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Compendium: Recent Graduate Student Dissertation and Thesis Abstracts

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COMPENDIUM: RECENT GRADUATE STUDENT DISSERTATIONS AND THESIS ABSTRACTS

PH.D. DISSERTATIONS

LL.M. THESES

REFORMING GHANA'S MATRIMONIAL PROPERTY LAW TO ACHIEVE GREATER GENDER EQUALITY UPON MARRIAGE BREAKDOWN

BY ELIZABETH ARCHAMPONG, PH.D.

This dissertation examines the law on matrimonial property in Ghana, focusing on its impact on women's matrimonial property rights upon marriage breakdown. It explores the law's underlying assumptions and actual judicial decisions in relation to goals of gender equality.

It provides a contextual background of Ghana, examining socio-cultural practices and political and economic conditions that adversely

affect Ghanaian women's rights. Then feminist legal methods and theoretical approaches to gender equality are used to think through the problems of gender equality, noting the challenges in defining equality in law to achieve a "real" difference in women's lives. The dissertation adopts a definition of gender equality that requires that the same recognition and significance be attached to the different contributions spouses make to the family during marriage. Consequently, it argues that upon marriage breakdown, spouses be entitled, presumptively, to equal shares of matrimonial property.

This definition of equality is used to assess Ghana's matrimonial property regime as well as judges' reasoning in matrimonial property cases and the extent to which both reinforce women's unequal status to their male counterparts in Ghanaian society. The dissertation concludes that the current law and judges' individual biases, which filter through their decision making, adversely impact women's property rights in the area of matrimonial property division. Thus, as part of rethinking matrimonial property law in Ghana, the Ghana Law Reform Commission report and its recommendations on spouses' property rights is reviewed. The Ontario model of matrimonial property law is also explored as a comparative model, and assessed for its application in Ghana.

The dissertation then makes recommendations for reform in Ghana, drawing on lessons from the Ontario model while attempting to be sensitive to the needs of Ghana's pluralist legal context and the impact of colonialism. It develops general rules likely to work for most women in Ghana. Broadly, the recommendations are for legislative reform and education. The legislative reforms focus on the incorporation of clear and specific guidelines into Ghana's matrimonial property law, while the education recommendations focus on the development of a strategy of dialogue combined with gender-sensitive education for the Ghanaian public and judicial system.

AN ACTOR NETWORK APPROACH TO THE STUDY OF SCIENTIFIC EVIDENCE IN CANADA

BY SOREN FREDERIKSEN, PH.D.

In this dissertation we advance a new way to approach the relationship between scientific evidence and the law. Based on the actor network theory of Bruno Latour, we develop a means of studying the interaction between legal and scientific actors and a prescriptive

approach that suggests a new doctrinal framework for the evaluation of scientific evidence at trial. This approach rejects a priori conceptions of legitimate science and instead describes an ongoing interlocking relationship between science and the law.

We evaluate our approach by means of three case studies of Canadian law. The first looks at the Supreme Court of Canada's re-evaluation of statistical data in *R. v. Askov*, the second looks at the jurisprudence surrounding the polygraph, and the third examines DNA evidence. These case studies lead us to characterize the relationship of Canadian law to science as interactive and iterative, where those who develop scientific techniques for legal use respond to changes in legal needs and requirements both by modifying their techniques and by developing the validation frameworks required to make their techniques admissible in Canadian courts. In turn legal issues that spring from scientific controversies that may arise over the appropriateness of a particular technique, its validation, and the interpretation of its evidence suggest that legal actors are cognizant of and respond to these scientific controversies.

We suggest that scientific evidence should be evaluated not by means of a series of rules that judges can apply but rather that scientific evidence should be approached as the product of a relationship that will over time lead to the recognition of valid science by judges. Phrased in actor network terminology, judges, lawyers, juries, scientists, exhibits, inscriptions, courtrooms, and laboratories are seen as actors in a network that generates valid science for law. Courts aware of this process and their place in it could take advantage of it by evaluating the fit of a proposed piece of evidence with existing scientific thought in assessing the reliability of a particular finding.

POLICE POWER IN LAW REFORM: A SOCIO-LEGAL CASE STUDY OF POLICE CHIEF PARTICIPATION IN THE MAKING OF 1997 ANTI-GANG LEGISLATION

BY MARK HEELER, PH.D.

