

# TRANSACTIONS

The Tennessee Journal of Business Law

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NUMBER 2

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# TRANSACTIONS

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## ARTICLES

- |   |  |     |
|---|--|-----|
| REGISTERING TRADE AND SERVICE MARKS IN TENNESSEE: A BRIEF HOW-TO GUIDE  | <i>Brian Krumm &amp; Zachari Gardner.</i>  | 179 |
| ELIMINATING THE PHRASE <i>REPRESENTS AND WARRANTS</i> FROM CONTRACTS  | <i>Kenneth A. Adams</i>                    | 203 |
| WINK, WINK, NUDGE JUDGE: PERSUADING U.S. COURTS TO TAKE ACCOUNTANTS SERIOUSLY IN FEDERAL SECURITIES CASES WITH HELP FROM THE U.K. COMPANIES ACT | <i>Kurt S. Schulzke</i>                    | 231 |
| CATCHING THE MAN BEHIND THE MAN: WHY THE SEC AND FINRA SHOULD CAPITALIZE ON SECTION 20(B) TO PURSUE CONTROL PERSONS                             | <i>Christopher John Ippoliti</i>           | 287 |
| TEACHING TRANSACTIONAL LAW - A CASE STUDY FROM AUSTRALIA WITH REFERENCE TO THE U.S. EXPERIENCE  | <i>Andrew Godwin</i>                       | 343 |
| PRACTICE READY LAWYERS DON'T JUST REPRESENT CLIENTS: EXPERIENTIAL EDUCATION FOR THE BUSINESS OF LAW   | <i>Nicole G. Iannarone</i>                 | 373 |
| EFFECTIVE CLIENT SELECTION IN TRANSACTIONAL CLINICS   | <i>Manoj Viswanathan</i>                   | 389 |
| THE COMMONPLACE MEETS THE MARKETPLACE: ACCESSIBLE ANALOGIES FOR TRANSACTIONAL DRAFTING  | <i>William E. Foster &amp; Emily Grant</i> | 397 |

## CASE COMMENTARIES

- |  |  |     |
|--|--|-----|
| CONSTITUTIONAL LAW, CONTRACTS, EMPLOYMENT LAW, INTELLECTUAL PROPERTY, PROPERTY, SECURITIES |  | 403 |
|--|--|-----|



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## BUSINESS FACULTY NOTES

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**Professor Teri Baxter** is in her second year as member of the University of Tennessee College of Law faculty after eleven years at the Saint Louis University School of Law. Her academic focus at the College of Law includes secured transactions, torts, family and privacy law, and constitutional law.

In her first year at the College of Law Professor Baxter was awarded the 2013 W. Allen Separk Faculty Scholarship Award for her article “Tort Liability for Parents Who Choose Not to Vaccinate Their Children and Whose Unvaccinated Children Infect Others,” which was published in the *University of Cincinnati Law Review* in 2014. Her latest article, “Respecting Parents’ Fundamental Rights in the Adoption Process: Parents Choosing Parents for their Children,” will be published in the spring issue of the *Rutgers Law Review*.



**Visiting Professor Kevin Conboy** practiced business law in Atlanta, Georgia for more than twenty-five years, first with Powell, Goldstein, Frazer & Murphy (now Bryan Cave), and then moving to global firm Paul Hastings LLP. His practice focused on commercial lending and other debt finance transactions, structuring and documenting secured and unsecured loan transactions. Most of his practice involved representation of the agent bank in complex senior debt transactions, but he also represented borrower clients. His transactions frequently included cross-border features, first and second lien financings, unusual collateral classes, and complex intercreditor issues. His industry focus was the communications and telecommunications industry, closing many deals in cable television, radio and broadcast television, cellular telephony, internet service providers, publishing, wireless, billboard, tower and other such businesses.

Professor Conboy served for two years as deputy headmaster and teacher at a secondary school in rural Kenya, East Africa. In addition to his time teaching in Kenya, Mr. Conboy taught as an adjunct faculty member at both the University of Georgia and Emory University Law Schools, and taught for a year as an Associate Professor at Atlanta’s John Marshall Law School, before coming to Knoxville to serve on the faculty of The University of Tennessee College of Law. He is

currently teaching Mergers and Acquisitions/Deal Skills and Preparing for Private Practice. He will return for the 2015-2016 school year.

Professor Conboy has published six law review articles (and written much more for popular publications), including “Tips for the Practitioner Seeking to Return to the Academy,” 14 TENN. J. BUS. L. 147 (Spring 2013) and “Diagramming Transactions: Some Modest Proposals and a Few Suggested Rules,” 10 TENN. J. BUS. L. 91 (Fall 2014).



