SOUTHWESTERN LAW REVIEW



VOLUME 49 2021 Number 3

TABLE OF CONTENTS

DEDICATION	
Byron G. Stier	348
NEW FRONTIERS IN TORT LAW AND THE CHALLENGES OF SCIENCE, TECHNOLOGY & INNOVATION: AN INTRODUCTION	
Byron G. Stier	.349
ARTICLES	
HOLISTIC TORT THEORY	
Alan Calnan	.362
RENDERING JUSTICE IN KEY AREAS OF TORT LAW IN THE NEXT DECADE	
Victor E. Schwartz	.378
OUTGUNNED NO MORE?: REVIVING A FIREARMS INDUSTRY MASS TORT	
LITIGATION	
Linda S. Mullenix	.390
THE RULE OF SCIENCE AND THE RULE OF LAW	
Mark A. Behrens & Andrew J. Trask	436
BRAVE NEW WORLD: TECHNOLOGY AND TORT PRACTICE	
Richard Marcus	.455

INCORPORATING AN ACTUAL MALICE EXCEPTION TO SECTION 230 OF THE COMMUNICATIONS DECENCY ACT Christopher Robinette & Shannon N. Costa
TORTS: PAST, PRESENT, AND FUTURE—PRESENTATION OF BRIAN PANISH Brian Panish
TORTS: PAST, PRESENT, AND FUTURE—PRESENTATION OF VICTOR SCHWARTZ Victor F.
Schwartz
NEW DEVELOPMENTS IN TORT LITIGATION: PRESENTATION OF FRANCIS MCGOVERN
Francis McGovern
THE EDUCATION OF THE JUDICIARY: THE SCIENCES ADDRESSING DISEASE CAUSATION
Michael Green
NEW MEANS OF FINANCING TORT LAWSUITS AND LAW FIRMS: PRESENTATION OF ANTHONY SEBOK Anthony Sebok
NEW MEANS OF FINANCING TORT LAWSUITS AND LAW FIRMS: PRESENTATION OF JAMES FISCHER James Fischer
NOTES AND COMMENTS
BRINGING LENDERS BACK TO THE GAME: HARMONIZING ACCESS TO AFFORDABLE HOUSING WHILE PROTECTING YOUR TAX DOLLARS FROM FRAUD Brandon Faus
THE PARADOX OF S.B. 1421: A NEW TOOL TO SHED LIGHT ON POLICE MISCONDUCT AND A PERVERSE INCENTIVE TO COVER IT UP Carina Miller

SOUTHWESTERN LAW REVIEW

VOLUME 49 2020 Number 3

2019-2020

Editor-in-Chief KELSEY FINN

Managing Editor BENJAMIN ISRAEL

Senior Lead Articles Editor SARAH SCHWARZMAN

Special Projects Editor DAVID ZAKHARIAN

Notes & Comments Editors
ASHLEY KOLEY
JAYNEE MATHIS

Lead Articles Editors NADIA ABOUJAWDAH ROBERT CARRASCO BRANDON FAUS MELISSA ZIGRANG

Associate Editors
ARIELLE FARIAS
ARIEL RAHIMI
BRANDON SALUMBIDES

Staff

ARYA AFIGHOM ABRAHAM BRAN JESSICA BULAON BLANCA CHAVEZ SAMANTHA DENNIS JAMES GLASSMAN ANDREW HYMAN SUNA IZGI ERICA JANSSON MARIA JARAMILLO MATTHEW KHIM OLGA KUZMINA KEILA MAGANA
ALEEZA MARASHLIAN
MARINA MELIKYAN
VACHE MURADIAN
HALEY POLLOCK
MARCO RAMOS
YOSEPH RIXIT
ALEJANDRO ROSA MATA
MEGAN RUTENBERG
SAMANTHA SCHURMER
SEYONEH SARKISIAN
JAMES STATTON
LINDSAY TUROSO

Faculty Advisors

BETH CALDWELL, B.A., M.S.W., J.D. MARK CAMMACK, B.A., J.D.

