

Torts and Compensation Systems Section

Annual Newsletter

December 2020

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This newsletter was compiled by Pamela C. Brannon, Coordinator of Faculty Services, and Timothy D. Lytton, Distinguished University Professor, Professor of Law and Associate Dean for Research and Faculty Development, Georgia State University College of Law.

Annual Meeting Programs “Tort and Compensation Systems” AALS Annual Meeting January 5, 2021 1:15pm-2:30pm

Panelists will discuss the work of the late John Gardner, who was the Professor of Jurisprudence at Oxford and a fellow of All Souls College. This session will be conducted jointly with the Jurisprudence section.

Speakers include:

Tom Daugherty, Associate Professor of Philosophy, University of North Carolina

Kimberly Kessler Ferzan (moderator), Earle Hepburn Professor of Law, Co-Director, Institute of Law & Philosophy, University of Pennsylvania Carey Law School

John Goldberg, Deputy Dean and Carter Professor of General Jurisprudence, Harvard Law School

Scott Hershovitz (moderator), Thomas G. and Mabel Long Professor of Law and Professor of Philosophy, Director, Law & Ethics Program, University of Michigan

Leslie Kendrick, Vice Dean and White Burkett Miller Professor of Law and Public Affairs, University of Virginia Law School

William L. Prosser Award Winner: Hon. Jack B. Weinstein

The 2021 Prosser Award winner is Judge Jack B. Weinstein of the Eastern District of New York.

For decades, Judge Weinstein has been a towering and transformative figure. Through his teaching, scholarly writings, and fearless jurisprudence, he has left a deep and lasting imprint on American tort law, and on the U.S. justice system more broadly. His accomplishments in the law far exceed the limits of this or any award announcement—indeed, the New York Times recent reported that his resume “now runs to more than 70 pages.

Showing an early industriousness that presaged his half-century of tireless judicial service, Judge Weinstein put himself through Brooklyn College by doing part-time dock work in New York Harbor. He then served for three years as a

submarine officer in the Second World War's Pacific theater. After the war, Judge Weinstein entered law school, earning a degree from Columbia Law School in 1948. Shortly thereafter, in 1952, he joined Columbia's faculty—and, within a few years, became a nationally recognized expert in Civil Procedure. Alongside his burgeoning academic career, Judge Weinstein continued to make time for public service. Of particular note was his service as a member of the NAACP's litigation team in *Brown v. Board of Education* and his two-year term as attorney for Nassau County.

After 15 years in academe, Judge Weinstein was appointed, and confirmed, to the federal bench, where he sat as a judge on the U.S. District Court for the Eastern District of New York. He served as a judge for almost 53 years, from 1967 to 2020 (recently retiring at age 98). He served as Chief Judge of the Eastern District from 1980 to 1988.

During his time in the Eastern District, Judge Weinstein has been a pioneering academic and jurist, shaping the law of procedure and evidence, and handling some of the most important mass tort cases, notably on Agent Orange, pharmaceuticals, tobacco, asbestos, and firearms. He has developed innovative methods—not without controversy—for resolving complex mass tort litigation, including enlarging the roles of magistrates and special masters, altering the role of expert witnesses, and simplifying questions of choice of law. At the same time, he has issued bold decisions on consequential matters including enterprise liability, market share liability, and whether damages distinctions based on race and gender violate the Fourteenth Amendment of the U.S. Constitution. (He says they do.)

In all his cases, Judge Weinstein has displayed endless energy and determination and brought uncommon courage, humanity and empathy. His innovations include, for example, enabling class action members to be heard individually, and sitting at a conference table when sentencing

defendants. A notable critic of mandatory minimums and other harsh sentencing practices, he has often spoken out against the “unnecessary cruelty” of federal criminal law, molding the thinking of a generation of sentencing reformers.

His writings have been similarly influential. His publications on mass torts and compensation systems include hundreds of judicial opinions, numerous academic articles, and several books including *Individual Justice in Mass Tort Litigation: The Effect of Class Actions, Consolidations, and Other Multiparty Devices* (1995); *Mass Torts: Cases and Materials* (with Kenneth Feinberg) (1992); and *Weinstein's Evidence* (with Margaret Berger) (1975–1979).

Professor John C. P. Goldberg, a former clerk, aptly summed up Judge Weinstein's extraordinary body of work: “No one in modern American law has played a more important role in pressing lawyers, fellow judges, and law professors to reconsider the potential of tort law to contribute to a just polity.”

The Prosser Award will be presented at this year's annual meeting. The Torts and Compensation Systems Section Executive Committee congratulates Judge Weinstein on this well-deserved honor.

