

# Missouri Law Review

---

Volume 78  
Issue 1 *Winter 2013*

Article 1

---

Winter 2013

## Table of Contents - Issue 1

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

*Table of Contents - Issue 1*, 78 Mo. L. REV. (2013)

Available at: <https://scholarship.law.missouri.edu/mlr/vol78/iss1/1>

This Front Matter is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

# MISSOURI LAW REVIEW

VOLUME 78

WINTER 2013

NUMBER 1

## CONTENTS

### ARTICLES

- A Proposal for a National Mortgage  
Registry: MERS Done Right.....*Dale A. Whitman* 1
- The Corporate Gatekeeper in  
Ethical Perspective.....*Christopher T. Hines* 77
- Two Wrongs Do Not Make a Right:  
Reconsidering the Application of  
Comparative Fault to Punitive Damage  
Awards.....*Victor E. Schwartz & Christopher E. Appel* 133
- The Currently Mandated Myopia of  
Rule 10b-5: Pay No Attention to  
That Manager Behind the  
Mutual Fund Curtain.....*Kelly S. Kibbie* 171

### COMMENT

- The Farmer and the Tax Man: The  
Scope of the Tax Forgiveness Provision in  
Chapter 12 Bankruptcy.....*David A. Martin* 243

### NOTES & LAW SUMMARIES

- Eighth Circuit Bungles Bundled  
Discounts: The Court Avoids Resolving  
Bundled Discounts.....*Melissa A. Cullmann* 299
- A Delicate Balancing of Paternalism and  
Freedom to Contract: The Evolving  
Law of Unconscionability in  
Missouri.....*Scott Lee Smithson, Jr.* 321
- Drawing on the Constitution: An Empirical  
Inquiry into the Constitutionality of  
Warrantless and Nonconsensual DWI  
Blood Draws.....*Kevin Stockmann* 351



## SCHOOL OF LAW UNIVERSITY OF MISSOURI

### ADMINISTRATIVE OFFICERS

TIMOTHY M. WOLFE, *President, University of Missouri System*  
BRADY J. DEATON, BS, MA, PHD, *Chancellor, University of Missouri*  
BRIAN L. FOSTER, BA, AM, PHD, *Provost, University of Missouri*  
GARY MYERS, BA, MA, JD, *Dean and Earl F. Nelson Professor of Law*  
RAFAEL GELY, BA, AM, JD, PHD, *Associate Dean for Academic Affairs and James E. Campbell Missouri Endowed Professor of Law*  
RIGEL C. OLIVERI, BA, JD, *Associate Dean for Faculty Research and Development and Associate Professor of Law*  
ROBERT G. BAILEY, BA, JD, *Director of the Center for the Study of Dispute Resolution and Assistant Dean*  
ELISABETH (LISA) E. KEY, BS, JD, *Assistant Dean of Admissions, Career Development and Student Services*  
RANDY J. DIAMOND, BA, JD, MLS, *Director of Library and Technology Resources and Professor of Legal Research*  
MARK LANGWORTHY, BS, JD, *Senior Director of Development*