SOUTHWESTERN LAW SCHOOL 2020-2021

BOARD OF TRUSTEES

PATRICK BAGHDASERIANS HON, DEBORAH S, BRAZIL

KEVIN BURKE STEVEN P. BYRNE MICHAEL E. CAHILL THOMAS L. DRISCOLL PETER DUCHESNEAU CHARLES P. FAIRCHILD JOHN M. GERRO JAHMY S. GRAHAM

HON. J. GARY HASTINGS KAREN A. HENRY THOMAS H. HOBERMAN

LAUREN B. LEICHTMAN

MARIA MEHRANIAN

HON. ROBERT H. PHILIBOSIAN

CHERIE S. RAIDY MEE H. SEMCKEN CARLOS A. SIDERMAN GEORGE WOOLVERTON JULIE K. XANDERS WALTER M. YOKA

DENNIS P.R. CODON, Trustee Emeritus SHELDON A. GEBB, Trustee Emeritus HON. RONALD S.W. LEW, Trustee Emeritus

BRIAN A. SUN, Trustee Emeritus

HON. ARLEIGH M. WOODS, Trustee Emerita

ADMINISTRATION

CHARLES P. FAIRCHILD, B.A., J.D., LL.M., Chair of the Board of Trustees

SUSAN WESTERBERG PRAGER, B.A., M.A., J.D., Dean and President

MICHAEL CARTER, B.A., M.B.A., Ed.D., Executive Vice President and Chief Administrative Officer

Anahid Gharakhanian, B.A., J.D., Vice Dean

DOV A. WAISMAN, A.B., M.S., J.D., Vice Dean

HILLARY KANE, B.A., J.D., Chief Communications and Marketing Officer

NYDIA DUENEZ, B.A., J.D., Associate Dean, Dean of Students and Diversity Affairs

DOREEN E. HEYER, B.S., M.S., Senior Associate Dean for Academic Administration

MARCIE CANAL, B.A., Associate Dean of Operations and Risk Management

MARGARET HALL, B.A., M.L.I.S., J.D., Associate Dean and Law Library Director

HILA KEREN, L.L.B., Ph.D., Associate Dean for Research

 $\label{eq:decomposition} \textbf{Debra}\ \textbf{L}.\ \textbf{Leathers}, \textbf{B}. \textbf{A}., \textit{Associate Dean for Institutional Advancement}$

ROBERT MENA, B.A., M.S., Ed.D., Associate Dean for Student Affairs

SHAHRZAD POORMOSLEH, B.A., J.D., Associate Dean for Career Services

HARRIET M. ROLNICK, B.A., J.D., Associate Dean for SCALE®

BYRON STIER, B.A., J.D., LL.M., Associate Dean for Strategic Initiatives

TRACY L. TURNER, B.A., J.D., Associate Dean for Learning Outcomes

JULIE K. WATERSTONE, B.A., J.D., Associate Dean for Experiential Learning

MARY BASICK, B.S., J.D., Assistant Dean of Bar Preparation

LISA M. GEAR, B.A., Assistant Dean for Admissions

NATALIE RODRIGUEZ, B.A., J.D., Assistant Dean of Academic Success

FULL-TIME FACULTY

RONALD G. ARONOVSKY, A.B., J.D., Professor of Law

MARY BASICK, B.S., J.D., Assistant Dean of Bar Preparation, Associate Professor of Law for Academic Success and Bar Preparation

PAUL A. BATEMAN, B.A., M.A., Ph.D., Professor of Legal Analysis, Writing, and Skills

MICHAEL J. BERGER, B.A., M.A., J.D., Associate Professor of Law

BETH CALDWELL, B.A., M.S.W., J.D., Professor of Legal Analysis, Writing, and Skills

CHRISTOPHER DAVID RUIZ CAMERON, B.A., J.D., Justice Marshall F. McComb Professor of Law

MARK CAMMACK, B.A., J.D., Professor of Law

KATHRYN CAMPBELL, B.A., J.D., Professor of Legal Analysis, Writing, and Skills

CATHERINE L. CARPENTER, B.A., J.D., The Honorable Arleigh M. Woods and William T. Woods Professor of Law and Co-Director of the Moot Court Honors Program

BRIDGETTE M. DE GYARFAS, B.S., J.D., Associate Professor of Legal Analysis, Writing, and Skills

ALEXANDRA D'ITALIA, B.A., J.D., M.P.W., Associate Professor of Law and Director of Writing Center, Co-Director of the Moot Court Honors Program

MICHAEL B. DORFF, A.B., J.D., Michael & Jessica Downer Endowed Chair, Professor of Law and Technology Law & Entrepreneurship Program Director

MICHAEL M. EPSTEIN, B.A., J.D., M.A., Ph.D., Professor of Law and Supervising Editor of the Journal of International Media and Entertainment Law

JOSEPH P. ESPOSITO, B.S., J.D., Professor of Law and Co-Director of the Trial Advocacy Honors Program Jenny Rodriguez- Fee, B.A., J.D., Clinical Professor of Law

