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Lead Articles of Interest

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LEAD ARTICLES OF INTEREST

As a service to the practicing lawyer the staff of the Review has included the following digest of recent lead articles from other journals. Since most attorneys do not have a periodical index available for immediate reference, many interesting and useful articles go unnoticed. The following summary of selected law review articles is intended as a substitute for the periodical index most law offices lack. We look forward to any comments or constructive criticism our subscribers might have regarding this new section, which we hope will become a regular feature. Reprints of the articles discussed are available at the addresses following each summary.

ADMINISTRATION OF DECEDENTS ESTATES

COLLECTING A DECEDENT'S ASSETS WITHOUT ANCILLARY ADMINISTRATION

Neill H. Alford, Jr.

18 Sw. L.J. 329 (1964).

This article succinctly reviews the historical development of ancillary administration from its inception in England to the present, then proceeds to explore in detail the intricacies involved via a hypothetical case. The principal of the case is a colonel in the United States Army who dies leaving real and personal property throughout the United States and Europe. Mr. Alford discusses the means available for collection of these assets, as well as suggesting approaches by which the practitioner may obviate many of the problems one invariably encounters in the liquidation and recovery of foreign assets.

Address: *Southwestern Law Journal, Southern Methodist University School of Law, Dallas 22, Texas.*

CREDITORS' RIGHTS

DEBTOR-CREDITOR CONFLICT OVER ACCELERATION

Sylvia J. Hardaway

16 U. FLA. L. REV. 163 (1964).

Mortgages and similar instruments frequently provide that the whole debt is to become due and payable upon the debtor's failure to pay principal installments or interest, or to comply with other requirements of the mortgage agreement. The courts of this country uniformly acknowledge the validity of such acceleration clauses, but they have continually promulgated confusing precedents when

construing these clauses. In this article, Hardaway attempts a critical analysis of the confusion in this area. Three problem areas particularly troublesome in construing acceleration clauses are considered. They are: (1) whether an absolute acceleration clause is self-executing or optional with the mortgagee; (2) under what particular circumstances will equity grant relief to the debtor from the hardship of acceleration; and (3) how shall interest requirements be handled? Though the author expends some effort analyzing Florida law, his extensive discussion of general minority and majority views in each of the three problem areas should be useful to the practicing attorney.

Address: *Univ. of Fla. L. Rev.*, Room 116, Law Bldg., Univ. of Fla., Gainesville, Florida.

EMINENT DOMAIN

WHEN IS STATE LAW APPLIED TO FEDERAL ACQUISITIONS OF REAL PROPERTY

Lawrence Berger
44 NEB. L. REV. 65 (1965).

In this article Mr. Berger undertakes to delimit the circumstances under which state or federal law will govern the various issues connected with federal acquisition of real property. In so doing, the author provides a compendium of pertinent cases, attempts to reconcile them, and formulates criteria for resolution of the issues involved.

Address: *Nebraska Law Review*, College of Law, University of Nebraska, Lincoln 8, Nebraska.

INSURANCE

"INCONTESTABLE"—AS TO WHAT?

William F. Young, Jr.
1964 U. ILL. L.F. 323 (1964).

The article covers the relation of the incontestability clause of the insurance policy to the inception, coverage and sound health clauses. The Conway distinction is set out; that the incontestable clause is not a mandate as to coverage nor is it a definition of the hazards to be borne by the insurer. He concludes that an astute policy draftsman may easily eviscerate the required incontestability clause by simply stating that the policy does not cover death in certain circumstances, then setting out the circumstances of a desired defense. He says that legislation is the answer to the quick-witted draftsman and the protection of the witless insured.

Address: *Law Forum*, College of Law, University of Illinois, Urbana, Illinois.

WAIVER (N) OR ESTOPPEL
C. Frank Aldrich
1964 U. ILL. L.F. 342 (1964).

Aldrich's article covers the uses of waiver and estoppel in a number of cases illustrating the great variety of uses to which these weapons of the insured can be put. Waiver and estoppel as effecting commencement of the contract, its termination, and as against defenses to claims under policies admittedly in force are discussed. The author contends the courts, in their efforts to protect the insured have been overly zealous and made the rules subjective tests and, in so doing, have destroyed the distinction between them. He contends that the failure to recognize the distinction between waiver and estoppel has led to rules of law that are unsound and sometimes result in questionable decisions, but more often require questionable reasoning to reach a sound decision.