2022 Prosser Award Nominations

The 2021 AALS Annual Meeting will be held January 5-9, 2021, virtually via videoconference technology due to the COVID-19 pandemic. At the 2021 Annual Meeting, the Torts and Compensation Systems Section will once again present the William L. Prosser Award to a law professor who has made outstanding contributions of scholarship, teaching, and service in tort law. Any law professor is eligible to nominate another law professor for the award.

Selection of the recipient will be made by the members of the Executive Committee of the Torts and Compensation Systems Section, based on the recommendation of an appointed special selection committee.

Nominations should be submitted to Elizabeth Weeks, Treasurer of the Executive Committee, at weeksleo@uga.edu. Nominations must be accompanied by a brief letter of support. Nominations must be received no later than June 30, 2021.

Election of Section Officers

The Section on Torts and Compensation Systems will elect officers for the coming year during a business meeting following the 2021 AALS program. You are invited to participate in the election. The current members of the Executive Committee will propose the following slate of candidates for election at the business meeting:

Chair: Mary Davis, Kentucky
Chair-Elect: Timothy D. Lytton, Georgia State
Secretary: Nora Freeman Engstrom, Stanford
Treasurer: Elizabeth Weeks, UGA
Exec. Committee Member: Tom Kadri, UGA
Exec. Committee Member: TBA

Recent Law Review Symposia

Class Actions, Mass Torts, and MDLs: The Next 50 Years (Lewis & Clark Law Review):

Jennie Lee Anderson, *Preface*, 24 LEWIS & CLARK L. REV. 357 (2020).

Robert Klonoff, *Foreword*, 24 LEWIS & CLARK L. REV. 359 (2020).

D. Theodore Rave & Zachary D. Clopton, *Texas MDL*, 24 LEWIS & CLARK L. REV. 367 (2020).

David Marcus, *The Persistence and Uncertain Future of the Public Interest Class Action*, 24 LEWIS & CLARK L. REV. 395 (2020).

David L. Knoll, *What Do MDL Leaders Do? Evidence from Leadership Appointment Orders*, 95 LEWIS & CLARK L. REV. 433 (2020).

Lynn A. Baker & Stephen J. Herman, *Layers of Lawyers: Parsing the Complexities of Claimant Representation in Mass Tort MDLs*, 24 LEWIS & CLARK L. REV. 469 (2020).

Joshua P. Davis & Brian J. Devine, *Procedural Self-Inflicted Wounds?* 24 LEWIS & CLARK L. REV. 497 (2020).

Alexandra D. Lahav, *Multidistrict Litigation and Common Law Procedure*, 24 LEWIS & CLARK L. REV. 531 (2020).

Elizabeth J. Cabraser & Adam N. Steinman, *What is a Fair Price for Objector Blackmail? Class Action Objectors and the 2018 Amendments to Rule 23*, 24 LEWIS & CLARK L. REV. 549 (2020).

Robert G. Bone, *In Defense of the Cy-Pres-Only Class Action*, 24 LEWIS & CLARK L. REV. 571 (2020).

Gerson H. Smoger, *The Importance of Cy Pres in Modern Class Action Jurisprudence and Myths Concerning Its Use*, 24 LEWIS & CLARK L. REV. 595 (2020).

Judith Resnick, Stephanie Garlock, & Annie J. Wang, *Collective Preclusion and Inaccessible Arbitration: Data, Non-Disclosure, and Public Knowledge*, 24 LEWIS & CLARK L. REV. 611 (2020).

Brian T. Fitzpatrick, *Deregulation and Private Enforcement*, 24 LEWIS & CLARK L. REV. 685 (2020).

Arthur R. Miller & Robert Klonoff, *Symposium Interview on Aggregate Litigation*, 24 LEWIS & CLARK L. REV. 697 (2020).

Common Law for the Age of AI (Columbia Law Review):

Mariano-Florentino Cuéllar, *A Common Law for the Age of Artificial Intelligence: Incremental Adjudication, Institutions, and Relational Non-Arbitrariness*, 118 COLUM. L. REV. 1773 (2019).

Jeannie Suk Gersen, *Sex Lex Machina: Intimacy and Artificial Intelligence*, 119 COLUM. L. REV. 1792 (2019).

Bert I. Huang, *Law's Halo and the Moral Machine*, 119 COLUM. L. REV. 1811 (2019).

Ashley Deeks, *The Judicial Demand for Explainable Artificial Intelligence*, 119 COLUM. L. REV. 1829 (2019).

Katherine J. Strandburg, *Rulemaking and Inscrutable Automated Decision Tools*, 119 COLUM. L. REV. 1851 (2019).