APRIL E. FRISBY, B.A., J.D., Associate Professor of Law for Academic Success and Bar Preparation

JAMES M. FISCHER, J.D., Professor of Law

NORMAN M. GARLAND, B.S., B.A., J.D., LL.M., Second Century Chair in Law and Professor of Law

JAY W. GENDRON, B.A., J.D., Director of the Entertainment and Arts Legal Clinic and Associate Professor of Law Anahid Gharakhanian, B.A., J.D., Vice Dean, Professor of Legal Analysis, Writing, and Skills and Director of the Externship Program

KEVIN J. GREENE, B.A., J.D., John J. Schumacher Chair and Professor of Law

WARREN S. GRIMES, B.A., J.D., Irving D. and Florence Rosenberg Professor of Law

ISABELLE R. GUNNING, B.A., J.D., Professor of Law

 $PRIYA\ S.\ GUPTA, B.A., MSc., J.D., \textit{Professor of Law and Faculty Director of the General LL.M. Program and Faculty Director of the General LL.$

DANIELLE KIE HART, B.A., J.D., LL.M., Professor of Law

JOHN HEILMAN, B.S., J.D., M.P.A., M.R.E.D., Professor of Law

 $Roman\ J.\ Hoyos,\ A.B.,\ J.D.,\ M.A.,\ Ph.D.,\ Professor\ of\ Law$

HILA KEREN, LL.B., Ph.D., Associate Dean for Research and Paul E. Treusch Professor of Law

JOERG W. KNIPPRATH, B.A., J.D., Professor of Law

CRISTINA C. KNOLTON, B.A., J.D., Professor of Legal Analysis, Writing, and Skills and Co-Director of the Negotiation Honors Program

HERBERT T. KRIMMEL, B.S., M.Acc., J.D., Professor of Law

CHRISTINE L. LOFGREN, B.A., J.D., Visiting Associate Professor of Legal Analysis, Writing, and Skills

JONATHAN M. MILLER, B.A., J.D., Professor of Law

JANET NALBANDYAN, B.A., J.D., Associate Professor of Law for Academic Success and Bar Preparation

EUNICE PARK, A.B., J.D., Professor of Legal Analysis, Writing, and Skills

ROBERT POPOVICH, B.S., MBT, J.D., Professor of Law

SUSAN WESTERBERG PRAGER, B.A., M.A., J.D., Dean, President and Professor of Law

GOWRI RAMACHANDRAN, B.A., M.A., J.D., LL.M., Professor of Law

ANDREA RAMOS, B.A., J.D., Clinical Professor of Law and Director of the Immigration Law Clinic

ORLY RAVID, B.A., J.D., Director of the Donald E. Biederman Entertainment and Media Law Institute and Associate Professor of Law

NATALIE RODRIGUEZ, B.A., J.D., Assistant Dean of Academic Success and Associate Professor of Law for Academic Success and Bar Preparation

JACQUELYN K. ROGERS, B.S., J.D., Associate Professor of Law for Academic Success and Bar Preparation

HARRIET M. ROLNICK, B.A., J.D., Associate Dean for SCALE® and Associate Professor of Law

TINA SCHINDLER, B.S., J.D., Director of Bar Preparation and Associate Professor of Law for Academic Success and Bar Preparation

MICHAEL D. SCOTT, B.S., J.D., Professor of Law and Technology Law & Entrepreneurship Program Founding Director Emeritus

BILL H. SEKI, B.A., J.D., Professor of Law and Co-Director of the Trial Advocacy Honors Program

IRA L. SHAFIROFF, B.A., J.D., Professor of Law

JUDY BECKNER SLOAN, B.A., J.D., Professor of Law

BYRON G. STIER, B.A., J.D., LL.M., Associate Dean for Strategic Initiatives and Professor of Law

J. KELLY STRADER, B.A., M.I.A., J.D., Professor of Law

N. KEMBA TAYLOR, B.A., J.D., Professor of Legal Analysis, Writing, and Skills

JOHN TEHRANIAN, A.B., J.D., Paul W. Wildman Chair and Professor of Law

TRACY L. TURNER, B.A., J.D., Associate Dean for Learning Outcomes and Director of the Legal Analysis, Writing, and Skills Program and Professor of Legal Analysis, Writing, and Skills

RACHEL E. VANLANDINGHAM, B.A., M.P.M., J.D., LL.M, Professor of Law

JULIA VAZQUEZ, B.A., M.A., J.D., Clinical Professor of Law and Director of Community Lawyering Clinic

