
SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

SYRACUSE UNIVERSITY COLLEGE OF LAW

ARTICLES

“Softness” in International Instruments:
The Case of Transnational Corporations

Harri Kalimo & Tim Staal

Efficient Breach in the Common European
Sales Law

Wenqing Liao

Promoting Compliance: An Assessment of
ASEAN Instruments Since the ASEAN Charter

Hao Duy Phan

NOTES

The Answer is in the Evidence: Plain Packaging,
Graphic Health Warnings, and the Family Smoking
Prevention and Tobacco Control Act

Michelle M. Chester

Establishing Liability for the Enslavement and Forced
Labor of Children Under the Alien Tort Statute

Katie Wendle

HONORARY BOARD OF ADVISORS

YORAM DINSTEIN
Tel Aviv, Israel

MYRES S. McDOUGAL*
New Haven, Connecticut

NORTHCUTT ELY
Washington, D.C.

EDWARD McWHINNEY
*Burnaby, British
Columbia, Canada*

VICTOR C. FOLSOM
Green Valley, Arizona

CECIL J. OLMSTEAD
New York, New York

MICHAEL W. GORDON
Gainesville, Florida

NATALINO RONZITTI
Pisa, Italy

GUNTHER JAENICKE
Heidelberg, Germany

SHABTAI ROSENNE
Jerusalem, Israel

MANFRED LACHS*
The Hague, Netherlands

DAVID M. SASSOON
Washington, D.C.

HOWARD S. LEVIE
Newport, Rhode Island

IVAN SHEARER
Sydney, Australia

RICHARD B. LILlich*
Charlottesville, Virginia

RICHARD YOUNG
Van Hornesville, New York

* *Deceased Member*

SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

SYRACUSE UNIVERSITY COLLEGE OF LAW

CONTENTS

ARTICLES

- “Softness” in International Instruments: The Case of
Transnational Corporations
Harri Kalimo & Tim Staal 257
- Efficient Breach in the Common European Sales Law
Wenqing Liao 335
- Promoting Compliance: An Assessment of ASEAN
Instruments Since the ASEAN Charter
Hao Duy Phan 379

NOTES

- The Answer is in the Evidence: Plain Packaging, Graphic
Health Warnings, and the Family Smoking Prevention and
Tobacco Control Act
Michelle M. Chester 413
- Establishing Liability for the Enslavement and Forced
Labor of Children Under the Alien Tort Statute
Katie Wendle 447



Cite as: 41 SYRACUSE J. INT'L L. & COM.

ISSN 0093-0709

The *Syracuse Journal of International Law and Commerce* is owned, published and printed bi-annually by Syracuse University, Syracuse, New York 13244-1030, U.S.A. The *Journal* is one of the oldest student-produced international law journals in the United States and celebrated forty years of student-production in the Spring of 2013. Editorial and business offices are located at: Syracuse University College of Law, MacNaughton Hall, Suite No. 410, Syracuse, New York 13244-1030 U.S.A.

The *Syracuse Journal of International Law and Commerce* actively seeks and accepts article submissions from scholars and practitioners in the field of public and private international law. The *Journal*, on occasion, holds international law symposia and publishes the papers presented therein in addition to its bi-annual volume of submissions.

Issue subscription rates, payable in advance, are: United States, \$25.00; foreign, \$30.00. Subscriptions are automatically renewed unless a request for discontinuance is received. Back issues may be obtained from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, N.Y. 14068. To ensure prompt delivery, notification should be received one month in advance.

The views expressed are solely those of the authors and do not necessarily reflect the views of the *Syracuse Journal of International Law and Commerce*, its advisors, editors or staff, Syracuse University College of Law or Syracuse University.

Member of National Conference of Law Reviews
Member of National Conference of International Law Journals

The *Syracuse Journal of International Law and Commerce* is indexed in the *Index of Legal Periodicals & Books*, *Current Law and Legal Resources Index*. Full text of selected articles is available on Westlaw® (database SYRJILC).

Copyright © 2014 *Syracuse Journal of International Law and Commerce*. All rights reserved.

For more information, please visit
<http://www.law.syr.edu/students/publications/sjilc/index.asp>.

SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

SYRACUSE UNIVERSITY COLLEGE OF LAW

2013 – 2014 Editorial Board

Editor-in-Chief

BRIDGET C. MCCULLOUGH

Managing Editor

SARA A. GOLDFARB

Notes & Comments Editors *Form & Accuracy Editors*

AMBER MARSHALL
KATIE WENDLE

MICHELLE CHESTER
ANDREW DICIOCCIO
MICHELLE FECIO
CHRISTOPHER MCCLARY

Lead Articles Editors

BRADLEY PEDERSON
CHRISTINE TATCHELL

Administrative Editor

ANGELA REED

Executive Editor

MICHELLE PARKER

Business Editors

AMBER MARSHALL
MARK McMURRAY

Third Year Associate Editors

NAMAL AMARAWEEERA
CONNIE HONG
JI-HYUN "JENNA" LEE
BRANDON RIFFEL
CHELSEA WOIZESKO

DANIEL BUTLER
KACIE KALIL
ERIN O'CONNOR
SAMANTHA ROBBINS

KAREN DIEP
CURRAN LEE
TARA PISTORESE
JOHN WELDON
GRACIE WRIGHT

Second Year Associate Editors

ADRIANA ALVAREZ
JEANJU CHOI
JUSTIN HARMON
BRIDGET KEHM
JEFFREY NARUS
MANU SEBASTIAN

KAYLA BEAUDUY
ELLIS CORTEZ
TYLER HITE
CARL LEARNED
ALEXA PARCELL
SAM SILBEREICH
MICHAEL YOAKUM

JOHN C. CARROLL
SAMANTHA DIORIO
KULSOOM IJAZ
JUSTIN MCHUGH
ABIGAIL REESE
NAJ'A TAMEEZ

Faculty Advisor

THOMAS R. FRENCH

On behalf of the entire Editorial Staff of the *Syracuse Journal of International Law and Commerce*, we are extremely grateful to our alumni for their support in the advancement of legal scholarship. The following outstanding individuals have provided exemplary leadership through their counsel and financial support to ensure the future success of the *Journal of International Law and Commerce*.

Platinum Donors
Gifts of \$500 and Above

Peter A. Bieger – L’76
Alan M. Gordon – L’77
Lourdes L. Lucas – L’91
Peter C. Lucas – L’91

Gold Donors
Gifts of \$250 - \$499

Peter L. Beard - L’ 86
Frederick W. Faery – L’92
George A. Long –L’81

Silver Donors
Gifts of \$100 - \$249

Dale L. Carlson – L’75
Cristin A. Cavanaugh – L’09
Timothy W. Crowley – L’97
A. Patrick Doyle – L’75
Elizabeth Downes
Francisco Fernandez - L’87
Margaret A. Jones – L’01
Stephen J. Jones – L’00
Geoffrey D. Korff – L’08
Nancy D. Lopera – L’80
Patrick J. Lopera – L’80

Orange Donors
Gifts of \$25 - \$99

Catherine G. Baker – L'08

Catherine Sinnwell Gerlach – L'13
Peter Arno Gerlach

Bradley Jon Hansen – L'99

John S. Keffalas – L'79

Eric S. Klee – L'97

Jennifer H. Klee – L'98

W. Carson McLean – L'06

Janet E. Moon – L'08

Mark J. Sweeney – L'13

Richard R. Volack – L'98

Joseph J. Wielebinski, Jr. – L'83

OFFICERS OF THE UNIVERSITY

Kent D. Syverud, *Chancellor*
Eric F. Spina, *Vice Chancellor and Provost*

COLLEGE OF LAW ADMINISTRATION

Hannah R. Arterian, B.S., J.D., *Dean and Professor of Law*
Aviva Abramovsky, B.S., J.D., *Associate Dean for Special Projects; Associate Professor of Law*
Christian C. Day, A.B., J.D., *Associate Dean for Academic Affairs; Professor of Law; Associate Director, Center on Property, Citizenship, and Social Entrepreneurism*
Cheryl A. Ficarra, B.Mus., M.S., *Associate Dean for Enrollment Management and Chief Financial Officer*
Thomas R. French, B.A., M.L.S., M.A., J.D., *Associate Dean, H. Douglas Barclay Law Library; Professor of Law*
Tomás A. Gonzalez, B.A., M.A., J.D., *Senior Assistant Dean of Student Life*
Ronald M. Denby, B.S., C.A.S., M.S., *Assistant Dean for Information Technology Services*
Alexandra C. Epsilanty, B.S., J.D., *Assistant Dean of Development and Institutional Advancement*
Kim Wolf Price, B.A., J.D., *Assistant Dean of Professional and Career Development*