Law-making study has largely overlooked the involvement of the police. While overt examples of police attempts to impact legal reform can be found in police union rallies and association lobbying, a less obvious but possibly more potent form of influence is found in police entitlement to speak authoritatively and often unchallenged about crime threats: a facet of the symbolic power of the police. Pierre Bourdieu sees

symbolic power as unrecognized capital bestowed on individuals and groups within particular "fields" of society. This model provides a structured framework to analyze the strategic use of the symbolic power of the police in the creation of criminal law. The central claim of this dissertation, however, is not that the police successfully use their vested authority to achieve law reform objectives. Rather, it is posited that the symbolic power of the police can be appropriated and manipulated by political groups for their own law-making purposes.

The law-making case under examination is the creation of Canada's first "anti-gang" law passed in 1997, Bill C-95. This law reform was largely attributed to the influence of the Canadian Association of Chiefs of Police (CACP) in government press releases, House of Commons Debates, and in the Senate Review. Subsequent legal analysis of Bill C-95 concurred on the significance of the police to the resulting legislation. Empirical findings from this thesis, however, challenge this perspective and make a case for a more nuanced view of police power. It is argued that police can be at once politically important as a perceived government partner but practically impotent as a participant, in legal reform.

The application of the symbolic power model to the case clearly reflects that police authority over certain crime threats can be an important legitimizing tool for politically expedient legislation created during a perceived crisis. In Bill C-95, an accepted and repeatedly cited rationale for the new law was "policing need." The failure of the police to capitalize on their power and have impact on the resulting legislation is a novel and unexpected discovery resulting from document analysis of CACP archives and government communications found through Freedom of Information requests. The study traces the rise and application of the symbolic power of the police in the making of Bill C-95 through an examination of the social and political context of the reform period, the sources of police power, the confluence of factors that increased police leaders' authority in the reform period, and the ultimate abuse of this power for political gain.

A QUANTITATIVE EXPLANATION OF JUDICIAL DECISION MAKING IN CANADIAN INCOME TAX CASES

BY THADDEUS HWONG, PH.D.

The dissertation explores the influences of socio-demographic characteristics of judges on their decision making in Canadian income

tax cases. In analyzing historical data on judges and judicial decision making in income tax cases decided by the Supreme Court of Canada from 1920 to 2003 and the Tax Court of Canada from 1983 to 2004, the socio-demographic characteristics of judges are found to have influenced their decision making in income tax cases. However, the decision-influencing socio-demographic characteristics are found to steer judges to vote in different directions in the two courts. The differences are interpreted to be hints of the presence of influences other than those from socio-demographic variables on decision making in the two courts. Based on the findings on the influences of socio-demographic characteristics on the historical voting patterns, voting scenarios are constructed to show different and varied propensities to vote for taxpayers of judges of the two courts. The voting scenarios suggest that taxpayers may be more likely to win in the current Supreme Court of Canada than in the current Tax Court of Canada.

The dissertation adds to the understanding of judicial decision making in income tax cases with three ideas. First, the socio-demographic characteristics of judges are decision influencing variables. Thus, judges of a court who share similar socio-demographic characteristics are expected to exhibit similar judicial behaviour. In the deliberation of cases in which a wider range of perspectives is needed, therefore, such a court may not be able to deliberate issues as comprehensively as a more diverse court. Second, the socio-demographic variables behave differently in the two courts, signalling the presence of influences of variables other than socio-demographic characteristics of judges on judicial decision making. The interpretation of the finding suggests that neither socio-demographic variables nor non-socio-demographic variables alone can paint the complete picture of judicial decision making. Both types of variables are needed for a deeper understanding of judicial decision making. Third, quantitative analysis can generate findings that can advance knowledge on judicial decision making. However, future qualitative analysis is required to greater understand the empirical findings generated by the exploratory data analyses in the dissertation. Therefore, a mixed approach of research is proposed to capitalize on the strengths of quantitative and qualitative analysis.

In sum, the dissertation finds that the lack of socio-demographic diversity on the bench may cause problems in judicial decision making, that socio-demographic characteristics can provide partial explanations of judicial decision making, and that a mixed approach of quantitative

and qualitative analyses may shed more light on judicial decision making in future research.

