Michigan Law Review

Volume 88 | Issue 8

1990

Front Matter

Michigan Law Review

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

Recommended Citation

Michigan Law Review, *Front Matter*, 88 MICH. L. REV. i (1990). Available at: https://repository.law.umich.edu/mlr/vol88/iss8/1

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

Vol. 88, No. 8

August 1990

CONTENTS

ARTICLES

THE NEGATIVE CONSTITUTION: A CRITIQUE Susan Bandes	2271
TORT LAW AS CORRECTIVE JUSTICE:	
A PRAGMATIC JUSTIFICATION FOR	
JURY ADJUDICATION Catharine Pierce Wells	2348
Women Lawyers and the Quest for	
PROFESSIONAL IDENTITY IN LATE	
NINETEENTH-CENTURY AMERICA Virginia G. Drachman	2414
CORRESPONDENCE	
OF Two Minds About Law	
AND MINDS Larry Alexander	2444
THE CASE OF THE AMOROUS DEFENDANT:	
CRITICIZING ABSOLUTE STARE DECISIS FOR	
STATUTORY CASES William N. Eskridge, Jr.	2450
CONTEMPT OF CONGRESS: A REPLY TO	
THE CRITICS OF AN ABSOLUTE RULE OF	
STATUTORY STARE DECISIS Lawrence C. Marshall	2467

NOTE

MAKING SENSE OF BILLBOARD LAW:	
JUSTIFYING PROHIBITIONS AND EXEMPTIONS	2482
RECENT BOOKS	
BOOKS RECEIVED	2526
PERIODICAL INDEX	
SUBJECT INDEX of Articles, Comments, Notes, and Recent	
Developments Appearing in Leading Law Reviews	2528
INDEX	
CONTENTS OF VOLUME 88: SUBJECT INDEX, ARTICLES, NOTES,	
AUTHORS, BOOKS REVIEWED	i

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 October, November, December, February, April, May, June, and August. Subscriptions: United States, \$36 per year in advance, eight numbers; Foreign, \$40. Editorial and Business Offices: Hutchins Hall, Ann Arbor, Michigan 48109-1215. 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.

Recent Volumes: Single Issues \$7, Book Review and Special Issues \$13, postpaid, at Editorial and Business Offices.

Back issues and volumes (before November 1981) available 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. It is therefore necessary to 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 *A Uniform System of Citation* (14th ed.). 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

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
Lee C. Bollinger, B.S., J.D., Dean
EDWARD H. Cooper, A.B., Ll.B., Associate Dean for Academic Affairs
Susan M. Eklund, A.B., J.D., Associate Dean for Student Affairs and Operations
Beverley J. Pooley, B.A., Ll.B., Ll.M., S.J.D., Associate Dean for the Law Library
Virginia B. Gordan, B.A., J.D., Assistant Dean for Student Affairs
Jonathan D. Lowe, B.A., J.D., Assistant Dean for Law School Relations
Allan T. Stillwagon, A.B. M.A. Assistant Dean and Admissions Officer. ALLAN T. STILLWAGON, A.B., M.A., Assistant Dean and Admissions Officer

Professors Emeriti of Law

Professors

Francis A. Allen, A.B., LL.B., J.D., LL.D.,
Edson R. Sunderland Professor of Law
Olin L. Browder, Jr., 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.
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.
GEORGE E. PALMER, A.B., J.D., LL.M.
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., JUR.SC.D.,
Thomas M. Cooley Professor of Law
ALLAN F. SMITH, A.B., LL.B., LL.M., S.J.D.
RUSSELL A. SMITH, A.B., J.D.
ERIC STEIN, J.U.D., J.D., DR.H.C., DR.H.C.,
Hessel E. Yntema Professor of Law
ANDREW S. WATSON, B.S., M.D., M.S., IN MED. ANDREW S. WATSON, B.S., M.D., M.S. IN MED.

