Indiana Law Review

VOLUME 13 ● 1980 ● NUMBER 2

INDIANA UNIVERSITY

APR 2 1 1980

SCHOOL OF LAW-INDPLS.

LIBRARY

Articles

Reexamining the Relationship Between Capital Gain and the Assignment of Income

David F. Shores

When Does a Limited Partnership Possess the Corporate Characteristic of Limited Liability?

Ralph C. Anzivino

Exhaustion Requirements in Younger-Type Actions:
More Mud in Already Clouded Waters
Mildred L. Calhoun

Comment

Revised Trial Rule 59 and P-M Gas The Honorable Jonathan J. Robertson

Notes

Nonmutuality: Taking the Fairness out of Collateral Estoppel

The Constitutional Infirmities of Indiana's Habitual Offender Statute

Book Review

Products Liability and the Reasonably Safe Product

Introducing the only "How-to-do-it" Transaction Guide that works for you because it works like you: very hard!

It's called the MIDWEST TRANSAC-TION GUIDE and it's the only lawbook that guides you step-by-step through virtually every transaction you'll ever handle. Nothing has been left. to chance.

All the sources have been collected. All the policy decisions are clearly identified. All the procedures for obtaining the necessary information and documents are spelled out. All the plans and schedules are presented \(\bigcup \) to you at the outset. And all the necessary

implementing forms are included with full explanations.

And that all adds up to an information-packed functional lawbook that will cut your research time in half. It's like having a team of specialists at your elbow, providing instant know-how every step of the way.

Open the Midwest Transaction Guide to any chapter and you'll discover why there's no other book quite like it. At the beginning of each chapter there's a "Scope of Chapter" to tell you what

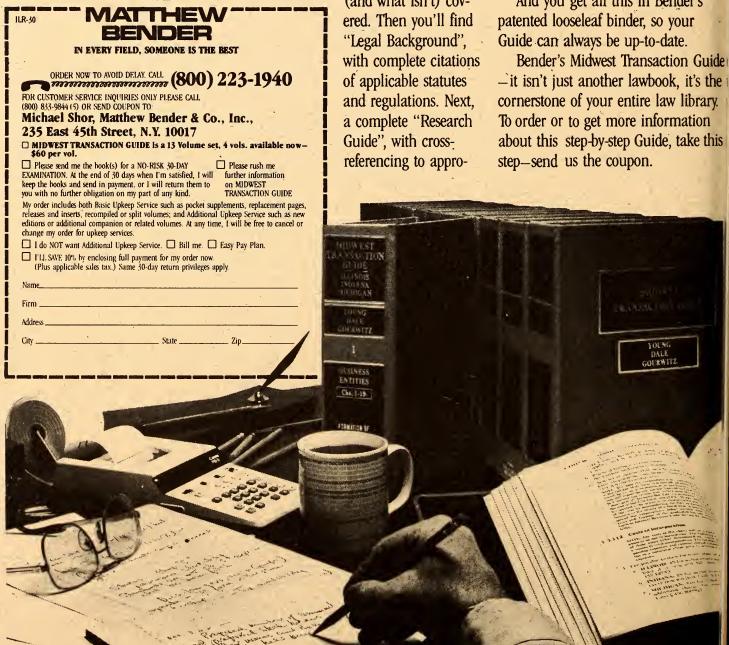
(and what isn't) cov-

priate statutes, treatises, law review articles—even books by other publishers! But there's more.

The "Transaction Guide" provides step-by-step procedure through the various stages, including clients' interview. facts and documents, preliminary determination, drafting guide, procedure guide ... forms. And more.

Because you also get comment and discussion, so you can be confident and prepared for whatever transaction you may have to handle.

And you get all this in Bender's patented looseleaf binder, so your Guide can always be up-to-date.



Announcing an important new publication from Shepard's/McGraw-Hill

Here is the first comprehensive coverage of existing solar legislation which, additionally, comes to grips with solutions to potential questions of law arising out of accelerated utilization of solar energy.

None too soon does Kraemer's SOLAR LAW become available to the many diverse groups and individuals who will welcome its legal and practical analysis of the issues of solar

energy as an alternative source for heating and cooling by homeowners and industries.

A \$1.3 billion market for solar components by the first half of the 1980's is now being

predicted by industry leaders. The legal implications of this expansion should not be underestimated.

Kraemer tackles his complex subject with authority and instructs the reader with commendable clarity.

"What are the legal public and private alternatives to assuring access to direct sunlight?"

"How does the astronomical sunearth relationship affect solar laws?"

"What is the interrelationship of public utility rates to solar energy?"

These are some of the questions that SOLAR LAW answers as it moves with orderly style from one aspect of its subject to the next.

