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Essay

SPINNING, SQUIRRELING, SHELLING, STILETTING AND OTHER STRATAGEMS OF THE SUPREMES ..... *Rodney J. Blackman* 503

Professor Blackman outlines a Constitutional Law professor's effort to understand and articulate some of the unstated stratagems which Supreme Court Justices have used in writing their opinions. These stratagems are intended, deliberate verbal maneuvers by justices either to do more with the words they use than their meaning ordinarily would suggest or to do something other than what their meaning would suggest.

Articles

TORT REFORM, SEPARATION OF POWERS, AND THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910 ..... *Roger C. Henderson* 535

Since the 1970s there have been a number of efforts to legislatively change the common law of torts throughout the United States. Of course, these changes must meet any relevant constitutional requirements. Most often these requirements are found in the Due Process and Equal Protection clauses of the particular state or federal constitutions. Although Arizona also has witnessed efforts at tort reform, it has two additional constitutional provisions that limit the power of the legislature to make changes in tort law.

Professor Henderson explores the historical and political background leading to the election of delegates to the Arizona Constitutional Convention of 1910, the body that framed the two constitutional provisions in question, and provides an exhaustive review of the actions in the Convention itself regarding these provisions. The author concludes that the two constitutional provisions have never been given their proper interpretation. He explains why and how the framers designed these provisions so that each would apply to separate situations rather than the interpretation that has been given to them to date which results in their being redundant. The Article is a revelation as to what the framers of the Arizona Constitution had in mind regarding the relative roles of the courts and the legislature when it comes to deciding how accident victims must be compensated in Arizona.

QUALIFIED IMMUNITY IN SECTION 1983 CASES AND THE ROLE OF STATE DECISIONAL LAW ..... *Richard B. Saphire* 621

State and local officials sued for civil rights violations under 42 U.S.C. § 1983 frequently seek to avoid monetary liability by asserting the defense of qualified immunity. The availability of the defense depends upon whether the plaintiff can establish that the defendant's conduct violated federal rights which were "clearly established" at the time that the defendant acted. This determination requires analysis of the legal precedents which existed at that time. In this Article, Professor Saphire examines the role that state decisional law plays

in qualified immunity analysis. He identifies important theoretical and practical issues and consequences associated with the failure of many federal and state courts to take state court precedents seriously. He then proposes a framework for qualified immunity decision making which accords the state court decisions the status required by prevailing conceptions of judicial federalism and which minimizes the potentially outcome determinative effect of choosing between state and federal courts in section 1983 litigation.

THE SHOT CLOCK COMES TO TRIAL: TIME LIMITS FOR FEDERAL CIVIL TRIALS ..... *Patrick E. Longan* 663

Professor Longan examines the need and potential for an amendment to Federal Rule of Civil Procedure 16 to authorize federal trial judges to impose time limits on trials. Professor Longan demonstrates statistically that federal judges are spending a dwindling amount of time trying civil cases and concludes that this trend is unlikely to end soon. This Article then discusses the critical importance of trials in guiding other litigants to fair settlements and describes how the dwindling supply of trial time, and the substitution of alternative dispute resolution for trial, undermine the settlement process. Professor Longan concludes that civil trial time must be used efficiently and discusses, from an economic perspective, why trials last too long. He demonstrates the theoretical superiority of time limits over other devices for shortening trials and offers practical suggestions for trial judges who wish to use their authority to reduce civil trials to an appropriate size.

Notes

TORT "REFORM" IN ARIZONA: AN ANALYSIS OF THE DEMISE OF JOINT AND SEVERAL LIABILITY..... *Kelly Catherine Myers* 719

This Note addresses the unjust consequences created by the Arizona Legislature's practical abrogation of joint and several liability in 1988 through Section 12–2506 of the Arizona Revised Statutes Annotated. The author examines the following problems produced by the legislature's virtual abolition of joint and several liability in 1988: plaintiffs are now required to bear the entire burden of a tortfeasor's insolvency; significant inequities arise by naming immune employers and insurance carriers as nonparties at fault; and no exception has been made for cases of indivisible injury.

FINDING INCOMPETENCY IN GUARDIANSHIP: STANDARDIZING THE PROCESS..... *Phillip Tor* 739

This Note examines whether definitions of incompetency and the procedures for obtaining objective evidence of incompetency for guardianship hearings adequately protect the interests of proposed wards. Three recommendations are proposed: states should adopt a functional definition of incapacity, require all proposed wards to undergo pre-hearing standardized evaluations for functional deficits, and fund pre-hearing examinations.

THE DOCTRINE OF EQUIVALENTS ANALYSIS AFTER *WILSON SPORTING GOODS*..... *Jean M. Barkley* 765

The doctrine of equivalents is an equitable doctrine available to patentees who cannot prove actual infringement but believe equity compels a finding of infringement. The Court of Appeals for the Federal Circuit decision in *Wilson* increases the burden a patentee bears in asserting the doctrine of equivalents. Strictly applied, *Wilson's* onerous requirements might serve to discourage patentees in their quest for equity. In reality, *Wilson's* framework has largely been disregarded.