAMERMESH, B.A., J.D.
GARETH H. JONES, LL.B., M.A., LL.B., LL.M., LL.D.,
Helen L. DeRoy Visiting Professor of Law

ORIT KAMIR, LL.B., M.A., LL.M., S.J.D. ATSUSHI KINAMI, LL.B., LL.M. ANDREA LYON, B.A., J.D. OSAMU MORITA DANIEL ROTHENBERG, M.A., PH.D. REBECCA SCOTT, A.B., M.PHIL., PH.D. MAXWELL STEARNS, B.A., J.D.

#### Adjunct Professors of Law

ELIZABETH M. BARRY, B.A., J.D.
JOHN E. BOS, B.A., J.D.
LAURENCE D. CONNOR, A.B., J.D.
TIMOTHY L. DICKINSON, A.B., J.D., LL.M.
JAMES FORMAN, B.A., J.D.
SAUL A. GREEN, B.A., J.D.
ALISON E. HIRSCHEL, B.A., J.D.

Marvin Krislov, M.A., J.D. Karl E. Lutz, B.A., J.D. Roberta J. Morris, A.B., J.D. Cyril Moscow, B.S., J.D. Steven W. Rhodes, B.S., J.D. Mark D. Rosenbaum, B.A., J.D. Edward R. Stein, B.A., J.D.

#### Adjunct Clinical Assistant Professors of Law

PAUL E. BENNETT, B.S., M.A., J.D. KATHLEEN HEGARTY, B.A., J.D. NEIL S. KAGAN, B.S., M.S., J.D. Peter Van Hoek, B.A., J.D. Matthew Weber, B.A., J.D., M.P.A.

#### Adjunct Instructor

MARGARET A. LEARY, B.A., M.A., J.D.

\* On Leave

Vol. 100, No. 5

March 2002

#### EDITORIAL BOARD

Editor-in-Chief Benjamin C. Mizer, of Ohio

Managing Editor JOHN W. URSU, of Minnesota

Book Review Editors Joshua A. Brook, of New York Frederick G. Sandstrom, of Florida

Executive Article Editor
JAMES D. MANGIAFICO, of Ohio

Executive Note Editor
MARY BETH CONSTANTINO, of Massachusetts

Executive Editors
TODD E. MESIBOV, of North Carolina
ROY A. MOSS, of Oklahoma
MARIELA OLIVARES, of Texas

Con
Kirsten Matoy Carlson, of Oklahoma
Catherine M. Carroll, of Virginia
Dora V. Chen, of Connecticut
Chandra F.C. Davis, of New Jersey
Renee M. DuPree, of Michigan
Benjamin M. Faulkner, of New York
Raphael M. Goldman, of Arizona
Edward A. Gordon, of Texas
Nicholas F. Joseph, of Maryland
Brett D. Koeller, of Wisconsin
Zachary M. Lewis, of Oklahoma
Joseph E. McCall, of New Hampshire
Matthew S. Meyer, of Delaware
Wonkee Moon, of California

JOHN T. ADAMS, of Arkansas
AAMRA S. AHMAD, of Idaho
DEMIAN S. AHN, of Washington, D.C.
SANTOSH S. ARAVIND, of Michigan
DAVID AZCUE, of New York
MARSHALL T. BELL, of Alabama
MICHAEL W. BOWLING, of Oklahoma
JOSCELYN R. CEKOLA, of Michigan
ANN H. CHEN, of Illinois
TRENT B. COLLIER, of Ohio
BRADLEY M. CONNERS, of Wisconsin
JAY C. COPPOLETTA, of Illinois
CLAIRE LOEBS DAVIS, of Idaho
JOSHUA A. DOAN, of Massachusetts
STEFANIE A. DOEBLER, of Pennsylvania
MADELEINE V. FINDLEY, of Ohio
WADE B. GENTZ, of Texas
BRIAN R. GORMLEY, of Virginia
SEAN J. HARTIGAN, of Florida
THOMAS E. HOGAN, of Connecticut
KRISTIN N. JOHNSON, of Texas
SARAH S. KEAST, of Michigan
JEFFREY D. KLINGMAN, of Virginia
ELIZABETH A. KRONK, of Michigan
NEHA LALL, of Michigan
ELIZABETH A. LEIFEL, of Illinois

BUSINESS MANAGER DOROTHY A. KELLY Article Editors
Jennifer L. Boatwright, of Iowa
Eric W. Doherty, of Minnesota
Emily M. Morris, of Ohio
John A. Sloat, of Michigan
Jane H. Yoon, of New Jersey

Note Editors
LISA J. COLE, of Washington, DC
KIMBERLY K. KEFALAS, of Michigan
JESSICA KOZLOV-DAVIS, of New Jersey
SCOTT A. MARTIN, of Texas
ADAM B. ZIEGLER, of Louisiana

Centennial Editor
COURTENAY E. MORRIS, of New York

Contributing Editors
MICHAEL MORDEN, of California
AYELETTE ROBINSON, of Michigan
TINA SAMANTA, of Maryland
BRIAN C. SMITH, of New York
BRITTAN J. STRANGWAYS, of Michigan
REBECCA L. STRAUSS, of Michigan
BERNARD TAYLOR, of Michigan
ELLISEN S. TURNER, of Michigan
VERONICA VELA, of Texas
JEFFREY M. WALSH, of Nebraska
LINDA MARIA R. WAYNER, of New York
JAMES R. WHITNEY, of Ohio
EMILY J. ZELENOCK, of Michigan

#### Associate Editors

SEAN M. LEWIS, of Vermont
DOUGLAS S. LLOYD, of Washington
ANDREW P. LYCANS, of Ohio
ANNA-ROSE MATHIESON, of Oregon
SARAH A. MCKUNE, of Michigan
CHAD B. MEAD, of Utah
LUMEN N. MULLIGAN, of Kansas
ADAM S. NADELHAFT, of New York
DAMON D. PERRY, of Illinois
DAVID A. PETERS, of Virginia
JAGAN NICHOLAS RANJAN, of Indiana
EFRAT RIFF, of Michigan
JACOB T. RISNER, of Indiana
JENNIFER L. SCHELLER, of Pennsylvania
RACHEL E. SCHNELLER, of Massachusetts
ERICA R. SEYBURN, of Michigan
ERIN L. SHENCOPP, of Indiana
NADIA I. SHHATA, of Washington, D.C.
ALEX E. SPIUTE, of California
MARLA H. SWARTZ, of Michigan
JEFFREY R. VESEL, of Minnesota
SKANTHAN VIVEKAANDAMORTHY, of California
ASHLIE C. WARNICK, of Virginia
TAMERA WOODARD, of Michigan
SARAH A. ZUMWALT, of New York

EDITORIAL ASSISTANT MELANIE D. EHLER