### THE FACULTY OF LAW

DOUGLAS E. ABRAMS, BA, JD, *Associate Professor of Law*  
ROBERT G. BAILEY, BA, JD, *Director of the Center for the Study of Dispute Resolution and Assistant Dean*  
ROYCE DE R. BARONDES, SB, SM, JD, *Associate Professor of Law*  
MARY M. BECK, BSN, MSN, JD, *Director of the Domestic Violence Clinic and Clinical Professor of Law*  
FRANK O. BOWMAN III, BA, JD, *Floyd R. Gibson Missouri Endowed Professor of Law*  
MICHELLE ARNOPOLO CECIL, BA, JD, *William H. Pittman Professor of Law and Curators Teaching Professor*  
CARLI N. CONKLIN, BS, MAE, MA, JD, *Associate Professor of Law*  
DENNIS D. CROUCH, BSE, JD, *Associate Professor of Law*  
MELODY RICHARDSON DAILY, BA, MA, JD, *Director of Legal Research and Writing and Clinical Professor of Law*  
KENNETH D. DEAN, BA, MA, JD, *Deputy Provost and Associate Professor of Law*  
BRAD M. DESNOYER, BJ, JD, *Visiting Associate Professor of Law*  
R. LAWRENCE DESSEM, BA, JD, *Dean and Professor of Law*  
RANDY J. DIAMOND, BA, JD, MLS, *Director of Library and Technology Resources and Professor of Legal Research*  
MARTHA DRAGICH, BA, MA, JD, *James S. Rollins Professor of Law*  
DAVID M. ENGLISH, BA, JD, *William Franklin Fratcher Missouri Endowed Professor of Law*  
CARL H. ESBECK, BS, JD, *Isabelle Wade & Paul C. Lyda Professor of Law and R.B. Price Professor of Law*  
R. WILSON FREYERMUTH, BS, JD, *John D. Lawson Professor of Law and Curators Teaching Professor*  
RAFAEL GELY, BA, AM, JD, PHD, *Associate Dean for Academic Affairs and James E. Campbell Missouri Endowed Professor of Law*  
ERIN MORROW HAWLEY, BA, JD, *Associate Professor of Law*  
JOSHUA D. HAWLEY, AB, JD, *Associate Professor of Law*  
CHUCK HENSON, BA, JD, *Visiting Professor of Law*  
KANDICE JOHNSON, BS, JD, *Director of Clinical Programs, Director of the Criminal Prosecution Clinic and Clinical Professor of Law*  
PAUL LADEHIOFF, BS, MA, JD, *Director of LLM in Dispute Resolution and Director of the Campus Mediation Service*  
THOMAS A. LAMBERT, BA, JD, *Associate Professor of Law*  
JOHN LANDE, AB, JD, MS, PHD, *Isidor Loeb Professor of Law*  
ILHIYUNG LEE, BA, MA, JD, *Edward W. Hinton Professor of Law*  
JAMES LEVIN, BA, JD, *Associate Director of the Center for the Study of Dispute Resolution and Adjunct Professor of Law*  
PAUL J. LITTON, BA, JD, PHD, *Associate Professor of Law*  
MICHAEL A. MIDDLETON, BA, JD, *Deputy Chancellor and Professor of Law*  
S. DAVID MITCHELL, BA, MA, JD, *Associate Professor of Law*  
RIGEL C. OLIVERI, BA, JD, *Associate Dean for Faculty Research and Development and Associate Professor of Law*  
PHILIP G. PETERS JR., BA, JD, *Ruth L. Hulston Professor of Law*  
RICHIARD C. REUBEN, BA, BA, JD, JSM, JSD, *James Lewis Parks Professor of Law*  
TROY A. RULE, BS, JD, *Associate Professor of Law*  
S.I. STRONG, BA, MPW, JD, PHD, DPHIL, *Associate Professor of Law*  
BEN L. TRACHTENBERG, BA, MA, JD, *Associate Professor of Law*  
RODNEY J. UPHOFF, BA, MS, JD, *Elwood L. Thomas Missouri Endowed Professor of Law and Director of the University of Missouri South Africa Educational Program*  
CHRISTINA E. WELLS, BA, JD, *Enoch H. Crowder Professor of Law*

