

CONTENTS

Page

Articles

A PRIVATIZATION SOLUTION TO THE LEGITIMACY

OF PREPETITION WAIVERS OF THE

AUTOMATIC STAY *Edward S. Adams & James L. Baillie* 1

When a corporate debtor defaults on an obligation to a lender, the two parties will often attempt to renegotiate the loan agreement to give the debtor a chance to cure the default. Lenders view these "workout" agreements as an opportunity to obtain concessions from the debtor that would adversely affect the debtor's legal position in any subsequent bankruptcy filing. Typically, the lender demands that the debtor agree to waive or modify protections it would gain in bankruptcy. The most common of these waivers found in a workout agreement is the waiver of the automatic stay. Upon the filing of a bankruptcy petition, the automatic stay operates to prevent the debtor's creditors from taking essentially any collection action against the debtor or the bankruptcy estate. The essential role the automatic stay plays in bankruptcy cannot be overstated. The stay preserves the debtor's pool of assets for the benefit of all the creditors. In exploring the arguments supporting and opposing the validity of waivers of the automatic stay, this article advances the notion that economic principles support allowing the debtor to waive the automatic stay when a waiver effects a privatization between one debtor and one creditor which resolves the common pool problem. Most fundamentally, this position supports upholding the validity of waivers of the automatic stay in cases such as single asset real estate scenarios, where there is but one creditor and one debtor.

OTHER PEOPLE'S MONEY: THE PROBLEM

OF PROFESSIONAL FEES IN

BANKRUPTCY *Cynthia A. Baker* 35

The high cost of bankruptcy reorganizations, particularly expenditures for attorneys, accountants and investment bankers, has received much attention in recent years. Professor Baker contends that fees are higher in chapter 11 because bankruptcy's priority system, combined with the mechanism for payment of professionals, creates economic incentives to over-spend on professional services in chapter 11. The "last class in the money" foots the bill for all professional fees. Other constituencies can spend freely for professional services because they do not bear the cost. Further, this system provides a litigation war chest to "out of the money" classes who have nothing to lose and everything to gain through litigation. The article proposes a modification to the fee structure which would correct the perverse economic incentives to over-litigate. This proposal would require each class of creditors or shareholders to bear its own professional costs.

HOLISTIC HEALTH CARE: INCLUDING ALTERNATIVE AND COMPLEMENTARY MEDICINE IN INSURANCE AND REGULATORY SCHEMES.....	<i>Michael H. Cohen</i>	83
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Holistic ideas about health and disease fundamentally challenge those of orthodox medicine. Because state scope of practice and disciplinary rules reflect the norms of medical orthodoxy, holistic providers, and physicians offering holistic treatments, face considerable legal risks. This article argues that existing legal rules unduly inhibit alternative and complementary medicine as an integrated component of mainstream health care, and unfairly discriminate against physicians who utilize holistic therapies. The article further argues that heightened standards of care, the duty to refer, and access-to-treatment laws can more meaningfully regulate these therapies. Finally, the article proposes ways in which third-party reimbursement schemes can incorporate alternative and complementary medicine.

HANFORD: CLEANING UP THE MOST CONTAMINATED PLACE IN THE UNITED STATES	<i>Gerald F. Hess</i>	165
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At Hanford, the United States produced the plutonium that fueled the Trinity test (the first atomic explosion in history), the bomb dropped on Nagasaki, and thousands of warheads during the Cold War. The production of plutonium resulted in release of billions of gallons of radioactive and chemical waste which contaminated over a thousand sites at Hanford. The United States Department of Energy's (USDOE's) cleanup of Hanford is the largest single environmental restoration challenge facing the United States and is the model for the restoration of contaminated sites throughout the USDOE's Nuclear Weapons Complex. This article details Hanford's contamination, the legal framework governing the cleanup, and the critical issues that must be addressed for the Hanford cleanup to succeed.

THE MYTH OF TESTAMENTARY FREEDOM	<i>Melanie B. Leslie</i>	235
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Recent revisions to the Uniform Probate Code would simplify will formalities and give courts greater discretion to validate defectively executed wills. The revisers predict that those reforms would eliminate the injustice resulting from courts' inability to excuse "harmless errors" in will execution due to the supposed judicial tradition of requiring strict compliance with formalities. Professor Leslie argues that the reforms are misguided to the extent that they assume that courts liberated from the strict compliance doctrine will seek primarily to effectuate testators' intentions. Rather, she argues, courts traditionally have imposed upon testators a moral duty to prefer closest relatives or dependents over others, and have implemented that duty through the manipulation of doctrine, sometimes even while asserting that their primary objective is to effectuate intent. If courts are indeed significantly more ambivalent about effectuating intent than is generally acknowledged, then the proposed reforms will do little to achieve the reformers' desired result—the validation of a greater number of documents intended to be wills. Rather, courts will simply find other means for implementing the moral norms that have traditionally competed with testamentary freedom.

