

1985

Table of Contents, Volume 23, Number 4, Summer 1985

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Recommended Citation

Table of Contents, Volume 23, Number 4, Summer 1985, 23 Duq. L. Rev. [xv] (1985).

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Duquesne Law Review

Volume 23, Number 4, Summer 1985

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Articles

REFLECTIONS ON ETHICAL ELEMENTS OF JUDAIC HALAKHAH

Phillip Sigal 863

Halakhah, or the body of Jewish norms of conduct and religious practices, consists of an everchanging aggregate of ethical principles. Halakhah is thus unlike most "legal" systems, which are characterized by the presence of a governmental authority reinforced by a justice system established to impose penalties. This article highlights the nature of halakhah as distinct from such traditional legal systems. Following this introduction, the author focuses on hermeneutics, the rules of religious textual interpretation, and their application to halakhic revision. The author then applies the hermeneutic to illustrate halakhic development in the areas of abortion and self-incrimination, and, in addition, discusses halakhic intimations in the New Testament. The author concludes by noting that the Christian values which influenced the Western legal systems are in fact based upon a matrix of Jewish theological-halakhic elements; an understanding of the process of halakhic interpretation and evolution would thus be valuable in analyzing the Judaeo-Christian ethical tradition in contemporary legal systems, in order to renew concern for the individual, and to approach complex issues of social and legal change.

THE HONORARY CONSUL IN MODERN INTERNATIONAL PRACTICE: WHY ARTICLE 68 OF THE FINAL ACT OF THE UNITED NATIONS CONFERENCE ON CONSULAR RELATIONS SHOULD BE AMENDED TO PROVIDE A UNIFORM REGIME FOR THE SENDING AND RECEIVING OF HONORARY CONSULS

Robert M. Jarvis 905

States throughout the world have long sought to promote trade and commerce with other nations. One way in which states have attempted to foster such exchanges is by the development and maintenance of a consular service, the function of which is to facilitate business relations with the country in which they are stationed. This article examines the existing system of sending and receiving *honorary* consuls, who are used most commonly by smaller and/or less wealthy states in those ports and cities in which representation is thought important, but which do not justify the sending of a professional consular officer. Noting that abuse of the honorary consul system has increasingly resulted in the refusal of certain states to admit honorary consuls, the author proposes a uniform regime for the regulation of honorary consuls under the auspices of the United Nations. The author provides a model statute to amend Article 68 of the Final Act of the United Nations Conference on Consular Relations, which would work to effect such a uniform regime.

THE NEW BANKRUPTCY PROCEDURES FOR REJECTION OF COLLECTIVE-BARGAINING AGREEMENTS: IS THE PENDULUM SWINGING BACK?

Charlene R. Ehrenwerth 939
Maureen E. Lally-Green

In 1984 the United States Supreme Court, in *Brotherhood of Teamsters v. Bildisco & Bildisco*, held that a debtor in possession in a Chapter 11 bankruptcy proceeding could unilaterally reject existing collective-bargaining agreements. Under pressure from labor interests, Congress acted quickly and enacted amendments to the Bankruptcy Act, whereby executory collective-bargaining agreements were removed from the operation of the rejection provisions found in section 365 of the Code. After summarily examining bankruptcy law and the *Bildisco* case, the authors thoroughly discuss new section 1113 of the Bankruptcy Code, which deals with the treatment of collective-bargaining agreements in the course of bankruptcy proceedings. Anticipating construction of the section's provisions—based on both the legislative background of the amendments, and on general principles of bankruptcy and labor law—the authors conclude that Congress has successfully enacted law which will work to prevent the derogation of labor's collective-bargaining rights as threatened in *Bildisco*.

SURVIVAL REMEDIES FOR DEATHS ON THE HIGH SEAS

Edward J. Balzarini, Jr. 981

The Death on the High Seas Act (DOHSA) provides a federal cause of action for deaths resulting from "wrongful act, neglect, or default" which occurs beyond three nautical miles from the shore of any state, territory or dependency of the United States. The measure of damages in an action brought under the Act is defined as the amount of the pecuniary loss sustained by the beneficiaries; the Supreme Court, construing the Act, has held that non-pecuniary remedies, such as compensation for loss of society, cannot be recovered in a DOHSA action. The issue remains, however, as to whether a DOHSA recovery can be supplemented with a claim for survival damages. This article discusses the question of whether such a claim can be properly joined with a DOHSA claim, and considers the possible sources of a survival remedy for deaths occurring on the high seas.