DEFLECTIONIST INSTITUTIONS OR BEACONS OF HOPE? A STUDY OF NATIONAL HUMAN RIGHTS COMMISSIONS IN ANGLOPHONE AFRICA

BY CHINEDU IDIKE, PH.D.

This dissertation examines the activities of three key national human rights commissions (NHRCs) in Anglophone Africa, to assess whether they are "deflectionist" or resourceful institutions for the protection and promotion of human rights. It conducts a study of the NHRCs in Kenya, Nigeria, and South Africa as a pointer to an understanding of NHRCs in Anglophone Africa. It seeks to discover whether NHRCs are useful additions to the body of national institutions that protect human rights or largely irrelevant bodies with little or no utility to local human rights struggles and the observance of international human rights standards. On the strength of a combination of interdisciplinary, doctrinal, theoretical, and fieldwork research, this dissertation examines the problem of the (ir)relevance of NHRCs in Anglophone Africa and concludes that these institutions are critical partners in the protection and promotion of human rights.

Owing to domestic judicial constraints and ineffectual international mechanisms for the promotion and protection of international human rights standards, states were encouraged by the United Nations to consider the desirability of empowering independent state institutions to advance the protection and promotion of human rights standards at the domestic level. The initiative was backed by UN documents that prescribe the minimum standards for the establishment and operation of these institutions. This led to the proliferation of NHRCs in Anglophone Africa in the 1990s with mandates to protect and promote human rights. While some scholars and groups have taken umbrage at the establishment of NHRCs, arguing that they are redundant institutions that should be done away with, others have viewed them as crucial partners for the protection and promotion of human rights.

In assessing the impact and effectiveness of NHRCs, this dissertation explores extant conceptions such as the dominant and the holistic conceptions of an ideal NHRC. While agreeing with some of the propositions of these key conceptions, the dissertation develops a deflectionist conception of an optimum NHRC and also employs the social movement theory to show that NHRCs in Anglophone Africa have

a chance to optimize their full potential by undergoing transformation as focal points for the development of mass social movement action in the area of human rights. Such transformations require the cultivation of an effective connection with the grassroots and the use of mass mobilization as a valuable strategy to secure human rights.

The dissertation concludes that NHRCs in Anglophone Africa have made modest achievements in the protection and promotion of human rights, and are, therefore, useful additions to this subject. However, it argues that it is only if they become central spots for the development of social movement action in the struggle for the protection of human rights that they would be able to transcend their modest achievements and stimulate fundamental social transformations and positive cultures that enthrone a language of human rights catechism in Anglophone Africa.

ECONOMIC GLOBALIZATION, REFUGEE PRODUCTION, AND THE UNDERMINING OF INTERNATIONAL LAW: A THIRD WORLD PERSPECTIVE

BY PIUS OKORONKWO, PH.D.

Globalization in general and economic globalization in particular, as operated through the agencies of the International Monetary Fund (IMF), the World Bank, and multinational corporations (MNCs), is seen as a "saviour" (mostly by the developed countries) necessary for the attainment of rapid and vigorous economic growth and development. However, based on its present organizing principles, economic globalization all too often is also "savage" in terms of the significant contributions it makes in the production of refugees and other attendant disasters in the "third world." As exemplified in the cases of Nigeria, Sudan, and other third world countries, the policies, programs, and activities of these formidable forces of globalization, *i.e.* IMF, World Bank, and MNCs, as driven by the influence of the developed countries, have contributed significantly in the instigation and exacerbation of such conditions as wars, ethnic conflict, poverty, coup d'etats, unemployment, and other related disasters. These conditions are highly instrumental in the generation of massive refugee flows in the "third world" countries. In other words, the present international economic structure is weighed heavily in favour of the relatively powerful developed states, to the detriment of relatively powerless "third world" countries.

