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# Northern Illinois University

# Law Review

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## ARTICLES

Another Tile in the “Jurisdictional Mosaic”<sup>1</sup> of Lawyer Regulation:  
Modifying Admission by Motion Rules to Meet the Needs of the 21<sup>st</sup> Century  
Lawyer

Abigail L. DeBlasis..... 205

*Can practicing law on a less than "full-time" basis hinder a lawyer's future mobility? The answer depends on which jurisdiction you ask. A parent who is considering a reduced hours schedule for family reasons or a recent graduate whose only option is part-time work should know that these choices may impact future mobility.*

*This Article provides an in-depth exploration of the current admission by motion rules, which are the rules that allow a lawyer who is already licensed and practicing in one jurisdiction to be admitted in another jurisdiction without having to take that jurisdiction's bar exam. These rules are of great necessity in the modern world given the need for mobility. The rules require that an applicant have been practicing law for some stated period of time in the original jurisdiction, assuming that these years in practice will ensure the applicant has minimum competence to practice in the same way that passing a bar exam ensures minimum competence. For example, a rule may require that the applicant have been actively engaging in the practice of law for five of the seven years immediately preceding her application for admission by motion. A troubling aspect of some jurisdictions' rules is the requirement of "full-time" prior practice.*

*The Article started out with a concern that lawyers, especially female lawyers, who work less than full-time for family or other reasons were significantly disadvantaged by the requirement of "full-time" prior practice. Of particular concern was that while some rules required full-time prior practice, they also allowed the applicant some "grace period" during which the applicant need not have practiced law at all. Even though the rules provided this grace period, they did not provide a part-time equivalent, thereby essentially preferring that a working parent drop out of practice entirely (during the grace period) rather than return to work on a less than full-time basis.*

*Although the Article started there, it does not end there. In addition to providing an Appendix with the specific requirements of each of the 42 jurisdictions that currently allow admission by motion, it also draws upon recent trends in other admission rules to question not only those jurisdictions that require "full-time" prior practice experience, but to raise questions about whether a lengthy prior practice is the appropriate proxy to ensure an*

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1. Gary A. Munneke, *Multijurisdictional Practice of Law: Recent Developments in the National Debate*, 27 J. LEGAL PROF. 91, 95 (2003) (“The United States is a jurisdictional mosaic of fifty-three states and territories with fifty-three systems of practice regulation.”).

*applicant's minimum competence to practice in another jurisdiction. In the end, the Article hopes to persuade for immediate, incremental improvements in the admission by motion rules that account for modern law practice and ensure working parents and more recent generations of lawyers who work less than full-time are not made immobile as a result.*

Standards in Command Responsibility Prosecutions: How Strict, and Why?  
 Michael J. Sherman..... 298

*The attached article looks at the concept of command responsibility – the idea that a commander may be held liable for crimes committed by his or her soldiers, even if the commander did not order these crimes to be committed, and may not have been aware of the criminal activity at all. It examines command responsibility prosecutions attached to a number of different conflicts: World War II, the Yugoslavian and Rwandan genocides, and the Sierra Leonean civil war. It also discusses proposed standards for command responsibility prosecutions set out by the African Union and the UN (both in the International Criminal Court and in UN peacekeeping operations).*

*As the article demonstrates, the standards used for prosecuting command responsibility cases in these various settings have differed significantly, making for important differences in the ability to hold the accused accountable. I propose one factor that helps predict how easy or difficult it will be to prosecute command responsibility cases: the extent to which those who write the standards have reason to fear that they themselves could be held liable under the standards they are establishing. If they have little to fear, then the rule setters will make it relatively easy to prosecute these cases. If they are worried, then it will be correspondingly harder to bring command responsibility prosecutions. I then discuss the implications of this conclusion for the legitimacy of international law in this area.*

Dissolution and Rational Choice: The Unique Remedial Framework for Director  
 Deadlock Under the Illinois Business Corporation Act  
 Kenneth J. Vanko..... 348

*This article discusses the remedy of judicial dissolution in the context of an Illinois corporation facing management deadlock. The particular focus of this article is on one of the most common corporate structures for small businesses: the equally-held firm where management rights are symmetrical with ownership interests. Although courts long have described dissolution as an extreme and disfavored remedy, they have done so without reference to the particular factual context unique to deadlocked closely-held corporations. Illinois has a unique shareholder-relief statute, which illustrates when dissolution is an appropriate remedy. Based on the statutory text, I suggest dissolution is a default remedy in deadlock cases when a petitioning shareholder does not request a buy-out of her shares in the litigation and when the corporation's shareholders have failed to include deadlock avoidance mechanisms in their advance planning documents. As support, I demonstrate the motivations for why a shareholder in an equally-split firm may eschew a buy-out remedy altogether and prefer dissolution.*

**NOTES AND COMMENTS**

Banned from the IV League: Advocating the extension of the choice of evils defense to protect blood manufactures from liability for taking donations from individuals at “high-risk” of transmitting Human Immunodeficiency Virus (HIV) during times of

extreme emergency.

Andrew J. Mertzenich..... 396

*A-positive to O-negative, men who have sex with men face an uphill battle when attempting to give the greatest gift of all, life itself. Current FDA Regulation places a twelve-month deferral on MSM from their last sexual encounter. Many previous articles seek to attack the constitutionality of this ban; others seek to recommend reducing the ban; still others advocate no change. This article differs from these, however, by assuming the constitutionality of the ban and, instead, advocating protection for blood manufacturers who, under certain narrow but extreme circumstances, are justified in taking donations from high-risk donors.*

U.S. Higher Education Financing Has Significantly Changed, So Too Should Seventh Circuit Student Loan Discharge Law

William L. Ryan..... 436

*Every year in the U.S., millions of students use public and private student loans to finance a portion of their post-secondary education. Inevitably, many student borrowers find themselves in the financial doldrums in the years subsequent to the initial loan disbursement. From this precarious position of defaulted debtor, many seek a fresh start by way of a personal debt discharge in Bankruptcy Court. Prior to 1978, student loan debt was discharged in routine bankruptcy proceedings. In 1978, Congress inserted provision 11 U.S.C. 523(a)(8) into the Bankruptcy Code. Section 523(a)(8) is better known as the “undue hardship” provision. The undue hardship provision requires debtors to meet an undue hardship in a separate bankruptcy proceeding for a debtor’s loans to be discharged. Today, the seventh circuit, along with 8 other circuits, uses the Brunner test to evaluate student debt in bankruptcy proceedings. The reputation of the Brunner test rests on its often rigid application and its varied and sometimes absurd results. The remaining circuits have adopted some version of the more flexible Totality of Circumstances test. This Comment provides a snapshot of the current statutory, administrative, and judicial regime governing student loan debt. Under the current regime, millions of student debtors are funneled into federally administered income-based repayment programs. This Comment urges courts to be skeptical of these repayment programs and to provide student debtors discharges where courts find the debtor deserving of such a discharge. This Comment’s primary recommendation is that the Seventh Circuit should adopt the Totality of Circumstances test; however, this is not the only suggestion regarding judiciary paths forward in this area of law.*

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