

2021

Volume 72 Issue 2 (2021)

Case Western Reserve Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

Recommended Citation

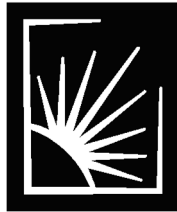
Case Western Reserve Law Review, *Volume 72 Issue 2 (2021)*, 72(2) Case W. Res. L. Rsrv. Front Matter (2021)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol72/iss2/2>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Case Western Reserve Law Review

Volume 72, Issue 2
Winter 2021



SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

© 2021 by Case Western Reserve Law Review

The Case Western Reserve Law Review (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of Case Western Reserve University School of Law. Postage paid at Cleveland, Ohio and at additional mailing offices. Editorial and business offices are located at Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106. Contact the Review by e-mail: lawreview@case.edu or telephone: (216) 368-3312.

The Case Western Reserve Law Review published this issue in print and online in May 2022.

The submission of unsolicited manuscripts is invited.

Subscriptions are entered for the entire volume for \$34.00 per year (\$36.00 outside the United States). Single issues of the current and previous volumes are available from the Case Western Reserve Law Review for \$16.00 each, plus shipping and handling. To order, contact:

Case Western Reserve University School of Law
Attn: Matthew Rish
11075 East Boulevard
Cleveland, Ohio 44106
Phone: (216) 368-6350
Facsimile: (216) 368-3285
E-mail: matthew.rish@case.edu

Back issues from earlier volumes are available from William S. Hein & Co., Inc., 24 East Ferry Road, Buffalo, New York 14209, or online: www.wshein.com/catalog/101440. Back issues are also available in electronic format at heinonline.org.

Citations conform to *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 21st ed. 2020). Style conforms generally to *The Chicago Manual of Style* (17th ed. 2017).

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, Massachusetts 01923, by phone: (855) 239-3415, by fax: (978) 646-8600, by e-mail: info@copyright.com, or online: www.copyright.com.

CASE WESTERN RESERVE LAW REVIEW

Volume 72

Winter 2021

Issue 2

Editor in Chief
ANDREW RUMSCHLAG

Managing Editor
CHRISTOPHER SWITZER

Publisher
KATHLEEN LYNCH

Executive Online Editor
CALLAN FORAN

Executive Articles Editors
KATIE HOUGH
ALEXA SHOOK

Executive Symposium Editor
REAGAN JOY

Executive Notes & Comments Editor
ERICA HUDSON

Operations Editor
NICK ADAMSON

ARIBA AHMAD

Contributing Editors
JACQUELINE KETT

GINGER PINKERTON

ELENA BARONE
ZHAOCHENG LI
AMY RUBENSTEIN

Senior Editors
MARK FIRMIN
BRIDGET MCCUSKER

JILLIAN FOX
ALEXANDRA MOORE
ZOE SUNTHEIMER

MATT BORCAS
KENNEDY DICKSON
EMMA GEESAMAN
ABIGALE GROSECLOSE
JOAN REARDON

Associate Editors
THOMAS BOYD
NATALIE EBERTS
JAMES GENETIN
MADELINE MISCHLER
MERITT SALATHE
SYDNEY WARINNER

LUCAS CHRISTENSEN
BENJAMIN FOOTE-HUTH
ANNIE GOLDSTEIN
ABIGAIL OPHIR
ANDREW THOMPSON

Faculty Advisor
JONATHAN ENTIN

CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW FACULTY

Administrative Officers

Deans

JESSICA WILEN BERG, B.A., J.D., M.P.H.
MICHAEL P. SCHARF, A.B., J.D.

Associate Dean for Academic Affairs

AVIDAN Y. COVER, B.A., J.D.

Associate Dean of Diversity and Inclusion

BRYAN L. ADAMSON, B.S., PH.B., M.A., J.D.

Associate Dean for Experiential Education

LAURA E. McNALLY-LEVINE, B.A., J.D.

Associate Dean for Research and Faculty Development

B. JESSIE HILL, A.B., J.D.

Associate Dean for Enrollment Planning and Strategic Initiatives

ALYSON S. ALBER, B.S., J.D.

Associate Dean of Development

ARTO WOODLEY, B.S., M.A., ED.D.

Assistant Dean of Admissions

KELLI C. CURTIS, B.A., J.D.