Professors of Law

HOWARD B. ABRAMS,* B.A., J.D. T. ALEXANDER ALEINIKOFF, B.A., J.D. LAYMAN E. ALLEN, A.B., M.P.A., LL.B. LAYMAN E. ALLEN, A.B., M.P.A., LL.B. AHARON BARAK,*
GUYORA BINDER,* A.B., J.D.
LEE C. BOLLINGER, B.S., J.D.
MICHAEL H. BRADLEY, M.B.A., PH.D.
DAVID L. CHAMBERS,** A.B., LL.B.,
Wade H. McCree Professor of Law
JULIUS L. CHAMBERS, B.A., M.A., J.D., LL.M.
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
ROGER A. CUNNINGHAM, S.B., J.D.,
James V. Campbell Professor of Law
GENNADY M. DANILENKO,* DIPL., J.D.
DONALD N. DUQUETTE,†† B.A., J.D. GENNADY M. DANILENKO,* DIPL., J.D.
DONALD N. DUQUETTE,†† B.A., J.D.
PIERRE-MARIE DUPUY,* J.D.
REBECCA S. EISENBERG,** B.A., J.D.
PHOEBE C. ELLSWORTH,** A.B., PH.D.
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.
STEPHEN A. GARDBAUM,* B.A., M.SC., PH.D., J.D.
WHITMORE GRAY, A.B., J.D., LL.D.
THOMAS A. GREEN, B.A., PH.D., J.D.
PHILIP SOPER, B.A., M.A., J.D., PH.D.
PHILIP SOPER, B.A., M.A., J.D., PH.D. WHITMORE GRAY, A.B., J.D., LL.D.
THOMAS A. GREEN, B.A., PH.D., J.D.,
John Philip Dawson Professor of Law
SAMUEL R. GROSS, A.B., J.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
DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law
YALE KAMISAR, A.B., LL.B., LL.D.,
Henry King Ransom Professor of Law
THOMAS E. KAUPER, A.B., J.D.,
Henry M. Butzel Professor of Law

LARRY B. KRAMER,* A.B., J.D.

JAMES E. KRIER, B.S., J.D.,

Earl Warren DeLano Professor of Law

RICHARD O. LEMPERT, A.B., J.D., PH.D.,

Francis A. Allen Professor of Law

CATHARINE A. MACKINNON, B.A., J.D., PH.D.

MITSUO MATSUSHITA,* B.A., PH.D., D.JUR.

MENACHEM MAUTHER,* L.B., LL.M., J.S.D.

WILLIAM I. MILLER,** B.A., PH.D., J.D.

SALLYANNE PAYTON, A.B., LL.B., BL.M., S.J.D.

DONALD H. REGAN, A.B., LL.B., B.PHIL., PH.D.,

William W. Bishop, Jr. Professor of Law

MATHIAS W. REIMANN, DR. JUR., LL.M.

PAUL D. REINGOLD,†† B.A., J.D.

THEODORE J. ST. ANTOINE, A.B., J.D., LARRY B. KRAMER,* A.B., J.D. THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
TERRANCE SANDALOW, A.B., J.D.,
Edson R. Sunderland Professor of Law
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. 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 JOSEPH WEILER, B.A., LL.B., PH.D., LL.M. PETER K. WESTEN, B.A., J.D. JAMES BOYD WHITE, A.B., A.M., LL.B., L. Hart Wright Professor of Law L. Hart Wright Professor of Law JAMES J. WHITE, B.A., J.D., Robert A. Sullivan Professor of Law PATRICIA D. WHITE,* B.A., J.D., M.A. CHRISTINA B. WHITMAN, A.B., M.A., J.D.

Assistant Professors of Law

MARIE R. DEVENEY, B.A., M.A., J.D.
JULIE M. FIELD,†† B.A., J.D.
AVERY KATZ,** B.A., M.A., J.D., PH.D.
LEO KATZ,** B.A., M.A., J.D.
JEFFREY S. LEHMAN, A.B., J.D., M.P.P.
MARK D. MITSHKUN,†† B.A., J.D.

essors of Law
Judith G. Olin,†† B.A., J.D.
Richard H. Pildes, A.B., J.D.
Nicholas J. Rine,†† B.A., J.D.
Suellyn Scarnecchia,†† B.A., J.D.
Kent D. Syverud, B.S.F.S., J.D., M.A.
Mark C. Van Putten,†† B.A., J.D.

