CONTENTS

ARTICLES

Tax Transitions, Opportunistic Retroactivity, and the Benefits of Government Precommitment … Kyle D. Logue 1129

Rhetoric and Reality in Copyright Law … Stewart E. Sterk 1197

Structuring Multiclaim Litigation:
Should Rule 23 Be Revised? … William W Schwarzer 1250

NOTES

Executive-Branch Rulemaking and Dispute Settlement in the World Trade Organization: A Proposal To Increase Public Participation … Aubry D. Smith 1267

Are Credit-Card Late Fees “Interest”? Delineating the Preemptive Reach of Section 85 of the National Bank Act of 1864 and Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 … Kevin G. Toh 1294

The Copyright Act of 1976 and Prejudgment Interest … Jon M. Powers 1326

One Bite at the Apple: Reversals of Convictions Tainted by Prosecutorial Misconduct and the Ban on Double Jeopardy … Rick A. Bierschbach 1346

Copyright © 1996 by The Michigan Law Review Association
Recent Books

Books Received.................................................. 1375

Copyright © 1996 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.

The design on the cover is taken from an etching of The University of Michigan Legal Research Building.

Michigan Law Review (ISSN 0026-2234) is published monthly in October, November, December, February, March, May, June, and August. Subscriptions: United States, $40 per year in advance, eight numbers; Foreign, $46. Editorial and Business Offices: Hutchins Hall, Ann Arbor, Michigan 48109-1215; 313-764-0542 (Editorial); 313-763-5870 (Business); 313-764-8309 (Fax). Second-class postage paid at Ann Arbor, Michigan, and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, Hutchins Hall, Ann Arbor, Michigan 48109-1215.

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


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 (15th ed. 1991) 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 1995

Administrative Officers

JAMES J. DUDERSTADT, M.S., PH.D., President of the University

GILBERT R. WHITAKER, JR., M.S., PH.D., Provost and Vice President for Academic Affairs

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

KENT D. SYVERUD, B.S.F.S., J.D., M.A., Associate Dean for Academic Affairs

SUSAN M. EKLUND, A.B., J.D., Associate Dean for Student Affairs and Operations

VIRGINIA B. GORDAN, B.A., J.D., Assistant Dean for Student Affairs

ANNE P. KNorr, B.S., M.A.T., Assistant Dean and Director for Development & Alumni Relations

DENNIS J. SHIELDS, B.A., J.D., Assistant Dean and Admissions Officer

Professors Emeriti of Law

FRANCIS A. ALLEN, A.B., LL.B., J.D., FRANK R. KENNEDY, A.B., LL.B., J.D.,
Edson R. Sunderland Professor of Law
James V. Campbell Professor of Law
Marvin L. Niehuss, A.B., LL.B.

ALFRED F. CONARD, A.B., LL.B., J.D.,
Henry M. Butzel Professor of Law
Roy F. Proftitt, B.S., J.D., LL.M.

LUKE K. COOPERIDGE, 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.

CHARLES W. JOINER, A.B., J.D.

DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law

THOMAS A. GREEN, B.A., PH.D., J.D.,
Hessel E. Yntema Professor of Law

BRUCE W. FRER, B.A., PH.D.,
Clarence Darrow Distinguished University Professor of Law

HENRY KING Ransom Professor of Law

EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law

RENAUD DEHOUSSE, LICENCE EN DROIT,
Earl Warren Delano Professor of Law

SAMUEL R. GROSS, A.B., J.D.,

STEVEN L. HARRIS, B.A., J.D.,

DONALD J. HERZOG, A.B., A.M., PH.D.,

NoRio HIGUCHI, LL.B.

JEROLD H. ISRAEL, B.B.A., LL.B.,
Hans E. Yntema Professor of Law

JEROLD H. ISRAEL, B.B.A., LL.B.,
William W. Bishop, Jr. Professor of Law

JOHN H. JACKSON, B.A., J.D.,

HENRIE E. YNTEMA, B.A., LL.B.,
Alene and Allan F. Smith Professor of Law

WILLIAM R. JENKES, A.B., J.D.

DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law

THOMAS A. GREEN, B.A., PH.D., J.D.,
Hessel E. Yntema Professor of Law

BRUCE W. FRER, B.A., PH.D.,
Clarence Darrow Distinguished University Professor of Law

HENRY KING Ransom Professor of Law

EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law

RENAUD DEHOUSSE, LICENCE EN DROIT,
Earl Warren Delano Professor of Law

SAMUEL R. GROSS, A.B., J.D.,

STEVEN L. HARRIS, B.A., J.D.,

DONALD J. HERZOG, A.B., A.M., PH.D.,

NoRio HIGUCHI, LL.B.

JEROLD H. ISRAEL, B.B.A., LL.B.,
Hans E. Yntema Professor of Law

JEROLD H. ISRAEL, B.B.A., LL.B.,
William W. Bishop, Jr. Professor of Law

JOHN H. JACKSON, B.A., J.D.,

HENRIE E. YNTEMA, B.A., LL.B.,
Alene and Allan F. Smith Professor of Law

WILLIAM R. JENKES, A.B., J.D.

DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law

THOMAS A. GREEN, B.A., PH.D., J.D.,
Hessel E. Yntema Professor of Law

BRUCE W. FRER, B.A., PH.D.,
Clarence Darrow Distinguished University Professor of Law

HENRY KING Ransom Professor of Law

EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law

RENAUD DEHOUSSE, LICENCE EN DROIT,
Earl Warren Delano Professor of Law

SAMUEL R. GROSS, A.B., J.D.,

STEVEN L. HARRIS, B.A., J.D.,

DONALD J. HERZOG, A.B., A.M., PH.D.,

NoRio HIGUCHI, LL.B.

JEROLD H. ISRAEL, B.B.A., LL.B.,
Hans E. Yntema Professor of Law

JEROLD H. ISRAEL, B.B.A., LL.B.,
William W. Bishop, Jr. Professor of Law

JOHN H. JACKSON, B.A., J.D.,

HENRIE E. YNTEMA, B.A., LL.B.,
Alene and Allan F. Smith Professor of Law

WILLIAM R. JENKES, A.B., J.D.
STANLEY S. SCHWARTZ, B.A., J.D.
BRUNO E. SIMMA,* B.A., DOCTOR OF LAWS, J.D.
A.W. BRIAN SIMPSON,** B.A., M.A., D.C.L., Charles F. and Edith I. Clyne Professor of Law
LAWRENCE W. WAGGONER, B.B.A., J.D., D.PHIL.

LAWRENCE M. SINES 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 Professor of Law

FRANK J. WHETE, B.A., J.D., Robert A. Sullivan Professor of Law

CHRISTINA B. WHITMAN, A.B., M.A., J.D.

Assistant Professors of Law

SHERMAN J. CLARK, B.S., J.D.
STEVEN P. CROLEY, A.B., J.D., M.A.
WARREN T. DEAN,†† B.A., M.S., M.A.
HEIDI L. FELDMAN, B.A., J.D., PH.D.
JULIE KUNCE FIELD,†† B.A., J.D.
RICHARD B. Ginsberg,†† B.A., J.D.
PETER J. HAMMER, B.S., B.A., J.D., PH.D.
MICHAEL A. HELLER, A.B., J.D.
RODERICK M. HILLS, Jr., B.A., J.D.
LANCE R. JONES,†† B.A., J.D.

Assistant in Law

ROBERT A. SULLIVAN, B.A., J.D.

Instructor in Law

ROBERTA J. MORRIS,* A.B., J.D., PH.D.

Lecturers in Law

PAUL D. BORMAN,† A.B., J.D., LL.M.
PAULA L. ETTELBRICK,† B.A., J.D.

SUSAN R. GZESI,† A.B., J.D.
CYRIL MOSCOW,† A.B., J.D.

† Adjunct  †† Clinical  * Visiting  ** On Leave