

TRANSACTIONS

The Tennessee Journal of Business Law

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TRANSACTIONS

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BUSINESS FACULTY NOTES



Professor Teri Baxter recently joined the College of Law after eleven years at the Saint Louis University School of Law, where she taught primarily in the business concentration. Professor Baxter taught Contracts, Commercial Transactions, Secured Transactions, Legal Profession, and classes focusing on the Fourth Amendment and privacy. Her primary academic focus at the College of Law will be in the commercial and constitutional law areas.

Before arriving at the College Of Law, Professor Baxter spoke as a panelist and commenter at the Lutie A. Lytle Black Women Law Faculty Writing Workshop, in June 2012, at Suffolk University in Boston, Massachusetts. Additionally, Professor Baxter's most recent article, "Tort Liability for Parents Who Choose Not to Vaccinate Their Children and Whose Unvaccinated Children Infect Others," will be published in the winter issue of the *University of Cincinnati Law Review* in 2014. The article concludes that parents have a duty to ensure that their unvaccinated children do not harm others and that damages should flow from any breach of that duty. The article also concludes that the existence of such a duty does not violate or infringe upon privacy rights.

Professor Iris J. Goodwin's article "Why Civil Law Countries Might Forego the



Individual Trustee: Provocative Insights from the New-to-the Fold" has been published by Cambridge University Press in the volume *The Worlds of the Trust* (L. Smith, ed.). Her piece "The Moral Patient, the Honorable Fiduciary, and a Faltering Liberalism: An Exploration of the Call to Animal Respect" has been published in the e-journal *Between the Species*. In addition, Professor Goodwin spoke earlier this year before the Columbia University Seminar on Law & Politics on the topic, "Civil Law Views of the Common Law Trust: Why Such Anxiety?" Professor Goodwin also appeared as an expert on a panel at the spring meeting of the

American Bar Association's Real Property, Trusts and Estates Section, speaking on the subject of restricted gifts to public charity. Finally, she has contributed an

article to *Blackwell's Encyclopedia of Political Thought* (Gibbons, et al. eds.) on the Investiture Contest.



Professor Joan M. Heminway's article, "Proceed At Your Peril: Crowdfunding and the Securities Act of 1933" (coauthored with UT Law alumnus Shelden Ryan Hoffman) was cited at footnote 8 of the Securities and Exchange Commission's proposed crowdfunding rules. The article was published in the *Tennessee Law Review* in 2011. Professor Heminway also had recent articles published in the *University of Cincinnati Law Review* ("Desire, Conservatism, Underfunding, Congressional Meddling, and Study Fatigue: Ingredients for Ongoing Reform at the Securities and Exchange Commission?") and the *U.C. Davis Business Law Journal* ("The New Intermediary on the Block: Funding Portals under the CROWDFUND Act").

In addition to her scholarly articles, Professor Heminway has presented on several issues relating to crowdfunding over the past few months. She recently traveled to a faculty forum at St. Mary's University School of Law to discuss a paper entitled "Lawyering in the Crowdfunding Era," which will appear as an article in the *American University Business Law Review*. Professor Heminway recently presented a paper at a symposium, "The Securities Act of 1933 at 80: Does it provide a Fair and Efficient Access to Capital?," organized by the *Kentucky Law Journal*. Her paper, "How Congress Killed Crowdfunding: A Tale of Political Pressure, Hasty Decisions, and Inexpert Judgments that Begs for a Happy Ending," will be published in a forthcoming special edition of the *Kentucky Law Journal*. She also recently spoke about disclosure regulation and crowdfunding at a *Vermont Law Review* symposium in South Royalton, VT on "The Disclosure Debates: The Regulatory Power of an Informed Public" and participated in a recent panel discussion on "Crowdfunding Social Enterprise" at a conference sponsored by the Kauffman Foundation and hosted by the Deming Center for Entrepreneurship at the University of Colorado's Leeds School of Business.

Professor Heminway chairs the planning committee for the Association of American Law Schools' Midyear Meeting Workshop on "Blurring Boundaries in Financial and Corporate Law" in June 2014 in Washington, DC.



Professor Amy Morris Hess continued her role in 2013 as ABA Advisor to a committee of the Uniform Laws Commission charged with drafting a uniform powers of appointment act. The act received final approval at the annual meeting of the Uniform Laws Commission in Boston, MA in July 2013. Hess plans several speaking engagements in 2014 to various state groups considering enactment of uniform act.

