African Regional Trade Agreements as Flexible Legal Regimes
James Thuo Gathii, Albany Law School

This paper argues that African Regional Trade Agreements (RTAs) are flexible legal regimes. As flexible legal regimes, African RTAs provide a forum for cooperation on a whole range of objectives, including trade liberalization. They nestle or nest within these regimes an entire range of other objectives including those relating to security and the sharing of common river ways.

African RTAs have modified the neo-classical/comparative advantage classical free trade model in two significant ways. First, African RTAs have embraced the principle of variable geometry according to which time-tabled liberalization commitments are undertaken at different speeds depending on the economic ability and interest of members. Second, these regimes have made distributional equity amongst themselves a central feature. This means they have designed compensatory mechanisms to ensure losses arising from liberalization commitments are given to the losers. By foregrounding variable geometry and distributional equity concerns, African RTAs have correspondingly distanced themselves from non-discriminatory free trade.
In addition, the multiplicity of memberships in African RTAs while further confirming their nature as flexible regimes, also illustrates how they are a classic case of the spaghetti bowl. Thus while flexibility has enmeshed well with the preferences of African governments not to build strong supranational bureaucracies, it has undermined the achievement of more thorough intra-regional trade.

"The Financial Action Task Force and Global Administrative Law"
Journal of the Professional Lawyer, Forthcoming
Albany Law School Research Paper No. 10-10

JAMES THUO GATHII, Albany Law School
Email: JGath@albanylaw.edu

This paper focuses on the lawmaking power of the Financial Accounting Task Force, ("FATF") as an international organization and how its work is now being consolidated by being incorporated within the G20's framework for global financial reform. FATF reform therefore constitutes an end run around governments and professional societies to implement legal reforms to combat money laundering and terrorism.

FATF reforms to combat money laundering and terrorism have raised high level discussions within leading law societies, like the American Bar Association in the U.S. that is providing a push back to the FATF 40 9, as well as the October 2008 Lawyer Guidance. By contrast, such discussions around FATF money laundering and terrorism financing laws are conspicuously absent in developing countries, where FATF reforms are being promoted through well-funded aid programs and training of government officials, but not to those in the private sector, including those in the real estate industry, the legal profession and accountants.

This paper contrasts recent legislation in Kenya implementing the FATF's anti-money laundering standards with the continuing discussion within the American Bar Association and the fact that no State in the European Union has even considered similar obligations on lawyers, the real estate industry or other gatekeepers subject to the FATF's anti-money laundering and anti-terrorism financing standards.

"Snatching Defeat from the Jaws of Victory: Uniform Rule 202:48"
Albany Law School Research Paper No. 10-11

PATRICK M. CONNORS, Albany Law School
Email: pconn@albanylaw.edu

Uniform Rule 202.48 requires the submission of certain proposed orders or judgments for signature by the judge within 60 days from the decision. Even if a party is entitled to relief, the victory can be snatched away for failure to comply with Uniform Rule 202.48. However, the rule has an exception where "good cause" exists for a delay beyond the 60 days. This article tracks the development of the "good cause" defense for failing to comply with Uniform Rule 202.48 by analyzing the decisions beginning with Feldman v. New York City Transit Authority and carries through to the 2008 Court of Appeals decision in Farkas v. Farkas. The analysis shows division in application of the rule and many unresolved issues that continue to linger and must be addressed.

"Anton Chekhov's 'Home' and 'A Visit to Friends': The Dichotomy between the Personal and the Professional, or the Lawyer Subjectified and Objectified"
Albany Law School Research Paper 10-12

JAMES D. REDWOOD, Albany Law School
Email: jredw@albanylaw.edu

The busy life of the practicing attorney is proverbial and leaves but little room and time for the demands of home. Further, it is equally well known that the lawyer's training emphasizes the objective over the subjective, the rational and logical over the emotional and personal. This article analyzes two short stories by the renowned Russian author Anton Chekhov, both of which give the reader a practicing lawyer attempting to reconcile the demands of the office with those of the home. In one story the attorney harmonizes the two by becoming more personal and "subjectified," while in the other work the lawyer tacks to the contrary wind and becomes more and more objectified and detached as the story progresses. Chekhov probes the minds and characters of his protagonists in skillful fashion, and the article demonstrates how, without choosing between them, he nevertheless illuminates an important problem of the legal profession in a way that holds valuable lessons for its purveyors. Chekhov remains a literary gem largely neglected by the law and literature movement, and the article attempts to remedy this oversight by bringing two of his most compelling essays in the short story form to the light of day.

