

1-1967

Issue Editor's Preface

Laurence K. Sawyer

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Laurence K. Sawyer, *Issue Editor's Preface*, 18 HASTINGS L.J. 477 (1967).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol18/iss3/1

This Comment is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Issue Editor's Preface

Contrary to the familiar topical format, this issue of the *Journal* seeks to unfold a wide variety of thought provoking and current articles. Aside from its obvious educational benefit to the writer, the value of a law review article is its ability to present an enlightening and thorough discussion of a particularly narrow subject, along with an exhaustive fund of source material for the interested reader. It is the hope of this Editor that the legal profession will find such value in the articles which follow

Is it possible to illustrate that the Common and Civil Law systems reveal similarity in their underlying doctrines, notwithstanding their different conceptual forms? In a most scholarly article, Professor Ralph Newman, of the Hastings faculty, undertakes this task and very aptly demonstrates that the "cleft" between the common and civil law will be narrowed as the principles of equity are received by all legal systems. This is Professor Newman's third article appearing in the *Journal* within three years; we wish to express our gratitude for his fine contributions to this publication.

Of recent concern to a number of state legislatures has been the problem of discrimination in employment because of age. Professor James Brennan ably discusses not only the substance and procedure of the varying state statutes which have attempted to prohibit this discrimination but also the value of such legislation in light of its social and economic effects.

Hastings has been proud of its renowned faculty, and this issue of the *Journal* is honored by the contribution of Professor J. Warren Madden, a member of that faculty. In a short article, based on a recent speech, Professor Madden relives his experience as the first chairman of the NLRB. The reader will discover that his memoir reflects not only the troubled waters upon which the first Board was launched but also a subtle humor, which perhaps contributed to the success of the Board's maiden voyage.

Recent condominium legislation in California has prompted Mr. Edward Ross to prepare an article on the status of the right of first refusal in California condominium law. He compares the treatment of the preemptive option in other states with that of California and concludes by setting forth possible guidelines for the California developer.

Mr. J. Murray Kleist raises the timely question of whether the failure to wear seat belts is contributory negligence, barring the injured

plaintiff's action against a negligent driving defendant. He points out the fallacies in the arguments put forth by the proponents of the seat belt defense and shows why such a defense is contrary to the public policy behind modern tort law

Foremost in the minds of many criminal lawyers today is the liberal judicial trend toward protecting the pre-arraignment, constitutional rights of the criminally accused. This protection of the criminal suspect is the subject of discussion in the first three student notes. Mr. Harvey Henderson undertakes to define the judicially-created stop and frisk rule in California; he points out three areas which need to be clarified by the California courts. In the second note, Mr. Richard Inlander examines the problem of prompt arraignment. Noting that the states have varying standards of procedure, he suggests that, in light of *Miranda v. Arizona*, a uniform pre-arraignment procedure would be desirable. Finally, Mr. Patrick Maloney discusses the potential use in California of a police release procedure for misdemeanants, as an alternative to the conventional bail system.

A second area of concern in the criminal law is the introduction of prejudicial evidence at the criminal trial. Mr. James Jackl re-examines the judicial history of section 1027 of the California Penal Code, which provides for the use of a court-appointed psychiatric witness in a criminal trial involving the defendant's sanity, and concludes that the section has not been construed to adequately alleviate the problems which it was designed to remedy. In the next note, Miss Donna Spragg discusses the admissibility and use of evidence in California juvenile court hearings and shows that the attempt to retain the informal nature of the juvenile court and the desire to protect the constitutional rights of juveniles have resulted in an anomalous rule of evidence.

Turning from criminal prosecutions to civil suits, three student notes provide the reader with an informative discussion of evidentiary problems in civil actions. Mr. Malcolm McLorg analyzes the subsequent repair rule embodied in section 1151 of the California Evidence Code and illustrates how the industrious lawyer, through various subterfuges, might circumvent the effect of the rule. The use of the *per diem* damage argument is the subject of Mr. Maurice Jourdane's note. Questioning the desirability of permitting this argument in California, Mr. Jourdane discusses the methods which might be used to offset its effect. Finally, Mr. Wendell Naraghi examines the liberal extension of *res ipsa loquitur* in California medical malpractice cases and concludes that this extension, although perhaps

justified on grounds of public policy, may have a detrimental effect on the practice of good medicine.

The last three student notes involve three recent problems in California law. Mr. Samuel Young points out the need for a change in the law which would allow a tenant to resist eviction by a landlord who merely seeks retaliation for the tenant's complaint of substandard housing to the authorities. Mr. Akira Togasaki discusses the problem of attorney's fees in third party actions under the Workmen's Compensation law; he likewise suggests that change in this area of California law is necessary. In the last note, Mr. James Jones examines the cases, after *Dep't of Mental Hygiene v. Kirchner*, which have construed the relatives' support liability statutes in California and concludes that these cases have brought California law closer to the law of other states.

The Book Review section contains a review of Hans Kelsen's *Principles of International Law*, revised by Mr. Robert W. Tucker. This basic work in the field of international law is reviewed by retired General Claude B. Meikelwait.

I wish to express my appreciation to those members of the Hastings faculty who so generously advised me on the planning of this issue. I am also indebted to Messrs. Lee Mermelstem and William Taggart, of the *Journal* Board, and Messrs. Stephen Jones, Peter Michael and Brown Smith, associate editors, for their personal assistance.

LAURENCE K. SAWYER
Issue Editor