Professor Hess's 2013 supplements to the multi-volume treatise, *BOGERT & HESS, THE LAW OF TRUSTS AND TRUSTEES*, were published in September 2013, and she is now working on the 2014 supplements. She is also working on a second edition of the casebook that she co-authored entitled *AN INTRODUCTION TO TRUSTS AND ESTATES*. West Publishing plans to publish the new edition in late 2014.

In March 2013, Professor Hess presented an update of her research on estate planning for the baby-boom generation at a joint meeting of the East Tennessee Lawyers Association for Women and Tennessee Law Women. In May 2013, she spoke on the use of expert witnesses in fiduciary duty litigation at an all-day CLE Program on Expert Witnesses sponsored by the Tennessee Bar Association in Nashville.

In August 2013, Hess was appointed vice-chair of the standing committee on diversity of the American Bar Association's Section of Real Property, Trust & Estate Law. She continues to serve on the Section's task force on estate planning for underserved populations and as associate editor of the Section's books & media publications. She is also a member of the professional responsibility committee of the American College of Trust and Estate Counsel.



Professor Becky Jacobs, serving as the College of Law's faculty adviser for the Fifth Annual Securities Dispute Resolution Triathlon Moot Court, recently travelled to New York City for a competition sponsored by St. John's University's Hugh L. Carey Center for Dispute Resolution and the Financial Industry Regulatory Authority. As part of the competition, law student teams from around the country meet to test their advocacy skills in the negotiation, mediation, and arbitration of a securities dispute. Members of FINRA's roster of experienced

neutrals serve as mediators, arbitrators, and judges. This was the first year that UT participated in the Triathlon, and, out of the 20+ competing teams, UT's team took the top honor in the Negotiation component of the competition.

Professor Jacobs also recently returned from a five-week summer program, Law and Sustainable Development: Comparative and International Perspectives, in Rio de Janeiro, Brazil. The program, organized by the Tulane Center for Law and International Development and the Fundação Getúlio Vargas Rio's Program in Law and Environment and co-sponsored by UT and GSU, provides its members with an opportunity to spend a week in the Atlantic rainforest and to meet prominent members of the local legal community, government officials, and community leaders and activists.

Several articles authored by professor Jacobs have been published or will soon appear in print, including a chapter entitled "Environmental Challenges to the Energy Sector" for Praeger International's Encyclopedia of the Business of Energy; a foreword in the *Tennessee Law Review's* 2013 Symposium edition, "The Biggest Environmental Law Case in Twentieth Century Tennessee...and Where Was the Press? The Little Endangered Snail Darter versus TVA's Tellico Dam," and an article with the title, "*Skort Reform - A Series of Unfortunate Events in Rio," which is forthcoming in the *Miami Inter-American Law Review*.

Professor Jacob gave a presentation at a recent forum entitled, "Women in/and Business: Sex, Gender, and Social Justice in the Economic Sphere," at a program sponsored by the Center for the Study of Social Justice, which was held at the University of Tennessee Howard H. Baker Center for Public Policy. She also was part of an organizing group for Southeastern Association of Law School's new law teacher program, which included mock interviews, curriculum vitae reviews, and mock job talks. She participated in the first program in August 2013 and will

participating on the Committee and in the program again in the 2013-14 academic year.



Professor Brian Krumm recently published a chapter entitled “State Legislative Efforts to Improve Access to Venture Capital,” as part of a book *ENTREPRENEURSHIP AND INNOVATION IN EVOLVING ECONOMIES: THE ROLE OF LAW*. Additionally, Professor Krumm has co-authored *THE ENTREPRENEURIAL LAW CLINIC HANDBOOK* with Professor George Kuney, which has been published by Thompson Reuters and Vital Source in an e-book format. The Handbook is designed to bridge the gap between what students learn in the doctrinal law classes such as Contracts, Business Associations, Taxation of Business

Organizations, Intellectual Property, Secured Transactions, and Securities Regulation and the integration and application of this knowledge in assisting the entrepreneur or business client in addressing their transactional legal needs. Its objective is to serve as single source of reference with extensive links to other resources and exemplars, for those attempting to resolve and address business related transactional challenges. This is a resource which can be used by both law students and new associates when counseling entrepreneurs in creating business entities, drafting transactional documents, protecting intellectual property, and dealing with securities issues.

Professor Krumm also participated in a panel presentation at the Third Biennial Conference on Teaching Transactional Law and Skills at Emory Law School entitled “Case Study: From Program Design to Student Experience”, which explored the development and evolution of the Transactional Law Curriculum at the University of Tennessee College of Law.