FACULTY

Aviva Abramovsky, B.S., J.D., *Associate Dean for Special Projects; Associate Professor of Law*
Rakesh K. Anand, A.B., J.D., *Associate Professor of Law*
Hannah R. Arterian, B.S., J.D., *Dean and Professor of Law*
Robert H. A. Ashford, B.A., J.D., *Professor of Law*
Elizabeth A. August, B.A., J.D., *Legal Writing Professor*
William C. Banks, B.A., M.S., J.D., *Board of Advisors Distinguished Professor; Professor of Law; Professor of Public Administration, Maxwell School of Citizenship and Public Affairs; Director, Institute for National Security and Counterterrorism*
Peter A. Bell, B.A., J.D., *Professor of Law*
Todd A. Berger, B.A., J.D., LL.M., *Assistant Professor of Law; Director, Criminal Defense Clinic*
Peter D. Blanck, B.A., Ph.D., J.D., *University Professor; Chairman, Burton Blatt Institute*
Jeremy A. Blumenthal, A.B., A.M., Ph.D., J.D., *Professor of Law*
Keith J. Bybee, A.B., M.A., Ph.D., *Paul E. and Honorable Joanne F. Alper '72 Judiciary Studies Professor; Professor of Law; Associate Professor of Political Science; Director, Institute for the Study of the Judiciary, Politics, and the Media; Senior Research Associate, Campbell Public Affairs Institute*
Sanjay Chhablani, B.A., J.D., *Professor of Law*
David M. Crane, B.G.S., M.A., J.D., S.J.D., *Professor of Practice*
Tucker B. Culbertson, A.B., J.D., *Assistant Professor of Law*
Christian C. Day, A.B., J.D., *Associate Dean for Academic Affairs; Professor of Law; Associate Director, Center on Property, Citizenship, and Social Entrepreneurism*
Lisa A. Dolak, B.S., J.D., *Angela S. Cooney Professor of Law; Associate Director, Center on Property, Citizenship, and Social Entrepreneurism; Associate Director, Institute for the Study of the Judiciary, Politics, and the Media*
David M. Driesen, B.Mus., M.Mus., J.D., *University Professor*
Richard A. Ellison, B.B.A., LL.B., *Professor of Law*
Thomas R. French, B.A., M.L.S., M.A., J.D., *Associate Dean, H. Douglas Barclay Law Library; Professor of Law*
Elton Fukumoto, B.A., M.A., Ph.D., J.D., *Legal Writing Professor*

