"Interface: The Push and Pull of Patents"
UC Davis Legal Studies Research Paper No. 165

PETER LEE, University of California, Davis School of Law
Email: ptrlee@ucdavis.edu

Patents, and the profits they enable, exert a tangible "pull" on university research. Influenced by commercial interests, universities may favor research pathways that generate approvable (i.e., patentable) results, thus diverting resources away from basic research. Indeed, empirical evidence suggests that revenue maximization constitutes the overriding goal of most university technology transfer offices. Commercial interests are also influencing university research in a different way, as the rush to patent biomedical research tools may inhibit academic science. Amidst these legitimate concerns, this essay explores an underappreciated, salutary facet of university patenting. While such patenting may accelerate the commercialization of academic science, it also creates opportunities for academic institutions to project their unique normative commitments into the marketplace. In this sense, patents function as interfaces that mediate two-way normative exchange between academics and industry. Increasingly, universities are utilizing patents to "push" a number of nonmarket goals into the private sector, such as ensuring wide access to patented resources for research and public health purposes. Among other effects, these efforts are increasing the availability of patented research tools for noncommercial investigations as well as expanding access to essential medicines in low-income countries. The essay concludes by exploring the normative implications of the push and pull of patents. Eschewing once-size-fits-all prescriptions, it suggests that the unique histories, constituencies, and aspirations of particular institutions should inform their approach to technology transfer.
This Article examines the historical and jurisprudential development of the principle that ownership determines federal taxation of families. It traces the "ownership equals taxability" principle from the late nineteenth century to 1930; that is, from the decades leading up to ratification of the Sixteenth Amendment to the U.S. Supreme Court’s landmark decisions in Poe v. Seaborn and Lucas v. Earl. It is a story of the early federal income tax and its administration; of tax avoidance opportunities for families; of the nature of spouses' legal interests as defined by state property laws; and of early tax enforcement efforts by the Treasury Department and Congress. It is also a story of how the Supreme Court sought to protect Congress' taxing power by articulating an expansive definition of ownership for purposes of determining taxability that relied on indicia of ownership such as control, management, dominion, beneficial interests, equitable interests, enjoyment, and even a "flow of satisfactions" concept that tracked consumption tax principles more closely than income tax principles.

In the end, the Article lays the groundwork for removing the modern-day false barometer of marriage between a man and a woman as the basis of family taxation. In place of marriage, it reestablishes ownership principles grounded in longstanding Supreme Court jurisprudence as the historically and legally accurate gauge for family taxation. In so doing, the Article presages an argument that will be articulated in a subsequent Article for taxing members of all state-recognized civil partnerships - marriage, domestic partnerships, civil unions, reciprocal beneficiary relationships - according to ownership interests as determined by state law.

This essay discusses the expansion of intellectual property rights in plants, plant tissues and genetic sequences in plants and problems this poses for global food supply and agriculture. The article then goes on to analyze recent treaties such as the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) and ways that such treaties create a "limited commons" in certain plant genetic resources. The article then goes on to discuss ways that open source software licenses may be adapted to the plant genetic resources context, and argues that open source seed licenses may be a vehicle for leveraging greater access to plant genetic resources by farmers and public plant breeders around the world.

Cast in the form of an e-mail, this article provides investment guidance to a new board member of a private foundation. Included in the advice offered is a discussion of socially responsible investing and its various subcategories.

This article considers several issues raised by the Supreme Court's opinion in District of Columbia v. Heller. One question is whether Heller requires the constitutionalization of self-defense decisions in tort and criminal law. If the Second Amendment protects the right to keep and bear arms for immediate self-defense purposes, as Heller holds, it arguably also protects the right to use firearms for self defense purposes. Put simply, does it make sense to interpret the Second Amendment to protect the means to exercise self-defense without extending some level of protection to the act of self-defense itself?

Answering this question in the affirmative leads to other issues. The privilege or excuse of self-defense is grounded on an ad hoc evaluation by juries of the reasonableness of the defendant's conduct. That analysis may be appropriate for tort or criminal law purposes, but it is arguably much more problematic as a constitutional
standard. There is also the question of whether a constitutionally required determination as to the reasonableness of defendant's conduct must be independently reviewed by appellate courts.

