Northern Illinois University Law Review

Volume 34 | Issue 2 Article 7

2-1-2014

Vol 34, no. 2, Spring 2014: Table of Contents

Northern Illinois University Law Review

Northern Illinois University
Law Review

Volume 34 Spring 2014 Number 2

ARTICLES

Public Opinion and the Limits of State Law: The Case for a Federal Usury Cap

Nathalie Martin..... ...259

Each year, states pour millions and millions of dollars of taxpayer money into regulating high-cost credit products like payday, title, and installment loans. These loans typically carry interest rates of 400-1,000% per annum. Most Americans are unaware that it is legal to charge these rates in some states. Moreover, most Americans, regardless of political affiliation, favor capping interest on consumer loans at 36% or less. While a number of states do cap interest on all consumer loans at 36% or less, the majority does not; the majority chooses instead to leave these loans unregulated or to use another regulatory approach. The regulatory approaches used by states have largely failed to meet states' goals of curbing abuses in high cost lending. As a result, states and individuals have taken to the courts to address abuses in high cost lending. These litigation efforts have also proven to be highly expensive and largely ineffective methods of curbing abuses in high cost lending. Because Americans overwhelmingly favor interest rate caps on consumer loans, and because states have been unable to deliver them, this Article calls on Congress to impose a federal usury cap on all consumer loans and suggests statutory language for doing so. This solution could protect consumers who use the loans and save taxpayer money for all Americans.

Physical and Financial Injuries: The Common Fund Doctrine and Its Application Under the Illinois Health Care Services Lien Act
Ayla Ellison 305

Under the Illinois Health Care Services Lien Act, hospitals and healthcare providers do not directly contribute to plaintiff attorneys' fees in cases where they will benefit from a judgment or settlement.

Medical liens allow healthcare providers and healthcare professionals to recoup payment for services they have rendered to an injured patient, and under the current scheme in Illinois, healthcare providers are being unjustly enriched by receiving benefits from settlements and litigation that they did not financially contribute to. The use of the Common Fund Doctrine, with healthcare professional and healthcare provider contribution, will prevent this unjust enrichment from occurring.

Rethinking the Validity of State Religions:
Is Antiestablishmentarianism a Fundamental Prerequisite for the Protection of Religious Rights Under International Human Rights Law?
Julia L. Ernst 333

State religions exist in various forms in approximately forty percent of countries, including Denmark, Greece, and the United Kingdom. Despite the benefits that the establishment of religion may bring to some people, this church-state arrangement violates internationally recognized human rights in a number of ways. Yet antiestablishmentarianism—otherwise known as the doctrine of separation of church and state—is not currently recognized as necessary for the protection of religious rights. This Article argues that antiestablishmentarianism is a fundamental prerequisite for the protection of religious rights under international human rights law. Following the introduction in Part I of the Article, Part II reviews examples of human rights norms protecting religious rights embodied in international instruments and explores how these rights are violated by state religions. Part III considers additional concerns that are raised by the establishment of religion. Part IV critiques pronouncements by international human rights entities and scholars suggesting that, while aspects of state religions have encroached upon religious rights, state religions per se do not. Part V discusses the tentative movement toward antiestablishmentarianism, including countries that have recently disestablished. Part VI concludes that the international human rights community should explicitly affirm the principle of antiestablishmentarianism as a necessary prerequisite for the protection of religious rights within the international human rights framework.

Between Killing and Letting Die in Criminal Jurisprudence
Dr. Roni Rosenberg 391

The distinction between act and omission is deeply embedded in our legal thinking. Criminal jurisprudence distinguishes sharply between harmful actions and harmful omissions and, consequently, between killing and letting die. The distinction between act and omission is not made solely under criminal jurisprudence as it is rooted in the foundations of common morality, which emphasizes not only the results but also the conduct that produced those results.

Nevertheless, since the beginning of the 1960s, there has been a significant movement to attack and criticize the moral distinction between killing and letting die. The primary question is whether there is, in fact, a moral distinction between causing harm and letting harm happen; more specifically, is there such a distinction between killing and letting die? Furthermore, if, in fact, such a moral distinction does exist, what is the rationale behind it?

Obviously, this is a morally radical position that demands a significant change in perspective, moral and perhaps also legal, since if the moral distinction between act and omission is not obvious, the legal distinction cannot be clear cut either. This lack of clarity has led to many attempts at laying a logical foundation for the intuitive understanding that there is a legal distinction between act and omission, and specifically between killing and letting die; yet it seems that creating this clear distinction is easier said than done.

This Article surveys and critiques several important theories for the distinction between act and omission. It goes on to introduce a new theory for this distinction; one based on the difference between the protected values that are foundational to the prohibitions against killing and letting die. This new perspective goes hand in hand with the Hobbesian and Rawlsian theories of social contract and with general theories of rule utilitarianism.

COMMENTS

An Inconsistent Truth: The Various Establishment Clause Tests As Applied in the Context of Public Displays of (Allegedly) "Religious" Symbols and Their Applicability Today

Emily Fitch 431

This Comment examines the heavily-discussed topic of the establishment clause of the First Amendment, and explores how the clause relates to the public display of religious symbols. This Article discusses the four Establishment Clause tests: the Lemon Test from Lemon v. Kurtzman*; the Endorsement Test* from Lynch v. Donnelly*; the Coercion Test from* Allegheny County v. Greater Pittsburgh ACLU*; and the Van Orden Test from* Van Orden v. Perry. *This Comment analyzes each of the four tests to determine which test is best suited to evaluate the constitutionality of the public display of a religious symbol.*

"Passing the Trash" in Illinois After *Doe-3 v. McLean County Unit District No. 5*: A Proposal for Legislation to Prevent School Districts From Handing Off Sexually Abusive Employees to Other School Districts

Noah Menold..... ...473

In school districts throughout the United States, school administrations often conceal employee-on-student sexual misconduct and allow the perpetrators to resign and continue their abuse of students at other school districts. The practice is known as "passing the trash." In Doe-3 v. McLean County Unit District No. 5*, the Illinois Supreme Court addressed a case of "passing the trash" and held*

that a school district does not owe an affirmative duty to a subsequent school district employer or its students; however, the court determined that a school district has a duty to provide accurate information about former employees. In an effort to eradicate the practice of "passing the trash," the Illinois General Assembly amended the Abused and Neglected Child Reporting Act.

This Comment argues that the narrow scope of Doe-3 v. McLean County Unit District No. 5 *does very little for victims of "passing the trash." In addition, this Comment argues that the Illinois General Assembly's use of the Abused and Neglected Child Reporting Act was the wrong mechanism to prevent the practice, as the Act only works if school districts do not conceal employee-on-student sexual misconduct and report such incidents. Finally, this Comment proposes alternative legislative methods of preventing "passing the trash" by: (1) providing victims a civil cause of action against violators of the Abused and Neglected Child Reporting Act; (2) requiring school districts to conduct more comprehensive background checks; (3) requiring school districts to verify that transient school personnel remain in good standing; and (4) creating a cohesive national policy.*