Address: *Law Forum, College of Law, University of Illinois, Urbana, Illinois.*

THE INSURED EVENT: DISABILITY INSURANCE

Walter W. Siebert
1964 U. ILL. L.F. 382 (1964).

A discussion concerning the history of disability insurance begins this article. It continues by commenting on general policy provisions and the legal meaning of terms embodied in the policies. The entire article is geared to Illinois law with a brief discussion concerning the law in various other jurisdictions which might be useful to lawyers outside Illinois.

Address: *Law Forum, College of Law, University of Illinois, Urbana, Illinois.*

CHANGE OF LIFE INSURANCE BENEFICIARY

Herbert C. Brook
1964 U. ILL. L.F. 426 (1964).

This article contains a brief history of law on the changing of life insurance beneficiaries. It deals further with the general policy requirements concerning such change in beneficiary. The various other rules concerning a change in beneficiary are dealt with as well as the contract problems.

Address: *Law Forum, College of Law, University of Illinois, Urbana, Illinois.*

PERPETUITIES

REMOVAL OF FUTURE INTEREST ENCUMBRANCES—
SALE OF THE FEE SIMPLE ESTATE

Candler S. Rogers
17 VAND. L. REV. 1437 (1964).

Mr. Rogers points out the need for legislation which would provide for judicial termination of future interests. He cites the hesitancy of the judiciary to use its equity powers as causing the need for such legislation.

Address: *Vanderbilt Law Review, Vanderbilt School of Law, Nashville 5, Tennessee.*

REAL PROPERTY

CHANGING CONCEPTS IN THE LAW OF LAND USE

John E. Cribbet
50 IOWA L. REV. 245 (1965).

In this article, Professor Cribbet traces the evolution of property concepts relating to land use from Blackstone to the present time. He analyzes past, present, and future developments in zoning, building, and housing codes, subdivision regulations, official maps, open-space controls, and urban renewal legislation.

Address: *Iowa Law Review, College of Law, University of Iowa, Iowa City, Iowa.*

ALLOCATION OF RIGHTS IN LAND:

PRELIMINARY CONSIDERATIONS

Richard G. Huber
50 IOWA L. REV. 279 (1965).

This article is primarily a detailed study and analysis of the various social, political and psychological factors which go into a determination of the value of land. It is "in a sense . . . a primer for planners, as it . . . attempt(s) to point out the majority of those considerations that have affected and will affect the use of land." The article would be most useful to state and local officials who must make decisions affecting land-use.

Address: *Iowa Law Review, College of Law, University of Iowa, Iowa City, Iowa.*

FEDERAL PROGRAMS FOR THE DIRECTION OF LAND USE

Raleigh Barlowe
50 IOWA L. REV. 337 (1965).

The role of the federal government in the area of land-use is

the theme of this article. It discusses the various powers of the federal government which are used to affect land-uses and explains their nature, sources and extent. The main thrust of the article is its explanation of how these various powers can be used to get a desired result.

Address: *Iowa Law Review, College of Law, University of Iowa, Iowa City, Iowa.*

LAND-USE CONTROL—THE STATE AND LOCAL PROGRAMS

Roger A. Cunningham

50 IOWA L. REV. 367 (1965).

This article deals with the various programs and systems used by state and local authorities to control land use and development. It "is devoted to a description and evaluation of the most important land-use controls based upon the police power of state and local governments—zoning and subdivision regulations—and the urban renewal program based upon the power of state and local governments to tax, borrow, spend and condemn for public purposes."

Address: *Iowa Law Review, College of Law, University of Iowa, Iowa City, Iowa.*

RULES OF CONSTRUCTION

LAW, RULES, AND THE INTERPRETATION OF WRITTEN DOCUMENTS

Lawrence M. Friedman

59 NW. U.L. REV. 751 (1965).

Mr. Friedman gives an extended analysis of the development and use of mandatory and discretionary rules of construction by the courts. He directs his comments to those areas of the law where rules of construction become increasingly important: negotiable instruments, wills, real property, and contracts.

Address: *Business Manager, Northwestern University Law Review, Northwestern University School of Law, Chicago, Illinois, 60611.*

TAXATION

CLIFFORD TRUSTS: USE OF PARTNERSHIP INTERESTS AS CORPUS; LEASEBACK ARRANGEMENTS

Charles W. Froelich, Jr.

