

TRANSACTIONS

The Tennessee Journal of Business Law

VOLUME 18

SPRING 2017

NUMBER 3

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TRANSACTIONS

THE TENNESSEE JOURNAL OF BUSINESS LAW

ISSN 4486-1457. *Transactions: The Tennessee Journal of Business Law* is published semi-annually and edited by students of the University of Tennessee College of Law. The publisher is The Tennessee Journal of Business Law, Inc., c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. All claims of non-receipt of an issue should be made within six months of the date of publication if claimant wishes to avoid paying for the missing issue. To order back issues, contact William S. Hein & Co., Inc. at 2350 North Forest Road, Getzville, New York 14068, or call toll free at (800) 828-7571. POSTMASTER: Send address changes to: *Transactions: The Tennessee Journal of Business Law*, c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. The journal is available free online and print editions may be ordered at <http://trace.tennessee.edu/transactions>.

The preferred Bluebook abbreviation for the journal title is TENN. J. BUS. L.

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BUSINESS FACULTY NOTES



Associate Dean Teri Baxter served as a panelist on October 31 alongside UT Law Professor Glenn Reynolds for the Free Speech and Diversity Forum sponsored by the UT Faculty Senate Task Force on Diversity and Inclusion and the UTK American Association of University Professionals. Professor Baxter and UT Law Professor David Wolitz were quoted in the Knoxville News Sentinel article, *Knoxville Lawyers, Law Professor React to SCOTUS*

Pick, about President Trump’s nomination of Judge Neil Gorsuch to fill the United States Supreme Court seat left vacant after Justice Antonin Scalia’s death a year ago. Professor Baxter was also interviewed by WATE News about Judge Gorsuch’s nomination. Professor Baxter’s article, *Employer-Mandated Vaccination Policies: Different Employers, New Vaccines, and Hidden Risks*, will be published in the Fall 2017 issue of the *Utah Law Review*.

Professor Zack Buck was part of a panel of experts interviewed by WalletHub for the article, *2017’s Cities Most Affected by Trumpcare*, in which



the panel discussed the American Health Care Act (ACHA, also known as “Trumpcare”) that was proposed to amend the Affordable Care Act (also known as “Obamacare”). Professor Buck and the other experts answered questions about the likelihood that the ACHA would pass, which provisions of the ACHA they thought should be changed, and what they believed to be the “single most impactful policy change to improve quality and reduce

the cost of healthcare.” Professor Buck’s article, *The Cost of High Prices: Embedding the Ethic of Cost in the Standard of Care*, has been published in the *Boston College Law Review* (58 B.C. L. REV. 101 (2017)). His article, *A Farewell to Falsity: Shifting Standards in Medicare Fraud Enforcement*, has been accepted for publication in volume 48 of the *Seton Hall Law Review*. The website JOTWELL (The Journal of Things We Like (Lots))

published Professor Buck's article *Targeted, Concise Treatments for The American Health Care System, reviewing David Orentlicher, Controlling Health Care Spending: More Patient 'Skin in the Game?' and Barbara A. Noah, The (Ir)rationality of (Un)informed Consent*. Professor Buck was the featured speaker at the UT College of Law Health Law Society's program in March. His talk was titled "*Health Care Reform: What's Happened and What's Next?*" It featured a summary of what, exactly, the Affordable Care Act does, and how it is working (or not working); what the Trump administration has done, if anything, to change the operation of the law; and the potential paths forward for repeal, replacement, and/or repair.



Professor Iris Goodwin's article, *Access to Justice: What to Do about the Law of Wills*, will be published in the *Wisconsin Law Review*. She is also working with West Academic Publishers to assemble an editorial board and otherwise develop a 25th edition of the iconic casebook, originally edited by Campfield, Turnier & Dickenson, *TAXATION OF ESTATES, GIFTS & TRUSTS*. She continues her involvement as a Fellow of the American College of

Trust and Estates Counsel, serving on both the Legal Education Committee and the Digital Property Committee. Finally, in January she completed a one-year term as Chair of the Trusts and Estates Section of the Association of American Law Schools. She is now Chair Emeritus.

Professor Joan M. Heminway co-convened and co-moderated a



discussion group at the Association of American Law Schools annual meeting in January. The session was entitled "*Salman v. United States and the Future of Insider Trading Law*" and addressed the holding in and aftermath of a recently decided U.S. Supreme Court case, *Salman v. United States*, the first insider trading case decided by the Court in 20 years. Professor Heminway also completed her service as a member of the

Executive Committee of the Section on Securities Regulation at the Annual Meeting.

