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**STALKING THE GOLDEN TOPIC: A GUIDE TO LOCATING AND SELECTING TOPICS FOR LEGAL
RESEARCH PAPERS**

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I. INTRODUCTION

For most people, two things are certain: death and taxes. For law students, one other thing is certain: the necessity to write at least one research paper to complete their legal education. To accomplish this goal, the student faces a high hurdle: finding the right topic. The student of law, commanded to find a research topic, is faced with a daunting chicken-and-egg problem—the student must do a great deal of research to assess a topic on which to do research.

The perfect paper topic is a delicate balance of generality and obscurity. It is amateurish to write a paper on a topic that is already well covered in legal literature. But it is nearly impossible to write on a topic that is covered nowhere, because the essence of legal writing is the quotation and citation of existing sources. Achieving this balance is partly an ongoing task as the paper takes shape, but a topic of correct scope helps focus and streamline the process.

In addition, the perfect paper topic must be novel. In order to graduate from Boalt Hall School of Law, for instance, one must write a “good quality ‘student comment’ of the sort that appear[s] in major law reviews.”¹ Novelty is a criterion by which law journals review article topics. In addition, many professors require that students’ seminar papers add to the current body of legal thought. Therefore, whether a student has any intention of publishing or not, the requirement of novelty means that the student must avoid “preemption,” or selecting a topic on which there is already a published article.

A recent article discussing information science journals described the criteria used for manuscript acceptance: “[V]alidity of claims, originality, clarity, reader appeal, [and] importance of subject.”² *918 The principal reasons cited for rejecting a manuscript were that the article did not add to the current body of knowledge, was superficial, was outside the journal’s subject matter, or was poorly written or researched.³ If such criteria are representative, then most rejections are based on topic alone. Failure to add to the current body of knowledge is preemption. Superficiality is a function of the scope of inquiry, often indicating too broad a topic—a chronic problem in student writing.⁴ A topic lying outside the journal’s subject matter is sometimes a euphemism for a topic that is uninteresting or outdated. Thus, a poor topic may be the only absolute barrier to publication. Law reviews often rewrite submissions, but they generally will not alter a topic.

This Article is intended to be a guide for students and other legal commentators who wish to find the “golden topic.” Of course, the reader should have in mind a field of specialty—the areas that are most interesting or the topics that will fit best into the subject matter of the targeted law class or law review. This Article is intended to be a guide for any student, in any field of specialty. To this end, it makes no attempt to be bibliographic. The sources quoted in the body of this guide are meant to serve only as examples. The examples will tend to fall within my own area of interest—intellectual property law. Students who are interested in other areas of law will need to use those examples to find equivalents in the appropriate field.⁵

This Article has two sections. The first suggests ways to find an appropriate topic; the second outlines a procedure for “vetting”—checking for preemption of the topic.

A. Survey Methodology

In the course of creating this guide, I conducted a survey of law reviews in which I asked questions about how they approached operations and management, topic selection, and preemption review. *919 Because I will be referring to this survey throughout the Article, I present some notes on methodology here. I confined my survey to student-run law reviews that had editorial offices located at a college of law and were listed in the *Index to Legal Periodicals*. The population of this inquiry was approximately 400. The survey was mailed in November 1995. I received approximately 210 responses. Of these, ten failed to qualify and were omitted from the sample because they were not edited by law students. I limited the inquiry to student-edited journals because in law, unlike in other fields, the scholarly literature is normally edited by students. Legal commentary in the United States also includes professional journals, but those are inappropriate to this inquiry for two reasons. First, they rarely publish student articles. Second, they engage in a significantly different method of article and topic selection called the “peer review” process.⁶ The response rate for primary reviews—94 out of 172, or 54%—was somewhat higher than for secondary reviews—103 out of 228, or 45%. This would likely render the sample more representative of primary reviews, because primary and secondary reviews may operate very differently. In particular, I would expect primary reviews to have more staff, be more organized, and have more clearly delineated procedures. However, I conclude the response bias is not extremely significant, and to fully disclose any such bias I have stratified my results. The exact phrasing of the survey and the results are printed in Appendix B.

In addition, for anecdotal information, I contacted members of the *Berkeley Journal of Employment and Labor Law*, *Berkeley Women’s Law Journal*, and *California Law Review* in person and conducted telephone interviews with members of the *Harvard Law Review* and *Yale Law Journal*. I also include comments of my own drawn upon my experience reviewing submissions at the *High Technology Law Journal*.

B. Updating

This Article was originally written in Spring 1994. I updated the survey and some of the searches in Winter 1996. In particular, between the time I conducted the preemption search or “vetting” procedure as outlined in Part III.C, I published a paper on the same subject I had been vetting. In 1996, I returned to the same sources to determine whether, if a paper had existed, I would have found it, *920 by trying to find my published paper by the same vetting procedure. However, please note that not every search procedure in this paper was updated in 1996. Most of these searches are merely illustrative, so timeliness is not an issue.

C. General Guides

There are a number of general guides to writing research papers, each of which has a brief discussion of topic selection. However, there appears to be no such guide written specifically for law students. The guides tend to offer general, practical advice: “Twentieth-Century world politics would obviously be too broad a subject for a ten-page term paper.”⁷ “The writer will find it useful to note down the topic (subject) of the report at the outset”⁸ “The best subject will be one in which you yourself are interested.”⁹ “Your chances for a good mark are better if your subject appeals to your instructor and/or the class.”¹⁰

As the quoted chestnuts illustrate, these guides are largely useless. Of course, the best topics are interesting and not too broad, but such general advice will not help refine a topic search to the level of specificity necessary to formulate the “golden topic.”

II. HOW TO FIND A TOPIC

A. Traditional Topics

Appendix A to this guide presents a list of student comment and note topics published in major law reviews in the last four years.¹¹ As an initial exercise, the user of this guide should simply scan these titles to get a sense of the level of specificity required for a publishable paper topic. In Appendix A, I have distinguished between three types of law reviews: primary law reviews of first-tier law schools, primary reviews of other law schools, and reviews that focus on a limited subject matter. The range of publishable topics depends on both the type of law review and the particular law review.

***921** Although topics cover a wide range of subject matter—civil rights, comparative law, economic analysis, and so on—law review articles essentially do one of two things. First, some articles resolve jurisdictional conflicts of law applied to an existing factual situation.¹² Second, some articles apply existing law to new or newly defined factual situations or apply new laws to existing factual situations.¹³ Of course, there are many topics that fall outside these categories. But categorizing the topics in this fashion helps locate similar topics. The analysis below provides suggestions for finding topics within each of these two categories.

1. Resolving a Jurisdictional Conflict

This category is the most amenable to a systematized search. A paper in this category identifies an unresolved area of law, evaluates conflicting lines of legal authority, and identifies and argues for the better rule. Such legal conflicts arise when there are parallel, rather than hierarchical, jurisdictions or sovereignties. The most obvious breeding ground is the United States courts of appeals. However, jurisdictional conflicts also arise between state courts of intermediate appeal, between state and federal courts, and between the supreme courts and statutory laws of individual states. In addition, topics in comparative law, which are very popular in secondary law reviews, are a form of jurisdictional comparison between laws of different sovereign nations.

This category also has the advantage of relevance. Papers involving the resolution of legal conflict are useful to practitioners in the field. Its disadvantage is that it requires timeliness. Many legal ***922** entities work to resolve jurisdictional conflicts—higher courts, the American Law Institute (restatements), and the National Conference of Commissioners on Uniform State Law (uniform laws). To remain timely, a paper must be published before the central issue is resolved by another entity. Fortunately, most of these entities move at a glacial pace. However, it might be wise, as part of the preemption check on a topic in this area, to determine whether the conflict at issue is about to be resolved by any such entities.

(a) Casebooks, Outlines, and Model Answers

In recent years, student casebooks have evolved from mere collections of cases to anthologies of cases and supplementary materials. Because these materials are pedagogical, they tend to emphasize unsettled points of law. Casebook notes—the comments added by the editors after each major case—are a fertile source of information about conflicting case law. For instance, without much difficulty, I found in a recent family law casebook a section comparing two cases on procreative rights, one holding that the fetus is a “person” within the meaning of the Federal Torts Claims Act, and the other holding that a fetus was not a “person” under the California Civil Code.¹⁴ In copyright cases I perused, I found the following examples of split authorities:

- A significant issue arising in some recent cases is whether the assessment of statutory damages under §504(c) is to be made by the district judge or by the jury. That section refers to “a sum of not less than \$500 or more than \$20,000 as the court considers just.” But it is not clear whether Congress intended “court” to mean a judge in all cases, or more loosely to include the jury as well.¹⁵
- Courts divide on whether party must prove bad faith to recover attorney’s fees. Some court [sic] require both plaintiffs and defendants to prove bad faith. Other courts apply a double standard¹⁶

***923** This is about the best and easiest kind of source a student could hope for. Many casebook notes identify a split, present the issue succinctly, and point the reader toward both primary and secondary authority.

Commercial outlines also tend to point out jurisdictional conflicts. However, they are generally less useful than casebooks for several reasons. Outlines are usually less accurate, updated with less care, and less likely to include bibliographic material. However, they are easy to skim and state the issue tersely. I found the following examples:

- Most courts uphold a rent acceleration clause A minority of states hold that a rent acceleration clause is unenforceable, because it is an agreement for liquidated damage or a penalty.¹⁷
- Courts have found that establishments that rent videotapes to be viewed on the premises in private viewing rooms are “places open to the public” and thus that any performance that occurs there is a public performance Note, however, that the Ninth Circuit has held that hotel rooms are not places open to the public for purposes of the Copyright Act. Thus, playing videotapes there, though a performance, is not a public performance.¹⁸
- The majority view is that a contract is formed on the terms conveyed to the offered by the intermediary The minority view holds that no contract results—on the ground that the parties have neither objectively nor subjectively reached an agreement.¹⁹

It is worth noting that Gilberts outlines use standard language in their headings such as “majority view” and “minority view.” This makes it easy to scan the outline for conflicts.

(b) Treatises

Treatises, like casebooks, identify splits in authority. However, they are not as handy as casebooks because they are harder to skim. Sitting down to read a treatise covering the selected area of interest is a useful exercise, but it may be time-consuming. In several hours of desultory reading, I found the following examples:

- In child custody law to date, the Supreme Court has not directly addressed the question of the tender years presumption.²⁰
- *924 • The sixth and seventh circuits are split on whether a patent disclosing confidential information terminates discloser’s duty of confidence.²¹
- The fifth and tenth circuits are split on implied covenant of “further exploration” for gas and oil leases.²²
- There is a “gap” in intellectual property protection for genetically engineered products made by a process covered by a U.S. patent and imported into the United States.²³

(c) West Digest

In the West Digest system, there are several key numbers under the topic “courts” and “federal civil procedure” that identify splits in authority. They are listed below with the results of searches I tried.²⁴

Subtopic Key Number	Description	Documents in Westlaw database ALLFEDS	Comments
106k90	Decisions of same court or coordinate court.	572	Few relevant. Mostly have to do with stare decisis.
106k91	Decisions of higher court.	76	Mostly relevant.
106k95	Decisions of courts of other state.	28	Almost 100% relevant.
106k96	Decisions of U.S. courts as authority in other U.S. courts.	1434	About 90% relevant. Many constitutional issues.

Using these key numbers to find disputed issues is like trying to find substantive issues through the “back door” of the procedural issues. This causes a problem: the headnote summarizes the procedural issue, not the substantive issue. Therefore, I recommend using this method only by a computer search, which allows one to *925 quickly scan the cases, and I do not recommend using any digest systems other than West’s, until they are also computer searchable.

(d) Computer Searches

Another way to find unresolved conflicts of law is to search on-line using phrases that generally apply to jurisdictional conflicts. The best such search appears to be “CIRCUIT w/5 SPLIT.” In the “DIST” (district court) file of the “GENFED” library on LEXIS, this search yielded over 1000 documents. Limiting the search to the year 1994 still yielded over forty cases, almost 100% of which appeared to be relevant.

Several other searches yielded some jurisdictional conflicts. A search in the Westlaw database “ALLFEDS” on “COURTS DIVERGE” yielded fourteen documents with 100% relevance. A search on “(DISPENSE OR DISPOSE) PRE/15 FOOTNOTE” in “ALLFEDS” yielded forty-five documents with 100% relevance. Note that for law review databases, this search works only in Westlaw, not in LEXIS.²⁵ Finally, it may be useful to search on the introductory signal “COMPARE” in law reviews. However, my searches in this area yielded a low relevance rate.

(e) Petitions for Certiorari

One of the explicit grounds for granting certiorari in the United States Supreme Court is to resolve conflicts between the circuit courts of appeals.²⁶ Thus, many petitions for certiorari will be based on these conflicts. However, the Supreme Court grants certiorari for less than 5% of the petitions filed.²⁷ It is unlikely that a split of authority for which certiorari is denied will soon be resolved. Therefore, petitions for certiorari that are denied may be a better source than those that are granted.

Petitions for certiorari are available on-line. However, because orders denying certiorari reveal none of the issues of the case, this is an arduous place to start. Therefore, the best source is one with commentary. Fortunately, *United States Law Week* reports many cases for which certiorari is denied. An electronic search in the *926 Westlaw database “BNA-USLW” on “CIRCUIT W/5 SPLIT” yielded 210 cases—an excellent source of jurisdictional splits. However, the incidence of such splits is not frequent—only about two or three per month. I set up a weekly “ECLIPSE” search on LEXIS using the same search terms, and over an entire month, it came up with no new material.²⁸ In addition, there is a West key number that sometimes identifies the granting of certiorari to resolve circuit conflicts. However, it does not appear very frequently. A search on “170Bk452 AND HE(CONFLICT)” in the database “ALLFEDS” yielded thirty-six cases, about half of which were relevant.