Using the Third World Approaches to International Law (TWAIL) perspective, the dissertation contends that the reason why economic globalization's negative impact on the "third world" remained unchecked is because of the existence of the colonial-type relationship between the "third world" and the developed world in the conduct of international relations and in the formation of international economic law. Economic globalization as promoted by international economic law has whittled down the sovereignty of most of the "third world" and transferred it to IFIs and MNCs. As a result the capacity of the "third world" countries to discharge their social and welfare functions to their citizens is being minimized. Thus, economic globalization has generated and exacerbated inequality, unemployment, poverty, ethnic conflicts, and wars in some "third world" countries. As previously stated, these are known conditions from where massive refugee flows in the "third world" originate. Similar to the situation during the colonial era, the developed countries who are reaping the benefits of economic globalization have refused and still refuse to take responsibility for the negative consequences, such as large scale refugee flows that this phenomenon has generated and still generates in the "third world." Instead, these developed states have adopted measures such as a narrow interpretation of international refugee law, interception of refugees at their borders, imposition of visa requirements, safe third country agreements, and a host of other non-entrée measures in order to limit the numbers of refugees and asylum seekers that can enter their countries or access their refugee determination systems.

As this kind of development represents a bleak and ominous portent to international peace and security, the dissertation suggests a number of alternative approaches in tackling, ameliorating, and possibly arresting the grave impacts of globalization in the "third world," with particular reference to refugee production. Because the present non-entrée model favoured by most developed countries in curbing massive refugee flows into their countries has proved ineffective, if not counterproductive, the dissertation proposes a reconceptualization of that model. In doing so, the dissertation challenges members of the international community to undertake some proactive measures, such as the institution of an Impact Monitoring Commission and reference of serious issues to the International Court of Justice for advisory legal opinions as a more effective way of dealing with refugee flows. Indeed, members of the international community will need to demonstrate strong political will in order to bridge the gap between the obligations

they have voluntarily accepted under the various international instruments, especially toward refugees, and their actual fulfillment—a task which is not only difficult but almost impossible to achieve unless the negative and sinister side of economic globalization is contained or at least minimized.

The dissertation concludes that, if the present operational paradigms of economic globalization are left unmonitored and unregulated, it would constitute a "dance of death" for international refugee law and refugeehood.

TRANSNATIONAL CORPORATIONS IN AFRICA'S EXTRACTIVE INDUSTRIES: CHALLENGES IN THE REGULATION OF CORPORATE CONDUCT

BY EVARISTUS OSHIONEBO, PH.D.

In the recent past, transnational corporations (TNCs) engaged in the exploitation of Africa's natural resources—oil, gas, gold, diamonds, etc.—have been implicated in human rights violations, environmental degradation and pollution, and ill treatment of employees. More significantly, some of these TNCs appear, perhaps unwittingly, to fuel and exacerbate human insecurity in Africa by providing warring factions and insurgent groups with material and financial support in countries such as Angola, Democratic Republic of Congo, Liberia, Sierra Leone, and Sudan.

This dissertation explores the range of regulatory strategies for regulating the social and environmental practices of TNCs in Africa's extractive industries. Adopting both critical and socio-legal perspectives, it argues that current debate about corporate regulation—conceptualized along ideological lines—is defective to the extent that it does not address the issue of how power is distributed among business, states, and civil society. It attempts to deconstruct the regulation of extractive TNCs within the context of the power imbalance between TNCs and host African states. In doing so, it examines public regulatory schemes, international and multilateral regulatory initiatives, self-regulation, and the impacts of civil society groups on corporate behaviour.

It argues that neither of the two conventional strategies of state command-and-control regulation and market or self-regulation has proven effective in the African context, and that a more pluralistic approach to regulation—complementing but not excluding these two—

might produce better results. This pluralistic approach might involve government agencies, corporations, consumers, non-governmental organizations, and local community associations. This approach has reasonable prospects of fostering cooperation between industry, regulators, and host communities.

Although the dissertation advances a pluralist view of corporate regulation, it does not disregard the pivotal role of the state and its institutions in regulation. While the state appears to have been severely enfeebled by modern economic realities, and while African states are particularly incapacitated, the state remains the best option for curtailing the excesses of extractive TNCs. But Africa need not rely exclusively on the state to regulate TNCs. Africa should harness both state and non-state resources and deploy them for regulatory purposes.

THE MUTUAL CONSTITUTION OF RISK AND PRECAUTION: A STUDY OF THE PRECAUTIONARY PRINCIPLE IN ACTION

BY DAYNA SCOTT, PH.D.

