# FORDHAM SALA 2 ESTANTE 38 TABLA LAW REVIEW



## **ARTICLES**

THE RECOVERY OF ATTORNEY'S FEES: A NEW METHOD OF FINANCING LEGAL SERVICES
THE ART OF FRISKING Joseph G. Cook
Conscription, the Constitution and the Framers: An Historical Analysis

**VOLUME XL** 

**NUMBER 4** 

# **CONTENTS**

	ARTICLES	
٤	THE RECOVERY OF ATTORNEY'S FEES: A NEW METHOD OF FINANCING LEGAL SERVICES  Gerald T. McLaughlin	761
V	THE ART OF FRISKING	789
£		805
	COMMENTS	
V	PSYCHIATRY V. LAW IN THE PRE-TRIAL MENTAL EXAMINATION: THE BIFURCATED TRIAL AND OTHER ALTERNATIVES	827
<i>V</i>	Section 11 of the Securities Act: The Unresolved Dilemma of Participating Underwriters	869
/	AMERICA'S CHANGING ENVIRONMENT—IS THE NEPA A CHANGE FOR THE BETTER?	897
	CASE NOTES	
	ADMINISTRATIVE LAW—FREEDOM OF INFORMATION ACT—LETTERS OF WARNING AND DETENTION ARE IDENTIFIABLE RECORDS NOT WITHIN INVESTIGATORY FILES EXEMPTION, NOR IS THEIR DISCLOSURE A VIOLATION OF DUE PROCESS (Wellford v. Hardin, 444 F.2d 21 (4th Cir. 1971))	004
	CONFLICT OF LAWS—TORTS—GUEST STATUTES IN BOTH STATE OF ACCIDENT AND STATE OF DEFENDANT'S RESIDENCE AND INSURANCE BAR ACTION IN NEW YORK BY NEW YORK GUEST (Pryor v. Swarner, 445 F.2d 1272 (2d Cir. 1971))	921 929
	Constitutional Law—Jurisdiction of Military Courts—O'Callahan v. Parker Denied Retroactivity by Fifth Circuit (Gosa v. Mayden, 450 F.2d 753 (5th Cir. 1971))	<b>9</b> 39
	CRIMINAL LAW—RIGHT TO APPEAL—FAILURE OF COUNSEL TO ADVISE DEFENDANT OF HIS RIGHT TO APPEAL AFTER A PLEA OF GUILTY HELD INSUFFICIENT GROUND TO REQUIRE A Montgomery Hearing (People v. Lynn, 28 N.Y.2d 196, 269 N.E.2d 794, 321 N.Y.S.2d 74 (1971))	949
	DOMESTIC RELATIONS—CONTRIBUTION BY DONEE TO COST OF PRE-NUPTIAL GIFT CREATES A LIEN ON THE GIFT TO THE EXTENT OF CONTRIBUTION BUT DOES NOT DEFEAT RIGHT OF DONOR TO RECOVER THE GIFT UPON FAILURE OF THE ENGAGEMENT (Gaden v. Gaden, 29 N.Y.2d 80, 272 N.E.2d 471, 323 N.Y.S.2d 955 (1971))	958
	FEDERAL RULES OF CIVIL PROCEDURE—CLASS ACTIONS—DISCOVERY—CLAIMS OF ABSENT MEMBERS OF CLASS DISMISSED FOR FAILURE TO RESPOND TO INTERROGATORIES (Brennan v. Midwestern United Life Insurance Co., 450 F.2d 999 (7th Cir. 1971), ccrt. denied, 40 U.S.L.W. 3399 (U.S. Feb. 22, 1972) (No. 71-778))	969

MULTIPLE DEFENDANTS ALTHOUGH INSTRUMENTALITY OF INJURY NOT UNDER ANY DEFENDANT'S EXCLUSIVE CONTROL (Colditz v. Eastern Airlines, Inc., 329 F. Supp. 691 (S.D.N.Y. 1971))	977
SECURITIES LAW—RULE 10b-5—PERSONS NOT CORPORATE INSIDERS CENSURED FOR USE OF NON-PUBLIC INFORMATION (Investors Management Co., SEC Securities Exchange Act Release No. 9267 (July 29, 1971) [1970-71 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 78,163, at 80,514)	985
SECURITIES REGULATION—INVESTMENT COMPANY ACT OF 1940—MUTUAL FUNDS—INVESTMENT ADVISER'S SALE OF INFLUENCE TO SECURE APPOINTMENT OF SUCCESSOR HELD BREACH OF COMMON LAW FIDUCIARY OBLIGATIONS AND SECTION 15(a) (Rosenfeld v. Black, 445 F.2d 1337 (2d Cir. 1971), petition for cert. filed sub nom. Lazard Freres & Co. v. Rosenfeld, 40 U.S.L.W. 3321 (U.S. Dec. 10, 1971) (No. 71-771))	997
BOOKS REVIEWED	
CAPPELLETTI: JUDICIAL REVIEW IN THE CONTEMPORARY WORLD Barry Hawk  Joseph M. Perillo	1007
Lowi: The Politics of Disorder	1014
Schwebel: The Effectiveness of International Decisions: Papers and Proceedings of the American Society of International Law F.L. Hartman	1017
WEINTRAUB: COMMENTARY ON THE CONFLICT OF LAWS Michael A. Schwind	1021
BOOKS RECEIVED	1029

# FORDHAM LAW REVIEW

Volume XL, Number 4



May 1972

### EDITORIAL AND GENERAL OFFICES

Lincoln Center, 140 West 62nd Street, New York, N.Y. 10023

Published four times a year—October, December, March, and May—by the Heffernan Press Inc., at 35 New St., Worcester, Massachusetts. Second class postage paid at Worcester, Mass. Member, National Conference of Law Reviews.

Subscription Price \$7.50, Single Issue \$3.50. Make checks payable to Fordham Law Review. Subscription renewed automatically unless notified to contrary.

### NOTICE

Effective with Volume XLI the FORDHAM LAW REVIEW announces the following change in pricing policy: Subscription Price \$10.00, Single Issue \$3.50.