It is worthwhile to note that the same opportunities for locating splits of authority through petitions for certiorari exist at the state level. However, depending on the state, the materials may be much harder to find. Local state bar magazines and regional legal newspapers are a source for this information.

(f) Foreign and Comparative Law

One way to find a ready-made topic is to look in the *Index to Foreign Legal Periodicals* and simply reuse a topic from a foreign publication. By using a topic that has been printed elsewhere, the student is taking advantage of the limited definition of preemption used by most law reviews. Preemption searches are usually limited to American law reviews and articles written in English.

(g) Uniform Laws and Restatements

Uniform laws and restatements have the primary purpose of unifying state law. Annotations and comments on these materials help identify conflicts between the law of different states. A computer search on “(CONFLICT SPLIT) W/5 AUTHORITY” in Westlaw’s “REST” (restatements of law) database yielded forty-six documents, about 60% of which appear to identify splits in authority. The same search in the “ULA” (uniform laws annotated) database yielded twenty-three documents, about 75% of which appeared relevant. The same search in the “ULA-MPC” (model penal code annotated) database yielded no documents.

(h) Circuit Surveys

A variety of law reviews publish a yearly review of the decisions of particular jurisdictions. The major ones are the *Supreme Court Review* in the *Harvard Law Review*; the *D.C. Circuit Review* *927 in the *George Washington Law Review*; the *Seventh Circuit Review* in the *Chicago-Kent Law Review*; and the *Second Circuit Review* in the *Brooklyn Law Review*. Although these sources sometimes detail splits in circuit authority, any relevant text can be more easily located by an on-line search in the relevant law review directory. In about an hour of desultory reading through these reviews, I found no relevant discussions.

2. New Facts, Old Laws; Old Facts, New Laws

The law is constantly in flux, changing to suit new situations and new ideas. One category of topics involves applying existing law to a new factual backdrop. Alternatively, a new law can be applied to an existing factual backdrop for new results. The caveat for this category is that timeliness is essential. The student has the chance to write a significant article if it is the first to discuss a coming trend. But even a paper written in three or four months will probably take another three to six months to publish. Therefore, students who plan to spend a long time writing a paper should probably avoid this category.

(a) News Sources

The search for topics in this category cannot easily take place in legal literature. Appeals that generate published opinions can take years to conclude, and even law review articles take months to edit. So it is necessary to go outside the traditional legal literature to find such a new factual backdrop. Specialty newspapers or magazines are a good source, and newspapers or trade magazines within a field of specialty can help hone the search.

(b) On-Line Searching

A good computer search to find new issues of law is “FIRST IMPRESSION.” In the LEXIS library “GENFED,” file

“DIST,” this search yielded over 1000 documents. Limiting the search to the year 1994 alone still yielded over seventy cases, almost 100% of which appeared to be relevant. This search could be conducted in other files as well, but the trial court posture is preferable; issues appear in the trial court first, before they have been completely preempted by legal commentary. Among trial courts, federal district courts are the most likely to have detailed, published opinions. Keep in mind that regulatory agencies may publish opinions on administrative hearings, which are generally found in specialty reporters.

One approach to seeking this kind of topic is to take an issue of first impression in one district and apply to it the law of a circuit *928 that has not yet considered the issue. It is helpful, though, to check whether the case presenting the issue has been appealed. If so, a telephone call to the court clerk in the relevant court of appeals, or to the attorney handling the appeal, should yield the appellate briefs.

(c) Loose-Leaf Newsletters

Taking advantage of the definition of preemption, a student can cull topics from loose-leaf services and newsletters. Most law reviews will not consider an article in such a publication preemptive because articles in such publications are generally of shorter length and less depth than law review articles. The best catalog of such publications is *Legal Looseleaves in Print*. Examples of newsletters in the field of intellectual property include the *Computer Lawyer*; *Biotechnology Law Report*; *Mealey's Litigation Reports, Intellectual Property*; and *BNA Patent Trademark and Copyright Journal*.

The important information is the publisher. Mealey's and BNA, for instance, publish newsletters in a variety of fields. A call to the publisher should be enough to identify the newsletter covering a given area of interest. Legal publishers usually expend a great deal of resources on customer service because their materials can be quite expensive.

(d) Computer Hot Topics

LEXIS features a database in library “HOTTOP,” file “HOTLAW,” that contains new developments in law. This library is updated every two weeks and contains information on ten practice areas. It is searchable in full text and also via the “links” on the screen. Westlaw carries a similar group of databases called “WESTLAW TOPICAL HIGHLIGHTS.” They are divided into practice groups; for instance, the intellectual property database is “WTH-IP.”

There are a number of caveats to keep in mind while searching for a topic in these databases. First, these are not so much new issues as new cases. In this sense, these databases may be better sources for case notes, as described in Part II.B.3. Second, the content of these databases depends on the computer service's judgment regarding what is interesting or important. Third, everyone else is probably looking at them too.

***929 B. Other Traditional Topics**

Of course, there are other kinds of traditional topics available. A glance at Appendix A will make them clear. I present three categories below, with examples culled from Appendix A. The first two categories are more akin to the papers that graduate students in other fields write. A student who is uncomfortable with traditional legal analysis may find a topic in these categories comfortably familiar territory. The last category is the case note, which typically analyzes one important case in-depth and describes how it affects the current body of law.

1. Historical Law

- Saikrishna B. Prakash, Note, *Hail to the Chief Administrator: The Framers and the President's Administrative Powers*, 102 YALE L.J. 991 (1993)
- John C. Uyoo, Note, *Marshall's Plan: The Early Supreme Court and Statutory Interpretation*, 101 YALE L.J. 1607 (1992)
- Jonathan Zasloff, Note, *Abolishing Coercion: The Jurisprudence of American Foreign Policy in the 1920's*, 102 YALE L.J. 1689 (1993)
- Katie S. Matison, Comment, *A Historical Trek Through the Judicial Interpretations of § 187 of the Limitation of Vessel Owner's Liability Act: The Evolution of the Literal Versus the Statutory Purpose Approach*, 17 TUL. MAR. L.J. 73 (1992)

2. Legal Philosophy and Jurisprudence

- Edward A. Harris, Note, *From Social Contract to Hypothetical Agreement: Consent and the Obligation to Obey the Law*, 92 COLUM. L. REV. 651 (1992)
- Gretchen A. Craft, Note, *The Persistence of Dread in Law and Literature*, 102 YALE L.J. 521 (1992)
- Benjamin P. Friedman, Comment, *Fishkin and Precedent: Liberal Political Theory and the Normative Uses of History*, 42 EMORY L.J. 647 (1993)
- Donald Batterson, Comment, *A Trend Ephemeral? Eternal? Neither?: A Durational Look at the New Judicial Federalism*, 42 EMORY L.J. 209 (1993)

3. Case Notes

- E. Kenly Ames, Note, *Beyond Rogers v. Koons: A Fair Use Standard for Appropriation*, 93 COLUM. L. REV. 1473 (1993)
- Jonathan H. Levy, Note, *Limiting Victim Impact Evidence and Argument After Payne v. Tennessee*, 45 STAN. L. REV. 1027 (1993)

*930 • Jennifer J. Berthiaume, Comment, *United States v. Juda: Fifth Amendment Due Process and Stateless Vessels on the High Seas*, 73 B.U. L. REV. 477 (1993)

- Donna L. Laddy, Comment, *Burns v. McGregor Electronic Industries: A Per Se Rule Against Admitting Evidence of General Sexual Expression as a Defense to Sexual Harassment Claims*, 78 IOWA L. REV. 939 (1993)

C. Nontraditional Topics

In addition to the traditional topics presented above, students may wish to take a novel approach to topic selection. Of course, these are difficult to categorize. Nontraditional topics have the advantage of minimizing preemption worries and catching the attention of editors reviewing topics for publication. They have the disadvantage of requiring time-consuming research going beyond the usual sources. A couple of suggestions are listed below.

1. Original Research

Papers presenting original research are far more common in other academic disciplines than in law. Students who plan to follow this route may have to invest some time in learning how to gather and present statistical information. In addition, proper survey or data gathering technique can be expensive. However, grants may be available to help finance original research, and there is abundant free information in the *Statistical Abstract of the United States*. Some examples of this kind of paper, culled from Appendix A, are:

- Jim Rossi & Mollie Weighner, Project, *An Empirical Examination of the Iowa Bar's Approach to Regulating Lawyer Advertising*, 77 IOWA L. REV. 179 (1991)
- Paul B. Lackey, Note, *An Empirical Survey and Proposed Bankruptcy Code Section Concerning the Propriety of Bidding Incentives in a Bankruptcy Sale of Assets*, 93 COLUM. L. REV. 720 (1993)
- Lewis S. Peterson, Note, *Who's Been Greedy? A Theoretical and Empirical Examination of Holdouts and Coercion in Debt Tender and Exchange Offers*, 103 YALE L.J. 505 (1993)

2. Municipal Law

Municipal law is rarely used as a topic. Municipal law may be difficult to research, but preemption in this area is highly unlikely. Only one title from Appendix A appeared at first glance to address municipal law:

- *931 • Craig A. Bowman & Blake M. Cornish, Note, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164 (1992)

A search in the LEXIS library "LAWREV," file "ALLREV," on "TITLE(MUNICIPAL)" yielded no documents. A natural language search on "(ORDINANCE MUNICIPAL CITY)" yielded about 40% relevant documents, most of which were on land use or environmental regulation. About half of these appeared in secondary reviews and about half in primary reviews. Students may be able to cull some ideas from *Municipal Ordinances: Text and Forms*,²⁹ one of the most comprehensive resources on municipal law.

D. A Note on Human Sources

Of course, the easiest way to find a topic is to convince someone else to find it. The question is, who is most likely to help?

1. Judges

Judges should not ordinarily discuss the merits of active cases.³⁰ They may have frequent brushes with the cutting edge of the law, but they are not a good source.

2. Professors

Understandably, many law professors are too busy or simply unwilling to help students select a topic unless the students are currently enrolled in a relevant class. However, some professors produce lists of topic ideas for their classes; students can request to see such a list from a previous class.

3. Practitioners

Practitioners can be quite helpful in supplying topics. In law firm practice, lawyers seldom have the time to do in-depth research. Some of them welcome the opportunity of “commissioning” a research paper. Because practitioners are usually handling time-sensitive matters, they will probably not be able to use research that proceeds at the usual academic pace—taking three or four months to complete. For this reason, practitioners may be more willing to discuss a study on an issue that recurs regularly in their practice. ^{*932} Students who interview practitioners about potential topics should focus their inquiries on such issues. Keep in mind that practitioners are present not only at law firms, but at public interest organizations as well. Also keep in mind that law firm librarians may have an equally good idea of what issues recur in practice.

4. Law Review Editors

It may seem obvious that law review editors would have an interest in helping authors develop publishable articles. One question on the survey was meant to determine whether law review editors would be a good source for topics. In fact, very few of the law reviews responding to my survey suggested detailed topics. The *Harvard Law Review* editor I interviewed stated that the *Review* almost never “commissions” articles.³¹

Some of the lesser known law reviews may be more cooperative. One problem that plagues secondary reviews is lack of high-quality submissions. Although only some of those responding to my survey admitted to having this problem, I suspect there is some dissembling at work.³² If secondary reviews lack quality submissions, then it is to their advantage to help students refine their research topics. It is likely that editors are more responsive to phone calls than mail surveys; my own experience as an editor is that people working on our journal were quite willing to talk to potential authors. After identifying a review in the appropriate area of specialty, students should call the managing editor of the review and ask whether a particular topic would fit within the review’s subject area. Then, the student may wish to inquire further about what has been published on the issue and whether there are any particular issues the editor would like to see addressed in a submission.

5. Internet

Electronic bulletin boards or news groups can be a good source for topics. As an experiment, I posted the following notice on the bulletin board:

***933 FREE RESEARCH!**

Law student seeks topic for research paper. What topic would interest you? This is a chance to get your in-depth topic researched for free.

I sent this message to a moderated news group, so the fact that it was posted indicates that the moderator did not consider it commercial and therefore in violation of “netiquette”—that is, the message was considered appropriate for the noncommercial nature of the Internet. I placed the notice twice, at a two-week interval, and received about two dozen responses. Although the responses were not numerous, they were generally of high quality. Some responses included detailed hypotheticals, and some were invitations to call and talk further. One was from a law

professor seeking a research assistant. A list of specialized legal news groups appears in Appendix C.

6. Conferences

One of the best ways to find topics is simply to “network.” One easy way to do this is attending seminars and conferences in the area of specialty. Many symposia offer reduced student rates. Local conferences are often held under the auspices of the state bar, or local practice groups thereof, and these are usually listed in the local legal newspaper or bar journal.

Ultimately, law review editors and law professors are often in the same position as the student: looking for the golden topic. Topics are not protectable by any kind of intellectual property law, and thus, most people who value their topics will tend to protect them. Professors and law students may be helpful, but they may be unlikely to share their best ideas. Students may be better off seeking help from those who are not seeking to publish. Thus, practitioners (who rarely write full-length law review articles)³³ and professors in nonlaw fields are generally the most helpful.

III. PREEMPTION

A. What is Preemption?

After formulating a topic that is interesting and seems neither too narrow nor too broad, the next step is conducting a preemption review. Preemption occurs when a law review refuses to publish an article because the topic is already the topic of an existing article. *934 However, it is not always as simple as that. My survey revealed a great diversity of practice with regard to preemption policies.