52 CALIF. L. REV. 956 (1964).

Mr. Froelich makes an extended analysis of the advantages of and various uses for the "Clifford Trust." This device can prove very useful for splitting income for tax purposes.

Address: *California Law Review, Inc., School of Law, University of California, Berkeley, California.*

THE RECAPTURE OF DEPRECIATION

Hoffman F. Fuller

39 TUL. L. REV. 15 (1964).

This article presents a thorough examination of the relationship between depreciation deductions and the tax effects to the property owner resulting from subsequent disposition of the depreciated property.

Address: *Tulane Law Review Association, Tulane University, New Orleans, Louisiana, 70118.*

THE TAXATION OF ITEMS OF GROSS INCOME

RECEIVED BY ESTATES OF DECEDENTS

Benjamin C. Langel

13 KAN. L. REV. 265 (1964).

Mr. Langel's article deals almost exclusively with taxation of items actually included in the gross income of the estate, but the taxation of decedents and of beneficiaries is also discussed where necessary to give the reader an over-all understanding of the statutory scheme involved. The first part of the article is devoted to a broad discussion of the general statutory scheme behind the taxation of estates. Though this portion of the article is brief, it does afford an understanding of how individual income items are taxed so an executor could treat the simpler and more commonplace income problems without need of any further research. The second part of the article is devoted to a discussion of individual items that are in some way unique to estates or decedents and how income from them should be treated. Included in this analysis are accounts receivable, advancements, bond income, capital transactions as well as many other items of interest to the practicing attorney.

Address: *University of Kansas Law Review, Green Hall, Lawrence, Kansas.*

TORTS

INSURANCE PROTECTION AND DAMAGE AWARDS

IN MEDICAL MALPRACTICE

Oliver Charles Schroeder, Jr.

25 OHIO ST. L.J. 323 (1964).

In this article Mr. Schroeder reviews the typical medical liability policy and the problem of damage awards in medical malpractice cases. A discussion of the insurance contract is broken down into five facets: defense and settlement issues, conditions of the contract, exclusions from the contract, time limits of contract coverage and notice to the insurer. The author also discusses the various court policies toward damage awards in malpractice suits, the conclusion

being devoted to a discussion of the problems involved in the meshing together of damages law with insurance law.

Address: *Ohio State Law Journal, College of Law, The Ohio State University, Columbus, Ohio, 43210.*

THE STATUS OF THE DOCTRINE OF CHARITABLE IMMUNITY
IN HOSPITAL CASES

John F. Horty

25 OHIO ST. L.J. 343 (1964).

This article discusses the various theories that have been used to explain and justify the charitable immunity doctrine as applied to hospitals. There are four basic theories applied to this doctrine. They are, however, often used in conjunction with each other and are often intermixed in the court's reasoning. Mr. Horty points out that charitable immunity has a "speckled past and an uncertain future" while breaking down of the current status of the doctrine in each state.

Address: *Ohio State Law Journal, College of Law, The Ohio State University, Columbus, Ohio, 43210.*

MODERN MEDICO-LEGAL TRENDS

Anne M. Knisely

25 OHIO ST. L.J. 360 (1964).

This article discusses some of the various trends toward wider bases of hospital liability that have resulted from an increase in the size and efficiency of hospitals and a decrease in opportunity for the "old fashioned" human, personal relationship between physician and patient. The author also discusses and criticizes the application of the doctrine of *res ipsa loquitur* to medical malpractice cases. In conclusion, Knisely discusses the future course of legal remedies available for injuries induced by medical malpractice, which remain unsettled because of the problem of weighing the interests of the patient against those of the physician.

Address: *Ohio State Law Journal, College of Law, The Ohio State University, Columbus, Ohio, 43210.*

MEDICAL MALPRACTICE

Benjamin D. Nicola

25 OHIO ST. L.J. 378 (1964).

Once having undertaken the care of a patient, the law imposes upon the physician the obligation of exercising due care and the amount of skill common to his profession and commensurate with his position. The article is primarily concerned with the standards of skill and care demanded of the physician in both general and particular circumstances. Such factors as the school of medicine

to which the practitioner belongs, the established modes of practice and the locality of practice are covered. The article then goes on to discuss the application of these standards to particular treatment.

Address: *Ohio State Law Journal, College of Law, The Ohio State University, Columbus, Ohio, 43210.*