Mala Chatterjee & Jeanne C. Fromer, *Minds, Machines, and the Law: The Case of Volition in Copyright Law*, 119 COLUM. L. REV. 1887 (2019).

Frank Pasquale, *Data-Informed Duties in AI Development*, 119 COLUM. L. REV. 1917 (2019).

Kate Crawford & Jason Schultz, *AI Systems as State Actors*, 119 COLUM. L. REV. 1941 (2019).

C. Scott Hemphill, *Disruptive Incumbents: Platform Competition in the Age of Machine Learning*, 119 COLUM. L. REV. 1973 (2019).

Tim Wu, *Will Artificial Intelligence Eat the Law? The Rise of Hybrid Social-Ordering Systems*, 119 COLUM. L. REV. 2001 (2019).

Comprehensive Tort Reform Through House Bill 4 (H.B. 4) by the Texas Legislature (Texas Tech Law Review):

R. Brent Cooper, Diana L. Faust, Brian G. Jackson, Gavin J. Gadberry, William G. Hamm, C. Paul Wazzan, Jared S. Livingston, D. Cameron Duncan III, Cesar J. Lopez, & Benjamin Kelton, *Introduction*, 51 TEX. TECH L. REV. 391 (2019).

Parts One and Two: The Crisis in Access to Medical Care, 51 TEX. TECH L. REV. 393 (2019).

Part Three: Constitutional Challenges to Chapter 74 and Proposition 12, 51 TEX. TECH L. REV. 399 (2019).

Part Four: Judicial Interpretation of House Bill 4's Changes to the Texas Tort Claims Act, 51 TEX. TECH L. REV. 423 (2019).

Part Five: Chapter 33 of the Texas Civil Practice and Remedies Code: Settlement Credits

and Responsible Third Parties, 51 TEX. TECH L. REV. 427 (2019).

Part Six: Chapter 41, Section 41.0105 of the Texas Civil Practice and Remedies Code: "Paid or Incurred", 51 TEX. TECH L. REV. 445 (2019).

Part Seven: Chapter 74, Subchapter A: Amendments and Judicial Interpretations of Chapter 74 Definitions, 51 TEX. TECH L. REV. 463 (2019).

Part Eight: Chapter 74, Subchapter B: Notice and Medical Authorizations, 51 TEX. TECH L. REV. 471 (2019).

Part Nine: Chapter 74, Subchapter D: Emergency Care, 51 TEX. TECH L. REV. 481 (2019).

Part Ten: Chapter 74, Subchapter F: Statute of Limitations and Statute of Repose, 51 TEX. TECH L. REV. 503 (2019).

Part Eleven: Subchapter G Liability Limits: Noneconomic Damages and Damages Awarded in Wrongful Death/Survival Health Care Liability Claims, 51 TEX. TECH L. REV. 517 (2019).

Part Twelve: Chapter 74, Subchapter H: Expert Reports Required Under Chapter 74 and Related Procedural Processes, 51 TEX. TECH L. REV. 525 (2019).

Part Thirteen: Chapter 74, Subchapter I: Requirements Relating to Expert Witness, 51 TEX. TECH L. REV. 577 (2019).

Part Fourteen: Chapter 74, Subchapter K: Periodic Payments for Future Damages, Medical Expenses, and Lost Wages, 51 TEX. TECH L. REV. 601 (2019).

Conclusion, 51 TEX. TECH L. REV. 617 (2019).

Driven by Data: Empirical Studies in Civil Litigation and Health Law (Denver Law Review):

David A. Hyman, *Are We Driven by Data? The Problem of Bad Doctors*, 96 DENV. L. REV. 761 (2019).

W. Kip Viscusi, *Medical Malpractice Reform: What Works and What Doesn't*, 96 DENV. L. REV. 775 (2019).

Gordon Ballingrud & Caitelin Jammo, *Ideology and Risk Focus: A Preliminary Exploration of the Effect of Judicial Ideology on Risk Focus in Supreme Court Opinion Construction*, 96 DENV. L. REV. 793 (2019).

Brian H. Bornstein & Amy J. Kleynhans, *The Evolution of Jury Research Methods: From Hugo Münsterberg to the Modern Age*, 96 DENV. L. REV. 813 (2019).

Krystia Reed, Valerie P. Hans, Valerie F. Reyna, *Accounting for Awards: An Examination of Juror Reasoning Behind Pain and Suffering Damage Award Decisions*, 96 DENV. L. REV. 841 (2019).

David Yokum, Christopher T. Robertson, & Matt Palmer, *The Inability to Self-Diagnose Bias*, 96 DENV. L. REV. 869 (2019).