Most law reviews surveyed do a preemption check before accepting an article for publication. However, this process is surprisingly informal. Only 9% of the reviews surveyed provided a written procedure for preemption review, and of these, many were cursory or general procedures.³⁴ One review editor who responded to the survey question on preemption check procedures remarked that although there was no written procedure, their tradition was well understood by everyone. Another editor, at a secondary review, noted that if there were something already published on the particular subject, she would know. A recent law review article discussing the merits of student-edited reviews contained an entire section defending the typical topic review process, but never managed to describe it.³⁵

Preemption may be highly discretionary.³⁶ Different law reviews have different definitions of preemption. Some will only decline a paper if the topic has already been used in that particular review. Some do not conduct preemption reviews at all. Most reviews probably limit their preemption search to United States law reviews, exclude books and *American Law Reports* annotations, and limit their searches to law review articles. However, most reviews probably do consider an article preempted if the primary issue is resolved by a judicial opinion.

Preemption may also depend on the identity of the author. Twenty-seven percent of the reviews surveyed stated a student paper could not preempt an article written by a professor. In an interview, an editor at *Harvard Law Review* stated that preemption of a law professor’s article by a student paper is “very rare.”³⁷ He stated that this was probably because students and professors write different kinds of articles.³⁸ It is clear that authors of different station are accorded different deference in the legal commentary field. In fact, the preemption review database on Westlaw, “LAW REVIEW ABSTRACTS CLEARINGHOUSE,” limits its entries to articles written or co-written by law professors. Thus, a student will probably face higher hurdles in the preemption process than will a *935 professor. It is therefore very important that a student conduct a thorough preemption search before beginning in-depth research.

B. Finding a Negative

Vetting a topic is the odd task of trying to prove a negative. The standard research task is a search for what exists, but the process of vetting means trying to determine whether something *does not* exist. The task therefore has an inherent psychological barrier. The student who has embarked on the quest for the golden topic finally finds a topic that seems valuable and fascinating. The quest seems over. Now the student begins looking for papers already written on that topic. If there is one, then the search must begin again.

This may sound trivial, but it can be crippling. One way to get beyond this psychological barrier is to remember that finding a paper that preempts a topic does not mean the topic was worthless or a waste of time. First, any such paper will necessarily be a gold mine of sources. Second, a new paper on exactly the same topic would be much different—containing new thoughts and means of expression. If the new paper comes to an opposite conclusion, it may not be considered preempted at all. Third, the existing paper may help hone a new focus: by inspiring an answer to its conclusion or by supplying a springboard to deeper inquiry.

C. How to Conduct a Preemption Search

This section lays out a very thorough preemption search. This procedure is probably more extensive than most papers require and, based on the survey, is more extensive than most law reviews conduct. However, I recommend such a full search. Even if it turns up nothing—the desired result—it will reap an extensive bibliography with which to begin research.

As an example, I outline below my preemption search on a topic on which I recently completed a law review note. The title of my note was *Issues of Property, Ethics and Consent in the Transplantation of Fetal Reproductive Tissue*.³⁹ It dealt with a recently announced technology (fetal ovary transplants) and the related political, ethical, and regulatory issues. When I updated this Article in 1996, I tested my vetting process by checking whether my published note was captured by the same process.

*936 Step 1: Defining the Subject

There are a variety of resources available to help the student conduct a preemption search—and to begin research at the same time. However, many of them do not provide full-text searches. For this reason, the first step is to think carefully about the topic, because the student will be required to search for the topic within the subject indices of several resources. Subject indices are important, partially because law review authors have an odd habit of using puns and homilies in their titles. Usually, these are followed by a more revealing title, but not always. For example, the following are culled from the student articles listed in Appendix A:

- Max Steir, Note, *Corruption of Blood and Equal Protection: Why the Sins of the Parents Should Not Matter*, 44 STAN. L. REV. 727 (1992)
- Jody R. King, Comment, *A Case Frozen in Time: Does Title VII’s 1991 Amendment Strip United States v. Burke of Its Precedential Value?*, 28 NEW ENG. L. REV. 109 (1993)
- Patrick Ingram, Note, *Censorship by Multiple Prosecution: “Annihilation, by Attrition if Not Conviction,”* 77 IOWA L. REV. 269 (1992)
- Kathleen B. Carr, Note, *Limiting Limitation: In re The Glacier Bay*, 16 TUL. MAR. L.J. 403 (1992)

It is quite difficult to determine from the above titles exactly what the articles are about, particularly when one is not already familiar with the area of law involved. If the title is unrevealing and the full text is unavailable, the only alternative is a subject search.

One approach to defining a subject search is to anticipate the key words or terms of art central to the topic. One useful tool for this is a thesaurus; students familiar with computer law services can take advantage of the new thesaurus options on Westlaw and LEXIS to fish for synonyms. For example, on Westlaw, I found:

Term Entered	Synonyms
Fetus	“Unborn child” Embryo Fetal
Transplant	Replacement
“Informed Consent”	none
“In Vitro”	none

*937 The Westlaw thesaurus apparently does not handle multiple-word phrases well. However, it is better than LEXIS. On LEXIS, the thesaurus feature is available within “freestyle” searching. Using it, I found no synonyms for any of these terms.

Armed with a few such terms, the student should next examine the *Library of Congress Subject Headings*. This hardbound source is routinely approximately two years out of date. It is a daunting set of volumes, but it contains a system of indexing that is quite different from that found in other resources such as LegalTrac and the *Legal*

Resource Index (discussed below). I found the following relevant subjects:

Fetal Tissues

Tissues

Fetal Liver Cells

Fetal Membranes

Fetal Nerve Tissue

Reproductive Technology

Fertilization in vitro

Human Reproductive Technology

Assisted Reproduction

Reproduction—Technological Innovation

Biotechnology

(Human) Embryo Transplantation⁴⁰

I note that although there was nothing under “in vitro,” there was an entry under “fertilization in vitro,” a transposition of “in vitro fertilization.”

Step 2: LegalTrac

I recommend starting with LegalTrac because it will help refine the subject search and because it has a wide coverage of all the publication databases. LegalTrac is a CD-ROM software package that covers 800 English language legal periodicals, including most law reviews and several legal newspapers. It is routinely approximately six months old in its coverage. The user can search two ways—either by subject or by word—but there is no full-text searching on LegalTrac; it only contains abstracts. LegalTrac has particularly good collocation—cross-referencing of subject headings. Because it only goes back to 1980, any prior articles will require a visit to the *Index to Legal Periodicals*, as set forth below.

I searched “fetal” on LegalTrac and encountered the topic “fetal tissue transplantation.” This demonstrates one useful feature of LegalTrac—it allows the user to put in the root of the word, then *938 displays all the surrounding subject headings. This is particularly useful for those who have trouble spelling or who simply want to browse. Under the topic “fetal,” I found ten subtopics:

Fetal Tissue Transplantation

Analysis

Economic Aspects

Finance

Laws, Regulations, etc.

Moral and Ethical Aspects

Political Aspects

Religious Aspects

Research

Usage

LegalTrac's subject index is very well compiled, using layman's terms and subtopics that make sense. Using this resource, I found a number of alternative subject headings—in addition to a wealth of sources for research purposes. In 1996, when I updated this Article, I found my published note under the category “fetal tissue transplantation—moral and ethical aspects.” I also found another article on a similar topic.⁴¹ I conclude this resource works quite well for a preemption search. It is easy to use, reasonably current, and the article ultimately published on the topic I was vetting appeared in the exact place the resource originally led me.

Step 3: Library Catalogs and Library Shelves

The next step is to look at the library catalog. Some on-line catalogs have databases for periodicals that list law review articles by subject. This is quite useful because subject indices are not available on Westlaw and LEXIS. Library catalogs, in contrast, are usually extensively cross-indexed by subject, and some periodicals databases contain abstracts. They will generally contain no better coverage of legal literature than LegalTrac. However, library catalogs do contain two other things: nonlaw materials and alternatively worded abstracts.

MELVYL, the on-line catalog of the University of California, and GLADIS, the catalog of U.C. Berkeley, use the subject headings from the Library of Congress, discussed above. These resources are routinely approximately two weeks out of date. By searching on “ovaries-transplantation” and “fetal tissue transplantation,” I found 214 articles. Interestingly, “fetal tissue transplantation” was not in *939 the Library of Congress index, but was on MELVYL. Possibly, the topic was added too recently for inclusion in the paper index. A search on the title words “fetal ovarian” yielded fourteen articles, two of which were relevant. MELVYL has access to law journal publications through its “MAGS” database, but this information apparently duplicates the *Legal Resource Index*, which is available on-line through LEXIS and Westlaw. I note that none of these searches yielded my published note.

I recommend that after finding the call numbers of some relevant books, the student should actually visit the shelves to take a look. Sometimes, the subjects of nearby call numbers are closely related, but due to differences in terminology, will not result from the subject search. A bit of browsing is sometimes very enlightening.

Step 4: Legal Resource Index

A computerized version of the *Legal Resource Index* is available on LEXIS in the “LAWREV” library, “LGLIND” file, and on Westlaw in the “LRI” (legal resource index) database or “LRI-D” (dialog) database. Westlaw's “IDEN” database describes the “LRI-D” database as cover-to-cover citations to and abstracts of over 850 legal periodicals, including law reviews, bar association journals, and legal newspapers. Coverage begins with 1980 and the file is updated monthly. The LEXIS database has very wide coverage and has a “TERM” segment that can be used effectively as a subject index.

LEXIS suggests limiting a preemption search to nonnewspapers by appending the search term “AND NOT REFR(COLUMN-LENGTH)” to each search. My search on “TERM(FETUS OR FETAL OR IVF OR ‘IN VITRO’ OR TRANSPLANT!) AND NOT REFR(COLUMN-LENGTH)” yielded 342 references, about 80% of which were relevant. The coverage of this resource is almost too wide—including many journals that may not, because of their subject area, be considered preemptive. In 1996, I updated this search using the search term “FETAL FETUS & TRANSPLANT” on Westlaw in its “LRI-D” database. I found sixteen documents, including the Hersey article uncovered in LegalTrac, but not my own.

Based on both the above approaches, I conclude the *Legal Resource Index* is not very useful for preemption purposes—although it remains a good general research tool. It is in a sense simultaneously too broad and too narrow—missing many journals, but including many nonjournals.

****940 Step 5: Westlaw's Law Review Abstracts Clearinghouse***

Westlaw carries a law review abstracts database called “LRAC” that includes only articles that have not yet been printed. This is the point at which the student should expect to catch articles that are being shopped for or prepared

for publication. Westlaw deletes the articles when they are published or have remained on the database for several months. This database is limited to articles written by law professors, and participation in the database is voluntary. Therefore, coverage will be far less than complete. In addition, there will be a lag time (sometimes, unfortunately, very long) between acceptance for publication and actual publication, when the article will appear in the above resources.

My search in the “LRAC” database on “FETUS TRANSPLANT ‘INFORMED CONSENT’ ‘IN VITRO’” yielded no documents. My updated search in 1996 yielded no articles with any of these terms.

Step 6: Index to Legal Periodicals

For all articles before 1980, the student will need to consult the *Index to Legal Periodicals*. This resource consists of a separate volume for each year and is indexed by subject. My preemption search yielded nothing, probably because the technologies involved did not exist before 1980.⁴²

Step 7: Full-Text Searches

The most frustrating part of conducting a preemption search is trying to find articles that contain lengthy discussions of a topic without using the topic as the primary thesis. Often, finding such articles requires extensive research and may be impossible without the benefit of full-text searching. The best technique for this part of a preemption review is to simply begin researching the topic.

Of course, the problem with relying primarily on full-text searching is lack of coverage. Both Westlaw and LEXIS omit many law reviews. Nevertheless, this method was the most popular among the journals responding to the survey, which means that many journals are conducting preemption review based on a small part of the published legal literature. Westlaw carries more law reviews than does LEXIS, although some are in abstract form and many are limited to partial coverage—of those topics Westlaw defines *941 as “selected works that present pragmatic discourses on legal issues of national interest.”⁴³ Coverage for each system changes over time. A list of the publications covered is available via the “SCOPE” command on Westlaw or in the “GUIDE” library and file on LEXIS. In addition to the law review databases—Westlaw’s database “JLR” and LEXIS’s library “LAWREV,” file “ALLREV”—there may be subject libraries that contain additional publications. For instance, in the intellectual property area, there are “COPYRT” and “PATENT” on LEXIS and “IP-TP” on Westlaw.

Step 8: American Law Reports and Case Law

Technically, case annotations and case law may not be considered preemptive, depending on whose definition of preemption one uses. However, it is useful to consult the appropriate subject headings in the *American Law Reports* and West’s Digest before concluding a preemption search. These resources sometimes contain references to law review articles, although they tend to be outdated. My search on LEXIS in the library “LAWREV,” file “ALR,” on “‘FETAL TISSUE’ OR ‘IN VITRO’ OR ‘TISSUE TRANSPLANT’” yielded about 10% relevant annotations.

IV. CONCLUSION

The student who begins the quest for a golden topic may find it anywhere. There are ideas everywhere, and the trick is to identify and evaluate them. The legal muse is a fickle mistress. Sometimes, the harder one tries, the less likely one is to come up with a good idea. Students may not find their golden topic while employing any of the search methods described in this guide. But the search process itself, and the effort expended upon it, may bring into relief the topics that dance across one’s mind at the most inappropriate moments. Carry a notebook at all times, and put a pad of paper on the night stand. Good luck.