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THE ARBITRARY AND CAPRICIOUS STANDARD UNDER ERISA: ITS ORIGINS AND APPLICATION 1033

The trustees of private employee pension and benefit plans are subject to the fiduciary standards enacted by the Employee Retirement Income Security Act of 1974. One such standard—the arbitrary and capricious standard—originated in cases decided under the Taft-Hartley Act. The author examines the origins of the arbitrary and capricious standard, concluding that although the federal courts lacked jurisdiction under the Taft-Hartley Act to formulate and apply the standard, it nevertheless has been universally adopted by the courts in cases decided under ERISA. The author examines the judicial tests developed to determine fiduciary status, and surveys the application of the arbitrary and capricious standard, identifying five distinct factors considered by the courts when reviewing challenged fiduciary conduct.

THE NATIONAL LABOR RELATIONS ACT AT FIFTY: ROOTS REVISITED, HEART REDISCOVERED 1059

1985 marks the fiftieth anniversary of the enactment of the National Labor Relations Act (The Wagner Act). The passage of time, however, seems to have shrouded the history of the NLRA and obscured the policies that it was enacted to serve. This comment explores the history and purposes of the NLRA. Through analysis of historical antecedents, contemporary events and legislative history, the author suggests that the NLRA was enacted to serve three primary purposes: to encourage economic recovery, to foster Industrial Peace and to establish Industrial Democracy. After discussing each of these purposes, the author concludes that they are as important to America today as they were in 1935, and that their significance cannot be neglected.

THE POSTJUDGMENT INTEREST RATE IN PENNSYLVANIA: IGNORING REALITY FOR TOO LONG 1083

The present interest rate on money judgments in Pennsylvania is six percent per annum by statute. This rate is the lowest in the country, in both the state and federal systems. The author first examines these other systems in an effort to reveal the inequity of the Pennsylvania rate. The author next considers the present Pennsylvania approach to postjudgment interest from a theoretical point of view. The author suggests methods by which a meaningful change in the postjudgment interest rate can be effected in order to bring Pennsylvania in line with the rest of the nation.

PREJUDGMENT INTEREST AND DELAY DAMAGE AWARDS ON BREACH OF CONTRACT AND RELATED DAMAGES: A COMPARATIVE ANALYSIS OF NEW YORK, OHIO AND PENNSYLVANIA LAW 1097

A choice of governing law can be determinative of whether a party is able to recover prejudgment interest on damages for breach of contract, tortious interference with contract and misrepresentation in contracting. This article compares prejudgment interest awards on such damages under New York, Ohio and Pennsylvania law. Following a review of the governing statutes and case law in this area, the author points out that recovery of prejudgment interest is more readily available under New York law.

**DENIAL OF SOCIAL HOST LIABILITY FOR FURNISHING ALCOHOL
TO A VISIBLY INTOXICATED GUEST IN *Klein v. Raysinger*:
A FAILURE IN JUDICIAL REASONING**

1121

In *Klein v. Raysinger* the Pennsylvania Supreme Court denied social host liability for the serving of alcoholic beverages to a visibly intoxicated guest who later is involved in a motor vehicle accident. The author assesses the court's opinion in light of the roles traditionally played by the legislature and judiciary, and simultaneously examines the court's reasoning in relation to established Pennsylvania common law negligence principles. The author concludes that while denial of social host liability based on a decision to defer to the legislature in making such a judgment would have been proper, the failure to impose liability on the basis of negligence principles was inconsistent with the general trend of Pennsylvania common law.

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The Duquesne Law Review is published quarterly at Pittsburgh, Pennsylvania. Editorial Offices: 132 The Edward J. Hanley Hall, 900 Locust Street, Pittsburgh, Pennsylvania 15282. Subscriptions: \$15.00 per year. Subscriptions are automatically renewed unless otherwise stipulated.

Single issues of the current volume are available from Duquesne Law Review at \$5.00 per copy. Other back issues are available through William S. Hein Co., Inc., 251 Main Street, Buffalo, N.Y. 14203.

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