**Professor Iris J. Goodwin** recently completed a one-year term as Program Chair of the Trusts and Estates Section of the Association of American Law Schools. For the association’s annual meeting in January, she developed a program entitled “Legal Reform and Grantors’ Jurisdictional Choices: The Implications of Freedom.” Professor Goodwin moderated the panel, which included Professors Anne-Marie Rhodes of Loyola University (Chicago), Stewart Sterk of Cardozo Law School, and Jeff Schoenblum of Vanderbilt Law School, along with practitioners Don Kozusko of Kozusko Harris Duncan and Susan Bart of Sidley & Austin. The program was ground-breaking in two ways. First, the panel consisted of both academics and practitioners. Second, the program presented – choice of law considerations in estate planning -- is something that practitioners recognize as an essential element in their stock in trade but that academics rarely consider in depth. Professor Goodwin will serve as Section Chair for 2015.



**Professor Joan M. Heminway** recently served as a panelist at the Association of American Law Schools (AALS) annual meeting in January. She discussed various ways of teaching courses involving the law as applied to non-human animals as part of a panel entitled “Keeping it Current: Animal Law Examples Across the Curriculum.” The panel was sponsored by the Section on Animal Law and was billed as a Pedagogy for New Law Teachers Program. Professor Heminway described her experiences teaching animal law as a service learning/experiential learning course, as a traditional seminar, and as a short course over a weekend and highlighted how she encourages student involvement in assisting non-profits that



work with animals. Professor Heminway also concluded her term as Retiring Chair of the AALS Section on Business Associations.

Professor Heminway has spoken at several recent conferences and forums, including the Sixth International Institutional and Technological Environment for Microfinance Conference, which was held in Lyon, France in March 2015, and a faculty forum at The University of Maryland Francis King Carey School of Law in April 2015. At both of these events, she shared her current work on crowdfunding intermediation. In addition, Professor Heminway will give presentations at this year's annual meeting of the Law and Society Association, to be held in Seattle, WA in May 2015, and the National Business Law Scholars Conference, which is being held in June 2015.

Professor Heminway's portion of an edited conference panel transcript, "Representing Entities: The Value of Teaching Students How to Draft Board Resolutions and Other Similar Documentation," published with a companion edited transcript of a presentation by Marcia Narine on the same panel, was included in a recent volume of *Transactions: The Tennessee Journal of Business Law*. Other recent published works include: "Women in the Crowd of Corporate Directors: Following, Walking Alone, and Meaningfully Contributing," 21 WM. & MARY J. OF WOMEN & L. 59 (2014) and "How Congress Killed Investment Crowdfunding: A Tale of Political Pressure, Hasty Decisions, and Inexpert Judgments that Begs for a Happy Ending," 102 KY. L. J. 865 (2014). She was also quoted in the Yahoo! Tech article, "10 Things You Must Know Before You Invest in That Crazy Crowdfunding Scheme" and a recent Knoxville Mercury article on student programming funding on campus. In addition, she continues to serve as a co-editor of the Business Law Prof Blog and a member of the Executive Council of the Business Law Section of the Tennessee Bar Association, and she teaches in The University of Tennessee's Professional MBA program.



**Professor Amy Morris Hess** spoke in March 2015 at a meeting of the Legal Education Section of the American College of Trust and Estate Counsel. Her topic was "The Uniform Powers of Appointment Act: Straightforward Default Rules to Fill a Vacuum." Professor Hess served as the ABA Advisor to the Uniform Law Commission drafting committee that drafted the Uniform Powers of Appointment Act.

Professor Hess also moderated a "Professors' Corner"

webinar sponsored by the ABA Real Property, Trust and Estate Law Section. The topic was “Same Sex Marriage on the Cusp: Remaining Issues of Nonrecognition and Guesses about the Future.” The March program dealt with a number of important developments for those who advise and plan for same-sex couples. The speakers, Professor Lee-ford Tritt of the University of Florida and Professor William LaPiana of New York Law School, discussed several questions that remain and attempted to predict their most likely answers.

In May, Professor Hess will speak at a continuing legal education program in Nashville presented by the Tennessee Bar Association. The half-day program is entitled “Unleashed: Hot Topics in Animal Law.” Professor Hess will discuss estate planning for pet owners.