Instructor in Law MARY F. WHITE, B.A., J.D.

FRED E. BELL,† B.A., J.D. FREDERICK W. LAMBERT,† A.B., J.D. †† Clinical † Adjunct

ROCHELLE E. LENTO, B.A., J.D. DAVID M. PIONTKOWSKY,† B.S., J.D. * Visiting

Michigan Law Review

Vol. 88, No. 8

August 1990

EDITORIAL BOARD

Editor-in-Chief
DAVID D. MEYER, of Michigan

Managing Editor
GREGORY B. HELLER, of Delaware

Book Review Editors GREGORY T. EVERTS, of Wisconsin CAROL J. SULCOSKI, of Pennsylvania

Executive Article Editor RENÉ L. TODD, of Ohio

Executive Note Editor
DANA M. MUIR, of Michigan

Executive Editors
KEITH R. DENNY, of Michigan
ERIK G. LIGHT, of Illinois

CHRISTOPHER M. ADAMS, of Louisiana GAIL C. BENT, of New York DAVID A. CERDA, of Illinois CARY J. COGLIANESE, of Michigan JONATHAN J. ENGLANDER, of New York BRADLEY L. FISHER, of Washington LISA D. FREEMAN, of Illinois WILLIAM J. GALLAGHER, of Illinois SUSAN M. GUINDI, of Michigan STEVEN A. KLEIN, of New Jersey

GREGG M. AUDET, of New Hampshire KEITH R. BARNETT, of Massachusetts GREGORY W. BLACK, of Illinois ROBERT A. BRUNDAGE, of Missouri AARON H. CAPLAN, of Iowa MICHAEL F. COLOSI, of Massachusetts KATHRYN M. DESSAYER, of California KENNETH P. EWING, of Maryland STEVEN M. FARINA, of Connecticut JULIA A. GOATLEY, of Michigan DAVID B. GOLDMAN, of Connecticut MERYL T. GORDON, of New York ADAM S. GRACE, of New Jersey WENDEL V. HALL, of Michigan MATTHEW R. HARRIS, of Washington LAURA J. HINES, of Iowa DANIEL R. HURLEY, of New York

Article Editors
R. DOUGLASS BOND, of New Jersey
DAVID C. ESSEKS, of New York
MARY I. HINIKER, of Michigan
ERIC S. WALTERS, of Michigan

Note Editors
AUDREY J. ANDERSON, of Minnesota
WILLIAM J. ASELTYNE, of Michigan
PETER E. JAFFE, of Pennsylvania
MARY BETH MURPHY, of Virginia
EDWARD J. SEBOLD, of Ohio
GRAEME E. SHARPE, of New York

Contributing Editors

GREGORY B. LADEWSKI, of Washington, D.C. JOHN I. LAZAR, of Michigan
THEODORE MACVEACH, of New Hampshire
K. HEATHER MCRAY, of New York
MARTA E. NELSON, of Ohio
MARK G. PETERS, of New York
LAURA M. SCHACHTER, of New Jersey
STANLEY S. SOKUL, of New Hampshire
MELANIE S. STEIN, of New York
RONALD C. WERNETTE, of Michigan

Associate Editors

MICHAEL K. ISENMAN, of Maryland TRINA JONES, of South Carolina STEVEN W. KASTEN, of Massachusetts DANIAL J. KIM, of Michigan MARTIN D. LITT, of Connecticut BRIAN E. MAZUREK, of Michigan JILL D. NEIMAN, of New York CHRISTINE A. PAGAC, of Michigan EVELYN E. SHOCKLEY, of Tennessee ADAM C. SLOANE, of New York CRAIG T. SMITH, of Michigan JAMES B. SPETA, of Illinois ALBERT L. VREELAND, II, of Alabama WILLIAM A. WALKER, of New York STEFANIE B. WEIGMANN, of New Jersey EDWARD J. WONG, III, of Illinois GREGORY J. ZEMANICK, of Pennsylvania

BUSINESS MANAGER Eleonora V. Eckert

EDITORIAL ASSISTANT Jenne S. Moldovan

ANNOUNCEMENT OF AWARDS AND PRIZES

JASON L. HONIGMAN AWARD FOR 1989-1990

This award has been given to Gregory B. Heller in recognition of his outstanding contributions as editor of the Michigan Law Review.

