The publications described briefly below are a selection of recent writings by Law School faculty members.

\textit{Walter J. Blum}\n
\textit{Amortization of a Retained Terminable Interest After Transfer of a Remainder}, 62 Taxes (April 1984).

Under our federal income tax there are various types of assets that cannot be depreciated or amortized by those who own them. As might be expected, the owners often seek ways to put themselves in a position to depreciate at least some of their investment in these assets. Over the years, the law has wrestled with deciding what arrangements will enable depreciation to be taken. One device that has been used by owners consists of transferring a remainder interest in the underlying property while retaining a term interest. The thought is that a term interest, which expires at a predictable date, can be depreciated. Under what circumstances should depreciation be allowed when the remainder is transferred? Mr. Blum explores this question in his article.


Over the years Mr. Blum has come to wonder about the function of analysis in dissenting opinions by justices of the Supreme Court in federal income tax controversies. Not infrequently, he is unable to discern how publication of a particular minority analysis can possibly contribute to improving the operation of our complex income tax system. Indeed, the analysis of a disserter may sometimes cause needless confusion on the part of our lower courts, tax advisors, and tax gatherers. Mr. Blum's reflections on the analytical dissenting opinions that have been filed during the last five terms of the court lead him to suggest a few guidelines for dissenters in writing opinions in income tax cases.

\textit{Frank H. Easterbrook}\n
\textit{Antitrust and the Economics of Federalism}, 26 J. Law & Econ. 23 (1983).

This article looks at "competition" in antitrust law from a different perspective: competition among the states. Mr. Easterbrook argues that the Supreme Court's recent attempts to apply the antitrust laws to the actions of state and local governments are both unnecessary, because these governments rarely have the ability to affect people living beyond their borders, and likely to be counterproductive, because the foreclosure of some forms of regulation may drive state and local governments to adopt other forms with welfare effects inferior to those displaced by antitrust. Mr. Easterbrook argues that ultimately the purpose of government is to replace competition with something else, and a federal rule requiring government action to be "procompetitive" has a potential to create a new fount of federal review of state action after the fashion of the substantive due process cases from 1890-1930.

\textit{R.H. Helmholz}\n

According to most commentators, the state of mind of the adverse possessor of land should be irrelevant. What should count is the accrual of a cause of action in ejectment against him. In this article Mr. Helmholz reviews the cases decided since 1966, concluding that American courts do not follow this rule. Instead, they regularly allow adverse possession to ripen into title only when the possessor is acting in the good faith belief that he is occupying what he owns already. Knowing trespassers rarely succeed. Mr. Helmholz explores the various means judges have taken to reach this result.

\textit{Diane Wood Hutchinson}\n

Ms. Hutchinson takes a comprehensive look at the Supreme Court of the United States' class action decisions and argues that two models of the class action emerge: a joinder model, in which the class action functions only as an elaborate joinder device, and a representative model, in which it functions as a vehicle whereby one (or more) representatives may litigate on behalf of unnamed class members who have no independent procedural right to appear before the court. After developing the history of class actions in this country and change for payment from B? In other words, why not blackmail? In his article, Mr. Epstein seeks to escape this dilemma by showing how the A and B agreement will have as a necessary consequence the commission of a fraud against C, an element which is not present when A simply discloses that same information to C. He then explains why the criminal prohibition against blackmail is important even if persons blackmailed are not willing to turn state's evidence. The prohibition makes it impossible for Blackmail, Inc. to sell its professional services to A as a means to extract greater payments from B.
the policies that class actions are designed to serve, Ms. Hutchinson describes and criticizes the two models in detail and suggests that the representative model is more consistent with both history and policy.

Gareth H. Jones


It is commonly said that the object of an award of damages for breach of contract is to compensate a plaintiff for his loss; it is not to strip the defendant of the profits gained from the breach. Mr. Jones argues that the defendant's gain has on occasions influenced judges of many common law jurisdictions in determining what is the quantum of the plaintiff's loss. But they have not always admitted this to be so. This leads Mr. Jones to consider whether it is desirable, and if so under what conditions, expressly to determine what is the quantum of the plaintiff's loss. But they have not always admitted this to be so.

William M. Landes and Richard A. Posner


Regulation and tort law are alternative methods (though often used in combination) for preventing accidents. The former requires a potential injurer to take measures to prevent the accident from occurring. The latter seeks to deter the accident by making the potential injurer liable for the costs of the accident should it occur. In this paper Mr. Landes and Judge Posner examine tort law as a method of regulating safety in cases of catastrophic accident (an accident resulting in serious injury to a large number of victims). They show that the problem of limiting solvency may be overstated and is perhaps more an argument for using a negligence rather than strict liability standard. The problem of causal uncertainty and long delay between accident and full-blown injury could perhaps be solved by moving toward a system where the accident victim sues and obtains a judgment before his injury is full blown. This approach also has attractions in dealing with the serious problem of giving victims of catastrophic accidents incentives to make “life style” changes that will reduce the severity of the delayed consequences of such accidents. Of course, there are many practical problems in making such a proposal work, but the alternating regulation has its own very serious practical problems.

Bernard Meltzer and Cass Sunstein


Mr. Meltzer and Mr. Sunstein consider the circumstances leading up to the air traffic controller's strike; the considerations behind the prevailing ban on public sector strikes; the history, constitutionality, and scope of the statutes banning strikes by federal employees; the problems of selective prosecution; and the implications of that strike for labor relations in the public sector and, incidentally, in the private sector.

A.W. Brian Simpson

Editor, Biographical Dictionary of the Common Law (Butterworths, 1984).

Thirty-nine contributors, including John H. Langbein, Dennis J. Hutchinson, and Gareth H. Jones, have written entries for this concise one-volume dictionary. It contains lives of more than seven hundred individuals, selected principally for having made significant contributions to the development of the common law system. Also included are some civilians, all Roman lawyers known to have worked in Britain, and curiosities such as the patron saint of lawyers. Although the emphasis is on the English common law, numerous American lives are included, ranging from major legal thinkers such as Holmes to such exponents of the deterrent theory of punishment as Judge Isaac Charles Parker of Arkansas. There are many illustrations, and the entries refer readers to further sources to which they may turn for fuller information.

Geoffrey R. Stone


Perhaps the most intriguing feature of contemporary first amendment doctrine is the increasingly invoked distinction between content-based and content-neutral restrictions on expression. Mr. Stone explores the merits and limitations of the distinction. He examines four possible rationales for the doctrine—equality, communicative impact, improper motivation, and distortion of public debate. In the end, he concludes that the distinction is more subtle than is usually assumed, that there are several previously unexamined types of restrictions that do not fit neatly within either the content-based or the content-neutral category, but that the distinction itself, if carefully defined, nonetheless serves a legitimate and fundamental role in first amendment jurisprudence.

Cass R. Sunstein


In this article, Mr. Sunstein analyzes recent developments in administrative law, with particular attention to the problem of judicial review of deregulation. He concludes that in reviewing administrative action (and inaction), the courts have moved away from the position that their primary role is to protect private ordering by guarding against unlawful government intrusions into the marketplace. The courts' new role is to ensure that agencies have complied with the governing statute, even if compliance requires the agency to intrude on private ordering. Mr. Sunstein also argues that a number of judge-made doctrines attempt to guard against takeover of the regulatory process by narrow interest groups. He illustrates this thesis by examining the Supreme Court's recent decision to invalidate the Reagan Administration's repeal of the passive restraints requirements for new automobiles.