Elena Engel, *2019 Symposium Note: Are Apology Laws and Tort Reform Helping or Hurting?* 96 DENV. L. REV. ONLINE 188 (2019).

Chelsea Kelleher, *Symposium Note: The Health Care Insurance Market's Moral Hazard Dilemma*, 96 DENV. L. REV. ONLINE 193 (2019).

Maeve Sullivan, *2019 Symposium Note: Panel 1*, 96 DENV. L. REV. ONLINE 196 (2019).

Rebecca Walker, *2019 Symposium Note: Jury Decision Making Processes*, 96 DENV. L. REV. ONLINE 199 (2019).

Embryonic Injuries and Nascent Remedies in the Age of CRISPR-CAS and Advanced IVF (Chicago-Kent Law Review):

Amit Choudhary, *Problems with CRISPR and What is Being Done About It*, CHI-KENT L. REV. (forthcoming).

Dr. Svetlana Rechitsky, *Advances in IVF and Human Leukocyte Antigens Matching and the Use of Preimplantation Genetic Testing for Late Onset Conditions*, CHI-KENT L. REV. (forthcoming).

Neville Sanjana, *An Introduction to CRISPR: What It Is, What It Does, and What Improvements Are Needed*, CHI-KENT L. REV. (forthcoming).

Judith Daar, *Evolutionary Perspectives on Reproductive Medicine: On Breaking Barriers and Meeting New Frontiers*, CHI-KENT L. REV. (forthcoming).

Naomi Cahn & Sonia Suter, *Bioethics of Regulation*, CHI-KENT L. REV. (forthcoming).

Dov Greenbaum, *Regulating Privacy and Intellectual Property Issues*, CHI-KENT L. REV. (forthcoming).

Yaniv Heled, Timothy Lytton, & Liza Vertinsky, *You Get What You Get and You Don't Get Upset: Sperm Donation and the Nonidentity Problem in Georgia Courts*, CHI-KENT L. REV. (forthcoming).

David Heyd, *Does the Non-Identity Problem Apply to Wrongful Birth Claims? – or, Can You Sue If You Wouldn't Have Been Born?*, CHI-KENT L. REV. (forthcoming).

Dov Fox, *Causation and Compensation of Intergenerational Harm*, CHI-KENT L. REV. (forthcoming).

Barbara Pfeffer Billauer, *Bioethical and Legal Issues in Creating Savior Siblings and Protective Progeny*, CHI-KENT L. REV. (forthcoming).

Michele Bratcher Goodwin, *Cultural Enhancement or Medical Manipulation?* CHI-KENT L. REV. (forthcoming).

Henry T. Greely, *Playing God: Progeny Selection and Legal Issues*, CHI-KENT L. REV. (forthcoming).

Robert Dinerstein, *Disability Rights and Wrongs*, CHI-KENT L. REV. (forthcoming).

Seema Mohapatra, *Social Justice Concerns*, CHI-KENT L. REV. (forthcoming).

Pamela Laufer-Ukeles, *From Consent to Empowerment: Improving Women's Decision-Making in Embryonic Genetic Manipulation*, CHI-KENT L. REV. (forthcoming).

Arthur Caplan, *Closing Address*, CHI-KENT L. REV. (forthcoming).

MDL Turns 50: A Look Back and the Way Forward (Georgia Law Review):

Clay D. Land, *Multidistrict Litigation After 50 Years: A Minority Perspective from the Trenches*, 53 GA. L. REV. 1237 (2019).

Margaret S. Williams, *The Effect of Multidistrict Litigation on the Federal Judiciary Over the Past 50 Years*, 53 GA. L. REV. 1245 (2019).

Howard M. Erichson, *MDL and the Allure of Sidestepping Litigation*, 53 GA. L. REV. 1287 (2019).

Myriam Gilles & Gary Friedman, *Rediscovering the Issue Class in Mass Tort MDLs*, 53 GA. L. REV. 1305 (2019).

Adam S. Zimmerman, *Surges and Delays in Mass Adjudication*, 53 GA. L. REV. 1335 (2019).

Andrew D. Bradt, *Multidistrict Litigation and Adversarial Legalism*, 53 GA. L. REV. 1375 (2019).

Alexandra D. Lahav, *The Continuum of Aggregation*, 53 GA. L. REV. 1393 (2019).

#MeToo in the Workplace (Employee Rights and Employment Policy Journal):

Jeffrey M. Hirsch, *Introduction: #MeToo in the Workplace*, 23 EMP. RTS. & EMPL. POL'Y J. 1 (2019).