Heller may influence tort law in another way. Gun owners are often held liable for negligence if they store a firearm in a location where a child gains access to it and injures themselves or others with the weapon. The same safeguards that prevent a child from obtaining a firearm, however, such as storing it in a locked drawer, may make the weapon less available for immediate self-defense. Thus, state courts may need constitutional guidance as to how these negligence lawsuits should be resolved in order to avoid the substantial burdening of a gun owner's Second Amendment rights.

The article addresses other issues as well, such as the role of so-called prefatory clauses in developing doctrine for the protection of enumerated rights.

"Yick Wo Re-Revisited: Nonblack Nonwhites and Fourteenth Amendment History"
University of Illinois Law Review, Fall 2008
UC Davis Legal Studies Research Paper No. 171

THOMAS WUIL JOO, University of California - Davis Law School
Email: twjoo@ucdavis.edu

The 1886 Supreme Court case Yick Wo v. Hopkins is often viewed as a precursor of the racial civil rights era represented by Brown v. Board of Education. In fact, the case was primarily about economic rights. In a new article, Unexplainable on Grounds of Race: Doubts About Yick Wo,* forthcoming in the Illinois Law Review, Professor Gabriel Chin argues that Yick Wo "is not a race case at all." I argue that it is a "race case" because the Court's use of the Fourteenth Amendment to vindicate economic rights necessarily entangled economic rights with race - in an ultimately pernicious way. While issues of "race" in American law tend to focus on nonwhiteness, the "race" of the Chinese plaintiffs in Yick Wo was legally significant in its nonblackness. The Reconstruction Court had previously refused to apply the Amendment to whites or to economic rights in The Slaughter-House Cases. But Yick Wo both revived the literal meaning of the Amendment's phrase "all persons" and applied it to economic rights. It thus ushered in a two-pronged civil rights counter-revolution symbolized by Lochner v. New York's protection of economic "substantive due process" for white persons and corporations and Plessy v. Ferguson's denial of civil rights protection to blacks. The counter-revolution also turned against the nonblack nonwhites who had helped create it, allowing the exclusion of Asians from immigration and naturalization, state laws prohibiting Asians from owning land, and the internment of Japanese Americans during World War II.

*http://ssrn.com/abstract=1075563

Solicitation of Abstracts

The University of California, Davis School of Law Legal Studies journal contains abstracts and papers from this institution focused on this area of scholarly research. To access all the papers in this series, please use the following URL: http://www.ssrn.com/link/UC-Davis-Legal-Studies.html

To submit your research to SSRN, log in to the SSRN User HeadQuarters, and click on the My Papers link on the left menu, and then click on Start New Submission at the top of the page.

Distribution Services

If your Institution is interested in learning more about increasing readership for its research by becoming a Partner in Publishing or starting a Research Paper Series, please email: Management@SSRN.com.

Distributed by:

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Subscription Management

You can change your journal subscriptions by going to the SSRN User HeadQuarters. Please enter the email address where you received this email in the 'Your Email Address' field and click 'Submit'. Click on 'Email me this
Site License Membership

Many university departments and other institutions have purchased site licenses covering all of the journals in a particular network. If you want to subscribe to any of the SSRN journals, you may be able to do so without charge by first checking to see if your institution currently has a site license.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

- Accounting Research Network
- Cognitive Science Network
- Corporate Governance Network
- Economics Research Network
- Entrepreneurship Research & Policy Network
- Financial Economics Network
- Health Economics Network
- Information Systems & eBusiness Network
- Legal Scholarship Network
- Management Research Network
- Political Science Network
- Social Insurance Research Network
- HRN Classics Research Network
- HRN English & American Literature Research Network
- HRN Philosophy Research Network

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

Individual Membership (for those not covered by a site license)

Join a site license, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: http://www.ssrn.com/subscribe

Financial Hardship

SSRN understands there is financial hardship in certain countries (for example the former Soviet Union and Eastern Bloc). If you are undergoing financial hardship and believe you cannot pay for a journal, please send a detailed explanation to Subscribe@SSRN.com

To ensure delivery of this journal, please add LSN@publish.ssrn.com (Legal Scholarship Network) to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email usersupport@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

REDISTRIBUTION

Individual and professional subscriptions to the journal are for single users. It is a violation of copyright to redistribute this document electronically or otherwise without the explicit permission of Social Science Electronic Publishing, Inc. Site licenses for organizations are available by contacting Site@SSRN.com