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Essay

AN ESSAY ON FRANK X. GORDON, JR. ..... *Frank Haze Burch, Andrew Abraham & James McConnell Bush* 283

Messrs. Burch, Abraham and Bush recount the life of retired Arizona Supreme Court Chief Justice Frank X. Gordon, Jr. The Authors reconstruct Gordon's early days growing up in Kingman, Arizona, his appointment to the Superior Court bench, his appointment to the Arizona Supreme Court, and key events from his years on the Supreme Court including the impeachment trial of Governor Evan Mecham, the pressure to run for governor, and his term as Chief Justice. The Authors include a sampling of Gordon's opinions, and conclude by describing his public service activities continuing into his retirement.

Articles

SUPPLEMENTAL JURISDICTION IN § 1441 REMOVED CASES: AN UNSURVEYED FRONTIER OF CONGRESS' HANDIWORK ..... *Joan Steinman* 305

Professor Steinman explores the interplay of the supplemental jurisdiction statute and § 1441 removal. The Author concludes that § 1367 applies to cases removed to federal court but that, when a removable diversity action has been filed, § 1367(b) permits federal courts to exercise supplemental jurisdiction over *all* claims filed pre-removal that form part of the same Article III case or controversy. She argues that, in pendent party situations, defendants against whom only state law claims have been pleaded should not be able to thwart removal by refusing to join the removal notice, and that, despite the invocation of federal jurisdiction by defendants, the doctrines that limit supplemental jurisdiciton in cases commenced in federal court should lead to the same outcomes in removed cases *unless* plaintiffs can establish that they did not act strategically in filing in state court as a first step in a series of events calculated to obtain federal jurisdiction. When plaintiffs make that showing, however, the courts should construe § 1367 to empower them to assert supplemental jurisdiction over plaintiffs' claims that would be beyond their authority if the case had been commenced in federal court initially. The Article also concludes that § 1367(b) is not flawed in authorizing supplemental jurisdiction over claims asserted by defendants after removal.

POLICYMAKING AND THE PERILS OF PROFESSIONALISM: THE ABA'S ANCILLARY BUSINESS DEBATE AS A CASE STUDY ..... *Ted Schneyer* 363

Drawing on internal ABA documents, Professor Schneyer evaluates the recent ABA debate on whether to adopt an ethics rule banning law firms from offering non-legal services, such as environmental consulting, which are "ancillary" to the practice of law. He finds that the ABA Litigation Section, which proposed the ban, gained a rhetorical advantage in the debate by

couching its arguments in the "idiom of professionalism." But he also shows that looking at this regulatory issue through the lens of professionalism produced serious flaws in the ABA's policymaking process. Relating the ancillary business debate to two earlier bar initiatives which were struck down by the Supreme Court—minimum fee schedules and bans on lawyer advertising—Professor Schneyer concludes that the idiom of professionalism is inimical to good policymaking and should be avoided whenever the ABA considers ethics rules in the future. In developing his argument, Professor Schneyer identifies a series of flaws that he believes may characterize all policy debates conducted in the idiom of professionalism.

AN INSTITUTIONALIST PERSPECTIVE ON LAW AND ECONOMICS (CHICAGO STYLE) IN THE CONTEXT OF UNITED STATES LABOR LAW ..... *James B. Zimarowski, Michael J. Radzicki & William A. Wines* 397

Economic analysis, a frequent component of modern legal decision-making, has recently undergone substantial methodological changes. A majority of economists have adopted a physical science-like methodology, often without acknowledging the limits of that approach in public policy analysis. The most vocal of these economists—the "Chicago School"—attempt to represent an ideology-based paradigm as scientific truth. This Article analyzes the Chicago-style law and economics paradigm in the context of labor law and policy. It compares the Chicago approach to the institutionalist perspective in which the political economy is studied as a social science. It concludes that institutional methodology more closely parallels the methodology of legal analysis than the Chicago-style approach.

Notes

INVIGORATED STATE MERGER ENFORCEMENT: A PROPOSED ANALYTIC FRAMEWORK THAT PREEMPTS PREEMPTION PROBLEMS ..... *Mark E. Chadwick* 445

NOTHING SIMPLE OR CERTAIN: ESTABLISHMENT CLAUSE BARRIERS TO CHOICE SYSTEMS IN AMERICAN EDUCATION ..... *Amy C. Hevly* 467

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