**Professor Becky Jacobs** recently served as moderator and panelist for two Continuing Mediation Education Programs from the Tennessee Valley Mediation Association, in collaboration with the Tennessee Association of Professional Mediators. The panels were entitled, “The Ethics of Scribing” and “Mediation – Business or Hobby.” Professor Jacobs also participated on a panel focusing on arbitration with States at an Atlanta International Arbitration Society conference. She also organized and will moderate a panel on internationalizing legal writing at the Southeastern Regional Legal Writing Conference hosted by UT Law as well as co-organizing and co-moderating a discussion group entitled, “ADR in Faculty Governance and Change: What Works – If Anything – and What Doesn’t,” to be held at the annual meeting of the Southeastern Association of Law Schools. Also at the SEALS conference, Professor Jacobs will once again take part in the Prospective Law Teacher program.

In addition to her work in alternative dispute resolution, Professor Jacobs participated in a workshop organized by the UT Extension Service entitled, "Options for CSA Legal Structure and Analyzing CSA Profitability." The event took place at the Gilmer family's Falcon Ridge Farm in Toone, TN. The workshop discussed legal structures and profitability analyses for CSA businesses. Her article, “Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating From Case to Social Justice in the Community,” is in print in volume 21 of the *Clinical Law Review*.



**Professor Brian Krumm** participated in a panel at the annual meeting of the Association of American Law Schools in January 2015. The panel, entitled “Integrating Clinical Pedagogy Across the Curriculum: Making It Work,” was presented by the Section on Clinical Legal Education. The panel explored innovative models for how clinical pedagogy can enhance learning across the curriculum in all three years of law school. Professor Krumm also recently presented at the 14th Annual Transactional Clinical Conference, which took place in April in Kansas City, MO.

Professor Krumm, along with Professor Jiang Dong of Renmin University Law School (Beijing, China), will give a presentation at the Association of American Law Schools’ Clinical Legal Education Conference, to be held in May in Rancho Mirage, CA. They will speak about the business transactions course they jointly taught, in which students from the two law schools negotiated with each other via teleconference.

Professor Krumm’s portion of an edited conference panel transcript, “Teaching Transactional Skills Using Real Clients From Clinic to Classroom,” was included in a recent issue of *Transactions: The Tennessee Journal of Business Law*. Additionally, his article, “Registering Trade and Service Marks in Tennessee: A Brief How-To Guide,” appears in this issue of *Transactions*.

Professor Krumm has been named to the Anderson Center for Entrepreneurship and Innovation Research Council, Haslam College of Business.



**Professor George Kuney’s** most recent article, “All Writs” in Bankruptcy and District Courts: A Story of Differing Scope,” is published in the spring issue of The University of Texas School of Law journal, *The Review of Litigation*. The article compares and contrasts the differences in the use of the “all writs” authority granted to federal district courts and federal bankruptcy courts by their respective enabling statutes. Historically, federal district courts seem reluctant to invoke the authority granted by the “all writs” doctrine except under certain limited circumstances. On the contrary, bankruptcy

courts seem much more willing to invoke the bankruptcy equivalent of the “all writs” doctrine in a variety of circumstances

Previously this year, Professor Kuney’s article, “Of Leases and Licenses, Sections 363(f) and 365(h),” was published in the NORTON ON BANKRUPTCY 2014 Annual Survey. The article examines the use of Section 363(f) of the Bankruptcy Code to circumvent protections for tenants and licensees of intellectual property as provided in Sections 365(h) and (n) of the Code. Kuney concludes that this use of Section 363(f) undermines Congressional intent and weakens protections of creditor and debtor interests contained in the original Bankruptcy Code of 1978.

CEB of California is publishing the 2015-updated edition of Professor Kuney’s single volume treatise, CALIFORNIA LAW OF CONTRACTS, co-authored with his wife, Adjunct Professor Donna Looper. Kuney recently published the 4th edition of THE ELEMENTS OF CONTRACT DRAFTING, the text used in the College’s Contract Drafting Course and by a number of law schools across the country. Professor Kuney and Michael Bernstein of Arnold & Porter are completing a revised and updated 4th edition of BANKRUPTCY IN PRACTICE, a comprehensive introductory guide for lawyers new to the field published by the American Bankruptcy Institute.

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, the Academic Support Task Force, and Bylaws Committee as well as continuing to teach first-year Contracts as well as Commercial Leasing and Remedies, along with his spring “Bankruptcy Fridays” program, consisting of his Reorganizations and Workouts class and Consumer Bankruptcy and Finance Seminar. He is working with the administration to develop an L.L.M. Degree program in United States Business Law for foreign lawyers, as well as a 3+3 program allowing for a six year total curricular path for University of Tennessee students to obtain their B.A. and J.D. degrees.