Professor Krumm represented the College of Law at a recent Association of American Law Schools Conference on Clinical Legal Education, held in San Juan, Puerto Rico when he spoke at a West Academic Publishing event, discussing a recently authored e-book, *THE ENTREPRENEURIAL LAW CLINIC HANDBOOK*, coauthored with Professor George Kuney. Professor Krumm and Kuney are currently working on *A TRANSACTIONAL MATTER*, an e-book that is scheduled for publication in the spring by Thompson Reuters. This book explains how the founders of a small, University-based software venture set out to commercialize the intellectual property they developed as part of their research efforts. The book chronicles the lifecycle of the venture from initial entity formation to asset

sale with hyperlinks to all of the documents necessary to support the underlying transactions. In addition, he will also be making a presentation based upon the book at the "Lawentrepreneurship: Law Clinics and University Incubators," to be held February 28, 2014 at Texas A&M University School of Law. Professor Krumm is also a member of the Steering Committee for the planning for Emory's Fourth Biennial Conference on Transactional Education to be held June 6-7, 2014.



Professor George Kuney's most recent article, "Section 363 Sales and Successor Liability," has been published in the 2013 Edition of the Norton Annual Survey of Bankruptcy Law. The article contrasts common-law successor liability and the Bankruptcy Code at 11 U.S.C. section 363(f). The article concludes that recent judicial decisions have strengthened the case for the trend to limit the bankruptcy sale free and clear power in the case of claims that are future and unknown at the time of the sale.

The Continuing Education of the Bar of California will publish the 2014-updated edition of Professor Kuney's single volume treatise, CALIFORNIA LAW CONTRACTS, co-authored with his wife, Adjunct Professor Donna Looper. Professor Kuney and Professor Brian Krumm recently published an e-book, THE ENTREPRENEURIAL LAW CLINIC HANDBOOK, with West Publishing and Vital Source.

In addition to his publications, Professor Kuney testified in November in field hearings conducted by the American Bankruptcy Institute's Commission to Study Reform of Chapter 11. His testimony focused on reorganization by sale of substantially all of the assets of a business under 11 U.S.C. section 363 and the expansion on the "small debtor" provisions of the code to more debtors while also lengthening the deadlines for small business reorganizations to encourage greater use of the cost saving process. His testimony will be published in the spring issue of TRANSACTIONS.

Finally, Professor Kuney remains active in the administration of the College of Law, directing the Clayton Center for Entrepreneurial Law, serving as chair of the Admissions Committee and the Academic Support Task Force, as well as participating in the College's mentoring program that matches students with experienced lawyers for informal discussions and support as they prepare to enter

the practice of law.



Professor Michelle Kwon spoke at the Joint Fall CLE Meeting of the ABA Sections of Taxation and Real Property, Trust and Estate Law, held in San Francisco, CA. The focus of the panel discussion was on the interaction of Internal Revenue Code sections 304 and 351. The panel also discussed recent proposed regulations to section 362(e)(1) and recent final regulations regarding section 362(e)(2).

Professor Kwon joined Professor Leatherman to speak at a recent meeting of the Tax Section of the American Bar Association in Washington, DC. Professor Kwon discussed regulations finalized on the day of the meeting that allowed corporate sellers to treat the disposition of subsidiary stock as a disposition of subsidiary assets. The panel described the regulatory scheme and focused on the regulations' effect on affiliated groups of corporations that file consolidated returns.



Professor Don Leatherman's most recent article, "The Scope of the *General Utilities* Repeal," was published earlier this year in 91 TAXES 235 (March 2013). In addition to his scholarly article, Professor Leatherman has co-authored several books. Professor Leatherman has a forthcoming book publication, co-authored with Howard Abrams and Richard Doernberg, *FEDERAL INCOME TAXATION OF CORPORATIONS AND PARTNERSHIPS* (5th ed. 2013). He published a second book, *FEDERAL CORPORATE TAXATION* (7th ed. 2013) earlier this year, also co-authored with Howard Abrams

and Richard Doernberg. In addition to the two book publications, Professor Leatherman also has a forthcoming publication for the Practising Law Institute, *Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financing, Reorganizations and Restructurings 2013*, entitled "A Survey of the Section 336(e) Regulations."

Professor Leatherman will speak this January at the American Bar Association ("ABA") tax section meeting in Phoenix, AZ on various aspects of the section 336(e) regulations. He will also speak in December at the Practising Law

Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures, on a panel discussing current developments for consolidated groups. Prior to those discussions, Professor Leatherman will lead an eight-hour continuing legal education program on S Corporation taxation for the accounting firm Dixon Hughes Goodman.

