

ARIZONA LAW REVIEW

VOLUME 25

1983

NUMBER 4

CONTENTS

Essay

Page

| | | |
|---|-------------------|-----|
| PRESERVING SEPARATION OF POWERS: A REJECTION OF JUDICIAL LEGISLATION THROUGH THE FUNDAMENTAL RIGHTS DOCTRINE | <i>Rex E. Lee</i> | 805 |
|---|-------------------|-----|

This Essay considers the function of judicial review and its relationship to the legislative process. The author argues that the legislature is the proper forum for resolving policy issues and therefore the courts should show the legislature more deference by adopting a single standard of review.

Articles

| | | |
|--|--------------------|-----|
| THE REPORTER'S PRIVILEGE: AN ANALYSIS OF THE COMMON LAW, <i>BRANZBURG v. HAYES</i> , AND RECENT STATUTORY DEVELOPMENTS | <i>Paul Marcus</i> | 815 |
|--|--------------------|-----|

This Article provides an overview of the current law with respect to the reporter's privilege. The author argues that a qualified privilege for reporters best resolves the conflict between first amendment considerations and the rights of civil and criminal litigants.

| | | |
|--|---|-----|
| WHAT WE KNOW, WHAT WE THINK WE KNOW, AND WHAT WE DON'T KNOW ABOUT WOMEN LAW PROFESSORS | <i>Elyce H. Zenoff & Kathryn V. Lorio</i> | 869 |
|--|---|-----|

This Article examines the progress and performance of women law teachers as compared to their male colleagues. The authors also consider the impact of women professors upon the legal education process.

| | | |
|---|---|-----|
| I.R.C. SECTION 274(b) AND <i>DUBERSTEIN</i> RESURFACE: THE EMPEROR STILL HAS NO CLOTHES | <i>Steven J. Willis & Michael S. Hawley</i> | 907 |
|---|---|-----|

This Article examines and exposes the confusion in the law regarding employer gifts under section 274(b) of the Internal Revenue Code. The authors conclude that the "detached and disinterested generosity" test articulated in *Commissioner v. Duberstein* is an inappropriate standard for distinguishing gifts from compensation, thus posing uncertainties for practitioners. The authors then provide practitioners guidance for operating within the current framework and suggest a new method for Congress to handle the problems which prompted section 274(b).

| | | |
|---|-------------------------|-----|
| DISCRETIONARY TRUSTS: AN ESTATE PLAN TO SUPPLEMENT PUBLIC ASSISTANCE FOR DISABLED PERSONS..... | <i>Carol Ann Mooney</i> | 939 |
|---|-------------------------|-----|

The author explores the usefulness of trusts as superior devices for supplementing a disabled child's income from public benefits. This Article suggests estate planning methods which offer the disabled person the greatest benefit and limit the assets accessible to the government.

Notes

| | | |
|---|-----------------------|-----|
| GROUP INSURANCE BROCHURES AND CERTIFICATES AND THE DEMISE OF THE MASTER POLICY | <i>Peter Akmajian</i> | 975 |
|---|-----------------------|-----|

This Note discusses cases granting group insureds coverage under the terms of brochures and certificates, concentrating on the diminishing importance of the group master policy. It also examines Arizona cases and suggests basic strategies for lawyers representing group insurers and insureds in Arizona.

| | | |
|---|---------------------------|-----|
| ANTITRUST ANALYSIS IN PROFESSIONAL SPORTS MANAGEMENT CASES: THE PUBLIC CRIES "FOUL!" | <i>Dana Mark Campbell</i> | 995 |
|---|---------------------------|-----|

This Note examines the public interest in professional sports operations and the failure of the courts to adequately protect the interests of the cities, fans, players and owners in antitrust challenges to league activities. The impact of judicial decisions on the future of sports operations is considered and a proposal for reform offered.

| | | |
|---|--------------------|------|
| PRIVATELY OWNED PARKING AREAS IN ARIZONA NEED BETTER PROTECTION FROM UNAUTHORIZED VEHICLES: A PROPOSAL TO AMEND THE STATUTORY GARAGEMAN'S LIEN | <i>Eric Olsson</i> | 1023 |
|---|--------------------|------|

Existing Arizona law does not allow a person who removes an unauthorized vehicle from private property to impound it until the vehicle owner pays the costs of towing and storage. The author proposes a statutory possessory lien to provide private property owners with an adequate means of protecting their parking areas.

Recent Decisions

| | | |
|---|-----------------------|------|
| I. CRIMINAL PROCEDURE FACILITATION: SHOULD IT BE REGARDED AS A LESSER IN- CLUDED SUBSTANTIVE OFFENSE WHEN PROSECUTION IS BASED ON THE DEFENDANT'S COMPLICITY? <i>State v. Polite</i> | <i>E. Hardy Smith</i> | 1047 |
| II. INDIAN LAW CONFUSION IN THE LAND OF INDIAN SOVEREIGNTY: THE SUPREME COURT TAKES A DETOUR <i>Rice v. Rehner</i> | <i>Anne M. Ryan</i> | 1059 |

| | |
|---|--|
| III. REMEDIES | |
| ONE MORE MOUTH TO FEED: A LOOK AT PHYSICIANS' | |
| LIABILITY FOR THE NEGLIGENT PERFORMANCE OF STER- | |
| LIZATION OPERATIONS | |
| <i>University of Arizona Health Sciences Center v. Superior</i> | |
| <i>Court</i> <i>Sandra Gooding Sylvia</i> 1069 | |
| IV. TORTS | |
| GOVERNMENTAL TORT IMMUNITY REVISITED: <i>RYAN V. STATE</i> | |
| <i>Ryan v. State</i> <i>Lucile D. Sherman</i> 1081 | |