

# OHIO STATE LAW JOURNAL

**Volume 34  
1973**

**COLLEGE OF LAW  
THE OHIO STATE UNIVERSITY  
COLUMBUS, OHIO  
1973**

Copyright © 1973 by The Ohio State University  
CITE AS 34 OHIO ST. L.J.—(1973)

## CONTENTS

### VOLUME 34

<b>Table of Lead Articles—Authors</b> .....	<b>iii</b>
<b>Table of Lead Articles—Title</b> .....	<b>iii</b>
<b>Comments and Notes</b> .....	<b>iv</b>
<b>Subject Index</b> .....	<b>v</b>
<b>Table of Cases and Statutes Noted</b> .....	<b>vii</b>

The quality of this reprint is equivalent to the  
quality of the original.



This volume is printed on acid-free paper by  
William S. Hein & Co., Inc.

## TABLE OF LEAD ARTICLES—AUTHORS

ATLESON, JAMES B.—Work Group Behavior and Wildcat Strikes: The Causes and Functions of Industrial Civil Disobedience .....	750
ARNOLD, ALAN—Preparing the Plaintiff's Antitrust Case .....	476
BATES, WALTER A.—Smorgasbord of Remedies .....	505
CURRY, EARL M., JR.—Intestate Succession and Wills: A Comparative Analysis of Article II of the Uniform Probate Code and the Law of Ohio .....	114
DOBBIN, ROBERT F.—Settlement of Private Antitrust Litigation Including Class Type Actions and Multiple Defendant Lawsuits .....	513
FORKOSCH, MORRIS D.—The Constitutional Right to Challenge the Content of Affidavits in Warrants Issued Under the Fourth Amendment .....	297
GELTNER, MICHAEL E.—A Modest Proposal To Amend Ohio's Post-Conviction Commitment Law .....	527
HOLLINGSWORTH, WILLIAM G.—Constitutional Religious Protection: Antiquated Oddity or Vital Reality .....	15
McCLATCHEY, JOHN F.—Organizing the Defense of the Private Antitrust Class Action .....	498
MONROE, MURRAY S.—Alternative Courses of Action Available to Injured Persons Under the Antitrust Laws .....	465
NATHAN, VINCENT M.—Priorities in Fixture Collateral in Ohio: A Proposal for Reform .....	719
SHIPMAN, MORGAN—The Need for SEC Rules to Govern the Duties and Civil Liabilities of Attorneys Under the Federal Securities Statutes .....	231
STEINHOUSE, CARL L.—The Effect of Justice Department and FTC Cases on Private Antitrust Litigation .....	490

## TABLE OF LEAD ARTICLES—TITLE

ALTERNATIVE COURSES OF ACTION AVAILABLE TO INJURED PERSONS UNDER THE ANTITRUST LAWS—Murray S. Monroe ..	465
CONSTITUTIONAL RELIGIOUS PROTECTION: ANTIQUATED ODDITY OR VITAL REALITY—William G. Hollingsworth .....	15
THE CONSTITUTIONAL RIGHT TO CHALLENGE THE CONTENT OF AFFIDAVITS IN WARRANTS ISSUED UNDER THE FOURTH AMENDMENT—Morris D. Forkosch .....	297
THE EFFECT OF JUSTICE DEPARTMENT AND FTC CASES ON PRIVATE ANTITRUST LITIGATION—Carl L. Steinhouse .....	490
INTESTATE SUCCESSION AND WILLS: A COMPARATIVE ANALYSIS OF ARTICLE II OF THE UNIFORM PROBATE CODE AND THE LAW OF OHIO—Earl M. Curry, Jr. ....	114
IN MEMORIAM—ERVIN H. POLLACK .....	1
A MODEST PROPOSAL TO AMEND OHIO'S POST-CONVICTION COMMITMENT LAW—Michael E. Geltner .....	527
THE NEED FOR SEC RULES TO GOVERN THE DUTIES AND CIVIL LIABILITIES OF ATTORNEYS UNDER THE FEDERAL SECURITIES STATUTES—Morgan Shipman .....	231
ORGANIZING THE DEFENSE OF THE PRIVATE ANTITRUST CLASS ACTION—John F. McClatchey .....	498