In addition, Professor Leatherman has moderated several panels this year, including a panel for the ABA tax section meeting in San Francisco on partnership transactions involving partner stock. Professor Leatherman also recently moderated an ABA teleconference entitled "Current Developments in Consolidated Tax Returns: Consolidated Aspects of the Section 336(e) Regulations." Earlier this summer, Professor Leatherman participated in a discussion group at the Southeast Association of Law Schools meeting concerning interdisciplinary teaching and moderated a third panel at the ABA tax section meeting entitled, "The Section 336(e) Regulations."



Professor Alex Long's article, "Reasonable Accommodation as Professional Responsibility," was accepted for publication in the *University of California, Davis Law Review*. The article explores the relationship between a lawyer's legal obligation under the Americans with Disabilities Act and their own ethical obligations.

His article "The Forgotten Role of Consent in Defamation and Employment Reference Cases" was accepted for publication in the *Florida Law Review* and will be forthcoming in 2014. Additionally, Professor Long's article "Diminishing Retaliation Liability," co-authored with Professor Sandra Sperino at the University of Cincinnati College of Law, which examines employer liability for permitting employment retaliation by coworkers, appeared in the *NYU Law Review Online* in April 2013.



Professor Carl Pierce recently returned from three years at the Howard H. Baker, Jr. Center for Public Policy at the University of Tennessee where he served as Director. Professor Pierce will now serve in a part-time position at the Howard H. Baker, Jr. Center as Director Emeritus and will focus his efforts on research about Senator Baker's career. At the College of Law, Professor Pierce is teaching classes on professional responsibility.

Professor Pierce served as the Clayton Center's second director and oversaw the faculty and student efforts to establish *Transactions: The Tennessee Journal of Business Law*. Professor Pierce then turned the leadership of the Clayton Center over to Professor George Kuney, but still contributed articles to the journal relating to the professional responsibilities of lawyers in the organizational setting.



Professor Thomas Plank's most recent article "The Securitization of Aberrant Contract Receivables," is forthcoming in the Chicago-Kent Law Review. His article, "Article 9 of the UCC: Reconciling Fundamental Property Principles and Plain Language," was published in 68 BUS. LAW. 439-506 (2013).

Professor Plank has also authored a chapter entitled "Security Interest Issues in the Merger of Multinational Enterprises," in MAKING THE PIECES FIT: AN ANALYSIS OF THE DAIMLER-CHRYSLER MERGER (Maurice E. Stucke, ed. Carolina Academic Press forthcoming). He updated his chapter entitled "The Key to Securitization: Isolating the Assets to Be Securitized from the Risk of An Insolvency Proceeding" in OFFERINGS OF ASSET BACKED SECURITIES (John Arnholz and Edward E. Gainor, eds., Aspen Pub. 2d ed. 2013).

In addition to his scholarly articles, Professor Plank presented at the 2013 annual meeting of the Association of American Law Schools ("AALS") in New Orleans, LA for the Program of the Section on AALS Section on Commercial & Related Consumer Laws. His presentation titled "Aberrant Contracts: Fringe Economy Lending & Other Atypical Consumer Agreements" was part of a program entitled "The Securitization of Aberrant Contract Receivables."



Professor Gary Pulsinelli has recently prepared a chapter for a book on international merger law, entitled “Integrating and Managing Intellectual Property in an International Merger.” The book is a collaboration with other College of Law and University faculty, under the current working title, MAKING THE PIECES FIT: LEGAL CONSIDERATIONS IN AN INTERNATIONAL MERGER. Professor Pulsinelli also spent last summer in Cambridge England where he taught a course on International Intellectual Property as a part of the University of Mississippi’s Cambridge Study Abroad Program.

Professor Pulsinelli was appointed to the Website, Technology, and Communications Committee of the Southeastern Association of Law Schools for the 2013-14 academic year.



Professor Paula Schaefer was invited to speak earlier this year at the ABA Center for Professional Responsibility’s National Conference in San Antonio, TX. She joined a panel in a discussion about, “Lawyer Fiduciary Duties: Testing the Limit of Client Loyalty and Confidentiality.” Professor Schaefer’s book, DEVELOPING PROFESSIONAL SKILLS: CIVIL PROCEDURE, was published by West Academic Publishing. The book focuses on the incorporation of skill exercises into first-year law school courses.

Professor Schaefer’s article, “Technology’s Triple Threat to the Attorney-Client Privilege,” was published in the *Journal of Professional Lanyer* and she was invited to a conference in Albuquerque, NM to speak at an authors’ working conference for a Best Practices for Legal Education book.



