

Michigan Law Review

Volume 97 | Issue 4

1999

Front Matter

Michigan Law Review

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

Recommended Citation

Michigan Law Review, *Front Matter*, 97 MICH. L. REV. i (1999).
Available at: <https://repository.law.umich.edu/mlr/vol97/iss4/1>

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 97
1998-1999

The University of Michigan
Law School

Michigan Law Review
Ann Arbor, Michigan 48109-1215

Michigan Law Review

Vol. 97, No. 4

February 1999

CONTENTS

ARTICLES

- LAW'S TERRITORY
(A HISTORY OF JURISDICTION)..... *Richard T. Ford* 843
- DNA DATABASE SEARCHES AND THE LEGAL
CONSUMPTION OF SCIENTIFIC EVIDENCE..... *Peter Donnelly* 931
and Richard D. Friedman
- LIMITING PATENTEES' MARKET POWER WITHOUT
REDUCING INNOVATION INCENTIVES:
THE PERVERSE BENEFITS OF UNCERTAINTY
AND NON-INJUNCTIVE REMEDIES..... *Ian Ayres* 985
and Paul Klemperer

NOTE

- THE QUALITY OF MERCY IS NOT STRAINED:
INTERPRETING THE NOTICE REQUIREMENT
OF THE FEDERAL TORT CLAIMS ACT..... *Ann McGuire* 1034

RECENT BOOKS

- BOOKS RECEIVED..... 1061

Copyright © 1999 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, \$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: <<http://law.umich.edu/pubs/journals/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 92, 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.

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* (16th ed. 1996) 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 1999

Administrative Officers

LEE C. BOLLINGER, B.S., J.D., *President of the University*
NANCY E. CANTOR, B.A., Ph.D., *Provost and Executive Vice President for Academic Affairs*
JEFFREY S. LEHMAN, A.B., J.D., M.P.P., *Dean*
CHRISTINA B. WHITMAN, A.B., M.A., J.D., *Associate Dean for Academic Affairs*
SUSAN M. EKLUND, A.B., J.D., *Associate Dean*
SUELLYN SCARNECCHIA, B.A., J.D., *Associate Dean for Clinical Affairs*
VIRGINIA B. GORDAN, B.A., J.D., *Assistant Dean for International Programs*
ERICA A. MUNZEL, B.A., J.D., *Assistant Dean and Director of Admissions*
KATHY A. OKUN, M.A., Ph.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.
BEVERLEY J. POOLEY, B.A., LL.B., LL.M., S.J.D.
ROY F. PROFFITT, B.S., J.D., LL.M.
JOHN W. REED, A.B., LL.B., LL.M., JUR.Sc.D.,
Thomas M. Cooley 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

ROBERT H. ABRAMS,* A.B., J.D.
LAYMAN E. ALLEN,** A.B., M.P.A., LL.B.
JOSE E. ALVAREZ, A.B., B.A., M.A., J.D.
ELIZABETH S. ANDERSON,* A.M., Ph.D.
KICHIMOTO ASAKA,* LL.B., LL.M.
ELIZABETH M. BARRY,† B.A., J.D.
JOHN S. BECKERMAN,* A.B., M.A., Ph.D., J.D.
OMRI BEN-SHAHAR,* B.A., LL.B., LL.M., Ph.D.
ANITA BERNSTEIN,* B.A., J.D.
RAJ K. BHALA,* A.B., M.Sc., J.D.
LEE C. BOLLINGER, B.S., J.D.
ANDREW P. BUCHSBAUM,† A.B., J.D.
DAVID L. CHAMBERS, A.B., LL.B.,
Wade H. McCree Professor of Law
LAURENCE C. CONNOR,† A.B., J.D.
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
STEVEN P. CROLEY, A.B., J.D., M.A.
PATRICIA M. CURTNER,† B.A., J.D.
HANOCH DAGAN,* LL.B., LL.M., J.S.D.
GENNADY M. DANILENKO,* DIPL. IN LAW, DOC. OF LAW
DONALD N. DUQUETTE,**† B.A., J.D.
REBECCA S. EISENBERG, B.A., J.D.
PHOEBE C. ELLSWORTH, A.B., Ph.D.,
Kirkland & Ellis Professor of Law
MERRITT B. FOX, B.A., J.D., Ph.D.
RICHARD D. FRIEDMAN, B.A., J.D., D.Phil.
BRUCE W. FRIER, B.A., Ph.D.,
Henry King Ransom Professor of Law
ROD M. GLOGOWER,† B.A., M.A.
KARTHIGASEN GOVENDER,* LL.B., LL.M.
THOMAS A. GREEN, B.A., Ph.D., J.D.,
John Philip Dawson Professor of Law
SAMUEL R. GROSS, A.B., J.D.,
Thomas G. and Mabel Long Professor of Law
DAVID A. HARRIS,* B.A., J.D.
JAMES C. HATHAWAY, LL.B., LL.M., J.S.D.
DONALD J. HERZOG, A.B., A.M., Ph.D.
ALISON E. HIRSCHL,† B.A., J.D.
HAROLD K. JACOBSON,* B.A., M.A., Ph.D.
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. LEMPERT,** A.B., J.D., Ph.D.,
Francis A. Allen 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.
 JÜRGEN MENSCHING,* JURIS.
 STAATSEXAMEN, JURIS.
 VORBEREITUNGSDIENST
 WILLIAM I. MILLER,** B.A., Ph.D., J.D.
Thomas G. Long Professor of Law
 CYRIL MOSCOW,† B.S., J.D.
 YASUAKI ONUMA,* LL.B.
 SALLYANNE PAYTON, A.B., LL.B.
 RICHARD H. PILDES,** A.B., J.D.,
*Roy F. and Jean Humphrey Proffitt
 Research Professor of Law*
 DONALD H. REGAN,** A.B., LL.B., B.Phil.,
 Ph.D.,
William W. Bishop, Jr. Professor of Law
 MATHIAS W. REIMANN, DR. IUR., LL.M.
 PAUL D. REINGOLD,†† B.A., J.D.
 STEVEN W. RHODES,† B.S., J.D.
 PAUL H. ROBINSON,* B.S., J.D., LL.M.,
 Dipl.Leg.St.
 MARK D. ROSENBAUM,† B.A., J.D.

