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"Pictures within Pictures"

Ohio North University Law Review, Vol. 36, 2010
UC Davis Legal Studies Research Paper No. 235

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This is a meditation on the creative process, copyright law, and comic book history.

"Gays, Jews, and Other Strangers in a Strange Land: The Case for Reciprocal Accommodation of Religious Liberty and the Right of Same-Sex Couples to Marry"

University of San Francisco Law Review, No. 45, 2010
UC Davis Legal Studies Research Paper No. 238

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This article presents a new perspective on the question of whether and to what extent states should provide accommodations to religious objectors to same-sex marriage. It critically evaluates both of the commonly presented, competing analogies for addressing this issue; the accommodation of religiously-based race discrimination (offered by those who oppose most accommodations) and conscience clauses for health care providers (suggested by commentators who are more supportive of accommodations.) As an alternative model, the article suggests that the starting place for determining whether or not an accommodation for religious objectors to same-sex marriage should be granted is to ask whether a comparable accommodation would be granted to an

individual or institution seeking the right to discriminate on the basis of religion in providing goods, services, or benefits to others.

The analogy to accommodation for religious discrimination is grounded on the recognition that religious liberty and the right of same-sex couples to marry share a common foundation and are in some sense mutually reinforcing interests. Both religion and same-sex marriage go to the core of a person's identity. Both are intrinsically relational. Both involve conduct that expresses commitment. Both relationships are the source of duties and responsibilities that people feel compelled to fulfill. Both religious liberty and gay and lesbian rights are susceptible to similar kinds of slippery slope challenges. (Polygamy is the pit at the bottom of both slippery slopes.) Finally, and perhaps most importantly, the essence of religious liberty is the right to be different and, in the eyes of the majority, to be wrong. That understanding has parallels to the debate about same-sex marriage as well.

In evaluating possible accommodations, the article carefully describes the costs to objectors if accommodations are denied and the cost to same-sex couples if accommodations are granted. It concludes by suggesting that government has dual responsibilities if accommodations are granted. When the state protects religious liberty by adopting discretionary accommodations, it must also use its resources and authority to promote the goals of civil rights legislation by spreading or mitigating the costs and burdens resulting from such accommodations.

"Client Files and Digital Law Practices: Rethinking Old Concepts in an Era of Lawyer Mobility"

Suffolk University Law Review, Vol. 43, p. 897, 2010

UC Davis Legal Studies Research Paper No. 236

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The lawyer or law firm that controls client files has distinct advantages in any competition for clients. Not surprisingly, disputes over control and possession of client files have long occupied the attention of courts and ethics committees, which over the years have developed a significant body of case law and ethics opinions addressing myriad issues relating to client files. Existing guidance, however, largely is directed to a world of "hard copy" files where pieces of paper neatly assembled within file folders invite a property-based analysis whenever disagreements over possession or access arise.

This article discusses the effects of digitizing client files and firm information in light of lawyer mobility and evaluates the existing framework of law and ethics developed largely in a world of hard copies. The article also offers some practical suggestions for firms seeking to assert greater control over client information and firm intellectual property.

"The Dangerous Trend Blurring the Distinction between a Reasonable Expectation of Confidentiality in Privilege Law and a Reasonable Expectation of Privacy in Fourth Amendment Jurisprudence"

UC Davis Legal Studies Research Paper No. 237

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In the past few years a new trend has emerged in the privilege case law. The traditional view is that a privilege claimant must show that at the time of the allegedly protected communication, he or she had a reasonable "expectation of confidentiality." However, in recent years some courts have abandoned the traditional terminology and begun using the expression, a reasonable "expectation of privacy." That expression is a term of art in Fourth Amendment jurisprudence. It is the expression that Justice Harlan coined in his famous concurrence in *Katz v. United States*, 389 U.S. 347 (1967) to define the scope of Fourth Amendment coverage.

Not only are the privilege cases beginning to use this expression more frequently; there are also indications that some courts are beginning to import Fourth Amendment doctrines into privilege law. The purpose of this short article is to criticize that trend. The article's introduction notes the trend. The first part of the article outlines the general differences between the Fourth Amendment exclusionary rule and privileges for confidential communications. The second part of the article focuses more specifically on the distinctions between an expectation of confidentiality and an expectation of privacy. The third and final part of the article identifies the untoward consequences that may flow if the courts continue to blur the distinction between the two concepts.

"Book Review: Quest for Equality: The Failed Promise of Black-Brown Solidarity"

Journal of American History (JAH), Vol. 97, No. 3, December 2010

UC Davis Legal Studies Research Paper No. 240

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This is a book review of Neil Foley, *Quest for Equality: The Failed Promise of Black-Brown Solidarity* (Harvard

University Press, 2010).

"Bollywood/Hollywood"

Theoretical Inquiries in Law, Vol. 12, p. 179, 2011
UC Davis Legal Studies Research Paper No. 239

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Free flow of culture is not always fair flow of culture. A recent spate of copyright suits by Hollywood against Bollywood accuses the latter of ruthlessly copying movie themes and scenes from America. But claims of cultural appropriation go far back, and travel in multiple directions. The revered American director, Steven Spielberg, has been accused of copying the idea for E.T. the Extra-Terrestrial from legendary Indian filmmaker Satyajit Ray's 1962 script, *The Alien*. Disney's *The Lion King* bears striking similarities to Osamu Tezuka's Japanese anime series, *Kimba the White Lion*. Neither Ray nor Tezuka's studio sued the American filmmakers and this Article is by no means an attempt to revive any particular legal case. Rather, this Article considers copyright's role in promoting free cultural exchange, albeit on fair terms in a global marketplace of ideas marked by sharp differentials in power, wealth, and knowledge.

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