Almost universally, environmental health advocates now place their faith in an emerging legal doctrine called the "precautionary principle" and its capacity to fundamentally transform environmental and health decision making with respect to potential, but uncertain, harms. This dissertation asks whether this faith is misplaced: whether the new "precautionary paradigm" is simply an updated version of the well-worn "risk paradigm" for decision making—that is, the same old familiar routines of risk assessment, prediction, and management clad in new language. While the dissertation presents ample evidence for this contention, it concludes, however, that the precautionary principle should not be discounted entirely, notwithstanding the serious limitations to its current applications.

In a series of case studies, I examine the precautionary principle as a legal instrument in the dispute settlement deliberations of the World Trade Organization, as a rhetorical instrument in the debate over genetically-modified foods, and as a policy instrument in the handling of the West Nile Virus by the city of Toronto in 2003. In the first two cases, the precautionary principle falls well short of its potential. And while the case of West Nile Virus indicates that the precautionary principle can inspire positive, innovative changes in situations of uncertainty and opposing risks, this case also fails to

uncover the transformative potential that environmental health advocates have claimed for the precautionary principle.

In reflecting on the interaction between precaution in practice and the entrenched discourses and routines of the "risk paradigm" in the three case studies, I argue that contemporary conceptions of risk and precaution are mutually constituted: the parameters of the risk paradigm continue to shape and mold the implementation of precaution, and in turn, the precautionary principle legitimates (and thus perpetuates) the risk frame by updating its language and placating activists while maintaining its core practices. The dissertation concludes with a discussion of strategies for resisting the risk frame and restoring the transformative potential of the precautionary principle.

PROBLEMATIZING THE SEARCH FOR BLACK RIGHTS UNDER LAW: JURIDICAL NEGRITUDE, CRITICAL LEGAL RHETORIC, AND THE CASE OF *IN RE AFRICAN-AMERICAN SLAVE DESCENDANTS LITIGATION*

BY LOLITA BUCKNER-INNISS, LL.M.

In this thesis I develop a new construct, juridical Negritude, and describe how it problematizes the black search for rights in white-dominated U.S. juridical settings. After describing the nature and scope of juridical Negritude, the historical antecedents which inspire and influence it, and several possible critiques of the concept, I introduce the case which is the focus of this thesis, *In Re African-American Slave Descendants Litigation.* I then describe the specific methodology used to analyze the case, critical legal rhetoric, and show first how critical legal rhetoric has grown from the intersection of law, ideology, and rhetoric and next how it is an ideal vehicle for exposing juridical Negritude. Finally, I perform a critical legal rhetorical analysis of *In Re African American Slave Descendants Litigation.*

THE CONTINGENT *CHARTER*: SOVEREIGNTY, SECURITY AND THE RIGHTS OF NON-CITIZENS

BY IRINA CERIC, LL.M.

This thesis considers the scant protection constitutional rights guarantees offer to non-citizens implicated in national security proceedings. Its focus is on the security certificate provisions of the *Immigration and Refugee Protection Act*, and a procedure which allows deportation proceedings on national security grounds to proceed on the

basis of ex parte in-camera hearings, admission of secret evidence, and near-mandatory detention of the named individual. Challenges to the constitutionality of this process under the *Canadian Charter of Rights and Freedoms* have not taken up these due process issues, focusing instead on the applicability of the *Charter*'s fundamental justice guarantees to non-citizens facing deportation. As a result, this thesis examines the construction of and reliance on particular notions of national security and (non)citizenship in the security certificate case law in an attempt to delineate and challenge the contingency of the *Charter* in respect of non-citizens.

ABORIGINAL SELF-DETERMINATION: ACCOMMODATION AND PROTECTION UNDER CANADIAN CONSTITUTIONAL LAW

BY JENNIFER DALTON, LL.M.

This thesis centres on the constitutional right of aboriginal self-determination in the Canadian context. It seeks to answer the following question: how does and should Canadian constitutional law accommodate and protect aboriginal self-determination? It is argued that the right of aboriginal self-determination within the Canadian context is necessary in order to rectify the history of injustice faced by aboriginal peoples and in order to acknowledge the right of aboriginal peoples to control their own lives.

