TABLE OF CONTENTS

ARTICLES

The Economic Purpose of The Contract Clause ... David Crump 687

Overruling Precedent:
"A Derelict in the Stream of the Law" .... Michael H. LeRoy 711

Private Rights for the Public Good? ........ J. Janewa OseiTutu 767

Sunbeam Offers a Ray of Sunshine for the Licensee When a Licensor Rejects a Trademark License Agreement in Bankruptcy ............... Alan N. Resnick 817

On Substantive Due Process and Discretionary Traditionalism .......... Ronald Turner 841
SMU Law Review

Volume 66  Fall 2013  Number 4

Member, National Conference of Law Reviews

SMU Law Review Association
2013–2014 Board of Editors

PRESIDENT
HEATHER COGLAN

SMU Law Review
EDITOR-IN-CHIEF
LANCE WYATT

Journal of Air Law & Commerce
EDITOR-IN-CHIEF
JACQUI BOGUCKI

SMU Law Review
MANAGING EDITOR
PHONG TRAN

Journal of Air Law & Commerce
MANAGING EDITOR
LAURA ARBEITER

SMU Associate
MANAGING EDITORS
ASHTON BARRINEAU
LINDSEY HOVLAND

LEAD ARTICLES EDITORS
NATHAN LEE
ROUZHNA NAYERI
PHILLIP SANDERS

SMU Comment
EDITORS
RENEE HUNTER
NICOLAS LOW
CYNTHIA WEBER

ARTICLES EDITORS
ZUNNY LOSOYA
BRYAN PARRISH
SAMUEL PINKSTON
BAINES SELLERS
ROSS STAIINE

Texas Survey Editor
BRANDON BELLOWS

ASSOCIATE TEXAS SURVEY EDITORS
JAMES BEDOTTO
KATIE CRISTINA

Corporate Counsel Symposium
EDITORS
JESSICA GREENWALD
BROOKE PANNO
KYLE PARK

ASSOCIATE SYMPOSIUM EDITORS
BLAKE FEIKEMA
MICHELLE NORTHCUTT

Symposium CLE
EDITORS
JUN LI
JOSHUA TYLER SHELTON

ADMINISTRATIVE MANAGING EDITORS
CHRISS LAMBERT
WILLIAM TRAN

EXECUTIVE EDITOR
CHRISTINA GIGLIOTTI

SMU Faculty Advisors
THOMAS WM. MAYO
ANTHONY J. COLANGELO

JALC Faculty Advisor
GREGORY S. CRESPI

SMU Administrative Assistant
DONNAISE BALDWIN

JALC Administrative Assistant
LISA BROWNING

The SMU Law Review Association publishes both
the SMU Law Review and the Journal of Air Law and Commerce.
SMU Law Review

The SMU Law Review Association
2013-2014 Staff Editors

John Adams  John P. Atkins  Jillian Beythan
Anna Booth  Samuel Bragg  Amanda Brett
Aaron Chibli  Allison Childs  Bryan Clegg
CC Copeland  Cody Cravens  Ashley Deweese
Nhi Dinh  Erik Fountain  Farsheed Fozouni
Kelli Gavin  Nicole Haget  Eric Hedlund
Seth Jaskoviak  Fahad Juneja  Christopher Knight
Clinton Kuykendall  Meagan Lanier  Scott R. Larso
Emily Leezer  Emily Lehmburg  Robert J. Levinski
Neal Lober  James M. Lucas  Huy Ly
John McGregor  Heather McKinney  Bryan McKown
Andria Rae Minyard  Joshua Pelfrey  Catherine Peterman
Jessica Phillips  Alex Poor  Seth Rasmussen
Amy Rauch  Cheyenne Rogers  Michael Sheetz
Jennifer Smiley  Cassie Suttle  Kelsey Taylor
Peter Thompson  J. Bryan White  Allyson Yates
Kyle Zunker  


SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

OFFICERS OF THE UNIVERSITY
R. Gerald Turner, President
Paul W. Ludden, Provost and Vice President for Academic Affairs
Thomas E. Barry, Vice President for Business and Finance
Brad E. Cheves, Vice President for Development and External Affairs
Chris Regis, Vice President for Business and Finance
Paul J. Ward, Vice President for Legal Affairs and Government Relations, General Counsel, and Secretary
Lori S. White, Vice President for Student Affairs
Michael A. Condon, University Treasurer