***942 APPENDIX A**

REPRESENTATIVE NOTE AND COMMENT TOPICS

Primary Reviews of First-Tier Law Schools

CALIFORNIA LAW REVIEW: Volumes 80-82

The Confidentiality of HIV-Related Information: Responding to the Resurgence of Aggressive Public Health Interventions in the AIDS Epidemic

Teenage Dating Violence: The Need for Expanded Awareness and Legislation

Understanding Kaye Scholer: The Autonomous Citizen, the Managed Subject and the Role of the Lawyer

The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism

Exclusive Jurisdiction and the Eleventh Amendment: Recognizing the Assumption of State Court Availability in the Clear Statement Compromise

Against “Overwhelming” Appellate Activism: Constraining Harmless Error Review

Related Contacts and Personal Jurisdiction: The “But For” Test

Domicile Under Immigration and Nationality Act Section 212(c): Escaping the Chevron “Trap” of Agency Deference

Achieving Efficiency Through Collusion: A Market Failure Defense to Horizontal Price-Fixing

The Establishment Clause, Civil Religion, and the Public Church

Judicial Review of the Administrative Record in NEPA Litigation

Environmental Marketing and Federal Preemption of State Law: Eliminating the “Gray” Behind the “Green”

***943** *Jenkins v. Missouri: School Choice as a Method for Desegregating an Inner-City School District*

Extradition of Government Agents as a Municipal Law Remedy for State-Sponsored Kidnapping

Den of Inequity: The Case for Equitable Doctrines in Rule 10b-5 Cases

Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation

Copyright Law’s Broken Rear Window: An Appraisal of Damage and Estimate of Repair

Robinson-Patman Act Regulation of Intraenterprise Pricing

Regulation of Attorneys Under California’s Talent Agencies Act: A Tautological Approach to Protecting Artists

Copy Wrong: Plagiarism, Process, Property, and the Law

The Antitrust Liability of Labor Unions for Anticompetitive Litigation

A Christmas Issue: Christian Holiday Celebration in the Public Elementary Schools Is an Establishment of Religion

Using Severability Clauses to Solve the Attainment Deadline Dilemma in Environmental Statutes

Should the Ranch Go Free Because the Constable Blundered? Gaining Compliance with Search and Seizure Standards in the Age of Asset Forfeiture

Fairness and Efficiency: Allowing Contribution Under ERISA

A Theory of Establishment Clause Adjudication

COLUMBIA LAW REVIEW: Volumes 92-95

The American Revolution and Constitutionalism in the Seventeenth-Century West Indies

***944** *The Economics of Antiquities Looting and a Proposed Legal Alternative*

Fusion and the Associational Rights of Minor Political Parties

Title VII Sexual Harassment: Recognizing an Employer's Non-Delegable Duty to Prevent a Hostile Workplace

Selecting a Jury in Federal Criminal Trials After Batson and McCollum

The Northwest Ordinance as a Constitutional Document

"Unconscionable" Conditions: A Contractual Analysis of Conditions on Public Assistance Benefits

The Copyrightability of Nonliteral Elements of Computer Programs

"Then the Dogs Died": The Fourth Amendment and Verification of the Chemical Weapons Convention

An Economic Analysis of Implied Warranties of Fitness in Commercial Leases

The First Amendment and the Power of Suggestion: Protecting "Negligent" Speakers in Cases of Imitative Harm

When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports

The Distribution of Treaty-Implementing Powers in Constitutional Federations: Thoughts on the American and Canadian Models

Sexual Exclusions: The Americans with Disabilities Act as a Moral Code

Toward an Equitable After-Acquired Evidence Rule

Will They Take Away My Video-Phone if I Get Lousy Ratings?: A Proposal for a "Video Common Carrier" Statute in Post-Merger Telecommunications

Bribery and Other Not So "Good Behavior": Criminal Prosecution as a Supplement to Impeachment of Federal Judges

***945** *Securing Access to Care in Health Maintenance Organizations: Toward a Uniform Model of Grievance and Appeal Procedures*

Limitations on Attorney Postverdict Contact with Jurors: Protecting the Criminal Jury and Its Verdict at the Expense of the Defendant

Juggling Comity and Self-Government: The Enforcement of Foreign Libel Judgments in U.S. Courts

Unburdening the Undue Burden Standard: Orienting Casey in Constitutional Jurisprudence

Must We Teach Abstinence? Pensions' Relationship Investments and the Lessons of Fiduciary Duty

Does Privacy Have Four Walls? Salvaging Stanley v. Georgia

Four Reasons and a Paradox: The Manifest Superiority of Copyright Over Sui Generis Protection of Computer Software

Logical Foundations of Preference Aggregation

When a Sting Is Overkill: An Argument for the Discharge of Punitive Damages in Bankruptcy

Assessing the Impact of Preferential Trade Agreements and New Rules of Origin on the Extraterritorial Application

of Antitrust Law to International Mergers

Fighting Words and Fighting Freestyle: The Constitutionality of Penalty Enhancement for Bias Crimes

The Admissibility of Ultimate Issue Expert Testimony by Law Enforcement Officers in Criminal Trials

Fighting Fire with Firefighters: A Proposal for Expert Judges at the Trial Level

Strict Scrutiny for Gender, via Croson

The Knock and Announce Rule: A New Approach to the Destruction-of-Evidence Exception

***946** *An Empirical Survey and Proposed Bankruptcy Code Section Concerning the Propriety of Bidding Incentives in a Bankruptcy Sale of Assets*

The Discretionary Function Exception Under the Foreign Sovereign Immunities Act

Informational Standing Under NEPA: Justiciability and the Environmental Decision Making Process

Safeguarding Style: What Protection Is Afforded to Visual Artists by the Copyright and Trademark Laws?

Pruning the Judicial Oak: Developing a Coherent Application of Common Law Agency and Controlling Person Liability in Securities Cases

Federal Jury Instructions and the Consequences of a Successful Insanity Defense

Unreliable and Prejudicial: The Use of Extraneous Unadjudicated Offenses in the Penalty Phases of Capital Trials

Beyond Rogers v. Koons: A Fair Use Standard for Appropriation

The Fighting Words Doctrine

Considerations Relating to the Enactment of Venue Schemes as Applied to Specialty Courts

Good Faith? Religious-Secular Parallelism and the Establishment Clause

On "Borrowed Wits": A Proposed Rule for Attorney Depositions

The Use of Quality-of-Life Measures to Ration Health Care: Reviving a Rejected Proposal

Weeding RICO Out of Garden Variety Labor Disputes

Broadcasting from Enemy Territory and the First Amendment: The Importation of Informational Materials from Cuba Under the Trading with the Enemy Act

***947** *Modification of a Chapter 11 Plan in the Mass Tort Context*

In-House Counsel's Right to Sue for Retaliatory Discharge

Forbearance Agreements: Invalid Contracts for the Surrender of Sovereignty

The Courts' Assault on the Robinson-Patman Act

From Social Contract to Hypothetical Agreement: Consent and the Obligation to Obey the Law

Prosecution Review Commissions: Japan's Answer to the Problem of Prosecutorial Discretion

A Problem of Mixed Motives: Applying UNOCAL to Defensive ESOPs

Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule

Membership in a Particular Social Group Under the Refugee Act of 1980: Social Identity and the Legal Concept of the Refugee

A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances

Banishing the Thirteenth Juror: An Approach to the Identification of Prosecutorial Racism

Clothing State Governmental Entities with Sovereign Immunity: Disarray in the Eleventh Amendment Arm-of-the-State Doctrine

Rule 10b-5 and Voluntary Corporate Disclosures to Securities Analysts

Fair Use of Copyrighted Material in Advertisement Parodies

The Scope of Representation—Reinforcing Judicial Review

Reconciling the Right to Vote with the Voting Rights Act

The GATT, U.S. Law and the Environment: A Proposal to Amend the GATT in Light of the Tuna/Dolphin Decision

**948 Righting Wrongs: Towards a New Theory of State Succession to Responsibility for International Delicts*

HARVARD LAW REVIEW: Volumes 106-108

Custodial Engineering: Cleaning Up the Scope of Miranda Custody During Coercive Terry Stops

Federal Estate Tax and the Right of Publicity: Taxing Estates for Celebrity Value

Feasibility and Admissibility of Mob Mentality Defenses

State-Sponsored Growth Management as a Remedy for Exclusionary Zoning

Forty Megahertz and a Mule: Ensuring Minority Ownership of the Electromagnetic Spectrum

Excessiveness Review for Capital Defendants After Honda Motor Co. v. Oberg

Universal Access to Health Care

Organizing Worth Its Salt: The Protected Status of Paid Union Organizers

Legal Realism and the Race Question: Some Realism About Realism on Race Relations

The Impact of Managed Care on Doctors Who Serve Poor and Minority Patients

Unenforced Boundaries: Illegal Immigration and the Limits of Judicial Federalism

Losing Control: Toward a New Understanding of the Taxation of Post-Incorporation Stock Sales

Absolute Liability for Ammunition Manufacturers

Attorney-Client and Work Product Protection in a Utilitarian World: An Argument for Recomparison

**949 Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development*

Liberalismo Contra Democracia: Recent Judicial Reform in Mexico

Super-Priority of Securities Intermediaries Under the New Section 9-115(5)(c) of the Uniform Commercial Code

Reasonable Doubt: An Argument Against Definition

Patriarchy Is Such a Drag: The Strategic Possibilities of a Postmodern Account of Gender

FDA Reform and the European Medicines Evaluation Agency

The Resurrection of Religious Freedom?

Settling for Less: Applying Law and Economics to Poor People

Labor-Management Cooperation After Electromation: Implications for Workplace Diversity

Condemnations, Implicit Benefits, and Collective Losses: Achieving Just Compensation Through “Community”

Distributive Liberty: A Relational Model of Freedom, Coercion, and Property Law

Racial Steering in the Romantic Marketplace

Harnessing Madison Avenue: Advertising and Products Liability Theory

The Birthright Citizenship Amendment: A Threat to Equality

Russian Property Law, Privatization, and the Right of “Full Economic Control”

The Message in the Medium: The First Amendment on the Information Superhighway

Discretion and Legitimacy in International Regulation

***950** *Managing the Real-Estate Investment Trust: An Alternative to the Independent Contractor Requirement*

Civic Republican Administrative Theory: Bureaucrats as Deliberative Democrats

Federalism, Political Accountability, and the Spending Clause

Looking It Up: Dictionaries and Statutory Interpretation

The Perils of Payment for Order Flow

Juvenile Curfews and Gang Violence: Exiled on Main Street

Interpreting Oriental Cases: The Law of Alterity in the Colonial Courtroom

Federal Prosecution of Cross-Burners

The Eighth Amendment and Ineffective Assistance of Counsel in Capital Trials

Investor Liability: Financial Innovations in the Regulatory State and the Coming Revolution in Corporate Law

Clear Statement Rules, Federalism, and Congressional Regulation of States

Visual Artists’ Rights in a Digital Age

Protection of Foreign Direct Investment in a New World Order: Vietnam—A Case Study

Dethroning the Welfare Queen: The Rhetoric of Reform

Trade Secret Misappropriation: A Cost-Benefit Response to the Fourth Amendment Analogy

One Strike and You’re Out? Creating an Efficient Permanent Replacement Doctrine

An Expectations Approach to Client Identity

***951** *Out of the Frying Pan or into the Fire? Race and Choice of Venue After Rodney King*

Aspiration and Control: International Legal Rhetoric and the Essentialization of Culture

The Civil Rights Act of 1991: The Business Necessity Standard

Taking Back Takings: A Coasean Approach to Regulation

Pornography, Equality, and a Discrimination-Free Workplace: A Comparative Perspective

Winship On Rough Waters: The Erosion of the Reasonable Doubt Standard

A Petition Clause Analysis of Suits Against the Government: Implications for Rule 11 Sanctions

The Demise of the Chaplinsky Fighting Words Doctrine: An Argument for Its Interment

The Oregon Health Care Proposal and the Americans with Disabilities Act

Hate Is Not Speech: A Constitutional Defense of Penalty Enhancement for Hate Crimes

The Civil Rights Act of 1991 and Less Discriminatory Alternatives in Disparate Impact Litigation

Constitutional Limits on Anti-Gay-Rights Initiatives

Racial Violence Against Asian Americans

What's Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision

STANFORD LAW REVIEW: Volumes 44-46

Killing Brown Softly: The Subtle Undermining of Effective Desegregation in Freeman v. Pitts

***952** *The After-Acquired Evidence Defense to Employment Discrimination Claims: The Privatization of Title VII and the Contours of Social Responsibility*

Considering "Power" in Separation of Powers

Misusing Antitrust: The Search for Functional Copyright Misuse Standards

No Room at the Inn: A Snapshot of an American Emergency Room

Policymaking and the Offer/Asking Price Gap: Toward a Theory of Efficient Entitlement Allocation

Medical Device Review at the Food and Drug Administration: Lessons from Magnetic Resonance Spectroscopy and Biliary Lithotripsy

College Financial Aid and Antitrust: Applying the Sherman Act to Collaborative Nonprofit Activity

Despite the Smoke, There Is No Gun: Direct Evidence Requirements in Mixed-Motives Employment Law After Price Waterhouse v. Hopkins

Women's Jury Service: Right of Citizenship or Privilege of Difference?

Shouting Down the Voice of the People: Political Parties, Powerful PACs, and Concerns About Corruption

Contract Renegotiation, Mechanism Design, and the Liquidated Damages Rule

Reconciling Professional Ethics and Prosecutorial Power: The No-Contact Rule Debate

Dispute Resolution Within Legislative Institutions

Psychological Health Tests for Violence-Prone Police Officers: Objectives, Shortcomings, and Alternatives

Rust Corrodes: The First Amendment Implications of Rust v. Sullivan

***953** *The Iran-Contra Prosecutions and the Failure of Use Immunity*

Son of COBRA: The Evolution of a Federal Malpractice Law

Employer Liability After Johnson Controls: A No-Fault Solution

Administrative Watchdogs or Zealous Advocates? Implications for Legal Ethics in the Face of Expanded Attorney Liability

Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy

Rotating Japanese Managers in American Subsidiaries of Japanese Firms: A Challenge for American Employment Discrimination Law

Limiting Victim Impact Evidence and Argument After Payne v. Tennessee

Merger and the Machines: An Analysis of the Pro-Compatibility Trend in Computer Software Copyright Cases

Immersed in an Educational Crisis: Alternative Programs for African-American Males

The Case for Heightened Scrutiny in Defense of the Shareholders' Franchise Right

Sometimes There's Nothing Left to Give: The Justification for Denying Water Service to New Consumers to Control Growth

When Mickey Mouse Is as Superman: The Convergence of Intellectual Property Laws to Protect Fictional Literary and Pictorial Characters

Assessing the Constitutionality of Press Restrictions in the Persian Gulf War

Corruption of Blood and Equal Protection: Why the Sins of the Parents Should Not Matter

He Thought He Was Right (But Wasn't): Property Law in Anthony Trollope's The Eustace Diamonds

***954** *Recombinant DNA Technology: A Science Struggling with the Patent Law*

Reimbursing New Technologies: Why Are the Courts Judging Experimental Medicine?