In seeking answers to the above question, legal analyses of constitutional recognition and protection of aboriginal self-determination in Canada, along with international legal analyses of indigenous self-determination, are undertaken. An analysis of whether aboriginal peoples constitute "peoples" or "minorities" is related to the potential extent of the right of aboriginal self-determination. This, in turn, holds importance in assessing which aboriginal communities in Canada constitute peoples with a right of self-determination.

"ACCESS TO MEDICINES FOR ALL": WTO RULES, THE HUMAN RIGHT TO HEALTH, AND THE HIERARCHY OF INTERNATIONAL LAW

BY RICHARD ELLIOTT, LL.M.

The epidemiology and political economy of the global health gap has provoked struggle over TRIPS and access to medicines for HIV/AIDS and other health needs in developing countries. This in turn raises broader questions about the WTO regime's impact on health and its

relationship to other international legal norms, such as states' legal obligation to realize progressively the human right to the highest attainable standard of health. A critical review of WTO treaties and jurisprudence identifies concerns with the regime's treatment to date of health-related measures. In WTO dispute settlement, a state's binding human rights obligations must not only guide WTO treaty interpretation but be given full effect, in line with the international legal hierarchy in which human rights norms are "constitutional," enjoying primacy over other norms such as WTO intellectual property rules. This hierarchy can and should be reflected in the creation, interpretation, and operation of the WTO regime.

HOMO(SEXUAL) SACER: BIOPOLITICS AND THE BATHHOUSE RAIDS IN TORONTO, 1981

BY NADIA GUIDOTTO, LL.M.

On 5 February 1981, just before midnight, one hundred and fifty police officers raided four gay bathhouses. During these raids, queer bodies and desires came to be constructed as diseased, perverse, and criminal. To help understand why this is the case, I set the raids against the backdrop of Michel Foucault's conception of biopolitics—"the administration of bodies and the calculated management of life." Working within this framework, Giorgio Agamben—who draws on Carl Schmitt's work—discusses how sovereign power manages bodies within the biopolitical order. In a similar vein, Antonio Negri and Michael Hardt take up the concept of biopower but focus on its potential for resistance. Placing these theorists next to each other, I explore the raids as a concrete example of biopolitics, moving from theory to praxis.

A LINGUISTIC EXPLORATION TO FOREIGN TERMS IN TRADEMARK LAW

BY SYUGO HOTTA, LL.M.

This research will challenge the existing framework of the standards that are now in use worldwide to test the similarities and dissimilarities between disputed trademarks by examining Japanese and U.S. trademark cases whose central issue is use of language expressions. I will propose a novel analysis of linguistic aspects of trademarks in terms of functions of language and a *model theoretic approach* that utilizes notions in linguistics such as markedness and Grice's (1975)

cooperative principle. Then, I will apply this analysis to trademarks involving a foreign language to show its helpfulness and discuss its implications for international law.

This research will have both theoretical and practical implications: it will contribute to the scholarly discourse of trademark law and linguistic theory, and it will offer an alternative set of standards that is more appropriate from a cognitive point of view and sufficiently adaptable to the present legal system.

INTERGOVERNMENTAL INSTITUTIONS, TRANSNATIONAL CORPORATIONS AND THE MODERN PARADIGM: THE REFLEXIVE POSSIBILITIES OF TRANSNATIONAL LEGAL PLURALISM FOR SUSTAINABLE DEVELOPMENT

BY ADAM KAY, LL.M.

State-based institutions and transnational corporations are the foundational ordering mechanisms of modern society. While the modern era has seen a formidable increase in economic prosperity, there are now strong indications that it is neither socially nor ecologically sustainable. Indeed, for many it is inherently unsustainable, as evidenced by the now long-standing inability of state-based institutions to control the environmentally devastating consequences of transnational commercial enterprise. This thesis explores the merits of such claims. In so doing, it seeks to unfold the basic assumptions and purposes of these foundational institutions of modern society, explore the complexities of the problems they raise, and analyze what hope recent intergovernmental initiatives to regulate transnational corporations have to offer. Drawing from reflexive legal theory, it argues that recent intergovernmental initiatives are showing much needed signs of encouragement. Ultimately, however, just how encouraging they may be depends upon the robust and coordinated participation of civil society in constructively engaging intergovernmental institutions and transnational corporations to help bring about the conditions of a more sustainable global society.

