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ARTICLES

Voluntary Dismissals and the Evolution of Illinois' Rule Against Claim-Splitting

Robert A. Cohen211

Under Illinois' rule against claim-splitting, a plaintiff is generally prohibited from maintaining separate and subsequent lawsuits where it raises different theories or different prayers for relief which arise out of the original cause of action. Recently, the rule has been applied harshly in multiple-count actions where a plaintiff has invoked a statutory voluntary dismissal after a partial adjudication. The Illinois Supreme Court has held that such litigation conduct amounts to claims-splitting but it adopted exceptions where the rule is relaxed. Unfortunately for practitioners, it appears that the court failed to adhere to its own test. Their resulting interpretation has led to the erosion of the Illinois voluntary dismissal statute, and has created confusion in the appellate court as to how the rule and its exceptions should be applied. This article tracks the history of claims-splitting law, examines the misapplication of the law in recent supreme court case law and seeks to better understand factors the appellate court has weighed as its panels have become fractured. The article next strongly urges that the Illinois voluntary dismissal statute and Illinois Supreme Court Rules be amended to address these types of cases and lastly provides suggestions on how practitioners might deal with the rule's consequences.

Fairness at the Expense of Commercial Certainty: The International Emergence of Unconscionability and Illegality as Exceptions to the Independence Principle of Letters of Credit and Bank Guarantees

Roger J. Johns & Mark S. Blodgett297

International transactions involve an array of risks. A persistent risk in individual commercial transactions occurs when parties do not know each other well enough to trust each other. Letters of credit and bank guarantees manage this transaction risk by shifting it onto trusted independent third parties. The value of these instruments rests upon the reliability of performance by such third parties, and that depends, in part, on the degree of judicial reluctance to enjoin their performance. To the extent one party to an underlying transaction believes the other can control the third party through injunction, the value of the third party's obligation diminishes. Until recently, the circumstances under which a court could be persuaded to enjoin the operation of letters of credit and bank guarantees were

limited almost entirely to some sort of fraud. Over the last several years, courts in a number of common law jurisdictions have begun to recognize unconscionability and illegality as new, fairness-based exceptions to this third-party independence. This article chronicles the evolution and spread of these new exceptions, and examines the threat their exaltation of fairness over contractual certainty poses to the utility of letters of credit and bank guarantees.

A Rational Post-Booker Proposal for Reform of Federal Sentencing Enhancements for Prior Convictions

Caleb E. Mason & Scott M. Lesowitz339

In this article we propose a solution to one of the more vexing problems in current federal sentencing jurisprudence: classification of prior offenses for the purpose of applying sentencing enhancements in immigration cases. The current system is unduly difficult to apply and leads to poor sentencing outcomes. We urge the United States Sentencing Commission to conduct systematic empirical surveys of crime definitions and prosecution practice, on both the interstate and intrastate level. The Commission should use those surveys to determine which specific statutes of conviction should trigger the relevant enhancements, instead of forcing the courts to decide on a statute-by-statute basis. On the interstate level, the surveys would allow the Commission to identify state codes that are out of sync with the national norm. On the intrastate level, the surveys would allow the Commission to determine whether a facially non-generic statute was actually being applied to non-generic predicate facts. The current system also lumps too many types of prior convictions into the same enhancement levels and largely ignores the length of sentence received for the prior convictions. We propose a graduated scale of enhancements based on empirical evaluation of the severity of predicate offenses as measured by federal sentencing practices.

The Law of Education: Educational Rights and the Roles of Virtues, Perfectionism, and Cultural Progress

R. George Wright 385

*This article recognizes the importance of rights-talk in the law of education, but encourages supplementing that rights-talk with a focus on some basic and largely uncontroversial personal and civic virtues; as well as on perfectionism in the sense of self-realization; and finally on genuine cultural progress over time. Each of these areas of emphasis are argued to be compatible with sound understandings of broadly liberal values, including freedom and autonomy; equality; dignity; and community. To illustrate both the problems and the possibilities of this expanded legal focus throughout the law of education, this article then works through the example of the Supreme Court's recent *Horne v. Flores* case.*

COMMENT

A New Leader in the World of Legalized Gambling: What the Illinois General Assembly Should do to Protect Pathological Gamblers from the Rapidly Expanding Industry

Matthew J. Dowd439

This Comment addresses the increasingly recognized disorder of pathological gambling and the lack of consideration it receives from the Illinois General Assembly as gambling in Illinois continues its trend of rapid decriminalization. The Comment first analyzes the well-documented individual and communal problems that are associated with pathological gambling and then examines the historical movement toward dependence on gambling revenues in Illinois. A close examination of gambling legislation in Illinois, Indiana, and New Jersey, and the interpretation of that legislation within those respective courts, reveals that pathological gamblers receive very little statutory protection from the abusive and negligent conduct of casinos. Ultimately, this Comment argues that the Illinois General Assembly should amend, and thereby revive, the Illinois Loss Recovery Act and create a cause of action by pathological gamblers against casinos when casinos engage in extreme behavior designed to entice pathological gamblers to relapse.

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