Countervailing Duties in a Not Quite Perfect World: An Economic Analysis

Rape in Prison and AIDS: A Challenge for the Eighth Amendment Framework of Wilson v. Seiter

YALE LAW JOURNAL: Volumes 102-104

Mississippi Learning: Curriculum for the Post-Brown Era of Higher Education Desegregation

Protecting Computer Programs as Compilations Under Computer Associates v. Altai

What's Past is Prologue: Precedent in Literature and Law

The Probation Officer and the Federal Sentencing Guidelines: Strange Philosophical Bedfellows

Legal Realism, Lex Fori, and the Choice-of-Law Revolution

An Idea Whose Time Has Come: A Comparative Procedural History of the Civil Rights Acts of 1960, 1964, and

1991

Allocating the Local Apportionment Pie: What Portion for Resident Aliens?

How the Elephant Lost His Tusks

“Some of the Most Embarrassing Questions”: Extraterritorial Divorces and the Problem of Jurisdiction Before Pennoyer

Stereotyping and Difference: Planned Parenthood v. Casey and the Future of Sex Discrimination Law

Law Firms and Associate Careers: Tournament Theory Versus the Production-Imperative Model

***955** *The Rushdie Incident as Law-and-Literature Parable*

Autonomy and Democracy

Compound-Complex Criminal Statutes and the Constitution: Demanding Unanimity as to Predicate Acts

Plants, Poverty, and Pharmaceutical Patents

Campaign Finance Reform and the Return of Buckley v. Valeo

Who’s Being Greedy? A Theoretical and Empirical Examination of Holdouts and Coercion in Debt Tender and Exchange Offers

Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy

The Persistence of Prejudice: Process-Based Theory and the Retroactivity of the Civil Rights Act of 1991

Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution

The Implications of School Choice for Children with Disabilities

Public Housing: Abandon HOPE, But Not Privatization

Just Disagreement: Indeterminacy and Rationality in the Rule of Law

Medical Malpractice Law and Health Care Cost Containment: Lessons for Reformers from the Clash of Cultures

Reviving Federal Grand Jury Presentments

Popular Sovereignty, Double Jeopardy, and the Dual Sovereignty Doctrine

A Broad Market Approach to Antitrust Product Market Definition in Innovative Industries

The Persistence of Dread in Law and Literature

Not by Risk Alone: Reforming EPA Research Priorities

***956** *Outing, Privacy, and the First Amendment*

An Economic Analysis of Biotechnology Patent Protection

Rethinking Statewide Taxation of Nonresidential Property for Public Schools

Who Decides? Restructuring Criminal Justice for a Democratic South Africa

Hail to the Chief Administrator: The Framers and the President’s Administrative Powers

Conservation Through Cooperation: The Collaborative Planning Process for Utility Conservation and Load Management

A License to Abuse: The Impact of Conditional Status on Female Immigrants

Withdrawal Restrictions in the Automobile Insurance Market

Abolishing Coercion: The Jurisprudence of American Foreign Policy in the 1920's

The Nineteenth Amendment and Women's Equality

Primary Reviews of Other Law Schools

BOSTON UNIVERSITY LAW REVIEW: Volumes 72-74

Donahue v. Fair Employment and Housing Commission: A Free Exercise Defense to Marital Status Discrimination?

Prudent Lenders Need Not Fear O'Day: A Case Comment on the Application of Fraudulent Conveyance Law to LBO Lenders

The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention

Language Classifications and the Equal Protection Clause: When Is Language a Pretext for Race or Ethnicity?

**957 Coming to Terms with the Celestial Jukebox: Keeping the Sound Recording Copyright Viable in the Digital Age*

Title IX and Intercollegiate Athletics: Current Judicial Interpretation of the Standards for Compliance

Section 27A Confronts Lampf and the Constitution

The Status of Weight-Based Employment Discrimination Under the Americans with Disabilities Act After Cook v. Rhode Island Department of Mental Health, Retardation, and Hospitals

Conspiratorial Children? The Intersection of the Federal Juvenile Delinquency Act and Federal Conspiracy Law

The Clinical Trial Exemption from Patent Infringement: Judicial Interpretation of Section 271(e)(1)

Is the North American Free Trade Agreement Entitled to an Economically Rational Countervailing Duty Scheme?

Education Fees in Public Schools: A Practitioner's Guide

American Wedding: Same-Sex Marriage and the Miscegenation Analogy

Should Noli Forfendi Apply to Sunken Ships?

Traditional Tort Principles and Wrongful Conception Child-Rearing Damages

United States v. Juda: Fifth Amendment Due Process and Stateless Vessels on the High Seas

The Older Worker's Benefit Protection Act of 1990: The End of Ratification and Tender Back in ADEA Waiver Cases

Participatory Management and the NLRA: Does the Act Cover Saturn's Autoworkers?

An Informed Electorate: Requiring Broadcasters to Provide Free Airtime to Candidates for Public Office

***958** *State Regulation of Political Broadcast Advertising: Stemming the Tide of Deceptive Negative Attacks*

Real Property Forfeitures as a Weapon in the Government's War on Drugs: A Failure to Protect Innocent Ownership Rights

Electromagnetic Field Injury Claims: Judicial Reaction to an Emerging Public-Health Issue

Species Conservation in the United States: The Ultimate Failure of the Endangered Species Act and Other Land Use Laws

State Constitutional Restraints on the Privatization of Education

The Forty-Eight Hour Rule and County of Riverside v. Mclaughlin

Hafer v. Melo: Personal Liability of State Officers Under 42 U.S.C. § 1983

Substantive Due Process in a State of Flux: Should Courts Develop New Fundamental Rights for Alien Children?

Interstate Branch Banking Reform: Preserving the Policies Underlying the McFadden Act

The Impact of Union Bank v. Wolas on the Ordinary Course of Business Defense to a Trustee's Avoiding Powers

Statutory Civil Rights Claims in Arbitration: Analysis of Gilmer v. Interstate/Johnson Lane Corp.

Court Got Your Tongue? Limitations on Attorney Speech in the Name of Federalism: Gentile v. State Bar

The National Endowment for the Arts Funding Controversy and the Miller Test: A Plea for the Reunification of Art and Society

Austin v. Michigan Chamber of Commerce: Freedom of Expression Issues Implicated by the Government Regulation of Corporate Political Expenditures in Candidate Elections

Dear Professor Lawrence, You Missed the School Bus; Brown v. Board of Education Supports Free Speech on Campus: A Reply

***959** *Local Autonomy, Educational Equity, and Choice: A Criticism of a Proposal to Reform America's Educational System*

EMORY LAW JOURNAL: Volumes 42-43

Proposed Title IX Guidelines on Sex-Based Harassment of Students

Deducting Unemployment Compensation and Ending Employment Discrimination: Continuing Conflict

Regulation of Real Estate Appraisers and Appraisals: The Effects of FIRREA

Medical Expert Systems and Publisher Liability: A Cross-Contextual Analysis

Redefining "Owner or Operator" Under CERCLA to Preserve Traditional Notions of Corporate Law

Integrated Resource Planning and Demand-Side Management in Electric Utility Regulation: Public Utility Panacea, or a Waste of Energy?

The Family and Medical Leave Act of 1993: A Great Idea but a "Rube Goldberg" Solution?

Losing Its Soul: How the Cipolla Case Limits the Catholic Church's Ability to Discipline Sexually Abusive Priests

The Torture Victim Protection Act: More Symbol Than Substance

Deeper into the Political Thicket: Racial and Political Gerrymandering and the Supreme Court

The Wedding Luau—Who Is Invited?: Hawaii, Same-Sex Marriage, and Emerging Realities

A Trend Ephemeral? Eternal? Neither?: A Durational Look at the New Judicial Federalism

Can Anyone Own a Piece of the Clock?: The Troublesome Application of Copyright Law to Works of Historical Fiction, Interpretation, and Theory

***960** *Vicarious Liability of Controlling Persons: Respondeat Superior and the Securities Acts—A Reversible Consensus in the Circuits*

Phone, Fax, and Frustration: Electronic Commercial Speech and Nuisance Law

Public Education: An Inner-City Crisis! Single-Sex Schools: An Inner-City Answer?

Fishkin and Precedent: Liberal Political Theory and the Normative Uses of History

Must God Regulate Religious Corporations? A Proposal for Reform of the Religious Corporation Provisions of the Revised Model Nonprofit Corporation Act

“Full Fathom Five”: Legal Hurdles to Treasure

IOWA LAW REVIEW: Volumes 77-79

FCC Regulation of the Radio Industry: A Safe Harbor for Indecent Programming?

Injustice Telecast: The Illegal Use of Closed-Circuit Television Arraignments and Bail Bond Hearings in Federal Court

The Future of Self-Funded Health Plans

“Final” Orders of Deportation, Motions to Reopen and Reconsider, and Tolling Under the Judicial Review Provisions of the Immigration and Nationality Act

Chiapuzio v. BLT Operating Corporation: What Does it Mean to be Harassed “Because of” Your Sex?: Sexual Stereotyping and the “Bisexual” Harasser Revisited

Master Distributors, Inc. v. Pako Corporation: The Eighth Circuit Refuses to Adopt a Per Se Prohibition on Trademark Protection of a Single Color

Iowa’s Felony-Murder Statute: Eroding Malice and Rejecting the Merger Doctrine

***961** *Earmarking in the Eighth Circuit*

Determining Reliability Factors in Child Hearsay Statements: Wright and Its Progeny Confront the Psychological Research

Iowa’s Limited Liability Company Act: An Entrepreneur’s Dream

Rethinking the Standards for Waiver of Counsel and Proceeding Pro Se in Iowa

In the Best Interests of Children and Adoptive Parents: The Need for Disclosure

Judicial Control of Reproductive Freedom: The Use of Norplant as a Condition of Probation

Iowa’s Dramshop Act and the Non-Liability of Convenience Stores

Burns v. McGregor Electronic Industries: A Per Se Rule Against Admitting Evidence of General Sexual Expression as a Defense to Sexual Harassment Claims

Contemporary Studies Project: An Empirical Examination of the Iowa Bar's Approach to Regulating Lawyer Advertising

Censorship by Multiple Prosecution: "Annihilation, by Attrition if Not Conviction"

Minority Scholarships: A New Battle in the War on Affirmative Action

Florida v. Wells: The Supreme Court Bypasses an Opportunity to Protect Motorists from Abuses of Police Discretion

United States v. Leach and [Internal Revenue Code Section 7521\(C\)](#): Applying a Text-Based Analysis to Provisions of the Tax Code

Lucas Comes to Visit Iowa: Balancing Interests Under Iowa's Rape-Shield Evidentiary Rule

Videotaped Wills: An Evidentiary Tool or a Written Will Substitute?

Payne v. Tennessee: The Future Role of Victim Statements of Opinion in Capital Sentencing Proceedings

**962 Doctrinal Foundations of [Section 1983](#) and the Resurgent Dormant Commerce Clause*

Due Process Comes Due: An Argument for the Clear and Convincing Evidentiary Standard in Sentencing Hearings

The Emergence of the Reasonable Woman in Combating Hostile Environment Sexual Harassment

Reconstructive Surgery on Medical Waste Management

The Exodus of Minorities' Fourth Amendment Rights into Oblivion: Florida v. Bostick and the Merits of Adopting a Per Se Rule Against Random, Suspicionless Bus Searches in the Minority Community

Rethinking the Treatment of Mitigation of Damages Under the Iowa Comparative Fault Act in Light of Tanberg v. Ackerman Inv. Co.

Harmelin v. Michigan and Proportionality Review Under the Eighth Amendment

NEW ENGLAND LAW REVIEW: Volumes 27-29

Daubert v. Merrell Dow Pharmaceuticals, Inc. Requiem for Frye: The Supreme Court Lays to Rest the Common Law Standard for Admitting Scientific Evidence in the Federal Courts

The End Justifies the Means: Building and Construction Trades Council v. Associated Builders and Contractors, Inc.

St. Mary's Honor Center v. Hicks: The "Pretext-Maybe" Approach

Ferreira v. Borja: Land Transactions in the Northern Marianas

Board of Education v. School Committee of Quincy: When a Child in Massachusetts Is Denied a Fundamental Education, the Massachusetts Constitution Is Violated

Shaw v. Reno: Is Remedial Racial Gerrymandering Another Victim of the Pursuit of the Color-Blind Constitution?

Doe v. Town of Plymouth and Officer Paul Tibbetts: When Is the Disclosure of HIV Status Beyond the Call of Duty?

**963 Television Advertising by Attorneys: A Deception Exception?*

Ante Up or Fold: States Attempt to Play Their Hand While Indian Casinos Cash in

Austin v. United States: Applicability of the Eighth Amendment to Civil In Rem Forfeitures

McNultry v. McDowell: *Recognizing Preconception Tort in the Commonwealth?*

Making Black and White Out of Gray: An Attorney's Duty to Investigate Suspected Client Fraud

Evans v. Romer: *The Political Process, Levels of Generality, and Perceived Identifiability in Anti-Gay Rights Initiatives*

Mahoney v. Commonwealth: *A Response to Domestic Violence*

The Big Chill: Davis v. Davis and the Protection of "Potential Life"?