PHILLIP RUDGE*
 TERRANCE SANDALOW,** A.B., J.D.,
Edson R. Sunderland Professor of Law
 SUELLYN SCARNECCHIA,†† B.A., J.D.
 JANE S. SCHACHTER, A.B., J.D.
 CARL E. SCHNEIDER, A.B., J.D.
 A.W. BRIAN SIMPSON, B.A., M.A., D.C.L.,
*Charles F. and Edith J. Clyne Professor
 of Law*
 PHILIP SOPER,** B.A., M.A., J.D., Ph.D.,
James V. Campbell Professor of Law
 EDWARD R. STEIN,† B.A., J.D.
 JOSEPH VINING, B.A., M.A., J.D.,
Harry Burns Hutchins 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 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

CYNTHIA A. BAKER,* B.G.S., J.D.
 P.E. BENNETT,†† B.S., M.A., J.D.
 ERIC A. BILSKY,†† B.A., M.A., J.D.
 RENEE BIRNBAUM,†† B.A., J.D.
 JULIET M. BRODIE,†† A.B., J.D.
 HOWARD J. BROMBERG,†† B.A., J.D.,
 J.S.M.
 LORRAY S.C. BROWN,†† B.A., J.D.
 SUMI K. CHO,* B.A., J.D., Ph.D.
 SHERMAN J. CLARK, B.S., J.D.
 JULIE E. COHEN,* A.B., J.D.
 LORI L. COHEN,†† B.A., J.D.
 ALYSON M. COLE,* B.A., M.A., Ph.D.
 TSILLA DAGAN,* LL.B., LL.M.
 THOMAS B. DARNTON,*†† B.A., J.D.
 CAMERON DAVIS,†† B.A., J.D.
 PHILIP M. FROST,† B.A., J.D.
 ULRICH R. HALTERN,* Dipl. in Law,
 LL.M., Doc. of Laws
 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.
 KIMBERLY A. JAMES,†† A.B., J.D.
 LANCE R. JONES,†† A.B., J.D.
 NEIL S. KAGAN,††† B.S., M.S., J.S.
 ORIT KAMIR,* J.D., M.A., LL.M., S.J.D.
 JOAN L. LARSEN,* B.A., J.D.
 ROCHELLE E. LENTO,†† B.A., J.D.
 ANDREA D. LYON,†† B.A., J.D.
 RONALD J. MANN, B.A., J.D.
 BRIDGET M. MCCORMACK,†† B.A., J.D.
 ADAM C. PRITCHARD, B.A., M.P.P., J.D.
 NICHOLAS J. RINE,†† B.A., J.D.
 ANNE N. SCHROTH,†† B.A., J.D.
 THOMAS H. SEYMOUR,†† B.A., M.A., J.D.
 CAROLYN R. SPENCER,†† A.B., J.D.
 RONALD E. STEINBERG,†† B.A., J.D.
 JOHN T. TEASDALE,† B.A., J.D., LL.M.
 GRACE C. TONNER,†† B.A., J.D.
 MARK D. WEST, B.A., J.D.
 MELISSA K. WORDEN,†† B.A., J.D.