HOWARD B. COBLENTZ PRIZE FOR 1989-1990

This prize has been awarded to Dana M. Muir, Carol J. Sulcoski, and René L. Todd in recognition of their contributions as editors of the Michigan Law Review.

HELEN L. DEROY MEMORIAL AWARD FOR 1989-1990

This award has been given to Audrey J. Anderson, author of Corporate Life After Death: CERCLA Preemption of State Corporate Dissolution Law, judged the best student contribution to Volume 88 of the Michigan Law Review.

SCRIBES AWARD FOR 1989-1990

An honorary membership in Scribes, the Society of Writers on Legal Subjects, is given for an outstanding published written contribution to the Michigan Law Review to Dana M. Muir for her Note, entitled Changing the Rules of the Game: Pension Plan Terminations and Early Retirement Benefits.

ABRAM N. SEMPLINER MEMORIAL AWARD FOR 1989-1990

This award has been given to James B. Speta, Editor-in-Chief of Volume 89 of the *Michigan Law Review*, in recognition of his superior scholastic record, effective leadership, and outstanding contribution to the *Review*.

BODMAN-LONGLEY AWARD FOR 1989-1990

This award has been given to Gregg M. Audet, Gregory W. Black, Robert A. Brundage, Michael F. Colosi, Kathryn M. Dessayer, Steven M. Farina, Julia A. Goatley, and Wendel Hall in recognition of their superior scholastic records and their contributions to the *Michigah Law Review* in their junior year.

RAYMOND K. DYKEMA AWARD FOR 1989-1990

This award has been given to Matthew R. Harris, Laura J. Hines, Daniel R. Hurley, Michael K. Isenman, Trina Jones, Christine Pagac, Evelyn Shockley, Adam C. Sloane, and William A. Walker for significant contributions to the *Michigan Law Review* during their junior year and in recognition of qualities that indicate the likelihood of future contributions to the legal profession.

ANNOUNCEMENT OF THE EDITORIAL BOARD 1990-1991

Editor-in-Chief
JAMES B. SPETA, of Illinois

Managing Editor
JULIA A. GOATLEY, of Michigan

Book Review Editors
STEVEN M. FARINA, of Connecticut
ADAM C. SLOANE, of New York

Executive Article Editor
MATTHEW R. HARRIS, of Washington

Executive Note Editor
KATHRYN M. DESSAYER, of California

Executive Editors
GREGG M. AUDET, of New Hampshire
GREGORY W. BLACK, of Illinois

Article Editors

Daniel R. Hurley, of New York
Michael K. Isenman, of Maryland
Trina Jones, of South Carolina
William A. Walker, of New York

Note Editors

ROBERT A. BRUNDAGE, of Missouri
MICHAEL F. COLOSI, of Massachusetts
WENDEL V. HALL, of Michigan
LAURA J. HINES, of Iowa
CHRISTINE A. PAGAC, of Michigan
EVELYN E. SHOCKLEY, of Tennessee

Contributing Editors

KEITH R. BARNETT, of Massachusetts AARON H. CAPLAN, of Iowa CARY COGLIANESE, of Michigan KENNETH P. EWING, of Maryland DAVID B. GOLDMAN, of Connecticut MERYL T. GORDON, of New York ADAM S. GRACE, of New Jersey STEVEN W. KASTEN, of Massachusetts DANIAL J. KIM, of Michigan MARTIN D. LITT, of Connecticut BRIAN E. MAZUREK, of Michigan JILL D. NIEMAN, of New York CRAIG T. SMITH, of Michigan ALBERT L. VREELAND, II, of Alabama STEFANIE B. WEIGMANN, of New Jersey EDWARD J. WONG, III, of Illinois GREGORY J. ZEMANICK, of Pennsylvania