As absorbing as it is informative, Kraemer's SOLAR LAW takes the reader through an enlightening tour of the frequently murky areas of the energy shortage on its way to intoducing solar systems. Solar ease-

ments, covenants, zoning, subdivision regulations, public and private nuisance issues are all examined individually with model examples followed by legal analysis and

recommended forms.

SOLAR LAW will interest and be-

come a mandatory addition to the library of people in the fields of law,

land planning, engineering,

Present and Future, with Proposed Forms by Sandy F. Kraemer

architecture, solar energy fabrication and installation, consumer organizations, environmentalists, land developers, home builders, government, and utility companies. And property owners in general.



ONLY 8 35 .00

About the Author

Sandy F. Kraemer is a Colorado Springs

(Colorado) lawyer whose combined background

in engineering and law has been channeled in support of new legal concepts to encourage solar energy development.

Author of many articles on solar law, he has sponsored relative state legislation and local ordinances. He is sought as a legal counselor by solar industries, is a nationally recognized speaker on energy policy and solar law. He serves as a consultant to the Phoenix Solar Project which is supported by the National Science Foundation.

Kraemer received his B.S. from Stanford University and J.D. from the University of Colorado for which he presently serves as a member of the Board of Regents.

| Name | | | | |
|------------------------|--|--|--|--|
| Mailing Address | | | | |
| City | State Zip | | | |
| Ordered by (signature) | | | | |
| | Please send me Solar Law. Purchase includes my order for future upkeep service appropriate sales tax. I would like to examine for 30 days without obligation. Have your representative call on me. | | | |
| | Charge my Shepard's account. Account No | | | |
| | Bill me. Bill Firm | | | |

Order Your Copies of Solar Law Today!

Orders subject to acceptance in Colorado Springs. Title remains with vendor until paid for in full. Terms available, no carrying charges.



Shepard's Inc.
Post Office Box 1235
Colorado Springs, Colorado 80901



announces an

All New INDEX to Burns'

At last — an index to the laws of Indiana you can use with ease and accuracy.

At the suggestion of members of the Indiana Bar this new Index ends forever index pocket parts, non-cumulative supplements and multiple index checking.

The All New INDEX to BURNS' STATUTES features

Annual Replacement

Each year Michie/Bobbs-Merrill will publish a new index replacing the previous year's edition.

Complete Information

Each year index headings will contain full treatment of all laws on a given subject or direct crossreferences to such treatment.

© 1979 The Bobbs-Merrill Company, Inc.

Comprehensive Cross-references

The new index includes cross-references containing code sections under both main headings and subheadings found in Burns' Indiana Statutes.

Efficient Format

The new index consists of three softbound volumes printed in easy to read double columns and larger type.

The new INDEX to BURNS' STATUTES will be the most important addition to your law library this year and for years to come.



Available soon from BOBBS-MERRILL or your local sales representatives:

In Northern and Central Indiana Bill Weber 10943 Wonderland Drive Indianapolis, Indiana 46239 (317) 257-5376 In Southern Indiana Jim Shultz 821 Skylark Drive Louisville, Kentucky 40223

(502) 583-8874

Indiana Law Review

Volume 13 1980 Number 2

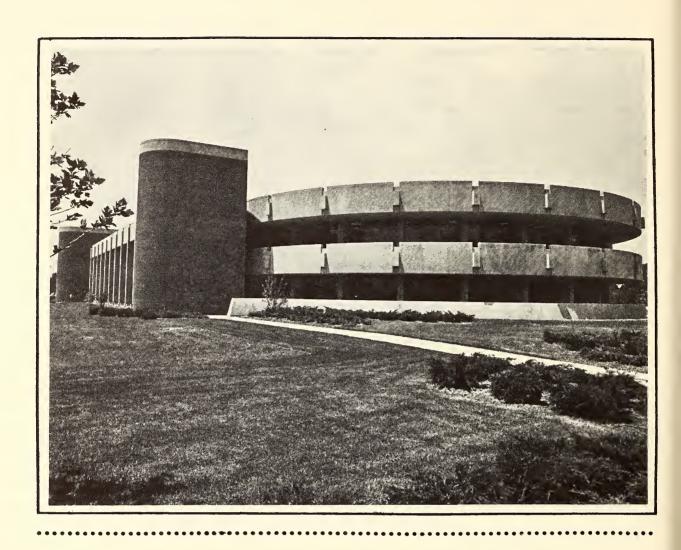
Copyright © 1980 by the Trustees of Indiana University

