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ARTICLES

Yours, Mine, and Ours: Law Firm Property Disputes
Douglas R. Richmond 1

Lateral movement by lawyers at all levels is now common. Ours is an age of lawyer mobility. It is also an age of client transience. Clients routinely change law firms, sometimes because they move with lateral lawyers, and sometimes for their own reasons. Understandably, lawyer and client mobility have spawned difficult questions about law firm property rights. For competitive reasons, law firms do not want departing lawyers taking the firm's intellectual capital or property with them when they move laterally. Client files are a treasure trove of intellectual capital and property that firms may wish to protect when clients shift their allegiance. Departing lawyers and clients have their own interests to advance and clearly believe that they have property rights in materials they created or for which they paid. Regardless of one's perspective, these are critical issues in today's professional environment. This article examines law firms' property rights and the competing rights of clients and individual lawyers in several critical aspects. In doing so, it discusses the application of trade secret law, fiduciary duty theory, and professional conduct rules in ways that are equally meaningful to courts, practicing lawyers, and scholars. Because the issues discussed in the article are important and, yet, surprisingly, there is relatively little authority squarely addressing them, this article fills a significant scholarly and practical void.

The Marriage Contract in Fine Art
Benjamin A. Templin 45

From the fifteenth- to eighteenth-centuries, artists across Europe and England painted a scene depicting the negotiation of a marriage contract. In nearly every painting, a notary sits or stands at a table, quill in hand, memorializing the details of the dowry transfer. Some artists celebrated the accord, while others condemned arranged marriages made for purposes of status and money. Interestingly, at the same time the artists painted, massive changes occurred in the law and political philosophy aimed at changing some of the inherent problems in marriage law, such as the rights of women, the influence

of parents, and divorce. To what extent does art reflect and influence the law? The study of art and law is a nascent yet vibrant discipline. By exploring the historical and legal context of art, we gain a better understanding of how the populace interpreted and followed the law, as well as how artists tried to influence the development of social norms. In the context of marriage contracts, this historical research is timely given the current debate over same sex marriage. Much has been made of the history and origin of marriage by both sides in the same sex marriage controversy. The analysis of these paintings yields some clues in how Western culture conceived of marriage during a time of massive social and legal change.

The Effect of State Law on the Judge-Jury Relationship in Federal Court

Richard C. Worf, Jr. 109

The conventional wisdom says that judge-jury rules in diversity cases are governed solely by federal law. My article shows that, to the contrary, under standard Erie *principles, state law should (and often already does) exert meaningful influence where state law provides the rule of decision. I begin with a rigorous reexamination of the relevant Supreme Court precedents in this field, and undertake the first study of what the Supreme Court's decision in* Gasperini v. Center for Humanities, Inc. *means for the judge-jury area. The framework I develop harmonizes* Gasperini *and the existing* Erie *cases, demonstrating that state law may influence the judge-jury relationship in at least three ways: under* Erie*'s constitutional holding, under the* Hanna *twin-aims test, and under a properly-conceived* Byrd*-balancing test. In the next two Parts, I apply my framework to two crucial problems in diversity litigation: the sufficiency of the evidence and the allocation of issues to judge or jury. Unlike many* Erie *articles, which focus only on the key Supreme Court cases, mine delves deeply into the federal appellate cases, showing that state law already influences the judge-jury relationship in ways that have gone unnoticed by the major treatises on federal practice and procedure.*

Inequalities in Illinois Constitutional Equality

Jeffrey A. Parness and Laura J. Lee 169

This article is a "first impression" piece on the failures by both the Illinois General Assembly and the Illinois Supreme Court to implement the three specific constitutional equality mandates of 1970. The 1970 equality mandates go well beyond federal and other American state constitutional provisions on discrimination by governments and by private parties. They speak directly to employment and housing matters. They expressly protect against discrimination based on race, color, creed, national ancestry, sex, or physical or mental handicap. The Illinois Human Rights Act was designed to implement these mandates. But it falls short, though it extends beyond the mandates in specifically protecting against discrimination based on religion, national origin, marital status, military status, sexual orientation, or unfavorable military discharge, as well as discrimination in financial credit access and public accommodations matters. The courts have deferred to the legislature. As a result, there

are, for example, no equality rights for public school children or for employees of small companies ("covered" but "exempted" under the Human Rights Act) even though the 1970 constitutional mandates promise protections. Our article demonstrates how legislators and judges can realize better the expectations of the constitutional convention delegates and the voters of Illinois who approved the three equality mandates. We hope the article will prompt reforms that provide greater equality to those suffering from illegitimate discrimination.

COMMENTS

Sexual Favoritism: A Cause of Action Under a "Sex-Plus" Theory
Susan J. Best 211

This Comment avers that sexual favoritism is a form of "sex-plus" discrimination. Traditionally, sexual favoritism has been argued as being a form of sexual harassment. Therefore, in order to be successful in a claim for sexual favoritism, a plaintiff must prove sexual harassment. The courts' treatment of sexual favoritism as sexual harassment is problematic for two reasons. First, placing the burden of proof needed for sexual harassment—i.e., proof that the defendant has created a hostile work environment—on plaintiffs injured by sexual favoritism is excessively high. Secondly, because there is no claim under the theory of sexual harassment for instances of consensual sexual relationships in the work place, if such relationships result in sexual favoritism to the detriment of a third party, those third parties have neither legal action nor remedy. As an alternative to the inadequacies of the current law, this Comment recommends that courts adopt the sex-plus theory. Under this more fitting theory, a plaintiff in a sexual favoritism lawsuit who is able to prove discrimination based on sex in conjunction with a sexual relationship, or lack thereof, would have a right to damages as a matter of law.

The Single-Purpose Container Exception: A Logical Extension of the Plain View Doctrine Made Unworkable by Inconsistent Application
Daniel Kegl 237

This Comment examines the single-purpose container exception to the Fourth Amendment's warrant requirement. Since the exception was recognized in Arkansas v. Sanders *and revisited in* Robbins v. California, *the federal circuits have not agreed as to what evidence courts can consider when deciding whether or not to apply the exception to a particular container. While some circuits allow specialized police knowledge and the circumstances surrounding the container's discovery to be considered, most disallow this evidence in making the same determination. As a result, the continued use of the single-purpose container exception results in an inconsistent application of the Fourth Amendment to similarly-situated containers. This Comment concludes that, because of these inconsistencies, the single-purpose container exception should be invalidated or at least limited significantly in order to protect the Fourth Amendment's integrity.*