In March, Professor Heminway presented her book chapter entitled “Financing Social Enterprise: Is the Crowd the Answer?” (forthcoming in the *The Cambridge Handbook of Social Enterprise*) at a symposium at The University of Notre Dame Law School and as a featured presenter for the Eugene P. and Delia S. Murphy Corporate Law Colloquium at the Fordham University School of Law.

Three law reviews recently published Professor Heminway’s research and commentary. These publications include: *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 SEATTLE U. L. REV. 611 (2017); *(Not) Holding Firms Criminally Responsible for the Reckless Insider Trading of their Employees*, 46 STETSON L. REV. 127 (2016); and *The Role of Business Counsel as Compliance Gatekeepers: Toward Understanding and Combatting Reckless Disregard for Legal and Ethical Compliance in Business Entities*, 62 WAYNE L. REV. 7 (2016). Each of these publications responds to a solicitation of the work and a presentation of it at a related symposium.

In December 2016, Professor Heminway was quoted in a Bloomberg BNA article entitled “*Domino’s Rewards Customers With Free Stock in Season of Giving.*” In the article, Professor Heminway notes that companies giving away stock as customer rewards must comply with state and federal securities laws. She also describes some of the potentially applicable regulations.



Professor Emerita Amy Morris Hess’s 2016 annual updates to the multi-volume treatise, *BOGERT & HESS, THE LAW OF TRUSTS AND TRUSTEES* were published in October 2016. In January 2017, she spoke on a panel during the 2017 midyear meeting of the American Bar Association (“ABA”) Section of Taxation in Orlando, Florida. The presentation was entitled “*Cultural Issues Affecting Family Business Succession Planning.*” In March, Hess spoke on “*Ethical Responsibilities of Lawyers Serving on Non-Profit Boards*” to the Committee on Professional Responsibility of the American College of Trust and Estate Counsel (“ACTEC”) in Scottsdale, AZ. She is a member of ACTEC’s Committees on Professional Responsibility, Legal Education, and Nomination of Academic Fellows. In April, Professor

Hess participated in several presentations during the 29th Annual Spring Symposia of the ABA Section of Real Property, Trust and Estate (“RPTE”) Law in Denver, Colorado. The presentations included speaking on “*Construction and Interpretation of Wills and Trusts*” during a half-day seminar titled “*Turns Out ‘Fiduciary’ Means You Have to Give It Back: An Introduction to Trust and Estate Litigation;*” and moderating panels entitled “*Construction Issues Engendered by Changing Concepts of Family, Gender, and Race: If My Grandson Becomes My Granddaughter Will She Get the Farm?*” and “*Mentoring Minority Lawyers in Practice: Diversity in Twenty-First Century Lawyering.*” Professor Hess is Chair of the RPTE Section’s Standing Committee on Diversity and Inclusion, as well as a member of the Section Council and an acquisitions editor for the Section’s Books and Media Committee.



Professor Becky Jacobs once again participated in the University of Tennessee’s Watershed Symposium in September. Professor Jacobs is a member of the Executive Committee for the Intercollegiate Watershed Minors at the University of Tennessee, and this was the 5th annual symposium held by the watershed faculty. The professor’s topic was “*Legal Careers for Water Professionals.*” Professor Jacobs also participated on a panel at the Society of American Law Teachers

conference in Chicago in October. The panel – “*Teaching About Social Justice by Not Talking About It*” – discussed faculty approaches to encourage students to examine critically the effect of different policies, doctrines and legal responses on society. Professor Jacobs also organized, moderated, and participated in two panels on the topic of “*An Ethical, Sustainable Energy Industry*” in October: one as part of the Energy and Environment Forum at UT’s Baker Center and one at the Appalachian Public Interest Environmental Law conference at UT College of Law. Finally, as part of the Discussion Series hosted by the UT Libraries’ Diversity Committee, Professor Jacobs facilitated a discussion about engaging in difficult conversations in early November.



Professor Brian Krumm and coauthors Professor George Kuney and Adjunct Professor Donna Looper have recently published *A TRANSACTIONAL MATTER: A GUIDE TO BUSINESS LAWYERING*. The book uses the story of iCare, an actual clinic case to illustrate to readers the legal work necessary for business formation, operation, and the commercialization of technology. It guides readers through a summary of a basic transaction from initial choice of entity for a new venture through the harvest of that venture through a sale of substantially all its assets to an acquirer. This book allows students to get a feel for how transactional lawyering actually works—examining client objectives, legal options, client counseling, due diligence, documentation and implementation. The book is supported by an extensive web-based collection of the underlying transactional documents and instruments that are examined through notes and questions in the text itself.