Assistant Dean for Student Services

MICHAEL T. MCCARTHY, B.A., J.D.

Assistant Dean of Career Development

MARY BETH MOORE, B.A., J.D.

Assistant Dean of Finance and Administration

MELANIE WALKER, B.B.A., M.B.A.

Professors of Law

BRYAN L. ADAMSON, B.S., PH.B., M.A., J.D.

David L. and Ann Brennan Professor

JONATHAN H. ADLER, B.A., J.D.

*Johan Verheij Memorial Professor and Director, Coleman P. Burke
Center for Environmental Law*

JESSICA WILEN BERG, B.A., J.D., M.P.H.

*Tom J.E. and Bette Lou Walker Professor; Professor of Bioethics and
Public Health*

DAVID J. CARNEY, B.A., J.D.

JUSCELINO F. COLARES, LL.B., M.A., PH.D., J.D.

*Schott-van den Eynden Professor of Law; Professor of Political Science; and
Co-Director, Frederick K. Cox International Law Center*

AVIDAN Y. COVER, B.A., J.D.

Director, Institute for Global Security Law and Policy

JENNIFER I. CUPAR, B.S., J.D.

SHANNON E. FRENCH, B.A., PH.D.

*Inamori Professor of Ethics; Professor of Philosophy and Law; and
Director, Inamori International Center for Ethics and Excellence*

JONATHAN C. GORDON, B.A., J.D.

Director, S.J.D. Program

RICHARD K. GORDON, B.A., J.D.

*Director of Financial Integrity Programs; Associate Director, Frederick K.
Cox International Law Center*

BRIAN K. GRAN, B.A., J.D., PH.D.

Professor of Sociology and Law

B. JESSIE HILL, A.B., J.D.

Judge Ben C. Green Professor

SHARONA HOFFMAN, B.A., J.D., LL.M., S.J.D.

*Edgar A. Hahn Professor; Professor of Bioethics; and Co-Director,
Law-Medicine Center*

DANIEL A. JAFFE, B.A., J.D.

Director, Lawyering Skills Program

CHARLES R. KORSMO, S.B., J.D.

JULIET P. KOSTRITSKY, A.B., J.D.

*Everett D. & Eugenia S. McCurdy Professor and Director, Center for
Business Law*

RAYMOND SHIH RAY KU, A.B., J.D.

Director, Center for Cyberspace Law and Policy

KEVIN C. McMUNIGAL, B.A., J.D.
*Honorable Blanche E. Krupansky and Frank W. Vargo, Jr., Professor of
Criminal Law*

LAURA E. McNALLY-LEVINE, B.A., J.D.

MAXWELL J. MEHLMAN, B.A., J.D.
*Distinguished University Professor and Arthur E. Petersilge Professor;
Professor of Bioethics; and Co-Director, Law-Medicine Center*

KATHRYN S. MERCER, A.B., M.S.S.A., J.D., PH.D.

DALE A. NANCE, B.A., J.D., M.A.
Albert J. Weatherhead III & Richard W. Weatherhead Professor

CRAIG ALLEN NARD, B.A., J.D., LL.M., J.S.D.
*Galen J. Roush Professor and Director, Spangenberg Center for Law,
Technology, and the Arts and the FUSION Certificate Program in Design,
Innovation & IP Management*

AARON K. PERZANOWSKI, A.B., J.D.
John Homer Kapp Professor

ANDREW S. POLLIS, A.B., J.D.

CASSANDRA BURKE ROBERTSON, B.A., M.A., M.P.Aff., J.D.
*John Deaver Drinko-BakerHostetler Professor and Director, Center for
Professional Ethics*

MATTHEW J. ROSSMAN, B.A., J.D.

MICHAEL P. SCHARF, A.B., J.D.
Joseph C. Hostetler-BakerHostetler Professor

THEODORE L. STEINBERG, B.A., PH.D.
Adeline Barry Davee Distinguished Professor of History and Professor of Law

ROBERT N. STRASSFELD, B.A., M.A., J.D.

Associate Professors of Law

JAIME BOUVIER, B.A., J.D.