THE TAXATION OF PERSONAL INJURY DAMAGES IN CANADA: RECONCILING TAX AND TORT LAW OBJECTIVES

BY TAMARA LARRE, LL.M.

This thesis examines the appropriate tax treatment of personal injury damages in Canada. It is argued that the application of the traditional tax evaluative criteria of equity, neutrality, and simplicity results in a conclusion that all personal injury damages should be taxed. However, an examination of non-tax considerations reveals that taxing personal injury damages could, in many cases, hinder the ability of tort law to meet its goals. It is argued that tort and tax law objectives can be reconciled by amending the *Income Tax Act* (Canada) to allow all personal injury damages for loss of future earnings to be invested in an annuity and to tax all payments from that annuity when received by the plaintiff. It is further proposed that the amendment should provide that damages for loss of past earnings and damages for loss of future earnings not invested in an annuity be included in income, and should explicitly provide that damages for loss of homemaking capacity, cost of care, and non-pecuniary losses are exempt from tax.

BEYOND THE PALE? THE INTERNATIONAL LEGAL BASIS OF THE BUSH DOCTRINE

BY JAMES W. MOORE, LL.M.

This thesis examines the international legal basis of the Bush administration's *jus ad bellum* (or use-of-force) paradigm in the global war on terror, popularly known as the "Bush Doctrine." Through a series of incremental and ad hoc decisions and measures taken in the aftermath of the terrorist outrage perpetrated on 11 September 2001, the administration gradually laid out an international legal paradigm on the right to use military force in the global war on terror. Is this paradigm an evolutionary or revolutionary development in the international *jus ad bellum* regime? That is the general question to be addressed in this thesis.

We begin with the presentation of two background chapters which set the context within which the analysis of key elements of the Bush Doctrine will proceed. In chapter two, we elaborate the underlying foreign policy framework within which the Bush administration conceptualizes its conflict with terrorists and rogue states. We follow this in chapter three with an examination of the fundamentals of the UN

Charter *jus ad bellum* regime, the international legal context within which the Bush administration seeks to prosecute the global war on terror.

We next proceed to examine two key elements of the Bush Doctrine and their interrelationship. In chapter four, we explore one of the fundamental premises of the doctrine, that terrorist attacks constitute armed attacks under article 51 of the UN Charter, justifying the unilateral or collective resort to the use of force in the exercise of a state's inherent right of self-defence. We then move on to consider a second key element, the controversial strategy of preventive/pre-emptive military action, focusing specifically on the administration's claims to a *jus ad bellum* right to initiate violence in the effort to prevent rogue states from acquiring WMD capabilities, either to use themselves or to pass on to their terrorist allies.

Finally, in the concluding chapter, we summarize the findings of the analyses in the preceding four chapters, and critique the Bush Doctrine as an attempt to reshape de facto the Charter *jus ad bellum* regime in a manner consistent with the structure of hegemonic international law. From this vantage point, we conclude that, when each element of the Bush Doctrine is examined on its own, it is initially difficult to take the position that the doctrine goes beyond the pale, understood as lying completely outside the UN Charter *jus ad bellum* regime. However, when the elements are viewed as an interactive whole, the overall thrust of the doctrine, effectively establishing a de facto exceptionalist position under the law for the global hegemon, cannot be reconciled with the best international legal understanding of the UN rules. Whether the doctrine is so thoroughly outside that understanding as to be "beyond the pale" as future international law is much less certain and will have to await the test of time.

THE IMPLICATIONS OF LARGE LAW FIRM CHANGES FOR WOMEN LAWYERS

BY GINA PAPAGEORGIOU, LL.M.