This fall, Professor Krumm addressed the Centre for Common Law at Renmin University of China in Beijing on the “*Changing Landscape of Innovation Finance*.” In addition, he and Professor Karl Okamoto, of Drexel University jointly conducted a seminar for the Renmin Faculty Development Centre on “*The Value of Transactional Law Clinics and Simulation Exercises in Teaching Transactional Law Skills*.” On February 27, 2017, Professor Krumm participated in a faculty exchange at Georgia State Law School where he presented his recent article, *Fostering Innovation and Entrepreneurship: Shark Tank Shouldn’t Be the Model*, which has been accepted for publication in the *Arkansas Law Review*. On March 29, Professor Krumm presented the article at the Syracuse University Transformative Dialogues Faculty Workshop. He also gave a webcast presentation entitled “*How Entrepreneurial Law and IP Clinics Can Assist in the Commercialization of University Intellectual Property*” at the New York State Science and Technology Law Center.



Professor George W. Kuney and Adjunct Professor Donna C. Looper’s book, *LEGAL DRAFTING: PROCESS, TECHNIQUES, AND EXERCISES* was recently published by West Academic Publishing. This text provides a comprehensive and flexible teaching instrument for any course in legal drafting covering contracts, instruments, and legislation. It contains text, examples, and exercises that deal with both contract and statutory drafting - making the text

suitable for a general drafting course, or one that focuses on contracts and instruments or on legislation. Most of the chapters have an end-of-the-chapter exercise that tests the student’s knowledge of and ability to apply the materials. It also contains further drafting exercises that involve drafting or revising either specific provisions or entire contracts and statutes.

In addition, West Academic has published the 4th Edition of Professors Kuney and Bob Lloyd’s casebook, *CONTRACTS: TRANSACTIONS AND LITIGATION*. The book blends classic common law contract cases with 21st-century opinions and draws upon the problem method of instruction. It compares and contrasts the common law of contracts, the Restatement of the Law Second—Contracts, and Uniform Commercial Code Article 2 rules, as well as the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts, and explores their evolution and application. It emphasizes the importance of context to the application of legal principles and discusses the overlap between the knowledge and skills of a litigator and those of a transactional attorney.

The newest installment in a series of short articles for the non-academic crowd that Professor Kuney published with Jon Friedland, a former Clayton Visiting Professor, can be viewed at <https://www.dailydac.com/commercialbankruptcy/litigation/articles/dealing-with-distress-for-fun-and-profit-priority-scheme-of-bankruptcy>. The series has a national circulation among insolvency professionals and laypeople.



Professor Michelle Kwon's article, *Easing Regulatory Bottlenecks with Collaborative Rulemaking*, will be published in the *Administrative Law Review*. She participated in two panel discussions at the January 2017 American Bar Association Tax Section Midyear meeting. The first was titled "*The Role of the Courts in Interpreting Consolidated Return Regulations*" as part of the ABA Tax Section Affiliated and Related Corporations Committee meeting. The other panel presentation, "*Cultural Issues Affecting Family Business Succession Planning*," was part of the programming for the Tax Section Diversity Committee.



Professor Don Leatherman spoke at the fall meeting of the American Bar Association tax section on interpreting tax cases involving consolidated groups. Professor Leatherman is one of a group of tax experts writing comments on the circular basis regulations under section 1.1502-11(b), and he hopes to publish an article on those regulations this summer.



Dean Alex Long's article *The Lawyer as Public Figure for First Amendment Purposes* has been published in the *Boston College Law Review*. In April, Dean Long presented a CLE at the UT College of Law entitled "*Discrimination in the Practice of Law: A Question of Ethics?*"



Professor Thomas Plank participated in a Colloquium in Las Vegas, Nevada, on February 24-25, 2017, on “*Banking in a Free Society*,” sponsored by the Federalist Society. At the Colloquium, Professor Plank discussed with a select group of attendees issues presented in materials—typically law review articles or excerpts from books—that each attendee was expected to have read and been prepared to discuss.

On March 24-25, 2017, Professor Plank participated in a drafting session of the Drafting Committee of the Uniform Law Commission (ULC) on Revised Articles 1, 3, and 9 of the Uniform Commercial Code (UCC) in Washington, D.C., as a member of the American Law Institute (ALI) Consultative Group on this revision. The UCC is sponsored and approved by the ULC (for which Plank is an observer) and the ALI.