This past summer, **Associate Dean Greg Stein** visited three Chinese law schools with Dean Doug Blaze to forge a working relationship with the schools and to undertake student and faculty exchange programs in the future. While in Shanghai, Professor Stein spoke to students and faculty at Shanghai University about “Takings Law in the United States,” and while in Beijing, Professor Stein guest lectured in a Legal Issues in Real Estate Development class at Peking University on the topic of “American Eminent Domain Law.”

Dean Stein’s latest article, “Is China’s Housing Market Heading Toward A U.S.–Style Crash?,” has been published in the *Arizona Journal of International and Comparative Law*. And his book, MODERN CHINESE REAL ESTATE LAW: PROPERTY DEVELOPMENT IN AN EVOLVING LEGAL SYSTEM, received a favorable review at the China Law Blog.

Dean Stein will travel to Kauai, Hawaii, for the spring meeting of the American College of Real Estate Lawyers (ACREL), where he will serve as a discussion leader for a panel and will give a presentation on the recent Supreme Court decision in *Koontz v. St. Johns River Water Management District*. He recently returned from Vancouver, British Columbia, where he attended ACREL’s annual meeting and Board of Governors meeting. Dean Stein serves on ACREL’s board.



Professor Maurice Stucke has recently published a number of articles. “A Response to Commissioner Wright’s Proposed Policy Statements Regarding Unfair Methods of Competition,” was published in the CPI Antitrust Chronicle, September 2013. “Looking at Monopsony in the Mirror,” appears in 62 EMORY L.J. 1509 (2013). Professor Stucke’s article, “Should Competition Policy Promote Happiness?,” was published in 81 FORDHAM L. REV. 2575 (2013). In addition to his scholarly articles, Professor Stucke has also contributed chapters to several books. His chapter, “Greater International Convergence and the Behavioural Antitrust Gambit,” will appear this year in the INTERNATIONAL RESEARCH HANDBOOK ON

COMPETITION LAW (Ariel Ezrachi, ed., Edward Elgar Publishing forthcoming 2013).

Professor Stucke also presented his scholarship at various conferences, including at the European University Institute, the University of Florence, and the University of Paris-Dauphine 17th Annual Conference of The International Society for New Institutional Economics. He presented research on behavioral economics and competition policy to competition authorities from around the world at a conference convened as part of Ireland's Presidency of the Council of the European Union in Dublin Castle, Ireland when he appeared before the Irish Competition Authority and the National Consumer Agency. Professor Stucke presented his article "Should Competition Policy Promote Happiness," at the University of Richmond Emroch Faculty Colloquy Series.

Several conferences and symposiums invited Professor Stucke as a guest speaker, including at the Southeastern Association of Law Schools' 2013 Annual Conference, the University of Colorado Law School, the South Dakota Law Review Symposium, the Assemblée Nationale, 4th International Concurrences Conference in Paris, France, and the COPA-COGECA (European Farmers & Agri-Cooperatives) in Brussels, Belgium. Professor Stucke also served as a panelist before the Italian Competition Authority, British Institute of International and Comparative Law, Loyola University Chicago School of Law, and the University of Rome I (Sapienza), at the Antitrust Marathon V: Public and Private Enforcement of Competition Law. A transcript of the symposium will be published in the European Competition Journal (forthcoming 2013).



Professor Kris Anne Tobin was elected to the Executive Committee of the Section on Admiralty and Maritime Law at the January, 2012 Annual Meeting of the Association of American Law Schools. Professor Tobin will serve as Section Chair in 2014.

Professor Tobin also presented "Tracking Arithmophobia: How to Read, Understand, and Analyze Financial Statements," last year at the third biennial conference entitled "Preparing the Transactional Lawyer: From Doctrine to Practice," at the Emory University

School of Law's Center for Transactional Law and Practice. A transcript of the presentation was published in *TRANSACTIONS*.



Professor Paulette J. Williams recently presented a work in progress titled, “Community Lawyering: Race, Privilege, and Social Justice,” at the Association of American Law Schools Conference on Clinical Legal Education, which was held in San Juan, Puerto Rico. Professor Williams also served as a co-leader for four small group sessions at the conference.

In June 2013, she did a presentation at the Institute of Law Teaching and Learning conference at Washburn University, in Topeka Kansas on the “Hybrid” Nonprofits Clinic/Seminar that she is teaching at the UT College of Law.

She did the introductory section for a presentation at the Transactional Lawyers’ Conference held at Emory University School of Law in September 2012. The presentation was published as Paula J. Williams, Kris Anne Tobin, Eric Franklin, & Robert J. Rhee, *Tackling “Arithmophobia”: Teaching How to Read, Understand, and Analyze Financial Statements*, 14 *TRANSACTIONS THE TENNESSEE JOURNAL OF BUSINESS LAW* 341 (2013).