Charlotte S. Alexander, *#MeToo and the Litigation Funnel*, 23 EMP. RTS. & EMPL. POL'Y J. 17 (2019).

Ann C. McGinley, *The Masculinity Mandate: #MeToo, Brett Kavanaugh, and Christine Blasey Ford*, 23 EMP. RTS. & EMPL. POL'Y J. 59 (2019).

Joseph A. Seiner, *Harassment, Technology, and the Modern Worker*, 23 EMP. RTS. & EMPL. POL'Y J. 85 (2019).

Michael Z. Green, *A New #MeToo Result: Rejecting Notions of Romantic Consent with Executives*, 23 EMP. RTS. & EMPL. POL'Y J. 115 (2019).

Elizabeth C. Tippet, *Opportunity Discrimination: A Hidden Liability Employers Can Fix*, 23 EMP. RTS. & EMPL. POL'Y J. 165 (2019).

New Voices (Journal of Tort Law):

Christopher J. Robinette, *Editor's Introduction: Symposium Issue: New Voices*, 12 J. TORT L. 155 (2019).

Alexander B. Lemann, *Autonomous Vehicles, Technological Progress, and the Scope Problem in Products Liability*, 12 J. TORT L. 157 (2019).

Benjamin J. McMichael, *Shifting Liability with Licensing: An Empirical Analysis of Medical Malpractice and Scope-of-Practice Laws*, 12 J. TORT L. 213 (2019).

Sarah L. Swan, *Aiding and Abetting Matters*, 12 J. TORT L. 255 (2019).

Cristina Carmody Tilley, *The Tort of Outrage and Some Objectivity About Subjectivity*, 12 J. TORT L. 283 (2019).

Remedies in Complex Litigation (Texas Law Review):

Lynn A. Baker, *Mass Tort Remedies and the Puzzle of the Disappearing Defendant*, 98 TEX. L. REV. 1165 (2020).

Robert G. Bone, *Rights and Remedies in Trademark Law: The Curious Distinction Between Trademark Infringement and Unfair Competition*, 98 TEX. L. REV. 1187 (2020).

Oren Bracha & Talha Syed, *The Wrongs of Copyright's Statutory Damages*, 98 TEX. L. REV. 1219 (2020).

A. Mechele Dickerson, *Designing Slavery Reparations: Lessons from Complex Litigation*, 98 TEX. L. REV. 1255 (2020).

Ezra Friedman & Abraham L. Wickelgren, *How Should We Enforce Patents? A Simulation Analysis*, 98 TEX. L. REV. 1283 (2020).

John M. Golden, *Judicial Policing of Patent Damages Experts*, 98 TEX. L. REV. 1307 (2020).

Bert I. Huang, *Coordinating Injunctions*, 98 TEX. L. REV. 1331 (2020).

Alexandra D. Lahav, *The Knowledge Remedy*, 98 TEX. L. REV. 1361 (2020).

Thomas O. McGarity, *Supplemental Environmental Projects in Complex Environmental Litigation*, 98 TEX. L. REV. 1405 (2020).

Rise of the Machines: Artificial Intelligence, Robotics, and the Reprogramming of Law (Fordham Law Review):

Deborah W. Denno & Ryan Surujnath, *Foreword*, 88 FORDHAM L. REV. 381 (2019).

Madeline Byrd & Katherine J. Strandburg, *CDA 230 for a Smart Internet*, 88 FORDHAM L. REV. 405 (2019).

Iria Giuffrida, *Liability for AI Decision-Making: Some Legal and Ethical Considerations*, 88 FORDHAM L. REV. 439 (2019).

Ellen P. Goodman & Julia Powles, *Urbanism Under Google: Lessons from Sidewalk Toronto*, 88 FORDHAM L. REV. 457 (2019).

Kristin Johnson, Frank Pasquale, & Jennifer Chapman, *Artificial Intelligence, Machine*

Learning, and Bias in Finance: Toward Responsible Innovation, 88 FORDHAM L. REV. 499 (2019).

Tom C.W. Lin, *Artificial Intelligence, Finance, and the Law*, 88 FORDHAM L. REV. 531 (2019).

David W. Opderbeck, *Artificial Intelligence in Pharmaceuticals, Biologics, and Medical Devices: Present and Future Regulatory Models*, 88 FORDHAM L. REV. 553 (2019).

Gerhard Wagner, *Robot, Inc.: Personhood for Autonomous Systems?* 88 FORDHAM L. REV. 591 (2019).

Ari Ezra Waldman, *Power, Process, and Automated Decision-Making*, 88 FORDHAM L. REV. 613 (2019).