On April 8, Professor Plank, along with four other lawyers, participated in a presentation for a program of the ABA Business Law Section Spring Meeting in New Orleans, Louisiana, entitled “*Control of Electronic Chattel Paper: Technological Developments and Gaps in the Law*” sponsored by the UCC Committee and Co-sponsored by the Commercial Finance Committee. This talk was based in part on Plank’s article, *Evolution of Chattel Paper: From Possession to Control*, 46 U.C.C.L.J. 1 (2014), and his experience in drafting legal opinions on the “control” of electronic chattel paper.

On Friday, April 21, 2017, Professor Plank and another lawyer will present on “*Electronic Chattel Paper*” for the ALI CLE session on Commercial Lending Today 2017 in San Francisco, California, similar to his presentation at the ABA Business Section Spring meeting.



Professor Gary Pulsinelli recently served as a mentor for the New Scholars Workshop on Patent and Copyright Law II. In August, Professor Pulsinelli was appointed to the SEALS Website, Technology & Communications Committee for 2016-17.



Professor Paula Schaefer participated in the University of St. Thomas School of Law's symposium on professional formation in legal education. The symposium marked the twenty-five year anniversary of the MacCrate Report and the ten-year anniversary of Best Practices for Legal Education and Educating Lawyers. The focus of the symposium and related workshop was on defining steps to foster institutional change toward professional formation of law students. Professor Schaefer's talk was titled *Building on the Professionalism Foundation of Best Practices for Legal Education*. Her article will be published in the University of St. Thomas Law Journal. In March, she presented "Teaching Professionalism Across the Curriculum" to the faculty of Villanova University School of Law. She was the guest of Villanova University School of Law's David F. and Constance B. Girard-diCarlo Center for Ethics, Integrity and Compliance. Professor Schaefer's article *Attorneys, Document Discovery, and Discipline* has been published in the Georgetown Journal of Legal Ethics.



Professor Greg Stein's most recent article, *Chinese Real Estate Law and the Law and Development Theory: A Comparison of Law and Practice*, was published as the lead article in Volume 25 of the Florida State Journal of Transnational Law and Policy. His article, *What Will China Do When Land Use Rights Begin to Expire?*, will be published in May in the Vanderbilt Journal of Transnational Law. His next article, *Reverse Exactions*, has been accepted for publication later this year

in the William & Mary Bill of Rights Journal. Professor Stein gave a presentation on this last article in February at the Texas A&M University School of Law Real Property Law Roundtable, held in Fort Worth, TX, as part of a panel on "*Takings Revisited*." He will present this article again at the University of Michigan Law School in Ann Arbor in May. And Professor Stein's review, *The Sticks in the Chinese Property Rights Bundle*, will appear in Jotwell in May.

Professor Stein participated in a panel presented by the Real Estate Transactions Section of the Association of American Law Schools this past January in San Francisco. The panel was entitled "*Keeping the Real World in Real Estate Transactions: New Ideas, Best Practices, and Partnership Opportunities to Strengthen Teaching and Scholarship*." The panel's discussions will be published in the Wake Forest Law Review. Professor Stein was re-elected to the Executive Committee of this Section. He also serves as a member of the Board of Governors of the American College of Real Estate Lawyers. Professor Stein was quoted in the January 25, 2017 issue of Forbes, in an article entitled *Why Hamilton's West End Wizardry Won't Work on Broadway*. The article addresses different methods by which producers of Broadway and West End shows can combat ticket scalping for their performances.



Professor Maurice Stucke was quoted in a Fortune article in December entitled *This 'Aggregator' App for Uber and Lyft Rides Hopes to Make the Cut*. In the article, the author, Kia Kokalitcheva, discusses Uber and Lyft prohibitions on third-party apps displaying their ride prices and wait times next to those of competing services. "Maurice Stucke, of the Konkurrenz Group, told Fortune that Uber's approach can be especially

problematic if its policy's purpose is to protect the company's monopoly or help it become one. "The greater the risk that the price transparency would let consumers find the better price, the greater the anti-trust risk," said Stucke."