THE EMERITUS FACULTY OF LAW

PETER N. DAVIS, BA, LLB, SJD, *Isidor Loeb Professor Emeritus of Law*  
WILLIAM B. FISCH, AB, LLB, MCL, DR JUR, *Isidor Loeb Professor Emeritus of Law*  
DAVID A. FISCHER, BA, JD, *James Lewis Parks and Isidor Loeb Professor Emeritus of Law*  
PATRICIA BRUMFIELD FRY, JD, MA, *Edward W. Hinton Professor Emerita of Law*  
PHILIP J. HARTER, AB, MA, JD, *Earl F. Nelson Professor Emeritus of Law*  
WILLIAM H. HENNING, BA, JD, LLM, *R.B. Price Professor Emeritus of Law*  
EDWARD H. HUNVALD JR., AB, JD, *Earl F. Nelson and John D. Lawson Professor Emeritus of Law*  
HENRY T. LOWE, AB, JD, *C.A. Leedy and Earl F. Nelson Professor Emeritus of Law*  
ALFRED S. NEELY IV, AB, LLB, *Edward W. Hinton Professor Emeritus of Law*  
GRANT S. NELSON, BA, JD, *Earl F. Nelson and Enoch H. Crowder Professor Emeritus of Law*  
LEONARD L. RISKIN, BS, JD, LLM, *C.A. Leedy and Isidor Loeb Professor Emeritus of Law*  
JAMES E. WESTBROOK, BA, JD, LLM, *Earl F. Nelson and James S. Rollins Professor Emeritus of Law*  
DALE A. WHITMAN, BES, LLB, *Dean Emeritus and James E. Campbell Missouri Endowed Professor Emeritus of Law*

THE ADJUNCT FACULTY OF LAW

MICHAEL CARNEY, BS, MA, JD, *Adjunct Associate Professor of Law*  
JOSEPH P. DANDURAND, BS, BA, JD, *Adjunct Professor of Law*  
SANDRA DAVIDSON, BA, MA, JD, PhD, *Professor of Journalism and Adjunct Professor of Law*  
ANGELA K. DRAKE, BS, JD, *Adjunct Professor of Law*  
C.J. DYKHOUSE, BS, JD, *Adjunct Associate Professor of Law*  
ROGER C. GEARY, BS, JD, *Adjunct Associate Professor of Law*  
RALPH J. HASLAG, BS, JD, *Adjunct Professor of Law*  
RON HOLLIGER, BS, JD, *Adjunct Professor of Law*  
MARK T. KEMPTON, BA, JD, *Adjunct Professor of Law*  
NANETTE K. LAUGHREY, BA, JD, *Adjunct Professor of Law*  
MISSOURI SOLICITOR GENERAL JAMES R. LAYTON, BS, JD, *Adjunct Professor of Law*  
LORI J. LEVINE, BS, JD, *Adjunct Associate Professor of Law*  
JENNIFER MCGARR, BA, MA, JD, *Adjunct Associate Professor of Law*  
SARAH R. MAGUFFEE, BA, JD, *Adjunct Associate Professor of Law*  
MELISSA A. MCCOY, BS, JD, *Adjunct Associate Professor of Law*  
LARRY L. McMULLEN, BA, JD, *Adjunct Professor of Law*  
DAVID D. NOCE, BA, JD, *Adjunct Professor of Law*  
WALTER RAY PHILLIPS, BA, JD, LLM, *Adjunct Professor of Law*  
SARAH J. READ, BA, JD, *Adjunct Professor of Law*  
MARK ROARK, BA, JD, LLM, *Adjunct Professor of Law*  
JAYME SALINARDI, BA, JD, *Adjunct Associate Professor of Law*  
LESLIE A. SCHNEIDER, BA, JD, *Adjunct Professor of Law*  
TROY K. STABENOW, BS, JD, *Adjunct Associate Professor of Law*  
SANDRA R. STIGALL, BBA, JD, *Adjunct Professor of Law*  
KATIE D. WHITMAN, BA, JD, *Adjunct Associate Professor of Law*  
ALEXANDRA E. WILSON-SCHOONE, BA, JD, *Adjunct Associate Professor of Law*  
JAYNE T. WOODS, BS, JD, *Adjunct Associate Professor of Law*