PREPARING THE PLAINTIFF'S ANTITRUST CASE—Alan Arnold .....	476
PRIORITIES IN FIXTURE COLLATERAL IN OHIO: A PROPOSAL FOR REFORM—Vincent M. Nathan .....	719
SETTLEMENT OF PRIVATE ANTITRUST LITIGATION INCLUDING CLASS TYPE ACTIONS AND MULTIPLE DEFENDANT LAW- SUITS—Robert F. Dobbin .....	513
SMORGASBORD OF REMEDIES—Walter A. Bates .....	505
WORK GROUP BEHAVIOR AND WILDCAT STRIKES: THE CAUSES AND FUNCTIONS OF INDUSTRIAL CIVIL DISOBEDIENCE— James B. Atleson .....	750

### COMMENTS AND NOTES

ADMIRALTY JURISDICTION: EXECUTIVE JET IN HISTORICAL PERSPECTIVE .....	355
AIRPORT ANTI-HIJACK SEARCHES AFTER SCHNECKLOTH: A QUES- TION OF CONSENT OR COERCION .....	879
ATTACHMENT OF LIABILITY INSURANCE POLICIES: WHAT RE- MAINS OF THE SEIDER DOCTRINE AFTER SEVEN YEARS OF CONFLICT .....	818
THE CONSTITUTIONALITY OF FEDERAL ABROGATION OF STATE CREATED RULES OF PRIVILEGE IN DIVERSITY CASES: PRO- POSED FEDERAL RULE OF EVIDENCE 501 .....	400
DENIAL OF DEFICIENCY: A PROBLEM OF REASONABLE NOTICE UNDER UCC § 9-504(3) .....	657
EQUAL PROTECTION AND THE PREGNANCY LEAVE CASE .....	628
EXTRA TERRITORIAL APPLICATION OF SECTION 10(b) AND RULE 10b-5 .....	342
JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS IN OHIO ...	853
THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: STATE PLANS AND THE GENERAL DUTY CLAUSE .....	599
IMPOUNDMENT OF FUNDS APPROPRIATED BY CONGRESS .....	416
THE PROPER STANDARD OF FAULT FOR IMPOSING PERSONAL LIABILITY ON CORPORATE DIRECTORS FOR FALSE OR MIS- LEADING STATEMENTS IN PROXY SOLICITATIONS UNDER SECTION 14(a) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SEC RULE 14a-9 .....	670
THE SCOPE OF SECTION 14(d): WHAT IS A TENDER OFFER? .....	375
SECURITIES REGULATION—A CASE FOR APPLYING THE PROXY RULES TO SOLICITATIONS FOR FUNDS IN CLASS ACTIONS BASED UPON THE SECURITIES ACT .....	201
SENTENCE CREDITING FOR THE STATE CRIMINAL DEFENDANT —A CONSTITUTIONAL REQUIREMENT .....	586
TOWARD A LEGAL THEORY OF THE RIGHT TO EDUCATION OF THE MENTALLY RETARDED .....	554