Symposium on Anita Bernstein's *The Common Law Inside the Female Body* (Boston College Law Review E-Supplement):

Bridget J. Crawford, *The Common Law as a Force for Women*, 61 B.C. L. REV. E-SUPP. I.-63 (2020).

Nadia B. Ahmad, *Re-Reading Anita Bernstein's The Common Law Inside the Female Body From the Bottom of the Well: Analysis of the Central Park Five, Border Drownings, the Kavanaugh Confirmation, and the Coronavirus*, 61 B.C. L. REV. E-SUPP. I.-69 (2020).

Ann Bartow, *The Female Legal Realist Inside the Common Law*, 61 B.C. L. REV. E.-SUPP. I.-82 (2020).

Deborah Dinner, *Seeking Liberty, Finding Patriarchy: The Common Law's Historical Legacy*, 61 B.C. L. REV. E-SUPP. I.-89 (2020).

Lolita Buckner Inniss, *(Un)Common Law and the Female Body*, 61 B.C. L. REV. E-SUPP. I.-95 (2020).

Katharine Silbaugh, *The Common Law Inside a Social Hierarchy: Power or Reason?* 61 B.C. L. REV. E-SUPP. I.-105 (2020).

Anita Bernstein, *There's Feminism in Those Judgments*, 61 B.C. L. REV. E-SUPP. I.-112 (2020).

Symposium on Anita Bernstein's *The Common Law Inside the Female Body* (Northwestern University Law Review Online):

Bridget J. Crawford, *The Common Law as Silver Slippers*, 114 NW. U. L. REV. ONLINE 131 (2019).

David S. Cohen, *The Promise and Peril of a Common Law Right to Abortion*, 114 NW. U. L. REV. ONLINE 140 (2019).

Joanna L. Grossman, *Women are (Allegedly) People, Too*, 114 NW. U. L. REV. ONLINE 149 (2019).

Cyra Akila Choudhury, *The Common Law as a Terrain of Feminist Struggle*, 114 NW. U. L. REV. ONLINE 160 (2019).

Margaret Chon, *Intellectual Property Infringement and the Right to Say No*, 114 NW. U. L. REV. ONLINE 169 (2019).

Maritza I. Reyes, *The Female Body in the Workplace: Judges and the Common Law*, 114 NW. U. L. REV. ONLINE 177 (2019).

Teri A. McMurtry-Chubb, *In Search of the Common Law Inside the Black Female Body*, 114 NW. U. L. REV. ONLINE 187 (2019).

Anita Bernstein, *Negative Liberty Meets Positive Social Change*, 114 NW. U. L. REV. ONLINE 195 (2019).

Symposium on Convergence and Divergence in Private Law (Southern California Law Review):

Yun-chien Chang & Richard A. Epstein, *Introduction to the Symposium on Convergence and Divergence in Private Law*, 92 S. CAL. L. REV. 741 (2019).

Richard A. Epstein, *The Necessity of Convergence in Private Law*, 92 S. CAL. L. REV. 751 (2019).

Saul Levmore, *Convergence and Then Downstream Divergence in Torts and Other Law*, 92 S. CAL. L. REV. 769 (2019).

Yun-chien Chang & Henry E. Smith, *Convergence and Divergence in Systems of Property Law: Theoretical and Empirical Analysis*, 92 S. CAL. L. REV. 785 (2019).

Giuseppe Dari-Mattiacci & Carmine Guerriero, *Divergence and Convergence at the Intersection of Property and Contract*, 92 S. CAL. L. REV. 809 (2019).

G. Marcus Cole, *The Long Convergence: "Smart Contracts" and the "Customization" of Commercial Law*, 92 S. CAL. L. REV. 851 (2019).

Robert Cooter & Ariel Porat, *Torts and Restitution: Legal Divergence and Economic Convergence*, 92 S. CAL. L. REV. 897 (2019).

Adam Mossoff, *Institutional Design in Patent Law: Private Property Rights or Regulatory Entitlements*, 92 S. CAL. L. REV. 921 (2019).

Shyamkrishna Balganesh, *Private Law Statutory Interpretation*, 92 S. CAL. L. REV. 949 (2019).

Stefanie Jung, *Bluffing in Business-to-Business Contract Negotiations*, 92 S. CAL. L. REV. 973 (2019).

Vanessa Casado Perez & Carlos Gomez Ligerre, *From Nuisance to Environmental Protection in Continental Europe*, 92 S. CAL. L. REV. 1003 (2019).

Aaron D. Simowitz, *Convergence and the Circulation of Money Judgments*, 92 S. CAL. L. REV. 1031 (2019).

