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Articles

Secured Transactions History: the Northern Struggle to Defeat the Judgment Lien in the Pre-Chattel Mortgage Act Era

George Lee Flint, Jr. 1

Reformers recently have attacked the priority accorded the Anglo-American nonpossessory secured transaction both under bankruptcy and nonbankruptcy law. These reformers believe that the law should reserve some of the debtors assets for general creditors, most notably tort claimants with judgment liens. The priority rule like many legal rules was adopted to solve some problem. The problem has disappeared, yet the rule remains. Thus, lawmakers must determine if some new rationale justifies the rule and, if so, the rule takes on a new life. If not, then lawmakers should change rules to accommodate the new conditions. This article aims to provide an understanding of the original reason for the rule granting a nonpossessory secured transaction priority. Further, this article endeavors to examine the historical record to determine in what situations the parties used the early nonpossessory secured transaction; what rules the courts developed to handle the transaction; and which parties benefitted from the old rules, which parties desired to ban the transaction, and which parties sought the reform of recording through the chattel mortgage acts. To accomplish this, this article examines the readily findable pre-chattel mortgage act appellate opinions for factual data bearing on the early use of the nonpossessory secured transaction.

Understanding the Limited Effect of *Mozlof v. United States* On Wrongful Death Damages Under the Federal Tort Claims Act

Cyrus B. Richardson, III 69

Congress excluded punitive damages from the damages available under the Federal Tort Claims Act (FTCA). As a result of this exclusion, damage calculations in wrongful death cases are often perceived to be confusing aspects of FTCA litigation. This confusion lies in the determination of which aspects of a state's wrongful death damage award are permitted by the FTCA and which are barred by the Act's punitive damage exclusion. However, in the 1992 FTCA personal injury case Molzof v. United States, *the Supreme Court held that the FTCA's punitive damages exclusion bars only the recovery of what are legally considered to be punitive damages according to traditional common law principles. Consequently, judges and practitioners must carefully consider the effect of* Molzof *on FTCA wrongful death damage awards. This article examines* Molzof's *limited effect on the calculation of wrongful death damages in order to curtail the misinterpretation and misapplication of the FTCA in light of the* Molzof *decision. Ultimately the article concludes that in light of* Molzof, *courts should exclude the punitive portions of a state's wrongful death act when calculating damages in FTCA wrongful death actions.*

The Innocence Commission: An Independent Review Board for Wrongful Convictions

David Horan 91

Convicting the innocent is no less a problem in the United States than in Great Britain. Yet the United States Congress has recently passed legislation making federal habeas corpus remedies for actual innocence more difficult to obtain, while at the same time the British Parliament passed legislation establishing the Criminal Cases Review Commission (CCRC), an independent body to investigate suspected miscarriages of justice in Great Britain. The problem of convicting the innocent is especially notable in Illinois, which has now exonerated and released more death row inmates (thirteen) than it has executed since 1977 (twelve). As a result, state political leaders in Illinois are now considering how to correct the Illinois criminal justice system's propensity for convicting innocent men to death. This article first compares the American and British criminal justice systems. It then describes the CCRC, and its evolution in Britain and addresses the political and legal feasibility of establishing Innocence Commissions in the United States. Finally, the article examines the need for such Innocence Commissions in the United States and concludes that the state governments of the United States, beginning with Illinois, need to follow Great Britain's lead in establishing an independent review commission to investigate suspected wrongful convictions.

Comments

Is Imminence Really Necessity? Reconciling Traditional Self-defense Doctrine With The Battered Woman Syndrome

Jeffrey B. Murdoch 191

Since the late 1970s, courts have been forced to deal with the question of whether and how the Battered Woman Syndrome can be used in a defense when a battered victim kills her abuser. The application of traditional self-defense law to these situations has proven problematic and resulted in a lack of uniformity regarding the disposition of these cases. When a theory seems incapable of dealing with situations for which it was purportedly developed, a reexamination of the theory is warranted. This comment focuses on whether imminence is a necessary condition in a claim of self-defense or if there are other legitimate ways to prove that a killing was necessary such that we, as a society, would consider it justified. This comment starts with an analysis of the relationship between imminence and necessity. And, after reviewing traditional imminence based self-defense law, and other doctrines which indicate that there is more to necessity than merely imminence, certain principles emerge. These principles are then applied to a claim of necessity arising in the context of a non-confrontational killing by a battering victim.

Attempted Stalking: An Attempt-to-Almost-Attempt-to-Act
Nick Zimmerman 219

Crimes of recklessness, crimes of possession, and crimes such as stalking are arguably inchoate. This is so because the government is seeking to prevent conduct which in itself is not physically harmful but has in the past proved to be the precursor to serious criminal acts. The creation of these "inchoate" offenses is not terribly troublesome—they rest on sound public policy. However, when "inchoate" crimes such as these are enacted, the legislature implicitly creates an attempt of the same crime because almost all fifty states have enacted general attempt statutes—statutes which create a crime of attempt and apply to all of the other offenses enacted. The use of a general attempt statute in conjunction with the antistalking laws is especially disturbing because stalking involves activity that does not itself rise to the level of an attempt. This comment is devoted specifically to the offense of attempted stalking. Part I analyzes the exact constitution of inchoate crimes and ultimately classifies all inchoate crimes as either complex inchoate or simple inchoate. Part II discusses the history of antistalking laws, and applies the analysis from Part I to the crime of stalking, attempting to determine whether stalking is a complex inchoate crime, a simple inchoate crime, or not inchoate at all. Part III analyzes the various double inchoate constructions, as well as the double inchoate crime of attempted stalking. Part IV discusses several different challenges to double inchoate constructions. Finally, Part V considers the justifications for, and criticisms of, attempted stalking and double inchoate crimes.