JOSEPH A. CUSTER, B.A., J.D., M.B.A., M.L.S.
Director, Law Library

AYESHA B. HARDAWAY, B.A., J.D.
Director, Social Justice Law Center

KENNETH F. LEDFORD, B.A., J.D., M.A., PH.D.
Associate Professor of History and Law

JACK TURNER II, B.A., J.D.
Director, Foreign Graduate LL.M. Program

Assistant Professors of Law

ANAT ALON-BECK, LL.B, LL.M., J.S.D.

MATTHEW A. SALERNO, B.A., J.D.

Senior Instructors in Law

MICHAEL J. BENZA, B.A., M.A., J.D.
Associate Director, Financial Integrity Institute

CATHY LESSER MANSFIELD, B.A., J.D.
Executive Director, Master of Arts in Financial Integrity Program

Instructors

LIAM J. DUNN, B.A., M.A., M.S., J.D.

Lecturers

ANDREW GERONIMO, B.A., J.D.

MELANIE R. GIAMARIA, B.A., J.D., M.S.S.A.

MAYA M. SIMEK, B.S., M.S.S.A., J.D.

ARCOLA WHATLEY, B.A., J.D.

Visiting Faculty

ANNE LEDERMAN FLAMM, A.B., J.D.

ROBERT N. RAPP, B.A., J.D., M.B.A.

KATHARINE A. VAN TASSEL, B.S.N., J.D., M.P.H.

Professors Emeriti

RONALD J. COFFEY, A.B., LL.B., LL.M.

GEORGE W. DENT, JR., B.A., J.D., LL.M.
Schott-van den Eynden Professor Emeritus

MELVYN R. DURCHSLAG, B.S., J.D.

JONATHAN L. ENTIN, A.B., J.D.
David L. Brennan Professor Emeritus of Law and Political Science

LEON GABINET, PH.B., J.D.
Coleman P. Burke Professor Emeritus

PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M.
*Distinguished University Professor Emeritus and Albert J. Weatherhead
III & Richard W. Weatherhead Professor Emeritus*

ERIK M. JENSEN, S.B., M.A., J.D.
Coleman P. Burke Professor Emeritus

LEWIS R. KATZ, A.B., J.D.
*John C. Hutchins Professor Emeritus and Director Emeritus, Foreign
Graduate Legal Studies*

ROBERT P. LAWRY, B.A., J.D., DIP. LAW
Director Emeritus, Center for Professional Ethics

WILBUR C. LEATHERBERRY, A.B., J.D.

JUDITH P. LIPTON, B.S., M.S.S.W., J.D.
*Honorable Blanche E. Krupansky and Frank W. Vargo, Jr. Professor
Emerita*

KENNETH R. MARGOLIS, B.A., J.D.

LOUISE W. MCKINNEY, B.A., J.D.

SPENCER NETH, B.A., J.D., LL.M.

CALVIN WILLIAM SHARPE, B.A., M.A., J.D.
Galen J. Roush Professor Emeritus

CASE WESTERN RESERVE LAW REVIEW

Volume 72

Winter 2021

Issue 2

TRIBUTE TO PROFESSOR PETER M. GERHART

Jessica Berg & Michael Scharf 249

Melvyn R. Durchslag 251

Juliet P. Kostritsky 253

Andrew Dorchak 255

Katharine Van Tassel 257

Kenneth F. Ledford 259

Jesse Wynn 261

Wendy Wagner 263

Bryan Adamson 267

Paul C. Gianelli 271

ARTICLES

Teaching Tort Myths 273

Peter M. Gerhart

Do Property Owners Owe Duties to Others? It's a Simple 287

Matter of Tort

Laura S. Underkuffler

Peter Gerhart and Contemporary Property Theory 301

Dave Fagundes

Peter Gerhart on Good Faith: Following a Trail of Breadcrumbs 317

James Gordley

Gerhart and Private Law's Melody of Reasonableness 355

Mark P. Gergen

BOOK REVIEW

Concepts All the Way Down 399

Peter M. Gerhart

NOTES

- Believing in Unicorns: How to Value Unicorn Companies and 421
Intellectual Property While Encouraging Continued Innovations
and Public Disclosure
Kathleen Lynch
- Iceberg Ahead: Why Courts Should Presume Bias in Cases of 463
Extraneous Juror Contacts
Andrew S. Rumschlag

COMMENT

- As a Matter of Fact: Copyrighting Fictitious Entries Within 507
Reference Works
Jacqueline Kett