- Ian Gallacher, B.A., M.F.A., J.D., *Associate Professor of Law; Director, Legal Communication and Research*
- Gregory L. Germain, B.A., J.D., LL.M., *Professor of Law*
- Antonio Gidi, LL.B., LL.M., Ph.D., S.J.D., *Visiting Associate Professor*
- Lauryn P. Gouldin, A.B., J.D., *Assistant Professor of Law*
- Andrew S. Greenberg, B.A., J.D., *Legal Writing Professor*
- Margaret M. Harding, B.A., J.D., *Associate Dean for Faculty; Professor of Law*
- Tara Helfman, B.A., M.Phil., M.A., J.D., *Assistant Professor of Law*
- Jason Douglas Hoge, B.A., J.D., *Practitioner-in-Residence*
- Paula C. Johnson, B.A., J.D., LL.M., *Professor of Law*
- David Cay Johnston, *Distinguished Visiting Lecturer*
- Arlene S. Kanter, B.A., J.D., LL.M., *Laura J. & L. Douglas Meredith Professor for Teaching Excellence; Professor of Law; Director, Disability Law and Policy Program; Co-Director, Center on Human Policy, Law and Disability Studies*
- Gary T. Kelder, B.A., J.D., LL.M., *Professor of Law*
- Deborah S. Kenn, B.A., J.D., *Associate Dean of Clinical and Experiential Education; Professor of Law; Director, Office of Clinical Legal Education; Co-Director, Community Development Law Clinic*
- Isaac Kfir, B.A., M.A., Ph.D., *Visiting Professor of International Relations and Law*
- Nina A. Kohn, A.B., J.D., *Professor of Law*
- Laura G. Lape, A.B., M.A., J.D., *Associate Professor of Law*
- Lynn S. Levey, B.A., M.A., J.D., *Legal Writing Professor*
- Kevin Noble Maillard, B.A., M.A., J.D., Ph.D., *Professor of Law*
- Robin Paul Malloy, B.S., J.D., LL.M., *Ernest I. White Chair and Distinguished Professor of Law; Director, Center on Property, Citizenship, and Social Entrepreneurism; Professor of Economics (by courtesy appointment), Maxwell School of Citizenship and Public Affairs*
- Janis L. McDonald, B.A., J.D., LL.M., *Professor of Law*
- Mary Helen McNeal, B.A., J.D., *Professor of Law; Director, Elder Law Clinic*
- Suzette M. Meléndez, B.A., J.D., *Director, Children's Rights and Family Law Clinic*
- Aliza M. Milner, B.S., J.D., *Legal Writing Professor*
- Dan Mullin, B.A., J.D., *Distinguished Visiting Lecturer*
- Robert G. Nassau, B.A., J.D., *Professor of Practice Associate Director of the Office of Clinical Legal Education; Director, Low Income Taxpayer Clinic*
- Kathleen M. O'Connor, B.A., J.D., *Legal Writing Professor*
- Deborah Sundquist O'Malley, B.A., J.D., *Visiting Legal Writing Professor*
- Ann E. Pfeiffer, B.A., J.D., *Practitioner-in-Residence*
- Gary J. Pieples, B.A., J.D., *Visiting Assistant Professor of Law; Director, Securities Arbitration and Consumer Law Clinic*
- Robert J. Rabin, A.B., LL.B., LL.M., *Professor of Law*
- LaVonda N. Reed-Huff, B.A., J.D., *Professor of Law*
- Lucille M. Rignanese, B.A., M.P.A., J.D., *Legal Writing Professor*
- Richard S. Risman, B.A., J.D., *Legal Writing Professor*
- Menachem Z. Rosensaft, B.A., M.A., M.A., J.D., *Distinguished Visiting Lecturer*
- M. Jack Rudnick, B.A., J.D., *Visiting Professor of Practice; Director, New York State Science and Technology LawCenter*
- Shannon P. Ryan, B.A., J.D., *Legal Writing Professor*
- Michael A. Schwartz, B.A., M.A., J.D., LL.M., Ph.D., *Associate Professor of Law; Director, Disability Rights Clinic*
- William C. Snyder, A.B., J.D., *Visiting Assistant Professor of Law*
- C. Cora True-Frost, B.A., J.D., M.P.A., LL.M., *Assistant Professor of Law*
- Terry L. Turnipseed, B.S., M.S., J.D., LL.M., *Professor of Law; Director, Syracuse Law Semester in D.C. Program; Professor of Engineering and Computer Science, LC Smith College of Engineering and Computer Science*
- A. Joseph Warburton, A.B., M.G.A., J.D., M.S., Ph.D., *Associate Professor of Law; Assistant Professor of Finance, Whitman School of Management*
- Steven S. Wechsler, B.S., M.B.A., J.D., *Professor of Law*

FACULTY EMERITI

Joseph A. Barrette, B.S., J.D., *Professor of Law*

Leslie Bender, B.A., J.D., LL.M., *Professor of Law*

Martin L. Fried, B.A., J.D., LL.M., *Crandall Melvin Professor of Estates and Trusts*

Peter E. Herzog, A.B., LL.B., LL.M., *Crandall Melvin Professor of Law*

Hilary K. Josephs, *Dean's Distinguished Research Scholar of Asian Law Emerita*

Travis H.D. Lewin, B.A., LL.B., S.J.D., *Professor of Law*

Thomas J. Maroney, B.A., LL.B., *Professor of Law*

Sarah H. Ramsey, B.A., M.A., J.D., LL.M., *Laura J. and L. Douglas Meredith Professor for Teaching Excellence; Professor of Law*

Richard D. Schwartz, B.A., Ph.D., *Ernest I. White Research Professor of Law*

William M. Wiecek, B.A., LL.B., Ph.D., *Chester Adgate Congdon Professor of Public Law and Legislation*