

San Diego International Law Journal

Volume 9
Issue 2 *Spring 2008*

Article 2

5-1-2008

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Recommended Citation

Christina Clemm, *Foreword*, 9 San Diego Int'l L.J. 213 (2008)

Available at: <https://digital.sandiego.edu/ilj/vol9/iss2/2>

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Foreword

CHRISTINA CLEMM*

The authors of Volume 9: Issue 2 of the *San Diego International Law Journal* discuss a myriad of issues, tackling emerging and pressing problems in international law. Three articles discuss different aspects of international investment in real estate. The others discuss remedies for victims under international and national law; the limits imposed on rule against double jeopardy in the United States, United Kingdom, and potentially other countries; and the possibility of defamation liability of Internet and global publishers in foreign courts.

In the first article of this issue, David S. Rudstein expands on his analysis of the exception to the double jeopardy rule created by the United Kingdom Parliament. In *Retrying the Acquitted in England Part II: The Exception to the Rule Against Double Jeopardy for "Tainted Acquittals,"* Rudstein discusses a United Kingdom rule that allows retrials of individuals whose acquittals have been "tainted" by criminal conduct. The article focuses on convictions that have been tainted by interference with or intimidation of witnesses and an analysis of United Kingdom and United States cases is performed. Part I of this article appeared in Volume 8: Issue 2 of the *San Diego International Law Journal* and discussed the United Kingdom's exception to double jeopardy when "new and compelling evidence" has emerged.

In Part II, Rudstein theorizes that the exception in the Criminal Procedure and Investigations Act which allows retrial when a conviction for an administration of justice offense has occurred is not severely detrimental to the purposes underlying the rule against double jeopardy.

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However, he asserts that the approach taken by the Illinois courts in the *Aleman* case¹ has been quite harmful to those policies. Currently, in Illinois a prosecutor who honestly believes that an individual's previous acquittal was tainted can without judicial oversight charge the individual for the same offense. While Rudstein does not believe it was wise for Parliament to have created the exception, he believes it is narrow enough that it does not make significant inroads into an individual's right to protection from double jeopardy like the Illinois exception.

Jorge A. Vargas discusses the application of and the history behind the Mexican Constitution's prohibition in Article 27 against foreigners owning property in the Restricted Zone² in his article *Acquisition of Real Estate in Mexico by U.S. Citizens and American Companies*. Professor Vargas is one of the foremost scholars on Mexican law and provides useful insight into the real estate purchasing process for foreigners and foreign legal entities in Mexico. He describes the distinction between residential and commercial property for purposes of foreign acquisition. Vargas also describes the *fideicomiso* and *Cláusula Calvo*—integral parts of such an acquisition. Additionally, he notes that the Foreign Investment Act of 1993 and its 1998 regulations have proved to be a more liberal structure for foreign investment than in the past. However, he argues that in the future, Mexico should make no distinction between Mexican and foreign investment and should eliminate the division of the Mexican territory into a Restricted and Permitted Zone.

In her article *Victims and Promise of Remedies: International Law Fairytale Gone Bad*, Sanja Djajic argues that "victims deserve remedy for harm suffered." She asserts that because there is no customary rule providing victims with remedies under international law and because national courts often provide inconsistent responses, victims are often placed in unfavorable positions. Additionally, she asserts that this trend is at odds with the recent phenomenon of international courts developing remedial forms. She attempts to prove these points through analysis of the European Human Rights System; the Human Rights Committee and

1. *People v. Aleman*, 667 N.E.2d 615 (Ill. App. Ct. 1996) (creating an exception to the constitutional guarantee against double jeopardy and holding that an individual previously acquitted of murder in a bench trial could be retried for the same offense because he had obtained that acquittal by bribing the trial judge), *aff'g* Nos. 93 CR 28786, 93 CR 28787, 1994 WL 684499 (Ill. Cir. Ct. Oct. 12, 1994); *see also Aleman v. Honorable Judges of the Circuit Court of Cook County*, 138 F.3d 302 (7th Cir. 1998) (affirming the denial of habeas corpus relief to an individual being retried following his acquittal in a bench trial for murder, allegedly obtained through bribery), *aff'g sub nom. United States ex rel. Aleman v. Circuit Court of Cook County*, 967 F. Supp. 1022 (N.D. Ill. 1997).

2. *Política de los Estados Unidos Mexicanos* [Const.], *as amended*, art. 27, *Diario Oficial de la Federación* [D.O.], 5 de Febrero de 1917 (Mex.).

ICCPR; the Committee Against Torture and UN Convention Against Torture; the International Court of Justice and International Law Commission; and national courts. Djajic also argues that it is often the case that the graver the violation, the less likely it is that the victim will be remedied. As such, she calls for closer scrutiny of and a more integrated approach to the current remedial structure. ·

Michelle A. Wyant discusses the differences in American, English, and Australian defamation law as they relate to statements published on the Internet or in global publications in her article *Confronting the Limits of the First Amendment: A Proactive Approach for Media Defendants Facing Liability Abroad*. She argues that the difference of priority afforded to an individual's reputation in the countries leads to forum shopping and has threatened the speech protections on which American publishers have grown to rely. She suggests that the American media should take action both through the courts and by modifying its internal practices to reduce its liability abroad.

In my comment *Title Insurance in Mexico: A Necessary Protection, Duplicative Expense, or Something in Between?*, I, Christina Clemm, discuss whether the protections afforded by Mexican law are great enough that investors in Mexican real estate do not need to purchase title insurance for their property. I examine the various protections under Mexican law and explain why some of them have been called into question. Further, I discuss the differences in the Mexican property system of which a buyer and his advisor should be aware. Additionally, I provide a short synopsis of the policies offered by the four major companies in the Mexican title insurance industry. Lastly, I discuss why I believe that although title insurance has questionable utility, its use in Mexico may continue to grow.

Finally, in the last article of Volume 9, Julius Sokol discusses the use of REITs in Asia and the need for integration of REIT regulation in Asian countries. In *The Proliferation of Global Reits and the Cross-Borderization of the Asian Market*, Sokol describes the various regulations imposed by Asian countries regarding REIT taxation, leverage, formation, and share capital requirements. He argues the balkanization of REIT regulation in Asian countries prevents REITs from listing on Asian exchanges and does not allow the Asian markets to achieve their full potential.

While these are all important topics in the international arena, they are but a few of many. Whether one is an orthodox comparatist or believes

that the laws of each culture should be respected and that there is no meta-law,³ only good can come from an analysis of different legal regimes and problems. We hope you enjoy the articles in this issue and come away feeling as if you are a more educated citizen of the world.

3. *See generally* KONRAD ZWEIGERT & HEIN KOTZ, AN INTRODUCTION TO COMPARATIVE LAW (Tony Weir transl., 3d rev. ed. 1998) (describing and introducing the concept of meta-law).