## SUBJECT INDEX

- ADMINISTRATIVE PRACTICE  
 Judicial Review of Administrative  
 Decisions in Ohio ----- 853
- ADMIRALTY  
 Admiralty Jurisdiction: Executive Jet  
 in Historical Perspective ----- 355
- ANTITRUST  
 Alternative Courses of Action Avail-  
 able to Injured Persons Under the  
 Antitrust Laws ----- 465  
 The Effect of Justice Department and  
 FTC Cases on Private Antitrust  
 Litigation ----- 490  
 Organizing the Defense of the Pri-  
 vate Antitrust Class Action ----- 498  
 Preparing the Plaintiff's Antitrust  
 Case ----- 476  
 Settlement of Private Antitrust Liti-  
 gation Including Class Type Ac-  
 tions and Multiple Defendant  
 Lawsuits ----- 513  
 Smorgasbord of Remedies ----- 505
- BASTARDY PROCEEDINGS  
 The Expansion of the Rights of Il-  
 legitimates—*Franklin v. Julian*,  
 30 Ohio St. 2d 228, 283 N.E.2d  
 813 (1972) ----- 428
- CIVIL PROCEDURE  
 Attachment of Liability Insurance  
 Policies: What Remains of the  
 Seider Doctrine After Seven years  
 of Conflict ----- 818
- CIVIL RIGHTS  
 Delimiting and Implementing the  
 Supervisory Powers Under § 1983  
 —*Littleton v. Berbling*, 468 F.2d  
 389 (7th Cir. 1972) ----- 691  
 Toward a Legal Theory of the Right  
 to Education of the Mentally Re-  
 tardated ----- 554
- CONSTITUTIONAL LAW  
 Constitutional Religious Protection:  
 Antiquated Oddity or Vital Reality 15  
 The Constitutional Right to Chal-  
 lenge the Content of Affidavits in  
 Warrants Issued Under the Fourth  
 Amendment ----- 297
- Equal Protection and the Pregnancy  
 Leave Case ----- 628
- First Amendment—State Regulation  
 of Partisan Political Activities of  
 Public Employees—*Broadrick v.*  
*Oklahoma*, 93 S. Ct. 2908 (1973) 949
- Fourth Amendment—Federal Grand  
 Jury Witness Who Has Been  
 Granted Transactional Immunity  
 Can Move to Suppress Evidence  
 Seized from Him in Violation of  
 the Fourth Amendment—*United*  
*States v. Calandra*, 465 F.2d 1218  
 (6th Cir. 1972), cert. granted, 41  
 U.S.L.W. 3441 (U.S. Feb. 20,  
 1973) ----- 450
- Impeachment by Unconstitutionally  
 Obtained Evidence—The Erosion  
 of the Exclusionary Rule—*People*  
*v. Taylor*, 8 Cal. 3d 174, 501 P.2d  
 918, 104 Cal. Rptr. 350 (1972),  
*petition for cert. filed*, 41 U.S.L.W.  
 3411 (U.S. Jan. 23, 1973 (No.  
 72-1002) ----- 706
- Impoundment of Funds Appropri-  
 ated by Congress ----- 416
- Liability of a Privately Owned Util-  
 ity Under 42 U.S.C. § 1983—  
*Palmer v. Columbia Gas Co.*, 342  
 F. Supp. 241 (N.D. Ohio 1972);  
*Ihrke v. Northern States Power*  
*Co.*, 459 F.2d 566 (8th Cir.), *va-*  
*cated as moot*, — U.S. —,  
 93 S. Ct. 66, 34 L. Ed. 2d 72  
 (1972) ----- 222
- Sixth Amendment—No Right to  
 Counsel at Photographic Identifi-  
 cation—*United States v. Ash*, 93  
 S. Ct. 2568 (1973) ----- 928
- State Tax Exemptions to Racially Ex-  
 clusive Fraternal Organizations  
 Which Engage in Charitable Acti-  
 vities Violates the Equal Protection  
 Clause of the Fourteenth Amend-  
 ment—*Falkenstein v. Department*  
*of Revenue*, 350 F. Supp. 887 (D.  
 Ore. 1972) ----- 700
- CRIMINAL LAW  
 A Modest Proposal to Amend Ohio's  
 Post-Conviction Commitment Law 527  
 Sentence Crediting for the State Crim-  
 inal Defendant—A Constitutional  
 Requirement ----- 586

## CRIMINAL PROCEDURE

- Discriminatory Enforcement of Federal Penal Laws—*United States v. Falk*, 479 F.2d 616 (7th Cir. 1973) ----- 942

## EVIDENCE

- The Constitutionality of Federal Abrogation of State Created Rules of Privilege in Diversity Cases: Proposed Federal Rule of Evidence 501 ----- 400

## FEDERAL INCOME TAX

- Deductibility of Cost of Establishing Merchandising Outlets—*Briarcliff Candy Corp. v. Commissioner*, 475 F.2d 775 (2d Cir. 1973) -- 906
- Payments to Settle a Claim Arising Under § 16(b) of the Securities Exchange Act of 1934 Held To Be Long-Term Capital Losses—*Anderson v. Commissioner*, 480 F.2d 1304 (7th Cir. 1973), *rev'g* 56 T.C. 1370 (1971) ----- 917

## LABOR

- Work Group Behavior and Wildcat Strikes: The Causes and Functions of Industrial Civil Disobedience -- 750