Two Moms and a Baby: Protecting the Nontraditional Family Through Second Parent Adoptions

[Massachusetts General Laws Chapter 258, § 10: Slouching Toward Sovereign Immunity](#)

A Case Frozen in Time: Does Title VII's 1991 Amendment Strip United States v. Burke of Its Precedential Value?

The Evolution of Horizontal Mergers and the 1992 Merger Guidelines

McDermott International v. Wilander: *Seaman Status Revisited*

An Analysis of the Legal Issues Surrounding the Forced Use of Ritalin: Protecting a Child's Right to "Just Say No"

UNIVERSITY OF ILLINOIS LAW REVIEW: Volumes 1992-1994

Questioning the Necessity of Copyright Protection for Software Interfaces

***964** *In Search of a Drinking Companion's Complicity Under Illinois's Dramshop Act*

The Appealability of Conditional Consent Judgments

Multiple Photocopying by Educators and the Fair Use Doctrine: The Court's Role in Reducing Transaction Costs

The Statute of Limitations Barrier in Civil Suits Brought by Adult Survivors of Child Sexual Abuse: A Simple Solution

Defining Property in the Post-Lucas World

"Buy Me Some Peanuts and Cracker Jack," but You Can't Buy the Team: The Scope and Future of Baseball's Antitrust Exemption

People v. Constitution: The Congressional Term Limit Debate and a Constitutional Definition of Qualification

Participation with Representation: Ensuring Workers' Rights in Cooperative Management

Beyond Self-Defense: The Use of Battered Woman Syndrome in Duress Defenses

Nollan and Dolan: *"Taking" a Link Out of the Development Chain*

Institutional Liability for Attacks on ATM Patrons

Issues in the Federal Registration of Flavors as Trademarks for Pharmaceutical Products

The Fiduciary Obligations of a Debtor in Possession

Caller ID: Privacy Protector or Privacy Invader?

Even After Reves, Securities Do Not Have Families: Returning to Economic and Legal Realities Through a Connotative Definition of a Security

Movies and Product Placement: Is Hollywood Turning Films into Commercial Speech?

Appellate Review Under the Bail Reform Act

**965 Wrongful Discharge for In-House Attorneys? Holding the Line Against Lawyers' Self-Interest*

Are Samplers Getting a Bum Rap?: Copyright Infringement or Technological Creativity?

A Tax Deduction for Restitutionary Payments? Solving the Dilemma of the Thwarted Embezzler

Belief in a Nonmaterial Reality—A Proposed First Amendment Definition of Religion

Simplifying the Tax Treatment of Intangibles: It's About Time—But Let's Not Forget Computer Software

Speak of the Devil: First Amendment Protection of Immoral Conduct

Coal, State Protectionism, and the 1990 Clean Air Act Amendments: Why Keeping Sears in Illinois Withstands Commerce Clause Scrutiny, but Keeping Coal Mining Jobs Does Not

Damage Caused by Reintroduced Wildlife: Should the Government be Held Accountable?

Secondary Reviews

ASIAN LAW JOURNAL: Volume 1

Accent Discrimination and the Test of Spoken English: A Call for an Objective Assessment of the Comprehensibility of Nonnative Speakers

BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW: Volumes 20-22

Cleaning Up the Mess, or Messing Up the Cleanup: Does CERCLA's Jurisdictional Bar (Section 113(H)) Prohibit Citizen Suits Brought Under RCRA?

State and Municipal Sewer System Authority Liability Under CERCLA: Who Should Pay for the Cleanup of Hazardous Industrial and Commercial Sewer Discharges?

**966 Taking Wetlands to the Bank: The Role of Wetland Mitigation Banking in a Comprehensive Approach to Wetlands Protection*

Deconstructing the Clean Air Act: Examining the Controversy Surrounding Massachusetts' Adoption of the California Low Emission Vehicle Program

A Constitutional Safety Valve: The Variance in Zoning and Land-Use Based Environmental Controls

Boston Harbor: The Anatomy of a Court-Run Cleanup

Actual Contamination in the Federal Sentencing Guidelines: To Prove or Not to Prove?

From Customary Law to Environmental Impact Assessment: A New Approach to Avoiding Transboundary Environmental Damage Between Canada and the United States

Inverse Condemnation and the Highway Cases: Compensation for Abutting Landowners

From Penn Central to United Artists' I & II: The Rise to Immunity of Historic Preservation Designation from Successful Takings Challenges

Environmental Fraud by Government Contractors: A New Application of the False Claims Act

The Big Green Stick: Reducing International Environmental Degradation Through U.S. Trade Sanctions

The Regulation and Permitting of Recycling Research and Development Facilities in the Commonwealth of Massachusetts

Plastics Recycling Legislation: Not Just the Same Old Garbage

Strange Things Are Afoot at the Circle K: Agency Action Against Leased Sites in Environmental Bankruptcy

Are Kosher Food Laws Constitutionally Kosher?

Harnessing Market Forces in Natural Resources Management: Lessons from the Surf Clam Fishery

***967** *Someone to Watch over Me: Medical Monitoring Costs Under CERCLA*

A Tale of Two Statutes: Twenty Year Judicial Interpretation of the Citizen Suit Provision in the Connecticut Environmental Protection Act and the Minnesota Environmental Rights Act

Environmental Regulation in Michigan and Massachusetts: Two States with Two Different Solutions to the Same Problem

Environmental Tobacco Smoke and Its Effect on Children: Controlling Smoking in the Home

Judicial Interpretation of State Constitutional Rights to a Healthful Environment

Resurrecting an Old Cause of Action for a New Wrong: Battery as a Toxic Tort

Taming the Green Marketing Monster: National Standards for Environmental Marketing Claims

Proving Causation in Toxic Tort Cases: T-Cell Studies as Epidemiological and Particularistic Evidence

Federal Antisecrecy Legislation: A Model Act to Safeguard the Public from Court-Sanctioned Hidden Hazards

The Legitimacy of Environmental Destruction in Modern Warfare: Customary Substance over Conventional Form

The Forest Legacy Program: Using Conservation Easements to Preserve the Northern Forest

Limiting Municipal Solid Waste Liability Under CERCLA: Towards the Toxic Cleanup Equity and Acceleration Act of 1993

Executive Order 12,630: A President's Manipulation of the Fifth Amendment's Just Compensation Clause to Achieve Control over Executive Agency Regulatory Decisionmaking

Land Reform for Post-Apartheid South Africa

***968** *The National Park Service and External Development: Addressing Park Boundary-Area Threats Through Public Nuisance*

COLUMBIA BUSINESS LAW REVIEW: Volumes 1991-1994

Financial Innovation and Derivatives Regulation: Minimizing Swap Credit Risk Under Title V of the Futures Trading Practices Act of 1992

Character of Boot in Divisive Reorganizations: Revenue Ruling 93-62 Errs in Applying Clark Tax Consequences for a Tax-Driven Plan of Reorganization Under Section 1129(d) of the Bankruptcy Code and Section 269 of the Internal Revenue Code

Desirable Economic Cooperation Among High-Technology Industries: A Look at Telephone and Cable

On the Regulation of Personal Data Flows in Europe and the United States

The Law of Franchisor Vicarious Liability: A Critique

Compliance with GAAP and GAAS: Its Proper Use as an Accountant's Defense in a Rule 10b-5 Suit

The NASD's Fair Sales Practice Rules: An Argument for Their Application to Government Securities Transactions, and for the Consideration of Some New Rules in the Mortgage Market

Liability for Forward-Looking Statements: The Securities and Exchange Commission's Ambiguous Stance

Sue or Lose: An Agenda for American Corporations and Companies Seeking Compensation from Iraq

Contracted-for Post-Petition Attorneys' Fees and Collection Costs: United Merchants Revisited

Rock on Trial: Subliminal Message Liability

***969** *No Way Out: Section 546(E) Is No Escape for the Public Shareholder of a Failed LBO*

Accountants' Liability in the Savings and Loan Crisis: An Argument in Favor of Affirmative Defenses

Revising FIRREA to Secure Procedural Due Process for Savings and Loan Owners

Putting the "O" Back in EEO: Why Congress Had to Act So Swiftly After the Supreme Court Decision in Boueslan

Legal Issues Involved in Corporate Globalization

"Contracting Around" the Good Faith Covenant to Avoid Lender Liability

Reading the Fine Print: The Effect of Disclaimers on Employee Welfare Plans

What About the Lucky Leprechaun?: An Argument Against "The Telephone Consumer Protection Act of 1991"

The Virtues of Glass-Steagall: An Argument Against Legislative Repeal

GEORGE WASHINGTON JOURNAL OF INTERNATIONAL LAW AND ECONOMICS: Volume 26

Precision-Guided Munitions Demonstrated Their Pinpoint Accuracy in Desert Storm; But Is a Country Obligated to Use Precision Technology to Minimize Collateral Civilian Injury and Damage?

Eighteen Months to Publication: Should the United States Join Europe and Japan by Promptly Publishing Patent Applications?

The Sinking of the United States Electronics Industry Within Japanese Patent Pools

NAFTA, Foreign Investment, and the Mexican Banking System

Japan's New Trade Secret Law: We Asked for It—Now What Have We Got?

***970 TULANE MARITIME LAW JOURNAL: Volumes 16-17**

A Historical Trek Through the Judicial Interpretations of § 187 of the Limitation of Vessel Owner's Liability Act: The Evolution of the Literal Versus the Statutory Purpose Approach

Protective Stipulations and the Single Claimant Exception in Limitation of Liability Proceedings

Remedies for Wrongful Seizure in Admiralty—Marastro Compania Naviera S.A. v. Canadian Maritime Carriers

Commercial Mayhem on the Trans-Orient Express: Trans-Orient Marine Corp. v. Star Trading & Marine

Plugging the Leaks in the Ship Mortgage Act: Nate Leasing Co. v. Wiggins

Maintenance and Cure: The Courts as Thy Brother's Keeper: Barnes v. Andover Co.

The Avco Exception to the Well Pledged Complaint Doctrine as Applied to the LHWCA: Aaron v. National Union Fire Ins. Co.

Clearing Up the Confusion with the Application of Section 910(F) of the LHWCA: Phillips v. Marine Concrete Structures, Inc.

The CMI Charts a Course on the Sea of Electronic Data Interchange: Rules for Electronic Bills of Lading

Elimination of Loss of Society Damages in General Maritime Law: Cater v. Placid Oil Co.

Mixed Oil and Gas Contracts Performed on Navigable Waters—Maritime or Nonmaritime? Confusion Reigns in State Territorial Waters: Davis & Sons, Inc. v. Gulf Oil Corp.

Limiting Limitation: In re The Glacier Bay

Superseding Cause and Comparative Fault After Reliable Transfer: Lone Star Industries v. Mays Towing Co.

**971 Compulsory River Pilots Granted Jones Act Seaman Status—Sounding the Death Knell of the "Fleet Doctrine": Evans v. United Arab Shipping Company*

Aloha, Bench Trial! Counterclaimant's Jury Right Sinks Plaintiff's 9(H) Designation: Wilmington Trust v. United States District Court for the District of Hawaii

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM: Volumes 25-27

Nothing Lasts Forever: Toward a Coherent Theory in American Preservation Law

Bankruptcy Courts and Stare Decisis: The Need for Restructuring

Toward a More Perfect Union: A Federal Cause of Action for Physician Aid-in-Dying

Verbal Sexual Harassment as Equality-Depriving Conduct

Equity in Public Education: School-Finance Reform in Michigan

You've Built the Bridge, Why Don't You Cross It? A Call for State Labor Laws Prohibiting Private Employment Discrimination on the Basis of Sexual Orientation

A Failure of Communication: An Argument for the Closing of the NYSE Floor

Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors

The Road Not Taken: Criminal Contempt Sanctions and Grand Jury Press Leaks

Balancing Cultural Integrity Against Individual Liberty: Civil Court Review of Ecclesiastical Judgments

***972 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL BUSINESS LAW: Volume 14**

The Parallel Importation of Unauthorized Genuine Goods: Analysis and Observations of the Gray Market

Tied Aid Credits and the New OECD Agreement

***973 APPENDIX B**

RESULTS OF SURVEY

Primary and Secondary Reviews

Dear Managing Editor:

I am collecting information on the operations of student-run law reviews for an article scheduled to appear in the *Utah Law Review*. I would appreciate your help in determining the following information about your publication.

Is your journal a student-run journal? If YES, please continue.

Is this journal the primary or main journal for your school?

48% *Yes*

52% *No*

Do you have a WRITTEN procedure for determining preemption? (To clarify terms, preemption occurs when a paper is rejected because there is already a published article on the same topic.)

9% *Yes*

91% *No*

If you have a WRITTEN procedure, please attach a copy to this survey.⁴⁴

If you do not have a written procedure:

A. Do you screen for preemption?

87% *Yes*

13% *No*

B. How do you teach incoming editors to screen for preemption?

60% *Word of mouth*

30% *Tutorial or seminar*

C. Which resources do you use to check for preemption? (Check all that apply)

79% *LEXIS/Westlaw law review databases*

21% *InfoTrac*

24% *LEXIS Legal Resource Index*

25% *Westlaw topic clearing database*

56% *Topic area knowledge of editorial board (informal)*

40% *Peer review (by faculty, advisory board, etc.)*

21% *Internally created list of topics published by your journal*

*974 D. Can a student-written paper preempt a professor-written paper?