FROM WITNESS TO RICHES: THE CONSTITUTIONALITY OF RESTRICTING WITNESS SPEECH	<i>Marcy Strauss</i>	291
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In the aftermath of the O.J. Simpson trial, numerous states have passed, or are considering passing, laws restricting so-called “checkbook journalism.” This article analyzes the constitutionality and wisdom of such laws, particularly as they impact on the ability of witnesses to sell their stories to the media. It concludes that such laws violate the First Amendment’s protection of freedom of speech.

IMPROVING SHAREHOLDER MONITORING OF CORPORATE MANAGEMENT BY EXPANDING STATUTORY ACCESS TO INFORMATION	<i>Randall S. Thomas</i>	331
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This article uses an empirical analysis of cases filed under the Delaware inspection statute to examine whether inspection statutes facilitate shareholder communication and information collection. This analysis shows that while shareholders almost always obtain stock lists and frequently get books and records, there are substantial delays and significant costs to them from using inspection statutes. It argues that the Delaware statute must be substantially streamlined to improve shareholders’ access to information. In particular, it recommends granting automatic access to stock lists in most circumstances and greater access to the corporation’s books and records provided certain conditions are satisfied. Finally, the article also examines the use of the inspection statutes as a discovery device for plaintiffs in derivative and class actions and a proposed revision of Rule 14a–7 of the 1934 Exchange Act.

Notes

STRICT LIABILITY AGAINST HOMEBUILDERS FOR MATERIAL LATENT DEFECTS: IT’S TIME, ARIZONA.....	<i>Lynn Y. McKernan</i>	373
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For a large part of legal history, the rule of law concerning the sale of residential homes was caveat emptor. However, in the latter part of this century, courts and legislators have changed this outmoded view of home seller liability by modifying, amending and even overruling previous law to meet the needs of the times. This Note discusses the variety of causes of action that have emerged in Arizona and other states to replace the now defunct caveat emptor rule regarding homeowners’ claims against developers for material latent defects. Specifically, this Note addresses the elements and predominant shortcomings of each of the current viable causes of action. Finally, this Note argues for the use of strict liability against builders of mass produced homes, for damage to the home itself, beginning with the premises the New Jersey Supreme Court laid in the foundation case of *Schipper v. Levitt & Sons, Inc.*

CUTTING FAT OR CUTTING CORNERS, HEALTH CARE DELIVERY AND ITS RESPONDENT EFFECT ON LIABILITY	<i>Kenneth R. Pedroza</i>	399
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The form of health care delivery is changing. Fee for Service groups are increasingly being replaced by Managed Care Organizations. Yet, a corresponding shift has not eventuated in the medical malpractice system which is premised on a Fee for Service system. This Note addresses the changes in the health care delivery system, and proposes the application of a substantial factor test to impose liability for medically negligent decisions.

PICKING PRODUCE AND EMPLOYEES: RECENT DEVELOPMENTS IN FARMWORKER INJUSTICE.....	<i>Jeanne E. Varner</i>	433
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Over the years, farmworkers have endured low wages, long hours and poor working conditions. When Congress enacted the Migrant and Seasonal Agricultural Workers Protection Act (AWPA) in 1983, it sought to remedy these conditions by regulating the practices of farm labor contractors and growers, and by providing a private right of action to farmworkers to ensure that violations of the AWPA would be redressed in the courts. This Note focuses on a recent Eleventh Circuit case, *Aimable v. Long & Scott Farms, Inc.*, wherein the court accepted the defendant grower's defense that the plaintiff farmworkers laboring in his field were not his employees for purposes of liability under the AWPA. Instead, the court found the defendant crewleader solely liable for the AWPA violations at issue, leaving the plaintiff farmworkers to collect a judgment from a bankrupt individual who, as the grower knew, had been repeatedly enjoined from working as a labor contractor. This Note argues for a per se rule that makes growers the employers of the farmworkers in their fields. Such a rule would guarantee farmworkers the remedies to which they are entitled under AWPA, and would prevent the arbitrary results which are produced in cases such as *Aimable*.