Professor Stucke's book, *BIG DATA AND COMPETITION POLICY*, received another positive review in the peer reviewed law journal, *World Competition*. His book, coauthored by Ariel Ezrachi, *VIRTUAL COMPETITION: THE PROMISE AND PERILS OF THE ALGORITHM-DRIVEN ECONOMY*, also received favorable attention in the article *Think Twice Before Trusting a Digital Assistant to Do the Shopping* on Phys.org; in an interview by the University of British Columbia; and in an Italian newspaper article. In addition, *VIRTUAL COMPETITION* was named book of the week by the *Times Higher Education* magazine. The *Financial Times* favorably cited Professor Stucke's book and research on cartels, and the University of Pennsylvania's Wharton Business Radio interviewed him on Monday, January 9 about *VIRTUAL COMPETITION* and his earlier book, *BIG DATA AND COMPETITION POLICY*. Professor Stucke was also quoted in a *New York Times* article entitled *Data Could Be the Next Tech Hot Button for Regulators*, discussing Big Data and the Organization for Economic Cooperation and Development meeting in November that explored the subject: "*Big Data: Bringing Competition Policy to the Digital Era*." Professor Stucke was quoted in an AP article titled *Trump's CEO Meetings Raise Ethics Questions* and in a *New York Law Journal* article titled *Experts Question Effectiveness of Antitrust Approaches in Digital Economy* that included Professor Stucke's comments as part of a recent forum sponsored by the antitrust law section of the New York State Bar Association. The University of Oxford published a blog by Professors Maurice Stucke and Ariel Ezrachi titled *How Online Competition Affects Offline Democracy*. Professor Stucke was quoted in a BNA.com article discussing the likely influence that the presidential election could have on the Bayer's proposed acquisition of Monsanto.

On Thursday, February 2, the University College of London held a roundtable discussion and book signing event of *VIRTUAL COMPETITION*, which Professor Florian Wagner Von Papp organized and moderated. *VIRTUAL COMPETITION* continues to receive positive recognition, including: a review by Choice, a publication that helps academic libraries make acquisition decisions; discussion in the French newspaper *Le Monde* article titled *How to Prove Anti-Competitive Practices at the Time of Their Algorithmic Optimization*; and in a Politico article discussing the collusion scenarios in the book. On Friday, King's College London & Concurrences organized a conference, *Innovation Economics for Antitrust Lawyers*, in which Professor Stucke discussed *BIG DATA AND COMPETITION POLICY*, while his co-author Ariel Ezrachi discussed *VIRTUAL COMPETITION*. The event attracted over 100 enforcers, lawyers, economists, and scholars, including Lord David Currie, the head of the U.K. Competition and Markets Authority. In his keynote speech Lord Currie discussed how "the rise of the algorithmic economy raises potentially difficult questions for competition policy, which Ezrachi and Stucke discuss in their excellent book 'Virtual Competition' (and I look forward to Maurice's comments in the next session.)" The legal blog Lexology favorably discussed Professor Stucke's book *VIRTUAL COMPETITION* in an article entitled *Will pricing algorithms be the European Commission's next antitrust target?* Harper's Magazine and The Authors Guild organized a special discussion with Professors Stucke and Ezrachi, to promote *VIRTUAL COMPETITION* on November 14 in New York City. The book was also mentioned in a press release by the United Nations Conference on Trade and Development (UNCTAD) in connection with the 7th meeting of the UNCTAD Research Partnership Platform on October 19. *VIRTUAL COMPETITION* was also reviewed by Yale game theorist guru Barry Nalebuff in *Science* magazine, which is published by the American Association for the Advancement of Science. *VIRTUAL COMPETITION* was also featured in *QUEST* (the publication highlighting the accomplishments of UTK faculty and students) in March. The book was also mentioned in an article about EU antitrust chief Margrethe Vestager's comments at a conference in Berlin, and in the article *Robots and Competition Law* on *elderecho.com*.

Professors Stucke and Ezrachi published an article in the *Harvard Business Review* titled *How Pricing Bots Could Form Cartels and Make Things More Expensive*. In the article, the authors question whether antitrust regulators will fare "in a world where intelligent pricing algorithms subtly collude with one another." Professor Stucke has been invited to participate in the BRICS (Brazil, Russia, India, China, South Africa) annual competition law forum this May. The annual BRICS competition law forum is a joint initiative of the HSE Skolkovo Institute for Law and

Development and the Centre for Law, Economics and Society at UCL. The St. Petersburg International Legal Forum, to which the BRICS competition law forum will be integrated this year, is a wide-ranging event focusing on the legal profession.



Professor Kris Tobin's book ADMIRALTY AND MARITIME LAW: A LEGAL RESEARCH GUIDE was published earlier this month. From the publisher: "With approximately seventy percent of the earth's surface covered by water, it could be argued that legal issues concerning admiralty do not receive their due in the greater spectrum of the law. Nevertheless, this lack of public recognition is by no means mirrored in the law itself. . . .

The goal of this guide is to help the novice and expert alike in finding an appropriate place to begin research; it contains definitions, information and sources on major subtopics, primary and secondary sources of U.S. law, and also sources of international, intranational, and transnational maritime law."