73% *Possibly, depending on quality, authoritativeness of author*

27% *Not possible*

Primary Reviews

Do you have a WRITTEN procedure for determining preemption? (To clarify terms, preemption occurs when a paper is rejected because there is already a published article on the same topic.)

5% *Yes*

95% *No*

If you have a WRITTEN procedure, please attach a copy to this survey.

If you do not have a written procedure:

A. Do you screen for preemption?

86% *Yes*
14% *No*

B. How do you teach incoming editors to screen for preemption?

65% *Word of mouth*
27% *Tutorial or seminar*

C. Which resources do you use to check for preemption? (Check all that apply)

79% *LEXIS/Westlaw law review databases*
21% *InfoTrac*
22% *LEXIS Legal Resource Index*
26% *Westlaw topic clearing database*
61% *Topic area knowledge of editorial board (informal)*
40% *Peer review (by faculty, advisory board, etc.)*
19% *Internally created list of topics published by your journal*

*975 D. Can a student-written paper preempt a professor-written paper?

66% *Possibly, depending on quality, authoritativeness of author*
34% *Not possible*

Secondary Reviews

Do you have a WRITTEN procedure for determining preemption? (To clarify terms, preemption occurs when a paper is rejected because there is already a published article on the same topic.)

12% *Yes*
88% *No*

If you have a WRITTEN procedure, please attach a copy to this survey.

If you do not have a written procedure:

A. Do you screen for preemption?

88% *Yes*
12% *No*

B. How do you teach incoming editors to screen for preemption?

55% *Word of mouth*
33% *Tutorial or seminar*

C. Which resources do you use to check for preemption? (Check all that apply)

78% *LEXIS/Westlaw law review databases*
20% *InfoTrac*
26% *LEXIS Legal Resource Index*
24% *Westlaw topic clearing database*
52% *Topic area knowledge of editorial board (informal)*
39% *Peer review (by faculty, advisory board, etc.)*
23% *Internally created list of topics published by your journal*

D. Can a student-written paper preempt a professor-written paper?

73% *Possibly, depending on quality, authoritativeness of author*
27% *Not possible*

*976 APPENDIX C

SPECIALIZED LEGAL DISCUSSION GROUPS

This list was posted on the news group “misc.legal.moderated” in May 1994, in response to a request on the same news group. I have not updated this list, because world wide web search engines such as Altavista at “http://www.altavista.digital.com” are readily available today and can handily locate a variety of Internet resources—both on Usenet and the web. Altavista currently offers a specialized web search service called “LawCrawler” that will help limit searches to law-related sources.

AIL@austin.onu.edu—Artificial Intelligence and the Law

all-of-elsa@jus.uio.no—European Law Students Assn. List

BIZLAW-L@umab.umd.edu—AALS Section on Bus. Assn. List

CALI-L@cali.kentlaw.edu—Computer Assisted Legal Instruction List

CALL-L@unb.ca—Canadian Academic Law Libraries List

CJUST-L@cunyrm.cuny.edu—Criminal Justice

CNI-COPYRIGHT@cni.org—Copyright and Intellectual Property Forum

COMLAW-L@ucs.ualberta.ca—Computers and Legal Education

CTI-LAW@mailbase.ac.uk—UK List on Use of Information: Technology in Law Teaching

CYBERIA-L@birds.wm.edu—Law & Policy of Computer Networks

data-protection@mailbase.ac.uk—UK Data Protection Law

EDLAW@ukcc.uky.edu—Law and Education

ENVLAWPROFS@oregon.uoregon.edu—International Discussion List for Professors of Environmental Law

EURO-LEX@vm.gmd.de—EC/European Legal Information Sources

*977 FEDTAX-L@SHSU.edu—Federal Taxation

FEMJUR@listserv.syr.edu—Feminist Legal Issues

H-LAW@uicvm.uic.edu—Legal History and Constitutional History

HISLAW-L@ulkyvm.louisville.edu—Canon, Feudal and Common Law

JURIST-L@nic.surfnet.n1—Dutch lawyers List (in Dutch language)

LAW-LIB@ucdavis.edu—US-Based Law Librarians List

LAWPROF@chicagokent.kentlaw.edu—Law Professors and Lecturers List

LAWSCH-L@American.edu—Law Student List

LAWSRC-L@listserv.law.cornell.edu—Internet Law Sources List

LEGWRI-L@chicagokent.kentlaw.edu—List for Legal Writing Instructors

LIS-LAW@mailbase.ac.uk—UK Legal Information/Law Libraries List

PSYLAW-L@UTEPvm.ep.utexas.edu—Psychology and Law List/Discussion

***978 APPENDIX D**

PREEMPTION POLICIES

(These excerpts have been edited to exclude some directions specific to each journal)

AMERICAN JOURNAL OF CRIMINAL LAW

Preemption Check

In selecting manuscripts for publication, it is a high priority that we choose works which add to the existing literature. We are interested in manuscripts which raise new issues, introduce and creatively develop unique ideas, and propose solutions. The extent to which manuscripts achieve this is a large function of the overall quality of the manuscript. One of our primary objects at the *Journal* is to stay with the cutting edge of developments in the field of criminal law. A thorough preemption check is essential to achieving that end.

To conduct a preemption check, please do the following:

1. Read and summarize the manuscript (please type this if possible). Your summary should identify the author's thesis, and any significant subthemes running through the manuscript. Note whether the argument is well-supported (if it makes an argument), whether there are any gaps in logic, etc. Does it offer a solution/new idea, or just articulate a problem?
2. Conduct a Westlaw/LEXIS (or a good old-fashioned library) search to determine what else is out there in law-review land on the subject. If the thesis of the manuscript is subsumed under a larger subject category (e.g. search & seizure, rt. to course), explain the unique twist/insight that the manuscript offers within that subject. Note the titles & cites of any works that address similar concerns. Compare/contrast any closely similar works in a paragraph (or less). If you think the manuscript under consideration adds something worthwhile to the existing works as a whole, explain what that is. If you think the manuscript is a glorified regurgitation of existing similar works, note that and you're done. In any case, after listing the similar works, comparing/contrasting, etc., give your final opinion as to whether you think the manuscript is preempted. Don't stress too much about making the "right" decision here; your opinion will be taken as advisory.
3. Tell what you think about the manuscript. Is it well written stylistically? Does it flow? Is it boring (in the context of a law review *979 manuscript?) Does it address something of use to practitioners, or is it more theoretical/intellectual? You don't need to worry about explaining yourself too much in doing this; just say what you think. The more thoughts and insights we can get into a work, the better assessment we can make as to whether/how well it will fit into our journal.

BOSTON UNIVERSITY LAW REVIEW

A Note About Preemption

Beyond the mere fact that we cannot duplicate another author's work, preemption checks are important for two reasons. First, an exhaustive check at an early stage can save the pain and wasted hard work that occurs upon later discovery of a similar article. Second, an article on the same general topic is not necessarily preemptive if the author plans to discuss a different aspect of the topic or to take an opposing viewpoint. Members who fear preemption of a topic should contact their Note Editor immediately.

The standard of preemption adopted by the *Law Review* is whether a published article or opinion so completely and competently discusses the author's topic that the author cannot significantly add to that discussion. Thus, an article

does not preempt merely because it covers the same subject matter. Preemption will not occur if the published article's treatment is incomplete or superficial or presents an analysis different from that proposed by the member. Doubt regarding preemption should be resolved as early as possible, with awareness that preemption will be reconsidered throughout the writing process.

At this and every other stage of the process, the author should also be aware of the status of any relevant case that is on appeal. The status of these cases can be checked by reference to *U.S. Law Week*, a stored search on LEXIS or Westlaw that is run periodically, or correspondence with the parties' attorneys. The importance of keeping track of the appellate status of cases cannot be overemphasized. The surprise discovery of a recent opinion can necessitate major redrafting at a late stage. The resulting inconvenience increases as the article reaches completion.

***980 CALIFORNIA WESTERN LAW REVIEW**

Preemption Check Guideline

- (1) Search the LegalTrac (last 8 years of the *Current Law Index*) or *Legal Resource Index*. You can also search this on Westlaw using LRI or on LEXIS using LEXREF, LGLIND.
- (2) On Westlaw use the TP-ALL (text periodicals) database to search the topic. This is a selection of law review articles and should not be considered a comprehensive search of all law review articles.
- (3) On LEXIS use the LAWREV, ALLREV to search your topic. The same note of caution applies to searches on LEXIS that applies to Westlaw (see (#2)).
- (4) In the periodicals room use the *Current Law Index* or *Index to Legal Periodicals* to trace journal articles.
- (5) For international law articles, also check the *Index to Foreign Legal Periodicals* in the periodicals room.
- (6) Be sure to look up any articles that seem questionable. Often a glance at the introduction will indicate whether the article preempts the topic. For articles not in our library, try to locate them on Westlaw or LEXIS.

FORDHAM LAW REVIEW

Preemption Searching

Preemption searches are especially important for those of you writing original topic proposals. You must complete a preemption search before you submit your topic proposal. In your search, you are determining whether other Notes and Articles have covered your topic and whether the Supreme Court has heard or will soon hear arguments on your key cases.

A. Preemptive Articles and Notes

You must complete a preemption search to ensure that your topic has not been covered by another author. Your search results, even regarding related topics, must be printed out and attached to any topic proposal that you submit.

You should begin your research with the indices available in the library. These indices include the volume sets entitled *Index to Legal Periodicals* ... and *Current Law Index* ..., as well as a computer-based index known as "WilsonDisc." If these indices show that you have not been preempted, then you must check either the *Index *981 to Legal Periodicals* or the *Current Law Index* to complete your library preemption work.

All of these indices are arranged by topic. In order to use them properly, you must think carefully about all of the areas of the law that your topic implicates. Compare your thoughts to the subject headings of the indices and arrange a set of four or five priorities that you will search. How far back you go depends on your topic. Certain areas of the law are constantly written about because they are big enough to withstand a lot of "traffic." A popular subject area should be searched farther back than an obscure or new topic.

The second part of your inquiry involves both a LEXIS and Westlaw search. Remember that these databases do not contain all of the publications in the library and therefore are no substitute for library work. These services are not always up to date for legal periodicals.

B. Preemptive Decisions

For most topics involving recent federal appellate and state high court cases, you also should check to ensure that your primary cases have not been reversed or overruled. Use Autocite (LEXIS) and Instacite (Westlaw) to check the current status of your cases. The next, more complicated step involves *United States Law Week* (“USLW”). Using the library’s collection, take the following steps:

- (1) Identify the leading cases that underlie your topic;
- (2) Check the “Table of Cases” section of *USLW* for the current term and get the docket number for each case;
- (3) Look up the docket numbers in the “Case Status Report” section. This section may show one or more of the following entries:
 - (a) “Filed”—This indicates the date when the certiorari petition was filed. This is not necessarily a problem because the petition can kick around long enough to complete a Note. If you see this, however, it is a signal for you to stay on top of the case’s status by checking *USLW* every week.
 - (b) “Sum”—This indicates on what page the Editors of *USLW* summarized the cert petition. Check this because the petitioner may not be seeking cert on your issue, in which case you’re probably all right.
 - (c) “Rev den” and “rev grant”—If you see the former, you are in the clear. If you see the latter, you should come talk to the Writing and Research Editor before doing anything else.
 - (d) “Oral arg”—This indicates where the Editors summarize the oral arguments. If you see this, forget about the topic if the cert is on your issue.
- *982 (e) Black triangle—This indicates that the Court has issued an opinion. You are most certainly preempted; read the opinion to see if the decision addressed your issue.

Approval of your topic proposal does not end your responsibility to conduct preemption searches. You must run a LEXIS/Westlaw/*USLW* search weekly and check one of the library indices every two weeks as the updated pamphlets arrive. Inform the Writing & Research Editor and your Notes and Articles Editor immediately if you find anything that looks remotely threatening.

GEORGETOWN JOURNAL OF LEGAL ETHICS

The preemption check must include:

1. Printouts from LEXIS, Westlaw, and the legal periodicals indicates on GULLIVER (the library computerized card catalogue) indicating that there is no article directly on point within the last FIVE years;
2. A copy of the *Legal Ethics* index highlighting any related article/note published on the topic or indicating that nothing even related to the topic has been published in *Legal Ethics*.

NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE

Preemption Check Procedure

Before proceeding with research and development of an article idea, it is important to conduct a “Preemption Check” on your topic to insure that the piece has not already been written. A student article must contribute something original to legal scholarship; it can either be a new approach to an old issue, or an exploration of an issue

about which very little has been written. This is, quite obviously, a difficult task. *Social Change* asks our authors to add something totally new to legal discourse while, at the same time, having sound and fully documented authority for virtually every sentence written. It is not enough simply to juxtapose several pieces which have already been written, or to write a summary of existing scholarship. It is critical to explore articles and books already published about your proposed topic to ensure that your work will truly be original.

***983 REVIEW OF LITIGATION**

Begin your preemption check by consulting the following sources *for the last ten years*:

1. *The Review of Litigation*—Determine whether *The Review* has already published a similar note or article.
2. *Current Law Index (CLI)*—Indexes over 700 legal periodicals. Material indexed by subject, author and title, cases, and statutes. Published in eight monthly issues, three quarterly cumulations, and one annual cumulation. You should check this index prior to going to the *Index to Legal Periodicals*.
3. *Current Index to Legal Periodicals*—Prepared by the University of Washington Law Library. Indexes contents of 175 law reviews under broad general topics with roughly the same subject headings as the *Index to Legal Periodicals*. Issued weekly.
4. *InfoTrac*—Be careful, this does not go back ten years.
5. *Content Pages of Legal Periodicals*—Photocopies of the content pages of selected journals. Compiled by Library staff on a weekly basis. Only need to check back *one month*.
6. *Shepard's Citations*—A complete citation system showing all citations by the state and federal courts to all cases, statutes, and articles reported in various reporter systems and journals.
7. *Westlaw and LEXIS*—Exhaust one source before proceeding to the next. If you find any titles that appear to cover the same topic, read them to decide if your proposed note would make a substantial contribution to the current literature. Carefully read materials that appear squarely on point. The more writing on point, however, the more important your topic must be to merit further treatment. Your note topic may be important enough to publish despite some previous treatment.