DEDMAN SCHOOL OF LAW

FACULTY AND ADMINISTRATIVE STAFF
Julia P. Forrestor, B.S.E.E., J.D., Dean ad interim and Professor of Law
John S. Lowe, B.A., LL.B., Senior Associate Dean for Academic Affairs and George W. Hutchison Chair in Energy Law
Nathan Cortez, B.A., J.D., Associate Dean for Research and Associate Professor Law
Gail M. Daly, B.A., M.A., J.D., Associate Dean for Library and Technology and Associate Professor of Law
Ruth A. Cross, B.A., J.D., Associate Dean for Administration, Director of Legal Research, Writing and Advocacy Program and Senior Lecturer in Law
Lynn Switzer Bozalis, B.A., J.D., Associate Dean for Development and Alumni Affairs
Martin L. Camp, B.A., J.D., Assistant Dean for Student Affairs
Karen C. Sargent, B.B.A., J.D., Assistant Dean and Executive Director for Career Services
Jill Nikirk, B.A., J.D., Assistant Dean for Admissions
Rebecca Garza Greenan, B.S., B.A., M.Ed., J.D., Director of Public Service Program and Director of Academic Skills Assistance Program
Roland C. Webb, B.S., M.B.A., Director of Financial Services
Lynn McVicker Dempsey, B.B.A., Director of External Relations
Kristy Offenburger, Director, Communications and Marketing
Linda A. Hale, B.A., J.D., Director of Career Services
Stephen B. Yeager, B.B.A., J.D., Director of Career Services
J. Mark McWatters, B.B.A., M.B.A., J.D., LL.M., LL.M., Director of Graduate Programs
Becca Lickteig, B.A., J.D., Director of Admissions
Laura Amberson, B.S., Registrar