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**Professor Michelle Kwon's** article, "The Criminality of Tax Planning," will appear in the *Florida Tax Review*, a peer-edited journal. The article assesses the willfulness standard as it is applied to tax advisors prosecuted for their clients' tax evasion. To establish willfulness, the government must show that a person accused of a tax crime intentionally violated a known legal duty. Because knowledge of illegality is an element of the government's tax evasion case, prosecutors must negate a defendant's claim of ignorance or misunderstanding of the law, which is evaluated subjectively. Increased prosecutions coupled with the present-day sophistication of tax practice call for a critical examination of the willfulness standard applied to tax advisors.

Professor Kwon is working on a corporate tax supplement to be published by Lexis with Professor Leandra Lederman from Indiana University Maurer School of Law.

In May, Professor Kwon will participate in the University of Kentucky College of Law's Developing Ideas conference.



**Professor Don Leatherman** recently served as a panelist at the American Bar Association Tax Section meeting. He spoke about how voting rights and economic ownership are affected in measuring affiliation when the legal owner of stock enters into a side agreement with another person. Professor Leatherman's participation was noted in the February 9 edition of *Tax Notes*.

This winter, Professor Leatherman was invited to speak at a Practising Law Institute seminar on mergers and acquisitions and at the Midyear Meeting of the Tax Section of the American Bar Association. In addition, he has been invited to give a presentation at the meeting of the Tax Section of the American Bar Association, to take place in Washington, DC, in May.



**Associate Dean Alex Long's** article, "Stop Me Before I Vote for This Judge Again: Judicial Conduct Organizations, Judicial Accountability, and the Disciplining of Elected Judges," was recently cited by the West Virginia Supreme Court of Appeals. The case involved a judge who was suspended from office for misconduct and raised the issue of whether the court could suspend her from holding office for a period of time beyond her elective term. The court cited Long's article in support of the idea that it had the authority to do so, although it decided not to. Additionally, Long's

article, "Lawyers Intentionally Inflicting Emotional Distress," was cited by the Louisiana Court of Appeals. The case involved a claim for intentional infliction of emotional distress by a non-client against her opponent's lead attorney. During the course of a deposition, the defendant's attorney asked the plaintiff's wife – a seventy-year old terminally ill woman living in an assisted-living facility – if she knew that her husband was having an affair. The plaintiff alleged that the attorney knew the accusation was false when he asked the question.

Dean Long's article, "Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism," has been identified by Professor Susan Fortney of Hofstra Law School as one of the best works of recent scholarship relating to legal profession, in a review published in *Jotwell: The Journal of Things We Like (Lots)*. Long's article appeared in the *University of California, Davis Law Review* in 2014. The article explores the relationship between a lawyer's legal obligation under the Americans with Disabilities Act and their own ethical obligations. His article, "What is Even More Troubling About the 'Tortification' of Employment Discrimination Law," was recently published in "Furthermore," the Ohio State Law Journal's online journal. Long's article is a response to an article written by LSU Professor Bill Corbett addressing the Supreme Court's misuse of tort concepts in employment discrimination cases. In addition, Dean Long's essay, "Finding New Inspiration in the ADA," has been published in the *Houston Law Review: Off the Record*, the online companion to the *Houston Law Review*. The essay is part of an online symposium commemorating the twenty-fifth anniversary of the passage of the Americans with Disabilities Act.

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**Professor Thomas Plank** recorded a podcast, posted on the Federalist Society website, addressing the case of Wellness International Network, Limited v. Sharif, which is pending in the United States Supreme Court. The issue in the case is whether the bankruptcy court – which is not an Article III court – has the constitutional power to adjudicate and enter final judgment on what constitutes property of the bankruptcy estate and, if not, whether the parties may nevertheless consent to such final adjudication by the bankruptcy court and whether that consent may be implied. Counsel for the petitioner, Wellness International Network, cited Plank’s law review article, “Why Bankruptcy Judges Need Not and Should Not Be Article III Judges,” 72 *Am. Bankr. L.J.* 567-639 (1998), which described the historical basis for allowing such adjudication by non-Article III judges.

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**Professor Gary Pulsinelli’s** article “Happy Together? The Uneasy Coexistence of Federal and State Protection for Sound Recordings,” was published in the fall issue of the *Tennessee Law Review*.

Professor Pulsinelli continues to serve on the Website, Technology, and Communications Committee of the Southeastern Association of Law Schools for the 2014-15 academic year.