Instructors of Law

MARGARET A. LEARY,† B.A., M.A., J.D.
 MARC S. SPINDELMAN,* B.A., J.D.

* Visiting
 ** On Leave

† Adjunct
 †† Clinical

Michigan Law Review

Vol. 97, No. 4

February 1999

EDITORIAL BOARD

Editor-in-Chief

WILLIAM R. SHERMAN, *of Ohio*

Managing Editor

ELIZABETH W. MILNIKEL, *of Illinois*

Book Review Editors

CHRISTOPHER M. NEWMAN, *of Michigan*
ROSEMARY B. QUIGLEY, *of Massachusetts*

Executive Article Editor

KRISTIN B. WILHELM, *of Georgia*

Executive Note Editor

ELLIOT M. REGENSTEIN, *of New York*

Executive Editors

JENNY L. FLOYD, *of Kentucky*
*WENDY M. MARANTZ, *of California*
CAROLYN C. RUSSELL, *of South Carolina*

Article Editors

ADAM B. COX, *of Michigan*
MATTHEW I. HALL, *of Michigan*
BENJAMIN MEANS, *of Maryland*
CHRISTOPHER SERKIN, *of Vermont*

Note Editors

PARKER ERKMANN, *of Alaska*
EMILY K. PASTER, *of Washington, D.C.*
LARA M. SHALOV, *of New York*
SCOTT T. VARHOLAK, *of Pennsylvania*
MATTHEW D. ZINN, *of California*

Contributing Editors

JAMES S. BIRGE, *of Indiana*
*WILLIAM F. BROCKMAN, *of Michigan*
HEATHER V. BURROR, *of California*
HUIYA H. CHEN, *of California*
ABHAY DHIR, *of Texas*
MARCI R. ETTER, *of New Jersey*
SCOTT J. FENSTER, *of Maryland*
*CHARLOTTE GIBSON, *of Michigan*
TROY J. HICKMAN, *of Washington*
MORENIKE S. KASSIM, *of Washington, D.C.*
KRISTA L. LENART, *of Michigan*

HYUN J. PARK, *of New York*
NADA M. PAYNE, *of New York*
DANA A. ROACH, *of Michigan*
RYAN T. ROUTH, *of Ohio*
WILLIAM PAUL SCHUCK, *of California*
*JAMES A. SHIMOTA, *of Michigan*
JEFFREY S. SILVER, *of Massachusetts*
AARON D. SINGER, *of Michigan*
DAVID D. TAWIL, *of New Jersey*
ALEXANDER C. WEXLER, *of Illinois*

Associate Editors

DAVID E. AMAN JR., *of Florida*
CAROLYN BARTH, *of Massachusetts*
ADAM M. BECKER, *of New Jersey*
JASON R. BENT, *of Iowa*
KIMBERLY D. BROWN, *of Ohio*
CHRISTOPHER J. BURKE, *of Pennsylvania*
ABIGAIL V. CARTER, *of Wisconsin*
KATHERINE S. DAWSON, *of Michigan*
MATTHEW H. DREXLER, *of Indiana*
LEA E. FILIPPI, *of Michigan*
ALYSON A. FOSTER, *of California*
CAROLYN J. FRANTZ, *of Louisiana*
MARK S. GERMANN, *of Indiana*
SEAN C. GRIMSLEY, *of Texas*
HARRIS T. HARTMAN, *of Georgia*
ALEXIS A. HAWKER, *of Colorado*
RACHEL L. HONG, *of Vermont*
CHARLES R. HUGHSON, *of New Mexico*
WINIFRED V. KAO, *of Virginia*
CHARLES N. KECKLER, *of Michigan*

HELEN YEONJUNG KIM, *of Georgia*
KARIN F. KLAPPER, *of New York*
JONATHAN P. KOK, *of Michigan*
CHRISTOPHER R. LIRO, *of Michigan*
SUSAN L. LOVELAND, *of Michigan*
AIMÉE S. MANGAN, *of Michigan*
NICOLE M. MULLÉ, *of New York*
DAVID D. O'BRIEN, *of Vermont*
ERIC R. OLSON, *of Kentucky*
RACHEL S. PASTER, *of Michigan*
RACHEL F. PREISER, *of New York*
DAVID A. RODRIGUEZ, *of Illinois*
MATTHEW K. ROSKOSKI, *of Georgia*
CAROLINE SADLOWSKI, *of Connecticut*
MICHAEL SATZ, *of Texas*
DARCY W. SHEARER, *of Massachusetts*
ALIZE (ALLIE) SHLECHTER, *of Texas*
BIZUNESH K. TALBOT, *of Wisconsin*
KRISTA L. TURNQUIST, *of Michigan*
DAVID L. YOUNG, *of Washington*

* *Article Review Board*