## PERPETUITIES

- Application of the Revised Ohio Perpetuities Statute—*Dollar Federal Savings Trust Co. v. First National Bank*, --- Ohio Misc. ---, 285 N.E.2d 768 (C.P., Probate Div., Mahoning Co. 1972) ----- 433

## PROBATE

- Intestate Succession and Wills: A Comparative Analysis of Article II of the Uniform Probate Code and the Law of Ohio ----- 114

## SEARCH AND SEIZURE

- Airport Anti-Hijack Searches After *Schneckloth*: A Question of Consent or Coercion ----- 879

- Stop and Frisk—Reasonableness of a Personal Search in an Airport Setting—*United States v. Moreno*, 475 F.2d 44 (5th Cir. 1973) --- 896

## SECURED TRANSACTIONS

- Denial of Deficiency: A Problem of Reasonable Notice Under UCC § 9-504(3) ----- 657
- Priorities in Fixture Collateral in Ohio: A Proposal for Reform -- 719

## SECURITIES

- The Concept of Access in the Private Offering—*SEC v. Continental Tobacco Co.*, 463 F.2d 137 (5th Cir. 1972) and Proposed Rule 146 -- 439
- Extra Territorial Application of Section 10(b) and Rule 10b-5 ---- 342
- The Need for SEC Rules to Govern the Duties and Civil Liabilities of Attorneys Under the Federal Securities Statutes ----- 231
- The Proper Standard of Fault for Imposing Personal Liability on Corporate Directors for False or Misleading Statements in Proxy Solicitations Under Section 14(a) of the Securities Exchange Act of 1934 and SEC Rule 14a-9 ----- 670
- The Scope of Section 14(d): What is a Tender Offer? ----- 375
- Securities Regulation—A Case for Applying the Proxy Rules to Solicitations for Funds in Class Actions Based upon the Securities Acts ----- 201

## TORTS

- Joint Liability—Risk Spreading—Industry Wide Standard—*Hall v. E. I. Dupont De Nemours & Co.*, 345 F. Supp. 353 (E.D.N.Y. 1972) ----- 216

## WORKMEN'S COMPENSATION

- The Occupational Safety and Health Act of 1970: State Plans and the General Duty Clause ----- 599

## TABLE OF CASES AND STATUTES NOTED

- Anderson v. Commissioner, 480 F.2d 1304 (7th Cir. 1973), *rev'g* 56 T.C. 1370 (1971).
- Briarcliff Candy Corp. v. Commissioner 475 F.2d 775 (2d Cir. 1973).
- Broadrick v. Oklahoma, 93 S. Ct. 2908 (1973).
- Dollar Federal Savings Trust Co. v. First National Bank, — Ohio Misc. —, 285 N.E.2d 768 (C.P. Probate Div., Mahoning Co. 1972).
- Falkenstein v. Department of Revenue, 350 F. Supp. 887 (D. Ore. 1972).
- Franklin v. Julian, 30 Ohio St. 2d 228, 283 N.E.2d 813 (1972).
- Hall v. E. I. Dupont De Nemours & Co., 345 F. Supp. 353 (E.D.N.Y. 1972).
- Ihrke v. Northern States Power Co., 459 F.2d 566 (8th Cir.), *vacated as moot*, — U.S. —, 93 S. Ct. 66, 34 L. Ed. 2d 72 (1972).
- Littleton v. Berbling, 468 F.2d 389 (7th Cir. 1972).
- Palmer v. Columbia Gas Co., 342 F. Supp. 241 (N.D. Ohio 1972).
- People v. Taylor, 8 Cal. 3d 174, 501 P.2d 918, 104 Cal. Rptr. 350 (1972), *petition for cert. filed*, 41 U.S.L.W. 3411 (U.S. Jan. 23, 1973) (No. 72-1002).
- Proposed Rule 146 under the Securities Act of 1933.
- SEC v. Continental Tobacco Co., 463 F.2d 137 (5th Cir. 1972).
- United States v. Ash, 93 S. Ct. 2568 (1973).
- United States v. Calandara, 465 F.2d 1218 (6th Cir. 1972), *cert. granted*, 41 U.S.L.W. 3441 (U.S. Feb. 20, 1973).
- United States v. Falk, 479 F.2d 616 (7th Cir. 1973).
- United States v. Moreno, 475 F.2d 44 (5th Cir. 1973).