Women lawyers began entering the legal profession and private law firms in increasing numbers during the 1970s. During that time, the legal profession and private law firms also underwent significant changes. Law firms began growing dramatically with legal talent increasingly centralized in these large law firms. The large law firm has undergone a complete transformation. It is beginning to resemble, in

both form and substance, the large corporations that it now predominately serves. Bottom-line thinking, intense concern about profitability and costs, and ongoing expansion into national and international markets are the norm. The pursuit of profit has resulted in reduced partnership opportunities for all lawyers, increased statistical monitoring of lawyer performance, increased billable hour requirements, reduced mentoring and training, and even "departnering" of partners. Some Canadian large law firms have adopted a more formal corporate model complete with a board of directors and a chief executive officer. This thesis addresses the gendered implications of these changes and asks the following questions: how are women lawyers affected by these changes, and how are policy initiatives designed to further gender equality in the legal profession affected by these changes? To a lesser extent, this thesis considers the underlying reasons for such changes. By considering the intersection and interrelationship of large law firm changes, barriers to gender equality, and policy initiatives designed to address gender inequality, this thesis demonstrates how the movement by large law firms to a more corporate model has not only exacerbated barriers to gender equality, and undermined policy initiatives designed to address gender inequality, but has more importantly legitimated these outcomes.

A FRAMEWORK FOR ENVIRONMENTAL REGULATION BY LOCAL GOVERNMENT

BY SHAUNA PARR, LL.M.

This thesis identifies six principal ingredients for environmental regulation by local government. As the level of government closest to its residents, municipalities have the unique ability to respond directly to local concerns. This research begins with the premise that municipalities have a legally permissible function in the regulation of environmental issues based on recent Supreme Court of Canada authority. Using a case study methodology, this thesis specifically considers pollution control regulation at the local level in the context of pesticide-use bylaws and the blue box program administered by Stewardship Ontario. In summary, the six ingredients for successful environmental regulation by local government are the following: regulating issues which are "primarily local" in nature; addressing the distinctive characteristics of a municipality; addressing industry-specific concerns; recognizing the importance of public support and participation; choosing appropriate

environmental policy instruments; and recognizing the need for collaboration and cooperation with other levels of government.

CONTESTING WOMEN'S SOLIDARITY: HUMAN RIGHTS LAW AND THE FWTAO MEMBERSHIP CASE

BY KAREN SCHUCHER, LL.M.

This thesis explores questions about how law in general, and Canadian human rights law in particular, engage with women's struggles against social inequalities. The questions are framed within an extended discussion of human rights and feminist legal scholarship, with a focus on Canadian scholars. They include questions about law and social power, the "promise and practice" of human rights law, and legal conceptualizations of sex discrimination. These questions are then probed through an analysis of the Federation of Women Teachers' Associations of Ontario (FWTAO) membership case. In this case, the Ontario Human Rights Code was invoked to challenge the right of FWTAO, a union and professional association, to represent all women public elementary teachers in Ontario. The thesis examines the social context in which the litigation proceeded, and provides a close examination of the legal processes involved in this litigation and the decisions of the human rights tribunal.

A MERIT-BASED ASSESSMENT OF GLOBAL MONETARY SYSTEMS AND THEIR NORMS

BY IAN D. SHEEN, LL.M.

The purpose of this thesis is threefold. The first is to propose a model for assessing various international monetary systems by their merits. The second is to assess three different global monetary systems that humanity has gone through so far and show how they fare in terms of carrying out the mandates that any international monetary system must fulfill. The third is to explain why the global monetary systems have retrogressed as they did and what is next. This thesis overcomes the partial views of the conventional approaches, which attempt to explain the dynamics of the international monetary systems only in politics, only in economics, or only in historical ad hoc developments. This thesis integrates them all to provide a holistic view. The analytic framework of this thesis also accommodates a longitudinal view so that the

evolutionary process over a long period of time can be captured at a sight.

IMAGE MERIDIAN: INDIGENOUS PEOPLES AND THE INTERACTION OF VIOLENCE, IMAGERY AND THE LAW

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On 12 November 1971, the badly beaten body of eighteen-year-old Cree teenager Helen Betty Osborne was found near The Pas, Manitoba. On 25 November 1990, the frozen body of seventeen-year-old Neil Stonechild was found in a barren Saskatchewan field. In 1980, Sandra Lovelace, after losing status as an Indian when she married a non registered man, took her case to the United Nations based on gender discrimination.

These three stories demonstrate the interaction between law, violence, and indigenous imagery. In my thesis I argue that law, through specific *Indian Act* provisions, has aided in both the creation and perpetuation of negative imagery of aboriginal peoples in Canada. I analyze the relationship between specific provisions of the *Indian Act* and the resulting violence demonstrated in the three stories. In my conclusion, I offer ways in which law can aid in imagery reversal through self-government agreements and indigenous participation.