

[Links: Subscribe ~ Unsubscribe | Distribution | Submit ~ Revise Your Papers](#)

Table of Contents

Paying to Break Up: The Metamorphosis of Reverse Termination Fees

[Afra Afsharipour](#), University of California, Davis - School of Law

Serious Academic Dishonesty in Law School and the Moral Character Requirement for Admission to the Bar

[Margaret Johns](#), University of California, Davis - School of Law

[Hollis L. Kulwin](#), University of California, Davis - School of Law

Book Review of 'Where We Live Now'

[Kevin R. Johnson](#), University of California, Davis - School of Law

Innovating Between and Within Technological Paradigms: A Response to Samuelson

[Peter Lee](#), University of California, Davis School of Law

Spatial Inequality as Constitutional Infirmary: Equal Protection, Child Poverty and Place

[Lisa R. Pruitt](#), University of California, Davis - School of Law

[^top](#)

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES UC DAVIS SCHOOL OF LAW

"Paying to Break Up: The Metamorphosis of Reverse Termination Fees"

UC Davis Legal Studies Research Paper No. 191

AFRA AFSHARIPOUR, University of California, Davis - School of Law

Email: aafsharipour@ucdavis.edu

Despite our giving lip service to the binding nature of contracts, every law student learns that there are numerous possible "outs" or "walk away rights" associated with any contract. This Article examines one particular walk away right – the reverse termination fee (RTF) – in one particular category of acquisition transactions – strategic transactions.

In sophisticated acquisitions involving public companies, the risk that one party may walk away from the transaction is particularly high because there is generally an interim period between the signing of the agreement and the completion of the acquisition. Accordingly, acquisition agreements are peppered with various provisions designed to mitigate, allocate or otherwise address this deal risk. Allocation of deal risk is a vital component of deals where millions, if not billions, of dollars are at stake for buyers and sellers, as well as their shareholders and stakeholders.

One of the primary ways of dealing with the risk that one party may abandon the transaction is through termination fee provisions. Typically, public company acquisition agreements provide for the seller to pay the buyer a standard termination fee in the event that the seller does not complete the transaction due to specific triggers, commonly involving situations where a third-party bidder emerges for the seller. In an increasing number of transactions, acquisition agreements provide for what is often referred to as a reverse termination fee, i.e., a payment from the buyer to the seller in the event the buyer cannot or does not complete the acquisition as specified in the agreement.

While for several years there have been anecdotal reports of an increasing use of RTFs, this Article's empirical study confirms that belief and examines why – despite repeated calls about the problematic nature of RTFs – such

provisions are on the rise. Scholars and practitioners have analyzed standard termination fees in numerous articles, RTFs, on the other hand, have received minimal attention despite their growing popularity. An analysis of RTF provisions is particularly timely. In part due to the current financial crisis, such fees and their role as an exclusive remedy in acquisition agreements have been at the center of debate among parties in broken deals and the subject of heated litigation in the Delaware courts.

This Article presents the first detailed study in legal literature of the use of RTFs to allocate deal risk in strategic transactions. This Article uses original data collected from an empirical study of strategic acquisition agreements involving public companies in the United States announced during two separate periods, January 1, 2003 through December 31, 2004, and January 1, 2008 through June 30, 2009. The analysis undertaken in this Article reveals three important findings about RTFs. First, parties to acquisition agreements are increasingly using RTF provisions. Second, there is a shift in the contractual triggers that give rise to RTFs. This shift has given buyers greater flexibility to walk away from transactions. And third, this shift may prove problematic for sellers and buyers.

"Serious Academic Dishonesty in Law School and the Moral Character Requirement for Admission to the Bar"

UC Davis Legal Studies Research Paper No. 184

MARGARET JOHNS, University of California, Davis - School of Law

Email: MZJOHNS@ucdavis.edu

HOLLIS L. KULWIN, University of California, Davis - School of Law

Email: hkulwin@ucdavis.edu

Our preliminary research suggested that serious academic dishonesty in law school might be treated confidentially, lightly punished, and withheld from bar examiners in connection with moral character certifications. If such a lax practice were followed, it could compromise the ability of bar examiners to conduct meaningful moral character investigations and might expose clients to the risk of representation by unscrupulous practitioners.

Our project has three aspects. First, to determine whether our impressions were accurate, we conducted a survey of law school administrators responsible for handling disciplinary matters and moral character reporting. This paper reports the results of this survey. Second, we researched the moral character certification process and offer some proposals for reform. Finally, we have suggested future research projects in the hope of generating further investigation and discussion of how law schools and other institutions can better protect the public from dishonest lawyers and improve the integrity of the legal profession.

"Book Review of 'Where We Live Now'"

Law & Politics Book Review, Vol. 19, No. 5, May 2009

UC Davis Legal Studies Research Paper No. 175

KEVIN R. JOHNSON, University of California, Davis - School of Law

Email: krjohnson@ucdavis.edu

Going beyond Black/white analysis of the issue, WHERE WE LIVE NOW analyzes in a sophisticated fashion residential segregation through the lens of immigration. It specifically considers the impacts on housing patterns of the migration of diverse peoples from Mexico and Latin America, Asia, and Africa. Such an analysis is much-needed. The demographic diversity of the United States has grown exponentially since Congress eliminated discriminatory national origins quota system from the US immigration laws in 1965. The book tells the important story of the integration over time of immigrants of different races and national origins and their offspring in neighborhoods across the country. By so doing, WHERE WE LIVE NOW highlights the growing diversity of the American population and how, in certain instances, the struggle for civil rights implicates Latinos, Asians, and other groups as well as African Americans.

