

Michigan Law Review

Volume 100 | Issue 3

2001

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 (2001).
Available at: <https://repository.law.umich.edu/mlr/vol100/iss3/1>

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.

Michigan Law Review

VOLUME 100
2001-2002

The University of Michigan
Law School

Michigan Law Review
Ann Arbor, Michigan 48109-1215

Michigan Law Review

Vol. 100, No. 3

December 2001

CONTENTS

ARTICLES

- THE PATHOLOGICAL POLITICS OF
CRIMINAL LAW *William J. Stuntz* 505
- PROPERTY RIGHTS AND LIABILITY RULES:
THE EX ANTE VIEW OF
THE CATHEDRAL *Lucian Arye Bebchuk* 601

NOTE

- SWALLOWING THE APPLE WHOLE:
IMPROPER PATENT USE BY
LOCAL RULE *Ellisen S. Turner* 640

RECENT BOOKS

- BOOKS RECEIVED 673

Copyright © 2001 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: <<http://www.law.umich.edu/journalsandorgs/mlr/>>. 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

Fall 2001

Administrative Officers

LEE C. BOLLINGER, B.S., J.D., *President of the University*
LISA TEDESCO, M.Ed., Ph.D., *Interim Provost and Executive Vice President for Academic Affairs; Vice President and Secretary of the University, and Professor of Dentistry*
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 of Students*
KATHERINE B. GOTTSCHALK, B.A., *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

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
LEE C. BOLLINGER, B.S., J.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., J.D.,
John Philip Dawson Collegiate Professor of Law
SAMUEL R. GROSS,* A.B., J.D.,
Thomas G. and Mabel Long Professor of Law
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 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. LEMPERS, 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., Ph.D.,
Elizabeth A. Long Professor of Law
DEBORAH C. MALAMUD, B.A., J.D.,
James E. and Sarah A. Degan Professor of Law
RONALD J. MANN, B.A., J.D.

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
 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*
 LAWRENCE 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.,
Robert A. Sullivan Professor of Law
 CHRISTINA B. WHITMAN, A.B., M.A., J.D.

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.
 MATTHEW WEBER, B.A., J.D., M.P.A.

Affiliated Overseas Professors

CHRISTINE CHINKIN, LL.B., LL.M., LL.M.,
 PH.D.
 HANOCH DAGAN, LL.B., LL.M., J.S.D.

J. CHRISTOPHER MCCRUDDEN, I.L.B., LL.M.,
 D.PHIL.
 BRUNO E. SIMMA, DOCTORATE OF LAW

Visiting Professors of Law

KARIMA BENNOUNE, B.A., M.A., J.D.
 TSILLA DAGAN, LL.B., LL.M.
 MARKUS DUBBER, A.B., J.D.
 YOSEPH EDREY, LL.B., LL.M., PH.D.

SHERMAN JACKSON, B.A., M.A., PH.D.
 DENISE MORGAN, B.A., J.D.
 MAXWELL STEARNS, B.A., J.D.
 OMRI YADLIN, B.Sc., LL.B., LL.M., J.S.D.

Visiting Associate Professor of Law

ANA MARIA MERICO-STEPHENS, B.A., J.D.

Adjunct Professors of Law

JOHN E. BOS, B.A., J.D.
 ANDREW P. BUCHSBAUM, A.B., J.D.
 LAURENCE D. CONNOR, A.B., J.D.
 PAULA ETTTELBRICK, B.A., J.D.
 JAMES FORMAN, B.A., J.D.
 RODERICK M. GLOGOWER, B.A., M.A.

WILLIAM R. JENTES, J.D.
 JOAN L. LARSEN, B.A., J.D.
 KARL E. LUTZ, B.A., J.D.
 JEFFREY H. MIRO, B.A., J.D., LL.M.
 ROBERTA J. MORRIS, A.B., 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.

* *On Leave*

Michigan Law Review

Vol. 100, No. 3

December 2001

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*

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

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*

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

JOHN T. ADAMS, *of Arkansas*
AAMRA S. AHMAD, *of Idaho*
DAMIAN 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

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. SHIHATA, *of Washington, D.C.*
ALEX E. SPJUTE, *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. EHLE