ARTICLES

Some Challenges for Legal Pragmatism: A Closer Look at Pragmatic Legal Reasoning
Andrew J. Morris

This article draws on the literature of legal pragmatism to identify distinctive characteristics of pragmatic reasoning. It then conducts a methodical comparison of pragmatic reasoning with more principled reasoning, which the article identifies as reasoning that gives normative force to formal legal reasons. The article conducts this comparison based on five criteria: (1) generality versus contextuality; (2) level of decision costs; (3) effect on rate of true judicial error; (4) effect on predictability; and (5) effect on judicial legitimacy.

Contract Law and its Potential Impact on Parole and Probation Searches
Michael Chmeler

When considering a defendant's motion to reconsider his sentence or motion to reduce his sentence, Illinois courts apply principals of contract law to hold the defendant to his negotiated plea agreement. However, courts only utilize contract law to enforce the sentence length and not other material terms of a negotiated plea. Specifically, Illinois courts have not enforced search conditions in probation or parole orders when challenged through a motion to quash and suppress. The failure to extend the use of contract principals to the search term of a sentence could create a conflict with how courts enforce negotiated pleas. In addition, a court's failure to uphold the search condition of a parole or probation term may have a negative impact on the State's willingness to enter into a plea agreement.

Protecting Court Borders: Fencing Hoffman Plastic Compounds, Inc. v. NLRB out of Illinois Civil Courts
Patrick D. Kenneally

An increasing number of jurisdictions have seized upon the reasoning in the United States Supreme Court's decision Hoffman Plastic Compounds, Inc. v. NLRB to deny undocumented immigrant plaintiffs recovery for lost future earnings at their projected earnings while living in the United States. However, a correct reading of
Hoffman and understanding of its precedent reveals a narrow ruling confined to the field of federal labor law incapable of influencing the availability and distribution of damages in personal injury actions in Illinois state courts. Illinois common law currently grants undocumented plaintiffs the right to recover damages for amounts they would have earned while working in the United States. When determining whether this common law should stand, the dispositive question is whether this law can be reconciled with the Immigration Reform and Control Act (IRCA), which prohibits employers from hiring undocumented immigrants. Illinois common law as it stands, providing for the uniform disbursement of damages to documented and undocumented plaintiffs alike, can be reconciled with the IRCA under a principled constitutional preemption analysis.

COMMENTS

Marshall v. Burger King Corp.: Making a Mess of “Duty” for Businesses in Illinois

Jeffrey H. Powell.................................95

This comment examines Marshall v. Burger King Corp., in which the Illinois Supreme Court overturned a “no duty” ruling of the trial court and determined that business owners have a duty to protect patrons from out-of-control vehicles crashing through their walls. The author analyzes the court's new duty analysis which relegates the traditional public policy factors to an exemption analysis and emphasizes a categorical approach to duty. The author concludes that the new duty analysis creates nearly a per se duty for businesses to protect their invitees from third party negligent acts and will lead to increased costs for businesses in Illinois.

XM Lawsuit: Threats to the Incentive Model of Copyright Genesis and the Obsolescence of the AHRA in a Digital Age of Hybrid Technology

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This article examines Atlantic Records Corp. v. XM Satellite Radio Inc. The current litigation offers a prime example of various ways in which the United States Copyright Act is unable to pace current technological trends with respect to the hybridization of technology. This article explores the nature of the current litigation and the fact that the litigation is entirely device-driven; the applicability, interpretation and purpose of the Audio Home Recording Act; threats to the incentive model of copyright genesis; and a call for device-neutral legislation that focuses on particular acts of infringement rather than measuring a device's capabilities as a proxy for measuring infringement. The article offers a particular look at the XM lawsuit which carries potential chilling effects on copyright dissemination in the digital age of hybrid technology where new devices can transform lawful channels of dissemination into illicit channels of diffusion.