FACULTY
John B. Attanasio, B.A., J.D., LL.M., Dipl. in Law, Judge William Hawley Atwell Chair of Constitutional Law, Professor of Law and Former Dean
Roy R. Anderson, B.A., J.D., LL.M., Vinson & Elkins Distinguished Teaching Fellow and Professor of Law
Maureen N. Armour, B.A., M.S.W., J.D., Co-Director of Civil Clinic and Associate Professor of Law
Lackland H. Bloom, Jr., B.A., J.D., Professor of Law
William J. Bridge, B.S.F.S., J.D., Associate Professor of Law
Alan R. Bromberg, B.A., J.D., University Distinguished Professor of Law
Cheryl Nelson Butler, B.A., J.D., Assistant Professor of Law
Regis W. Campfield, B.B.A., LL.B., Professor Emeritus of Law and Marilyn Jeanne Johnson Distinguished Law Faculty Fellow Emeritus
Beverly M. Carl, B.S.L., J.D., Professor Emerita of Law
Michaela E. Cashen, B.A., J.D., Senior Lecturer in Law
Eric Cedillo, B.S., J.D., Coordinator, Consumer Advocacy Project
Anthony J. Colangelo, B.A., J.D., LL.M., J.S.D., Associate Professor of Law
Nathan Cortez, B.A., J.D., Associate Dean for Research and Associate Professor of Law
Gregory S. Crespi, B.S., M.S., Ph.D., J.D., Professor of Law
Ruth A. Cross, B.A., J.D., Associate Dean for Administration; Director of Legal Research, Writing, and Advocacy Program; and Senior Lecturer in Law
Gail M. Daly, B.A., M.A., J.D., Associate Dean for Library and Technology, Director of the Underwood Law Library, and Associate Professor of Law
David E. DePianto, B.A., J.D., Ph.D., Assistant Professor of Law
William V. Dorsaneo III, B.A., J.D., Chief Justice John and Lena Hickman Distinguished Faculty Fellow and Professor of Law
Beverly C. Duréus, B.A., J.D., Th.M., Senior Lecturer in Law
Linda S. Eads, B.A., J.D., Associate Provost and Associate Professor of Law
Julia P. Forrester, B.S.E.E., J.D., Dean ad interim and Professor of Law
Jeffrey M. Gaba, B.A., J.D., M.P.H., Professor of Law
Christopher H. Hanna, B.A., J.D., LL.M. (in Taxation), Altshuler University Distinguished Teaching Professor and Professor of Law
Patricia S. Heard, B.A., J.D., Senior Lecturer in Law
JoAnn A. Hubbard, B.S., J.D., Senior Lecturer in Law
Christopher M. Jenkins, B.S., J.D., LL.M., LL.M. (with distinction), Director of the Criminal Justice Clinic and Assistant Professor of Law
Larry Jones, B.B.A., J.D., LL.M., Director of Federal Tax Clinic and Small Business Clinic
Jeffrey Kahn, B.A., M.Phil., D.Phil., J.D., Associate Professor of Law
Ndiva Kofele-Kale, B.A., M.A., Ph.D., J.D., University Distinguished Professor and Professor of Law
Henry J. Lischer Jr., B.B.A., J.D., LL.M. (in Taxation), Professor Emeritus of Law
John S. Lowe, B.A., LL.B., Senior Associate Dean for Academic Affairs and George W. Hutchison Professor of Energy Law
George A. Martinez, B.A., M.A., J.D., Professor of Law
Thomas Wm. Mayo, B.A., J.D., Altshuler University Distinguished Teaching Professor and Associate Professor of Law Orly Sulami Mazur, B.B.A., M.P.A. (summa cum laude), J.D. (Order of the Coif), LL.M., Assistant Professor of Law
Joseph W. Mc Knight, B.A., B.A., B.C.L., M.A., LL.M., Larry and Jane Harlan Faculty Fellow and Professor of Law
Charles J. Morris, B.A., LL.B., Professor Emeritus of Law
Frederick C. Moss, A.B., J.D., LL.M., Professor Emeritus of Law
John J. Mylan, B.S., J.D., LL.M. (in Taxation), Professor Emeritus of Law
Xuan-Thao Nguyen, B.A., J.D., Professor of Law
Joseph Jude Norton, A.B., LL.B., LL.M, S.J.D., D.Phil., Distinguished Faculty Fellow in Financial Institutions, Professor of Law and James L. Walsh Distinguished Faculty Fellow
Victoria Palacios, J.D., Associate Professor of Law
Kenneth L. Penegar, A.B., J.D., LL.M., Professor Emeritus of Law
Roark M. Reed, B.S., B.A., J.D., Professor Emeritus of Law
W. Keith Robinson, B.S., J.D., Assistant Professor of Law
C. Paul Rogers III, B.A., J.D., LL.M., Professor of Law and former Dean
Meghan Ryan, A.B., J.D., Assistant Professor of Law
Eliot Shavin, B.A., J.D., Supervising Attorney, Civil Clinic
Ellen K. Solender, A.B., J.D., Professor Emerita of Law
Mary B. Spector, B.A., J.D., Co-Director of Civil Clinic, Director of Consumer Law Project, and Associate Professor of Law
Walter W. Steele Jr., LL.B., Professor Emeritus of Law
Marc I. Steinberg, A.B., J.D., LL.M., Rupert and Lillian Radford Chair in Law
Heather Stobough, B.A., M.A., J.D., Lecturer in Law
Joshua C. Tate, B.A., M.A., M.Phil., J.D., Ph.D., Associate Professor of Law
David O. Taylor, B.S., J.D., Assistant Professor of Law
Elizabeth G. Thornburg, B.A., J.D., Professor of Law
Sarah Tran, B.S., J.D., Assistant Professor of Law
Jenia Iontcheva Turner, B.A., J.D., Professor of Law
Jonni Walls, B.A., J.D., Lecturer in Law
Jessica Dixon Weaver, B.A., J.D., Assistant Professor of Law
Harvey Wingo, B.A., M.A., J.D., Vinson & Elkins Distinguished Teaching Fellow Emeritus and Professor Emeritus of Law
Peter Winship, B.A., LL.B., LL.M., James Cleo Thompson Sr. Professor of Law
<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Institution</th>
<th>City, State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvie Branscomb, Jr.</td>
<td>Branscomb P.C.</td>
<td>Corpus Christi, Texas</td>
<td></td>
</tr>
<tr>
<td>Alan R. Bromberg</td>
<td>Professor of Law</td>
<td>Southern Methodist University</td>
<td>Corpus Christi, TX</td>
</tr>
<tr>
<td>Gregory S. Crespi</td>
<td>Professor of Law</td>
<td>Southern Methodist University</td>
<td>Dedman School of Law</td>
</tr>
<tr>
<td>Craig T. Enoch</td>
<td>Winstead P.C.</td>
<td>Austin, Texas</td>
<td></td>
</tr>
<tr>
<td>Ernest E. Figari, Jr.</td>
<td>Figari &amp; Davenport</td>
<td>Dallas, Texas</td>
<td></td>
</tr>
<tr>
<td>Deborah G. Hankinson</td>
<td></td>
<td>Hankinson Levinger LLP</td>
<td>Dallas, TX</td>
</tr>
<tr>
<td>The Honorable Nathan L. Hecht</td>
<td></td>
<td>Supreme Court of Texas</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>The Honorable Patrick E. Higginbotham</td>
<td>United States Court of Appeals</td>
<td>Fifth Judicial Circuit</td>
<td></td>
</tr>
<tr>
<td>Thomas Wm. Mayo</td>
<td>Associate Professor of Law</td>
<td>Southern Methodist University</td>
<td>Dedman School of Law</td>
</tr>
<tr>
<td>R. Gerald Turner</td>
<td>President</td>
<td>Southern Methodist University</td>
<td></td>
</tr>
</tbody>
</table>
Articles