ARTICLES

The Common Market for International Students: Does a right to Free Movement and Equal Treatment for Students Exist in the European Union?

Jarrod Tudor..........................1

The market for international students in Europe is a lucrative one. Although there is no express free movement of students in the Treaty on the Functioning of the European Union ("TFEU"), the European Court of Justice ("ECJ") has combined, through its jurisprudence, several provisions of European Union ("EU") law to create a de facto right of free movement and equal treatment for citizens as they cross member-state borders seeking a higher education. Articles 18, 20, and 21 of the TFEU guarantee freedom of movement for citizens of the EU across member-state borders and freedom from discrimination based on nationality. Article 45 of the TFEU provides for the free movement of workers to pursue employment in other member-states so long as these workers are citizens of the EU. Article 49 of the TFEU gives EU citizens the right to pursue self-employment activities in another member-state. Regulation 1612/68 provides for equal treatment guarantees for migrant workers. These various provisions of EU law have been interpreted by the ECJ to grant free movement and equal treatment rights to students, but not on equal terms. The strongest rights for EU citizen-students is derived from the rights associated with free movement of workers which extends to both the worker and his or her children pursuant to Article 45 and Regulation 1612/68. Although the ECJ has held that member-state governments cannot treat citizens of other member-states differently in regard to tuition and admissions, the ECJ has left open the ability of member-states to require proof of integration and financial stability on the part of a migrating student that threatens the existence of free movement and equal treatment rights for students.

An Argument in Support of Tax-Free Per-Cap Distribution Payments Derived from Native American Nations Gaming Sources

Arthur Acevedo..........................66

Gaming activities play important social, cultural, and economic roles for many Native American tribes. During the 1970s and 1980s, gaming activities spread throughout the country, and became more accessible to non-native individuals. This growth in gaming activities drew the attention of state and
local officials who sought to limit and regulate Native American gaming. In California v. Cabazon Band of Mission Indians, the State of California, arguing before the Supreme Court, asserted that it could exercise jurisdiction over Native American gaming activities. In a stunning defeat, the Supreme Court ruled against the State of California when it announced its decision in 1987. The Cabazon decision effectively removed all state and local regulatory oversight from Native American gaming activities, thereby leaving states powerless to regulate this area. In response to Cabazon, Congress enacted the Indian Gaming Regulatory Act ("IGRA") in 1988. The purpose of IGRA is to regulate Indian gaming activities conducted by Native American tribes. A key feature of IGRA allows tribes to make discretionary per-capita distributions to members of its tribe from the net revenues of its gaming operations. However, one of IGRA’s distribution conditions requires that per-capita payments be “subject to Federal taxation.” That means per-capita payments are counted toward one’s income.

Section 61 of the Income Tax Code defines gross income for income tax purposes. In broad and sweeping language, § 61 provides that “gross income includes all income from whatever source derived.” This language is structured to capture all forms of income. The IRS has stated in a private letter ruling that per-capita distributions constitute gross income under § 61 of the Income Tax Code. Notwithstanding § 61’s broad language, a taxpayer may exclude an item from income only by proving that such item qualifies under one of the exclusionary tax provisions of the Income Tax Code. This Article argues that per-capita distributions qualify for exclusion from gross income as a gift. This Article first discusses the evolution and regulation of the gaming industry within the Native American community. Next, this Article examines the controversial history of defining “gross income” since the enactment of the federal income tax in 1913. Finally, this Article presents several arguments supporting the proposition that per-capita distribution payments constitute gifts under the Income Tax Code—and are therefore non-taxable to the recipient.

Toward Democracy in Criminal Procedure: The Significance & Limitation of Citizen Participation in Criminal Trials in an Attempt to Accomplish Democracy in Criminal Justice in Korea

Soonmin Kwon

Core principles of democracy are important not only in executive and legislative functions, but they are also significant to criminal adjudications. Many countries permit lay citizens to participate in fact-finding and/or sentencing in their criminal justice systems. When a lay person is allowed to judge whether a citizen has violated criminal law, direct democracy is incorporated into criminal justice, and the scope of democracy generally is expanded. Historically, the jury system has evolved as a legal means of expanding the freedom of citizens against political oppression by the state. The use of citizen juries in criminal proceedings takes fact-finding from
professional judges and gives it to private citizens. Those lay jurors reflect the opinions of the members of society, which may be disregarded by professional judges who seek to further governmental interests. The recent movement to allow citizen participation in criminal trials in Korea seeks to fulfill the above purpose. To that end, various improvement strategies are needed to revitalize the system to better accomplish the stated goals.

Legislation to Admit Evidence of Propensity When Prosecuting DUI Recidivists

Patrick Kenneally

Despite gains, Illinois has yet to fully tourniquet the bloodletting caused by the selfish faction who persist in driving under the influence (DUI). Among this faction, DUI recidivists are commonplace and the elite threat. As Illinois legislators have done with prosecutions of sex offenders and domestic batterers, this Article advocates for the enactment of legislation allowing the State to admit evidence of a DUI defendant’s prior DUIs at trial. Admission of prior DUIs against a defendant will strengthen prosecutions of recidivists, which are inherently difficult, and ensure offenders face criminal sanctions proven to reduce recidivism.

NOTES AND COMMENTS

Prohibition’s Hangover: How Antiquated Illinois Beer-Law is Abused by Big Beer to the Substantial Detriment of Craft Breweries

Ryan R. Lee

The explosion of the craft beer industry in recent decades has revealed how antiquated the laws relating to beer in Illinois have become. Shaped primarily by the Liquor Control Act of 1934, the Beer Industry Fair Dealing Act, the mandatory three-tier distribution system, and the inadequate policing power of the Illinois Liquor Control Commission; the Illinois beer-law landscape allows big beer to abuse the system to the substantial detriment of craft breweries. These regulations and deficiencies prohibit craft breweries from growing to their full potential and encourage craft brewers to either relocate out of, or outright refuse to do business in, Illinois. While more craft-friendly legislation has gradually been implemented, Illinois needs to quickly rectify the issues with its beer-law or continue to lose substantial revenue to other states that are more conducive to the success of craft brewers.

Educating a Jury on Eyewitness Testimony: Using Jury Instructions is a Better Approach than Expert Testimony

Kelly McKay

Eyewitness testimony experts are called to testify during criminal trials to explain the unreliability of eyewitness identifications. These experts describe to the jury how human memory works and try to create some doubt in the eyewitness’s testimony. But are these experts really necessary when other methods can be used to create doubt in eyewitness testimony? This Comment
discusses why eyewitness testimony experts should not be allowed to testify and the admissibility of eyewitness testimony experts throughout the country, primarily focusing on Illinois. This Comment also mentions New Jersey v. Henderson, which discusses the adoption of expansive jury instructions for eyewitness testimony. Ultimately, this Comment encourages Illinois to implement jury instructions similar to New Jersey instead of allowing eyewitness testimony experts to testify.