# MISSOURI LAW REVIEW

## EDITOR IN CHIEF

ASHLEY M. CROSS

## MANAGING EDITOR

KAITLIN GALLEN

## SENIOR LEAD ARTICLES EDITOR

MICHELLE WRIGHT

## ASSOCIATE EDITOR IN CHIEF

LUKE J. WEISSLER

## LEAD ARTICLES EDITORS

JONATHAN BREMER

BENJAMIN HARNER

ELIZABETH WEBER

## ASSOCIATE MANAGING EDITORS

KEVIN HOFFMEYER

STEPHANIE LIU

KEVIN STOCKMANN

## SENIOR NOTE AND COMMENT EDITOR

MADISON MARCOLLA

## NOTE AND COMMENT EDITORS

CONOR NEUSEL

ABBY SCHABERG

AMY SESTRIC

CURTIS SHANK

## LAYOUT AND DESIGN EDITOR

SCOTT LEE SMITHSON

## SENIOR ASSOCIATE EDITOR

JOE MEYER

## ASSOCIATE EDITORS

HADEN CRUMPTON

JOE PALUMBO

MELISSA CULLMANN

CHANTAL FINK

CODY REINBERG

---

## ASSOCIATE MEMBERS

MAGGIE AHRENS

SCOTT APKING

SARAH AYRES

PETER BAY

STEPHANIE BRADSHAW

RYAN E. BUCK

KYLE BUMBERRY

DANIEL COFFMAN

JOHN FREESE

JAMES GALBRAITH

BREANNA HANCE

JOEL HANE

SARAH HASKINS

ELIZABETH HATTING

KEITH HOLLAND

AMANDA N. JOHNSON

MELESA JOHNSON

N. DREW KEMP

RACHEL LAWRENCE

ERIN LEACH

CHRISTOPHER LESINSKI

MISHELLE MARTINEZ

MICHAEL OWENS

SHELLY ROSENFELDER

KACI SARGENT

VALERIE SHANDS

ZACK SHKLAR

BRIAN STAIR

NICK THEODORE

JACOB THESSSEN

## FACULTY ADVISOR

PAUL J. LITTON

## COMPUTERS

DARRELL E. JAEGER

---

---

The *Missouri Law Review* publishes one volume per academic year. Each volume consists of four issues. Subscriptions are accepted only on a volume basis, starting with the first issue of the volume. Current subscription price: \$40.00 (Foreign subscriptions -- \$45.00). Payment for renewal subscriptions is due within thirty days of the invoice date. Any entity or individual invoiced for four or more renewal subscriptions will be charged \$5.00 per subscription for failure to pay within thirty days. Refunds will not be made for cancellations made after the publication of the first issue of any volume.

Subscribers must report non-receipt of an issue within six months of its mailing or one month of receipt of a succeeding issue, whichever is shorter, in order to receive that issue without additional charge.

All notifications of change of address should include old and new addresses with zip codes. Notice of a change of address must reach the *Review* one month in advance of publication to ensure delivery. The Post Office will not forward issues to a new address. The *Review* will forward issues missed because of address changes only upon written claim of non-receipt and prepayment of \$2.00 to cover the cost of postage and processing.

Complete sets, odd volumes, or issues of the *Missouri Law Review* can be obtained from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

---

---

Published quarterly by the School of Law, University of Missouri, Columbia, Missouri 65211, telephone: 573-882-7055. Entered as second class matter February 7, 1936, at the Post Office in Columbia, Missouri, under the Act of March 3, 1879. Periodicals postage paid at Columbia, Missouri, and additional mailing offices, *Missouri Law Review* (USPS 355-300) (ISSN 0026-6604). Postmaster: Send change of address to *Missouri Law Review*, School of Law, Hulston Hall, Room 15, University of Missouri, Columbia, Missouri 65211.

---

**Copyright:** Copyright 2012 by the Curators of the University of Missouri. Articles herein may be duplicated for classroom use, provided that (1) each copy is distributed at or below cost, (2) the author and the *Missouri Law Review* are identified, (3) proper notice of copyright is affixed to each copy, and (4) the *Missouri Law Review* is notified of the use.

**Production:** The citations of the *Review* conform to *The Bluebook: A Uniform System of Citation* (19th ed. 2010), copyright by the *Columbia*, *Harvard*, and *University of Pennsylvania Law Reviews* and *The Yale Law Journal*.

<http://www.law.missouri.edu/lawreview>