

Northern Illinois University Law Review

Volume 35 | Issue 1

Article 8

8-1-2014

Vol. 35, no. 1, Fall 2014: Table of Contents

Northern Illinois University Law Review

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Recommended Citation

Northern Illinois University Law Review (2014) "Vol. 35, no. 1, Fall 2014: Table of Contents," *Northern Illinois University Law Review*. Vol. 35: Iss. 1, Article 8.

Available at: <https://huskiecommons.lib.niu.edu/niulr/vol35/iss1/8>

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Volume 35

Fall 2014

Number 1

ARTICLES

The Clash Between Science and the Law: Can Science Save Nineteen-year-old Dzhokhar Tsarnaev's Life?

Andrea MacIver..... 1

The Supreme Court of the United States has found that youth under the age of 18 are fundamentally different than adults in ways that impact how they should be punished for their crimes. In Roper v. Simmons, Graham v. Florida, and Miller v. Alabama, the Supreme Court ruled that it is cruel and unusual punishment to sentence youth under the age of 18 to death, to life without the possibility of parole for nonhomicide crimes, and to automatic life without the possibility of parole for homicide crimes (respectively). However, the underlying scientific studies that the Supreme Court relied on in making these decisions in Roper, Graham and Miller stand for the proposition that a youth's brain is not fully developed until his or her mid-to-late twenties—well after the youth celebrates his or her 18th birthday.

This Article analyzes the clash between the Supreme Court's decisions to draw the line at the age of 18 for the harshest criminal penalties and the scientific studies that confirm a youth's brain is not fully developed until his or her mid-to-late twenties. To demonstrate this clash, the Article takes an in-depth look at the case of Dzhokhar Tsarnaev—the nineteen year old charged with setting off explosive devices at the finish line of the Boston Marathon, now facing the death penalty. The Article argues that if the Supreme Court were to fully recognize the scientific studies that it relied on in Roper, Graham and Miller, scientific studies that show a youth's brain is not fully developed until his mid-to-late twenties, that recognition could be the difference between life and death for Dzhokhar Tsarnaev. Although the Article concludes that Dzhokhar Tsarnaev is not the case where Supreme Court will come to terms with these underlying scientific studies (given the severity of Dzhokhar Tsarnaev's crimes), the case of Dzhokhar Tsarnaev exemplifies a true clash between science and the law.

Two Figures in the Picture: How an Old Legal Practice Might Solve the Puzzle of Lost Punitive Damages in Legal Malpractice

John M. Bickers 35

When lawyers err, clients must pay the price. If a lawyer's action, or inaction, prevents a client from succeeding in a lawsuit, the lawyer must pay the amount necessary to make the client whole. But what does it mean to make the client whole? A puzzle appears when a finder of fact in a legal malpractice case determines that punitive damages in the original lawsuit were appropriate. Punitive damages are not meant to restore the client to her original position. By definition, they are meant to punish the original defendant for the egregiousness of his conduct. The plaintiff receives them as a response to the lawsuit, but there is no necessary link between the plaintiff's injury and the punitive damages.

State courts have responded to this conundrum by categorically awarding punitive damages or categorically rejecting them. Awarding courts have focused on the need to make the plaintiff whole; rejecting courts have emphasized the fact that the attorney's simple negligence does not compel the award of punitive damages. Neither decision has any logical primacy. Indeed, like an optical illusion, one can look at the situation from two different perspectives and see two different outcomes as logical, or even compelling.

This article reviews the arguments and counter-arguments about lawyer malpractice and punitive damages. It then suggests a policy solution parallel to that adopted by the medieval law of deodand. That system of forfeiture of inanimate objects blamed for human deaths had to account for cases in which the object no longer existed. In those cases, the law focused on the wrongdoing rather than the injury. In similar fashion, this article concludes that the best solution to the attorney malpractice and lost punitive damages problem is to focus on the original wrongdoer, and not transfer responsibility to the attorney. Doing so leads to the same legal result as that of the states that categorically reject the transfer of punitive damage awards to malpracticing attorneys, but with a sounder basis.

The Fourteenth Amendment: A Structural Waiver of State Sovereign Immunity from Constitutional Tort Suits

Travis Gunn 71

The Supreme Court's state sovereign immunity jurisprudence has undergone a fundamental change. Although the Immunity Theory of the Eleventh Amendment remains the approved methodology for assessing a State's sovereign immunity from suit, the modern Court has transformed state sovereign immunity into a constitutionally-derived aspect of the States' sovereignty, detached from the Eleventh Amendment's text. This Article explores what has been overlooked by other commentators: in detaching state sovereign immunity from the Eleventh Amendment's text, the modern Court used new analytical tools to justify the scope of state sovereign immunity. The modern Immunity Theory now emphasizes constitutional structure and constitutional

history to establish the boundaries of state sovereign immunity.

This Article uses those analytical tools to determine the extent the Fourteenth Amendment restricts state sovereign immunity. Ultimately, this Article will show that Section 1 of the Fourteenth Amendment extinguished a State's sovereign immunity from suit for violating the substantive provisions of the Fourteenth Amendment – including the constitutional rights found within that Amendment, and those rights incorporated against States through the Fourteenth Amendment. This analysis will also counsel for reading 42 U.S.C. § 1983 as creating a right of action against States as "persons" for the violation of such constitutional rights.