"Innovating Between and Within Technological Paradigms: A Response to Samuelson"

Minnesota Law Review Headnotes, Vol. 93, 2009

UC Davis Legal Studies Research Paper No. 192

PETER LEE, University of California, Davis School of Law

Email: ptrlee@ucdavis.edu

Drawing on Professor Samuelson's article, "Are Interface Patents Impeding Interoperability," this Response identifies situations where interface patents warrant regulatory intervention. It first notes that interfaces define "technological paradigms": integrated systems of interoperability. It then argues that interface patents can provide incentives to invent valuable interfaces and encourage healthy competition between emerging technological paradigms. However, once an industry has coalesced around a single paradigm, the costs of strictly asserting interface patents likely outweigh their benefits. This Response argues that by considering industrial and informational developments over time, government and industry actors can calibrate policy interventions to maximize innovation both between and within technological paradigms.

"Spatial Inequality as Constitutional Infirmary: Equal Protection, Child Poverty and Place"

LISA R. PRUITT, University of California, Davis - School of Law
Email: lrpruitt@ucdavis.edu

This is the first in a series of articles that maps legal conceptions of (in)equality onto the socio-geographical concept of spatial inequality, with a view to generating legal remedies for those living in places marked by socioeconomic disadvantage. Written for a symposium on "rural law," this article considers in particular whether the funding and delivery of government services at the county level in the state of Montana violate the state's constitution because of the grossly disparate abilities among Montana counties to finance and provide such services. Pruitt's analysis focuses on children as a particularly vulnerable and immobile population, many of whom are deprived of government services based on place of residence. Further, the article scrutinizes the provision of health and human services as a category of services to which Montana children experience great variations in access.

County governments in Montana are financed principally by local property tax revenue. Uneven development across the state, from one county to the next, consequently confers on individual counties vastly different capacities to provide services. Because of the lack of centralized funding for services such as public health and other human services, those who live in sparsely populated, relatively undeveloped and property-poor counties are least served by local government. At the same time, wealthy counties - which tend also to be more populous - have economies that are more diversified, property tax bases that are more substantial, and a correspondingly greater capacity to deliver services. More densely populated counties also face lower per capita costs for delivering services because they are better able to achieve economics of scale.

To illustrate these disparities, Pruitt discusses in detail the economic and demographic profiles of five Montana counties. These include Yellowstone County, home to Billings, the state's largest city; fast-growing Gallatin County, which exemplifies rural gentrification and the rural resort phenomenon; Stillwater County, a sparsely populated nonmetropolitan county with significant mineral wealth; Big Horn County, a persistent poverty county with a majority American Indian population; and Wheatland County, a tiny county with a dwindling population and an agriculture-based economy.

The legal critique of this spatially and economically uneven landscape relies primarily on the 1972 Montana Constitution, which is among the most progressive state constitutions in the nation. In particular, Pruitt argues that the constitution's equal protection and dignity clauses are violated by the county government funding scheme and its consequences. The Montana equal protection clause forbids discrimination based on "race, color, sex, culture, social origin or condition, or political or religious ideas." Pruitt maintains that significant disparities in service provision, which occur arbitrarily across county lines, violate this equality guarantee. Pruitt's second argument is for state provision of a minimal degree of services to children. Relying on the constitution's dignity clause and the doctrine of *parens patriae*, Pruitt argues that children cannot live with dignity unless their fundamental needs are met. She asserts that the typical emphasis on autonomy with respect to the dignity right is misplaced with regard to children. For the child population, Pruitt maintains that a right to dignity should be grounded instead in their inherent dependency and vulnerability, thus imposing a duty on the state to provide children's first-order needs when their parents cannot or do not do so. In addition to this analysis under the Montana Constitution, the article also challenges the orthodoxy of U.S. constitutional jurisprudence regarding poor people, public benefits, and equal protection.

Finally, Pruitt argues that Montana's school funding scheme, which has been the subject of recent litigation, now represents a better model - albeit a still-imperfect one - for financing public services. This is because the school funding formula seeks to level the funding playing field by providing more state monies, along with federal funds that are somewhat similarly allocated, to school districts based on the presence of at-risk students. School districts with the highest percentages of at-risk students tend also to be the school districts with poorer property tax bases. By contrast, the scheme for financing county government results in a situation in which more affluent counties are better able to provide services to residents, while those living in the most rural and property-poor counties have access only to very limited health and human services. Financing so linked to the local scale thus aggravates and further entrenches spatial inequalities, an outcome that is in contrast to the school funding formula, which aims to achieve greater substantive equality by channeling money to the schools with the greatest need.

While this article analyzes spatial inequality in the context of a specific state and with respect to a particular type of government service, the capacity and significance of spatial inequality as a critique of legal equality guarantees is not so limited. The services that governments provide implicate a wide range of rights, and these rights may be violated if the services are not provided in an equitable manner. Pruitt thus calls for all branches and scales of government to be more attentive to the difference place makes to service delivery, in order to ensure more even and fair access.

[^top](#)

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 organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: RPS@SSRN.com

Distributed by:

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

[^top](#)

Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

Subscription Management

You can change your journal subscriptions by logging into [SSRN User HQ](#). If you have questions or problems with this process, please email UserSupport@SSRN.com or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

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](#)

[NEW Cognitive Science Network](#) **NEW**

[NEW Corporate Governance Network](#) **NEW**

[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

[^top](#)

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).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site licenses, please contact us at Site@SSRN.com

[^top](#)

Copyright © 2009 Social Science Electronic Publishing, Inc. All Rights Reserved