Christopher Serkin, *Divergence in Land Use Regulation and Property Rights*, 92 S. CAL. L. REV. 1055 (2019).

Texas Alliance for Patient Access (TAPA) and the Texas Trial Lawyers Association (TTLA) on Medical Malpractice Claims in Texas (Texas Tech Law Review):

Glenn W. Cunningham, *Preface: The Crisis That Was Created*, 51 TEX. TECH L. REV. 619 (2019).

Charles Silver, David A. Hyman, & Bernard Black, *Fictions and Facts: Medical Malpractice Litigation, Physician Supply, and Health Care Spending in Texas Before and After H.B. 4*, 51 TEX. TECH L. REV. 627 (2019).

Robert S. Peck & Hartley Hampton, *A Challenge Too Early: The Lawsuit to Invalidate Texas Damage Caps Ten Years Ago and Its Likely Future Vindication*, 51 TEX. TECH L. REV. 667 (2019).

Patrick Luff & Jay Harvey, *Understanding the Texas Tort Claims Act*, 51 TEX. TECH L. REV. 693 (2019).

Randall O. Sorrels & Jonathan D. Sneed, *Chapter 33: A Guide to Applying and Calculating Proportionate Responsibility in Texas*, 51 TEX. TECH L. REV. 711 (2019).

Kirk L. Pittard, *Recovery of Medical Expenses Under Texas Civil Practice and Remedies Code § 41.0105 – The Paid or Incurred Statute*, 51 TEX. TECH L. REV. 731 (2019).

Paula Sweeney, *Definitions Under Chapter 74*, 51 TEX. TECH L. REV. 745 (2019).

Michelle Cheng & Tom Jacob, *Pre- and Post-Suit Notice: Medical Authorizations and the 120-Day Expert Report*, 51 TEX. TECH L. REV. 765 (2019).

Patrick Luff, Bill Liebbe, Jay Harvey, & Jack McGehee, *Emergency Medical Care in Chapter 74: Substantive Definitions and Interpretive Quandaries*, 51 TEX. TECH L. REV. 785 (2019).

Paula Sweeney, *The Statute of Limitations Under Chapter 74*, 51 TEX. TECH L. REV. 811 (2019).

Luke Metzler & Lawrence Lassiter, *The Damages Caps: “The Most Important Part” of House Bill 4*, 51 TEX. TECH L. REV. 833 (2019).

Justice Peter Kelly, *Expert Reports in Health Care Liability Claims*, 51 TEX. TECH L. REV. 841 (2019).

Kathryn Snapka & William J. Chriss, *Periodic Payment of Future Damages in Medical Malpractice Cases*, 51 TEX. TECH L. REV. 847 (2019).

Gavin McInnis, *To Arbitrate or Not to Arbitrate, That Is the Question*, 51 TEX. TECH L. REV. 859 (2019).

Truth Decay: Deep Fakes and the Implications for Privacy, National Security, and Democracy (Maryland Law Review):

Robert Chesney & Danielle Keats Citron, *21st Century-Style Truth Decay: Deep Fakes and the Challenge for Privacy, Free Expression, and National Security*, 78 MD. L. REV. 882 (2019).

Mary Anne Franks & Ari Ezra Waldman, *Sex, Lies, and Videotape: Deep Fakes and the Free Speech Delusion*, 78 MD. L. REV. 892 (2019).

Thomas E. Kadri, *Drawing Trump Naked: Curbing the Right of Publicity to Protect Public Discourse*, 78 MD. L. REV. 899 (2019).

Jessica Silbey & Woodrow Hartzog, *The Upside of Deep Fakes*, 78 MD. L. REV. 960 (2019).

Twenty-Fifth Annual Clifford Symposium on Tort Law & Social Policy

Rising Stars: A New Generation of Scholars Looks at Civil Justice (DePaul Law Review):

Stephan Landsman, *Introduction*, 69 DEPAUL L. REV. ix (2020).

Yonathan A. Arbel & Roy Shapira, *Consumer Activism: From the Informed Minority to the Crusading Minority*, 69 DEPAUL L. REV. 233 (2020).

Maureen Carroll, *Civil Procedure and Economic Inequality*, 69 DEPAUL L. REV. 269 (2020).

Zachary D. Clopton, *Civil Justice and the (Green) New Deal*, 69 DEPAUL L. REV. 335 (2020).

Andrew Elmore, *The State Qui Tam to Enforce Employment Law*, 69 DEPAUL L. REV. 357 (2020).

Dov Fox, *Redressing Future Intangible Losses*, 69 DEPAUL L. REV. 419 (2020).