Privately Funded Family Medical Leave? 119
Bernie D. Jones

Upon the twentieth anniversary of the passage of the Family Medical Leave Act of 1993, activists have been pressed to correct its failure to grant American workers federally funded paid leave similar to those found in other nations that offer expansive social programming. Recent developments indicate, though, that supporters of paid leave might be more successful at the state level, not the federal one. Nonetheless, federally funded paid leave is presented as a pressing civil rights issue. In this article, I suggest an alternative, a property theory of paid family leave, founded upon a newer formulation of pension benefits: private family leave pensions that might operate similar to deferred compensation plans, tax deferred or tax free, and available through employers and brokerage houses. This is about supporting self-investment-such plans have the potential to offer greater benefits than even the most generous of the prevailing state government-sponsored paid leave benefits programs; as such, more thought should be put into considering alternatives to federally funded paid family medical leave.

The U.C.C. and Perfection Issues Relating to Farm Products 169
Robert D'Agostino and Bruce G. Luna II.....

The Uniform Commercial Code (the U.C.C.), first proposed in 1952, is designed to harmonize the various state laws dealing with commercial transactions. To date, the U.C.C. has been adopted in all fifty states. Article 9 of the U.C.C. governs the creation of security interests in personal property that is pledged in exchange for debt. Primarily, Article 9 covers the creation of an enforceable security interest, referred to as attachment, the legal process of notification of a security interest to other creditors, known as perfection, the priority among secured creditors over claims to collateral, and the secured creditor's remedies for failure of the debtor to honor its obligations. Various state laws govern the creation and enforcement of security interests in farm products, as well as the priority of agricultural liens. The complex interplay of the Uniform Commercial Code as adopted among the states, and federal law relating to the perfection and priority of security interests in agricultural products, has resulted in a variety of unintended consequences.

First, the U.C.C.'s Article 9 agricultural lien provisions, primarily the rules defining farm products and agricultural liens, create some confusion when determining the U.C.C.'s applicability to agricultural liens when dealing with secured parties, debtors, and collateral. Second, Article 9's priority rules with respect to agricultural liens are subject to state lien statutes. These state lien statutes, in turn, contain their own priority rules and opt-out clauses with respect to priority under the U.C.C. In many situations, it is still unclear whether lien statute priority provisions override Article 9's priority rules.

Historically, agricultural liens were created by state legislatures to protect specific types of creditors. In general terms, agricultural liens are designed to protect those who supply real estate (e.g., landlords), services (e.g., veterinarians), or goods (e.g., feed sellers) on credit to farmers in furtherance of crop or livestock production. Agricultural liens, similar to security interests, are designed to give creditors the ability to claim farm products in order to recoup payment from a defaulting debtor.

Contrary to the purpose of the U.C.C., the failure to include statutory liens under Article 9 has resulted in a great variance from jurisdiction to jurisdiction when it comes to matters relating to the creation, enforcement, perfection, and priority in agricultural liens. Georgia agricultural lien statutes are often used throughout this Article as examples. This Article recognizes that the process for the perfection and the establishment of priority in security interests in farm products is not always clear, because the current legal regime occasionally results in uncertainty in the perfection and priority process for the related creditors and debtors. The first part of this Article will summarize the U.C.C. and federal law framework for perfecting and enforcing a security interest in agricultural products. The second part of this Article will analyze the Chapter 12 bankruptcy issues that result from the definition of farm products and farming operations, the analysis for when farm products become inventory for purposes of Article 9, and whether government entitlement payouts to farmer-debtors are reachable by secured creditors. Next, this Article will examine the issues facing secured creditors with respect to establishing the priority between agricultural liens and Article 9 security interests. Finally, this Article will review the current status of recent cases addressing these issues.

NOTE AND COMMENT

DNA Real Estate: The Myriad Genetics Case and the Implications of Granting Patent Eligibility to Complimentary DNA

Sarah E. Hagan 205

In June 2013, in Ass'n for Molecular Pathology et. al., v. Myriad Genetics, Inc., the Supreme Court examined the patent eligibility of isolated (human) DNA and its components. This was in response to advances in breast cancer prescreening surrounding mutations associated with the BRCA1 and BRCA2 genes. In accordance with 35 U.S.C. §101, the Court evaluated whether naturally occurring segments of DNA and synthetically created segments of

DNA were patent eligible. The Court found that while isolated natural DNA segments were patent ineligible, synthetically created DNA segments were not precluded.

This Note examines the potential economic and ethical implications of this decision and focuses a discussion on why such a ruling may likely prove contradictory. While the synthetically created DNA evaluated in Myriad, known as complimentary DNA (cDNA), is in fact synthetic and generated at the hand of a laboratory technician, arguably the one who holds the patent on such a component of DNA will therefore be able to exert increased control over the naturally occurring DNA segment for which the cDNA serves to compliment.

Shuttered: An Examination of How the 2013 Chicago Public School Closings are Denying Special Education Students the Right to an Appropriate Public Education

Michael Toren231

Recently, the Chicago Public School system faced financial crisis as it struggled to balance severe budget cuts against overwhelming pension obligations. CPS responded to the crisis by immediately closing forty-nine elementary schools and terminating the employment of thousands of teachers and support staff. The displaced students, including many with special needs, were hastily transferred to surrounding schools without meaningful evaluation of the impact of the closings or the resources the receiving schools could provide. After a brief history of the disability rights movement, special education laws, and the crisis that led to the CPS closings, this Comment argues that the CPS closings and layoffs harmed special education students in violation of the federal guarantees provided by the Individuals with Disabilities Education Act. This Comment also advocates for a new legal burden scheme that would hold school systems more accountable for changes made to special education programs under IDEA.