TEXAS JOURNAL OF INTERNATIONAL LAW

Preemption Check:

- i. Once you have identified your topic, you must run a preemption check. Your note topic may be preempted in one of two common ways. First, a court decision, usually by the U.S. Supreme Court or a piece of legislation, may render your proposal moot or obsolete. Second, another journal may have already published an article or note that advances the same argument you plan to make or explores substantially the same topic as you want to research.
- ii. The primary purpose of the preemption check is to ensure your topic has not been thoroughly treated elsewhere. Preemption ***984** checks are also valuable because they enhance your understanding of the area of the law, provide useful footnote material, and reveal how other authors have approached the subject matter. When you turn in your preemption memo, and later your substantial sentence outline and bibliography, you are representing that you have carefully surveyed the literature of your field of law and have not found any articles or cases that preempt your topic.
- iii. Preemption check ... time is not wasted; if the preemption check is incomplete, however, time spent researching and writing about a preempted topic is wasted.
- iv. Exhaust one source before proceeding to the next. If you find any titles that appear to cover the same topic (especially the more widely circulated law reviews), read them to decide if your note would make a substantial contribution to the current literature. Carefully read materials which appear squarely on point. The more writing on point, however, the more important your topic must be to merit further treatment. Your note topic may be important

enough to publish despite some previous treatment.

v. Begin your preemption check, by consulting the following sources for the last six months.

a. *UTCAT—Legal Resource Index (LegalTrac)*: The *Legal Resource Index* lists articles published, beginning in 1980, plus selected law-related items in other periodicals. Some full displays give abstracts of the article. The *Legal Resource Index* is updated monthly, and runs about one month behind. You should use the subject/key word option in your search.

b. *Westlaw*: Go into TP-ALL and check for your topic. Remember, a Westlaw search alone is not sufficient because Westlaw does not carry all periodicals. Also, go into LRAC to ensure that a professor is not currently writing an article on the same or similar subject. If you are doing a note on a federal or state case, check InstaCite to determine if your case is still good law, and Shepard's, Shepard's preview, and QuickCite to determine what cases have cited your case.

c. *Current Law Index (CLI)*: Indexes over 700 legal periodicals. Material indexed by subject, author/title, cases, and statutes. Published in eight monthly issues, three quarterly cumulative issues and one annual cumulative issue. ... You should check this index prior to going to the *Index to Legal Periodicals*.

d. *Content Pages of Legal Periodicals*: Photocopies of the content pages of selected journals are compiled by library staff on a weekly basis. ... You should also check the content pages for the last six months of the international law journals which are located in a binder in the TILJ office.

***985 UNIVERSITY LOUISVILLE JOURNAL OF FAMILY LAW**

Topic Not Recently Dealt With.

You must research any topic that you tentatively select in the *Index of Legal Periodicals* to insure that no legal publication has duplicated the subject within the past five years. You commonly will discover that another author has recently written about your tentative topic.

DON'T BE DISCOURAGED! This conflict is common. You still possibly may use the same general idea, but you may have to focus on another angle or take a unique approach. Articles more than five years old may be outdated because of new cases. You may be able to show how conclusions or predictions in the old article have proven incorrect in light of new case law or statutes. You may be able to narrow or broaden the topic previously addressed.

VIRGINIA JOURNAL OF INTERNATIONAL LAW

Consult the *Index of Legal Periodicals*, *Legal Resource Index*, and other indices. Westlaw and/or LEXIS are also very helpful, but because they may not be complete, please *do not rely solely on them!* Search *all* relevant subject headings under which this article may be indexed and identify any titles that appear to be substantially similar.

Be especially sensitive to *major* plagiarism problems here (minor problems will be caught during the initial edit if the article is accepted).

If a subsequent judicial decision, statute, regulation, etc. could conceivably render the author's analysis irrelevant, perform a LEXIS or Westlaw search to verify that the analysis is still valid. List below any pending cases, bills, proposed rule makings, etc. which might affect the value of this article in the future.

WILLIAM MITCHELL LAW REVIEW

Determining Legal Significance

The first task that a writer faces after choosing a subject is to determine the legal significance of the topic. This involves a comprehensive analysis of the significance of the decision in light of prior authority. Adequate preliminary research may indicate that the topic is not worthy of law review treatment. Often an important legal

issue will have already been addressed extensively and adequately *986 in other law reviews. Discovering this at an early stage will save the writer many hours of wasted time and effort. The following suggestions may help to determine the legal significance of the topic:

1. When writing a Comment or Note, read the case or statute several times, underline the issues you think are important and present a significant legal problem.
2. Familiarize yourself with the general area of law treated in your Comment or Note. Check the amount of legal literature available. The following sources should be checked: encyclopedias, leading texts and hornbooks, A.L.R.s, Restatements, West Digests, *Index to Legal Periodicals* and the latest indexes of leading periodicals (especially the Minnesota, Hamline, and William Mitchell Law Reviews, Commerce Clearing House and Prentice-Hall Services, and any pertinent uniform and model legislation). A computer search on either Westlaw or LEXIS or both is important but not sufficient.
3. Evaluate the issues presented by your topic in light of authority and commentary.

Footnotes

- a1 J.D., 1994, Boalt Hall School of Law. This paper was originally written as a “pathfinder” for the advanced legal research course at Boalt Hall School of Law, taught by Robert Berring and Kathleen Vanden Heuvel. The author would like to thank Karen Norgaard for her excellent assistance in tabulating and analyzing survey results and updating this paper in 1996.
- 1 UNIVERSITY OF CAL. AT BERKELEY SCHOOL OF LAW (BOALT HALL), ACADEMIC RULES § 1.01(E)(1) (1994).
- 2 Debra Kaufman, *Writing Research Results for Publication*, 84 L. LIBR. J. 617, 617 (1992) (quoting John Budd, *Publication in Information Science: The State of the Literature*, LIBR. J., Sept. 1, 1988, at 125, 128).
- 3 *Id.* at 618.
- 4 My support for this, and most of the other uncited statements regarding operational procedures for law reviews, is my own experience at the *High Technology Law Journal*, 1993-94.
- 5 This is probably not as daunting as it sounds. For instance, see *infra* part II.A.2.c regarding the use of loose-leaf services. My example in that section is *Mealey’s Intellectual Property Reporter*. Finding the equivalent is a trivial task: look for the *Mealey’s* reporter in the area of interest. The best key to equivalent sources is probably the publisher.
- 6 For a detailed discussion of the peer review process, see Thomas McGarity, *Peer Review in Awarding Federal Grants in the Arts and Sciences*, 9 HIGH TECH. L.J. 1 (1994).
- 7 JOSEPH GIBALDI, *MLA HANDBOOK FOR WRITERS OF RESEARCH PAPERS* 4 (4th ed. 1995).
- 8 PAT F. BOOTH, *REPORT WRITING: GUIDELINES FOR INFORMATION WORKERS* 5 (1985).
- 9 LUCYLE HOOK & MARY V. GAVER, *THE RESEARCH PAPER* 2 (4th ed. 1969).
- 10 ADRIAN A. PARADIS, *THE RESEARCH HANDBOOK* 127 (1974).
- 11 I have determined which are student notes and comments (as opposed to articles) by looking for the designation “note” or “comment” in the title. Because each law review may have a slightly different definition of what constitutes a “note” or a “comment,” some of the entries may not actually be student writing.

- 12 Some examples, culled from Appendix A, include: Diane K. Danielson, Comment, *Environmental Regulation in Michigan and Massachusetts: Two States with Two Different Solutions to the Same Problem*, 20 B.C. ENVTL. AFF. L. REV. 99 (1992); Paula A. Ragusa, Note, *Eighteen Months to Publication: Should the United States Join Europe and Japan by Promptly Publishing Patent Applications?*, 26 GEO. WASH. J. INT'L L. & ECON. 143 (1992); Alex E. Rogers, Note, *Clothing State Governmental Entities with Sovereign Immunity: Disarray in the Eleventh Amendment Arm-of-the-State Doctrine*, 92 COLUM. L. REV. 1243 (1992).
- 13 Some examples from Appendix A include: Craig A. Bowman & Blake M. Cornish, Note, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164 (1992); Michael S. Greenfield, Note, *Recombinant DNA Technology: A Science Struggling with the Patent Law*, 44 STAN. L. REV. 1051 (1992); Christopher J. McAuliffe, Comment, *Resurrecting an Old Cause of Action for a New Wrong: Battery as a Toxic Tort*, 20 B.C. ENVTL. AFF. L. REV. 265 (1993); Jennifer L. Radner, Comment, *Phone, Fax, and Frustration: Electronic Commercial Speech and Nuisance Law*, 42 EMORY L.J. 359 (1993); Sean M. SeLegue, Comment, *Campus Anti-Slur Regulations: Speakers, Victims, and the First Amendment*, 79 CAL.L.REV. 919 (1991).
- 14 JUDITH AREEN, FAMILY LAW—CASES AND MATERIALS ON FAMILY LAW 825-28 (2d ed. 1985).
- 15 ROBERT A. GORMAN & JANE C. GINSBERG, COPYRIGHT FOR THE NINETIES 675 (1993). The book goes on to outline the split in authority between the Northern District of Illinois, the District of New Jersey, the Ninth Circuit, and the Eleventh Circuit. *Id.* at 676. Most notably, although the book includes references to two law review articles on related subjects, it does not include an article on the resolution of the split.
- 16 PAUL GOLDSTEIN, COPYRIGHT, PATENT, TRADEMARK, AND RELATED STATE DOCTRINES 708 (3d ed. 1990). This conflict was examined by the Supreme Court in *Fogerty v. Fantasy, Inc.*, 114 S.Ct. 1023 (1994), while this guide was being prepared.
- 17 JESSE DUKEMINIER, PROPERTY 252 (Gilbert Law Summaries ed., 12th ed. 1985).
- 18 MARGRETH BARRETT, INTELLECTUAL PROPERTY 178-79 (Emanuel Law Outlines, Inc. ed., 1991).
- 19 MELVIN A. EISENBERG, CONTRACTS 90 (Gilbert Law Summaries ed., 11th ed. 1984-1985).
- 20 2 CHILD CUSTODY & VISITATION LAW AND PRACTICE § 10.04[4], at 10-74 (John P. McCahey et al. eds., 1995).
- 21 2 ROGER MILGRIM, MILGRIM ON TRADE SECRETS § 2.06[3], at 2-113 (1990).
- 22 2 EARL A. BROWN & EARL A. BROWN JR., THE LAW OF OIL AND GAS LEASES § 16.02, at 16-39 (1990).
- 23 ARYEW S. FRIEDMAN, THE LAW OF HIGH TECHNOLOGY INNOVATION § 3.08, at 3-15 (1992).
- 24 In Westlaw, “courts” is topic number 106, so a search on subtopic 90 would use the search term “106k90.”
- 25 This is because LEXIS formats its law reviews with the word “footnotes” and will not allow a search on the word “footnote” (singular) without “footnotes” (plural).
- 26 *See, e.g., Mitchell v. Budd*, 350 U.S. 473, 474 (1956) (granting certiorari to resolve circuit conflict).
- 27 Book Note, *The Uncertainty of Cert.*, 105 HARV. L. REV. 1795, 1795 (1991) (reviewing H.W. PERRY, JR., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT (1991)).

- 28 Moreover, many other students may be culling this source for paper topics.
- 29 THOMAS A. MATTHEWS & BYRON S. MATTHEWS, *MUNICIPAL ORDINANCES: TEXT AND FORMS* (2d ed. 1984).
- 30 MODEL CODE OF JUDICIAL CONDUCT Canon 3B(7) (1990).
- 31 Telephone Interview with Dean Newton, Articles Co-Chairman, *Harvard Law Review* (Apr. 4, 1994).
- 32 To admit a lack of material is damaging to the review's reputation and may also be dangerous in terms of campus politics because secondary reviews sometimes occupy a "second-class" position on campus with respect to the primary law review, while competing with the primary review for resources and membership.
- 33 Michael D. Stokes, *How to Get Your Article Published by a Law Review*, A.B.A. J., Oct. 1985, at 144, 144.
- 34 The written procedures supplied to me in the survey are attached as Appendix D.
- 35 Phil Nichols, Note, *A Student Defense of Student Edited Journals: In Response to Roger Cramton*, 1987 DUKE L.J. 1122, 1124-32 (1987).
- 36 Stokes, *supra* note 33, at 144 (stating that preemption is "difficult to discern").
- 37 Telephone Interview with Dean Newton, *supra* note 31.
- 38 *Id.*
- 39 Heather J. Meeker, Note, *Issues of Property, Ethics and Consent in the Transplantation of Fetal Reproductive Tissue*, 9 HIGH TECH. L.J. 185 (1994).
- 40 LIBRARY OF CONGRESS SUBJECT HEADINGS (18th ed. 1995).
- 41 Jonathan Hersey, *Enigma of the Unborn Mother: Legal and Ethical Considerations of Aborted Fetal Ovarian Tissue and Ova Transplantations*, 43 UCLA L. REV. 159 (1995).
- 42 My published note, which appeared in a journal issue dated Fall 1991, was in the 4/14/95-7/13/95 *Index to Legal Periodicals* under "fetal tissue."
- 43 This comes from the text in the "SCOPE" command in Westlaw for the database "JLR."
- 44 For responses, see *infra* Appendix D.