Maggie Gardner, “*Foreignness*,” 69 DEPAUL L. REV. 469 (2020).

David S. Han, *Managing Constitutional Boundaries in Speech-Tort Jurisprudence*, 69 DEPAUL L. REV. 495 (2020).

Victor D. Quintanilla, *Doing Unrepresented Status: The Social Construction and Production of Pro Se Persons*, 69 DEPAUL L. REV. 543 (2020).

D. Theodore Rave, *Tort Claims as Property Rights*, 69 DEPAUL L. REV. 587 (2020).

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In Memoriam

FRANCIS MCGOVERN

(from the Washington Post)

Francis Edward McGovern II passed away unexpectedly on February 14, 2020, at age 74. Francis's birth in Albemarle County, Virginia marked his family's sixth generation. Francis graduated from Yale University and the University of Virginia School of Law, and served his country as a Captain in the U.S. Marine Corps.

A widely revered and innovative legal scholar and gifted teacher, Francis was a tenured Professor of Law at Duke University and Associate Professor at The University of California Hastings College of Law and taught in various capacities at dozens of law schools nationally and internationally. He was a prolific author in leading legal publications, highlighting his innovative and insightful approaches to the practical application of the law and strategic thinking. Not only were students broadened and enriched by Francis, but throughout the United States and abroad Francis worked with esteemed members of the federal and state judiciaries, mediators, and attorneys, helping them apply and improve the law to resolve intractable problems with creative solutions.

Francis was a frequent lecturer or moderator at professional conferences and also served on dozens of legal and university boards and committees, serving as President of the academy of Court-Appointed Masters as well as numerous settlement trust or compensation centers and institutes. As a court-appointed special master or neutral expert, Francis

developed innovative and lasting solutions in most of the significant US mass-claim litigation, including the DDT toxic exposure litigation, Dalkon-Shield controversy, and silicone gel breast implant litigation. More recently, Francis was serving as the special master addressing abatement of mold in New York public housing, and global settlement efforts to address the national opioid crisis.

ALAN CALNAN

(from Debbie Leathers,
Associate Dean, Southwestern Law School)

In the words of Dean Susan Prager, “Though he had been teaching Southwestern students for 30 years, Alan Calnan always seemed, and was, young and vibrant. He lived and breathed torts. He was an accomplished, well-cited scholar and, as many of you know so well, he was a pathbreaking, creative teacher, one who encouraged his colleagues to see technology as opening new avenues for effective teaching. Many of you were pioneers with him in the classroom.”

“At the Southwestern Law Review’s request, Professor Calnan in close collaboration with his friend and colleague Professor Byron Stier and students put together one of the most extraordinary symposium days that I have ever experienced. It was the inaugural public event for the Panish Civil Justice Program. I will always remember him as he was that day beaming with pride and excitement. But that is actually the way Alan Calnan always seemed, exuding energy and enthusiasm. The written issue from the conference was destined to be one of the most significant in the history of our law review, and it now takes on added significance for Southwestern.”

PIERRE WIDMER

(from the European Group on Tort Law)

On 13 May 2020, Pierre Widmer passed away at the age of 82. A native of Berne (Switzerland), he studied law at the University of Berne, where

he also served as a university assistant from 1965 to 1973 with Professor Hans Merz, interrupted by one year of research at Unidroit in Rome. He subsequently served at the Swiss Federal Office of Justice for seventeen years, first as a staff legal advisor, then as a deputy-director, where he was in charge of legislative projects in private national and international law. In 1990, he became the director of the Swiss Institute of Comparative Law in Lausanne, retiring in 2003.

From 1981 to 2001, Pierre lectured tort law at the University of St. Gallen, where he was awarded a titular professorship in 1986. He also taught at the universities of Zurich and Lucerne. He was a member and chair of various Swiss and international expert commissions, including at the Council of Europe, UNCITRAL and Unidroit, of whose Governing Council he was a member from 2004 to 2009 and an honorary member thereafter.

Pierre became one of the first members of the European Group on Tort Law in 1993. From 1999 to 2011, he chaired the Supervisory Board of the European Centre of Tort and Insurance Law (ECTIL), whose honorary member he was.

In addition to a wide range of publications, one of his many outstanding contributions to the research and practice of tort law was his co-authorship of the internationally acclaimed draft of a comprehensive reform and unification of Swiss tort law (1988-2000, together with Pierre Wessner). His excellence was acknowledged inter alia by the Great Walter Hug Award (1996) and an honorary doctorate at the University of Berne (2006).

The European Group on Tort Law has lost one of its founding members, a brilliant scholar, and a dear friend.