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**Professor Paula Schaefer’s** article, “A Primer on Professionalism for Doctrinal Professors,” which appeared in the *Tennessee Law Review* in 2014, was noted on the Legal Skills Prof Blog. A related chapter by Schaefer will appear in the book, “Building on Best Practices: Transforming Legal Education in a Changing World,” to be published later this year by Lexis. Additionally, Professor Schaefer spoke the 2015 Igniting Law Teaching Conference, on the subject, “Tips for

Finding the Attorney Professionalism Lessons Hiding in Plain Sight in Every Casebook,” at American University, Washington College of Law in Washington, DC.

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**Associate Dean Greg Stein's** article, “Will Ticket Scalpers Meet the Same Fate as Spinal Tap Drummers? The Sale and Resale of Concert and Sports Tickets,” was recently published in the *Pepperdine Law Review*. He was also quoted on this subject in an article on the CNBC website, entitled, “The Surreptitious Rise of the Online Scalper.” Dean Stein’s manuscript, “What Will China Do When Land Use Rights Begin to Expire? The Evolution Toward Rule of Law in Real Estate,” has been posted to the Social Science Research Network and was noted favorably on the China Dream blog.

Dean Stein recently co-chaired the meeting of the Law School Professors’ Committee at the spring meeting of the American College of Real Estate Lawyers (ACREL). He also gave a “What’s Trending?” presentation to ACREL’s Land Use and Environmental Committee, focusing on the land use implications of the legalization of marijuana, the impact of Airbnb on landlords and homeowners’ associations, and the liability and privacy issues raised by the use of drones. In addition, Dean Stein has been invited to participate in a panel at the annual meeting of the Association for Law, Property, and Society (ALPS). Stein’s presentation, “Harmonizing Chinese Real Estate Law with the Theory of Law and Development,” will be part of a panel entitled, “The Chinese Real Estate Market: Four Perspectives.” The ALPS Conference will be held at the University of Georgia School of Law in Athens, GA, in May 2015.

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**Professor Maurice Stucke** is currently an Academic Visitor at Oxford University’s Institute of European and Comparative Law, a Fellow at Oxford’s Centre for Competition Law and Policy, and a Senior Associateship at Pembroke College. While at Oxford this semester with his family, Professor Stucke is undertaking several research projects. First, he will examine (with Ariel Ezrachi) the relationship between competition and quality in two-sided markets. Second, Professor Stucke



will examine the implications of a data-driven economy on privacy, consumer protection and competition law. Finally, he will develop ways that companies can promote an ethical organizational culture to deter wrongdoing.

Professor Stucke's most recent article, "No Mistake About It: The Important Role of Antitrust in the Era of Big Data," (with Allen Gruens) appeared in the *The Antitrust Source*. Additionally, his article, "In Search of Effective Ethics and Compliance Programs," was published in the *Journal of Corporation Law*, a publication of the University of Iowa College of Law, and his article, "How Competition Agencies Can Use Behavioral Economics," was recently published in *The Antitrust Bulletin*. Professor Stucke is also the coauthor (with Allen Grunes) of an op-ed piece entitled, "Dancing Around Data." The article, which appears in *The Hill*, argues that privacy concerns should be given greater consideration in the evaluation of corporate mergers.

Professor Stucke recently authored two book chapters that will appear in publications later this year. "Leniency, Whistleblowing and the Individual: Should We Create Another Race to the Competition Agency?" will appear in ANTI-CARTEL ENFORCEMENT IN A CONTEMPORARY AGE: THE LENIENCY RELIGION, and "When More Is Better and When Less Is More: Behavioral Antitrust and Choice" will be published in CONSUMER CHOICE IN COMPETITION LAW.



**Professor Kris Anne Tobin** and Brad Morgan, associate director of the Institute for Professional Leadership, will give a presentation at the upcoming annual conference of the Institute for Law Teaching and Learning. They will speak about "Combining Legal Research Pedagogy, Pro Bono and Experiential Learning in the First Year Curriculum at the University of Tennessee College of Law." The conference will take place in Spokane, WA this coming June.

Professor Tobin continues to serve on the Executive Committee for the AALS Section on Admiralty and Maritime Law.

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**Professor Paulette J. Williams** teaches the Nonprofits Clinic, the Nonprofits Seminar, and the Business Clinic. She is schedule to present at the Association of American Law Schools Conference on Clinical Education, which will place this May in Rancho Mirage, CA.

Professor Williams recently served as a member of the ABA-AALS site visit team for the University of Massachusetts School of Law at Dartmouth.