DOV A. WAISMAN, A.B., M.S., J.D., Vice Dean and Professor of Law

JULIE K. WATERSTONE, B.A., J.D., Associate Dean for Experiential Learning, Clinical Professor of Law and Director of the Children's Rights Clinic

WILLIAM WOOD, B.A., M.S.E.L., J.D./M.A., Associate Professor of Law

BRYCE WOOLLEY, B.A., J.D., Associate Professor of Law for Academic Success and Bar Preparation

In Memorium

Professor Alan L. Calnan

EMERITI FACULTY

DEBRA LYN BASSETT, M.S., J.D, John J. Schumacher Chair Emerita

MICHAEL H. FROST, B.A., M.A., Ph.D., Professor of Legal Analysis, Writing, and Skills Emeritus

BRYANT G. GARTH, B.A., J.D., Ph.D., Dean Emeritus

JAMES A. KUSHNER, B.B.A., J.D., Professor of Law Emeritus

ROBERT C. LIND, B.E.S., J.D., LL.M., Paul E. Treusch Professor of Law Emeritus and Director Emeritus, Biederman Entertainment and Media Law Institute in Residence

ROBERT E, LUTZ, B.A., J.D., Paul E. Treusch Professor of Law Emeritus in Residence

CHRISTINE LORILLARD, B.A., M.A., Ph.D., Professor of Legal Analysis, Writing and Skills Emerita

SUSAN J. MARTIN, B.A., J.D., Professor of Law Emerita

ROBERT A. PUGSLEY, B.A., J.D., LL.M., Professor of Law Emeritus in Residence

KATHERINE C. SHEEHAN, B.A., M.A., J.D., Professor of Law Emerita

LEIGH H. TAYLOR, B.A., J.D., LL.M., Dean Emeritus and Professor of Law

LINDA A. WHISMAN, B.A., M.L.S., J.D., Associate Dean for Library Services and Professor of Law Emerita

ADJUNCT FACULTY

RYAN ABELMAN MILENE APANIAN Anna Aran JOHN BEGAKIS PATRICK BOIRON NICHOLAS BOND SAMANTHA BORGHI VICTORIA BURKE ROBYN LEE CHEW ALEX COFFEE HON. ANGELA DAVIS LIZA DAVIS THOMAS DEBOE ADAM DOMBCHIK NYDIA DUENEZ ROBERT DURAN PEGGY FARRELL MITCH FEDERER GARY P. FINE REBECCA FISCHER ALICE J. GARFIELD CRAIG GELFOUND SHARREL GERLACH KARINA GODOY HON, RUPA GOSWAMI MEHRNAZ HADIAN JONATHAN HANDEL MELISSA HANNA NAZGOLE HASHEMI LESLIE HEIMOV

DAVID HELFANT

HOWARD JACOBS MATTHEW JACOBS VERONICA JEFFERS MORRIS JENKINS ALLAN JOHNSON DOUGLAS JOHNSON NEVILLE JOHNSON Juli Jordan HON, MARK A. JUHAS JARED JUSSIM HILLARY KANE VIK KANWAR ROBERT KAYNE STACEY KIM-JACKSON ANDREW KNAPP IRIS KOKISH LEIB LERNER ZACHARY LEVINE SARA LOCKE KATHY M. LOMBARD APRIL MACARAEG JONATHAN MARCUS CARINA J. MILLER KYLE MARKS RICHARD D. MARKS HON. DARRELL S. MAVIS

TIMOTHY B. MCCAFFREY, JR. DAVID MCFADDEN DINAH MINKOFF

KAMAL MOO MICHAEL MORSE RONI MUELLER DAVID OSTROVE TIGRAN PALYAN HON, AMY M. PELLMAN SHARON PERLMUTTER TISH PICKETT JUAN A. RAMOS EMILY REHM SUSAN KOHN ROSS DEBORAH RUMMELHART GEORGE H. RUIZ ANASTASIA SAGORSKY LOVEE SARENAS

NEGIN MOSTADIM

ANDREW SCHWARTZMAN JENNIFER SEIGLE DANIEL SELARZ JEFFREY SHANE HON, JAY J. SHIN ZEPUR SIMONIAN ROURKE STACY EDWARD STARK STEPHEN STRAUSS ANITA SURENDRAN JULIA SYLVA

HON. ARMEN TAMZARIAN LEONARD TORREALBA JOSEPH TRIGILIO DANIELLE VAN LIER Laura Wesley SONIA YAGURA