Articles

| Reexamining the Relationship Between Capital Gain and the Assignment of Income | |
|--|-----|
| David F. Shores | 463 |
| When Does a Limited Partnership Possess the Corporate Characteristic of Limited Liability? | |
| Ralph C. Anzivino | 503 |
| Exhaustion Requirements in Younger-Type Actions: More Mud in Already Clouded Waters | |
| Mildred L. Calhoun | 521 |
| Comment | |
| Revised Trial Rule 59 and P-M Gas The Honorable Jonathan J. Robertson | 541 |
| Notes | |
| Nonmutuality: Taking the Fairness out of Collateral Estoppel | 563 |
| The Constitutional Infirmities of Indiana's Habitual Offender Statute | 597 |
| Book Review | |
| Products Liability and the Reasonably Safe Product | 627 |
| | |

Volume 13 February 1980 Number 2

The INDIANA LAW REVIEW (ISSN 0090-4198) is the property of Indiana University and is published four times yearly, January, March, April, and June, by the Indiana University School of Law—Indianapolis, which assumes complete editorial responsibility therefor. Subscription rates: one year, \$12.50; three years, \$35.00; five years, \$50.00; foreign \$14.00. Single copies: annual Survey issue, \$6.00; other issues, \$3.50. Back issues, volume 1 through volume 11, are available from Fred B. Rothman & Co., 10368 W. Centennial Rd., Littleton, Co. 80123. Please notify us one month in advance of any change of address and include both old and new addresses with zip codes to ensure delivery of all issues. Send all correspondence to Editorial Assistant, Indiana Law Review, Indiana University School of Law—Indianapolis, 735 West New York Street, Indianapolis, Indiana 46202. Publication office: 735 West New York Street, Indianapolis, Indiana 46201.



Please enter my subscription to the INDIANA LAW REVIEW

| NAME | | |
|-----------|-----------------------------------|--|
| ADDRESS _ | | |
| _ | | |
| _ | Enclosed is \$ for subscriptions. | |
| | Bill me for subscriptions. | |
| | Mail to: | |
| | INDIANA LAW REVIEW | |

INDIANA UNIVERSITY
SCHOOL OF LAW-INDIANAPOLIS
735 West New York Street
Indianapolis, Indiana 46202

Subscription Rates (one year):

Regular, \$12.50; Foreign, \$14.00; Survey, \$6.00

Indiana Law Review

Volume 13

1980

ROGER D. ERWIN Editor-in-Chief

R. MATTHEW NEFF Executive Editor

CHARLES E. BARBIERI LYNNE M. MCMAHAN WENDY B. REISMAN
JOAN M. RUHTENBERG

Articles Editors

PATTI J. KURTH

LINDA R. LAMPING

Managing Editors

KEVIN M. BARTON
GREGORY J. BUBALO
MONETTE E. DRAPER

JANET S. ELLIS
ROBERT A. HUTCHENS
EDWARD V. OLSON

Note and Development Editors

THOMAS V. EASTERDAY
MICHAEL R. HARTMAN
CAROLE J. JOHNSON
BRIAN A. MCKINSEY
MICHAEL J. MCMAHON

GEORGE E. PURDY
CHARLES E. SPEVACEK
DOUGLAS E. STARKEY
CAROLYN R. SUTTON
JAMES D. ZEGLIS

Associate Editors

PAUL J. GALANTI Faculty Advisor

DAWN CAMPBELL Editorial Assistant

Indiana University School of Law-Indianapolis

1979-1980 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

JOHN W. RYAN, Ph.D., President of the University

GLENN W. IRWIN, JR., M.D., Vice-President

FRANK T. READ, J.D., Dean

GERALD L. BEPKO, LL.M., Acting Associate Dean for Administration and Finance G. Kent Frandsen, J.D., Assistant Dean for Student Affairs

Faculty

THOMAS B. ALLINGTON, Professor (on leave, first semester, 1979-80). B.S., University of Nebraska, 1964; J.D., 1966; LL.M., New York University, 1971.

EDWARD P. ARCHER, Professor. B.M.E., Rensselaer Polytechnic, 1958; J.D., Georgetown University, 1962; LL.M., 1964.

JAMES F. BAILEY, III., Associate Professor and Director of Law Library. A.B., University of Michigan, 1961; J.D., 1964; M.A.L.S., 1970.

AGNES P. BARRETT, Associate Professor. B.S., Indiana University, 1942; J.D., 1964. GERALD L. BEPKO, Acting Associate Dean for Administration and Finance, and Pro-

fessor. B.S., Northern Illinois University, 1962; J.D., IIT/Chicago-Kent College of Law, 1965; LL.M., Yale University, 1972.

CLYDE HARRISON CROCKETT, Associate Professor. A.B., University of Texas, 1962; J.D., 1965; LL.M., University of London (The London School of Economics and Political Science), 1972.

DEBRA A. FALENDER, Associate Professor. A.B., Mount Holyoke College, 1970; J.D., Indiana University, 1975.

CLEON H. FOUST, Professor Emeritus. A.B., Wabash College, 1928; J.D., University of Arizona, 1933.

G. KENT FRANDSEN, Assistant Dean-Student Affairs, and Associate Professor. B.S., Bradley University, 1950; J.D., Indiana University, 1965.

DAVID A. Funk, Professor. A.B., College of Wooster, 1949; J.D., Case Western Reserve University, 1951; M.A., Ohio State University, 1968; LL.M., Case Western Reserve, 1972; LL.M., Columbia University, 1973.

PAUL J. GALANTI, Professor. A.B., Bowdoin College, 1960; J.D., University of Chicago, 1963.

HELEN P. GARFIELD, Associate Professor. B.S.J., Northwestern University, 1945; J.D., University of Colorado, 1967.

HAROLD GREENBERG, Associate Professor. A.B., Temple University, 1959; J.D., University of Pennsylvania, 1962.

JOHN S. GRIMES, Professor of Jurisprudence Emeritus. A.B., Indiana University, 1929; J.D., 1931.

JEFFREY W. GROVE, Associate Professor (on leave, 1979-80). A.B., Juniata College, 1965; J.D., George Washington University, 1969.

WILLIAM F. HARVEY, Carl M. Gray Professor of Law. A.B., University of Missouri, 1954; J.D., Georgetown University, 1959; LL.M., 1961.

W. WILLIAM HODES, Assistant Professor. A.B., Harvard College, 1966; J.D., Rutgers, Newark, 1969.

LAWRENCE A. JEGEN III., Professor. A.B., Beloit College, 1956; J.D., University of Michigan, 1959; M.B.A., 1960; LL.M., New York University, 1963.

WILLIAM R. JONES, Professor. B.S., University of Louisville, 1950; J.D., University of Kentucky, 1968; LL.M., University of Michigan, 1970.

HENRY C. KARLSON, Assistant Professor. A.B., University of Illinois, 1965; J.D., 1968; LL.M., 1977.

CHARLES D. KELSO, Professor (on leave, 1979-80). A.B., University of Chicago, 1946; J.D., 1950; LL.M., Columbia University, 1962; LL.D., John Marshall Law School, 1966; J.S.D., Columbia University, 1968.

- WILLIAM ANDREW KERR, Professor. A.B., West Virginia University, 1955; J.D., 1957; LL.M., Harvard University, 1958; B.D., Duke University, 1968.
- WALTER W. KRIEGER, Associate Professor. A.B., Bellarmine College, 1959; J.D., University of Louisville, 1962; LL.M., George Washington University, 1969.
- WILLIAM E. MARSH, Associate Professor. B.S., University of Nebraska, 1965; J.D., 1968.
- Melvin C. Poland, Professor (on leave, second semester, 1979-80). B.S., Kansas State University, 1940; LL.B., Washburn University, 1949; LL.M., University of Michigan, 1950.
- RONALD W. POLSTON, Professor. B.S., Eastern Illinois University, 1953; LL.B., University of Illinois, 1958.
- GARY A. RATNER, Associate Professor. B.S., California Institute of Technology, 1966; M.S., Purdue University, 1969; J.D., University of Connecticut, 1973; LL.M., Yale University, 1974.
- FRANK T. READ, Dean and Professor. B.S., Brigham Young University, 1960; J.D., Duke University, 1963.
- MARSHALL J. SEIDMAN, Professor. B.S., University of Pennsylvania, 1947; J.D., Harvard University, 1950; LL.M., 1970.
- WILLIAM A. STANMEYER, Associate Professor (on leave 1979-80). A.B., Xavier University, 1958; A.M., Loyola University, 1962; J.D., DePaul University, 1966.
- KENNETH M. STROUD, Professor. A.B., Indiana University, 1958; J.D., 1961.
- JAMES W. TORKE, Professor. B.S., University of Wisconsin, 1963; J.D., 1968.
- R. Bruce Townsend, Professor of Jurisprudence (on leave, second semester, 1979-80). A.B., Coe College, 1938; J.D., University of Iowa, 1940.
- JAMES PATRICK WHITE, Professor (on leave). A.B., University of Iowa, 1953; J.D., 1956; LL.M., George Washington University, 1959.
- HAROLD R. WOODARD, Assistant Professional Lecturer. B.S., Harvard University, 1933; J.D., 1936.
- LILA J. YOUNG, Visiting Assistant Professor. A.B., Northwestern University, 1961; J.D., Indiana University, 1970.

Law Library Staff

- WENDELL E. JOHNTING, Technical Services Librarian. A.B., Taylor University, 1975. CHRISTINE L. STEVENS, Reference Librarian. A.B., Western Michigan University, 1970; M.L.S., Indiana University, 1971.
- KATHY J. WELKER, Assistant Director. A.B., Huntington College, 1969; M.L.S., Indiana University, 1972.
- MERLIN P. WHITEMAN, Reader's Services Librarian. A.B., Hope College, 1973; M.L.S., Indiana University, 1974.