"The Limits of RESPA: An Empirical Analysis of the Effects of Mortgage Cost Disclosures"
Housing Policy Debate, Forthcoming
Albany Law School Research Paper No. 10-13
ELIZABETH RENUART, Albany Law School
Email: erenu@albanylaw.edu
JEN DOUGLAS, affiliation not provided to SSRN
Email: jdouglas@gmail.com

Congress passed the Real Estate Settlement Procedures Act (RESPA) in 1974 based upon documented instances of kickbacks between settlement service providers, unearned fees, and expensive and unnecessary closing costs paid by buyers and sellers of residential real estate. It opted for a disclosure strategy accompanied by few substantive prohibitions. Over the last thirty-five years, only a handful of studies attempted to measure the success of the mortgage loan disclosures. This article uses a uniquely rich database to examine this question.

We find evidence that closing costs increased since 1972 and fee types proliferated. The early cost estimate underestimated the final closing costs and projected cash to borrowers in a majority of cases, lending credence to complaints of baiting and switching. These observations call into question the efficacy of the RESPA disclosure scheme. Further, they point to the need for detailed data collection, routine monitoring of whether RESPA is meeting its legislative intent, and rigorous debate about whether RESPA’s goals can be achieved more effectively by another strategy.

This article is particularly timely because Congress instructed the new Bureau of Consumer Financial Protection to combine RESPA and related Truth in Lending Act disclosures into a single, integrated form over the next year.

"The Judge of the Qualifications of its Members"
Albany Law School Research Paper No. 10-14

BENNETT LIEBMAN, Albany Law School
Email: blieb@albanylaw.edu

New York State Constitution Article III, Section 9 provides that “Each house shall... be the judge of the elections, returns and qualifications of its own members.” Recently, the case of Senator Hiram Monserrate has brought renewed attention to this provision. His case involved a conviction in 2009 for criminal assault. He was elected in November of 2008, and the assault occurred in December of 2008. Thus, the act took place after his election but before his term began. Nevertheless, the Senate voted to remove Monserrate from office.

This article reviews the history of the Constitutional provision, review its usage in New York history, review the history of similar provisions in other states and the federal government, and try to identify some of the potential problem raised by the Monserrate case.

"Gambling and the New York State Constitution"
Albany Law School Research Paper No. 10-15

BENNETT LIEBMAN, Albany Law School
Email: blieb@albanylaw.edu

New York State has pari-mutuel betting on horse racing for seventy years, which now includes a massive off-track betting system, State lottery, video lottery, charitable bingo, and tribal casinos. All of this takes place in a state where the Constitution makes gambling illegal except in four situations. These exceptions have now swallowed the rule. This article provides a review of the history of gambling in New York state to determine how the state came to this position, and considers what can be done to create a more rational Constitutional and jurisprudential basis for the conduct of gambling in New York state.

"Who’s in Charge?: Proposals to Clarify Gubernatorial Inability to Govern and Succession"
Albany Law School Research Paper No. 10-16

MICHAEL J. HUTTER, Albany Law School
Email: mhutt@albanylaw.edu

As New York moves through a period of turmoil in the Governor’s office, it is appropriate to consider the New York Constitution’s requirements for Gubernatorial succession. Under Article IV, section 5 of the New York Constitution, the Lieutenant Governor assumes power upon the death or resignation of the Governor. However, the Lieutenant Governor also assumes power when the Governor is “absent from the state” and remains in power until the Governor’s return. Since 1982, there have been studies performed by the New York state Law Revision Commission to address concerns over the meaning of this phrase among many other issues, such as inability to govern, or filling the vacancy of the Office of Lieutenant Governor.

This article provides proposals to remedy the possible confusion that could arise from gubernatorial succession and would promote stability in uncertain times.
Solicitation of Abstracts

The Albany Law School Research Paper Series contains and showcases the broad range of the scholarly work of its vibrant and growing faculty. This scholarship takes theoretical, doctrinal, empirical and interdisciplinary approaches and its coverage includes a variety of themes covering the national and the international as well as the local and state issues. The papers are available online or through email distribution and can be accessed at www.albanylaw.edu/scholarship

ALBANY LAW SCHOOL is an independent private school in the heart of New York State's capital since 1851. As the oldest law school in New York and the oldest independent law school in the nation, the institution offers students an innovative, rigorous curriculum taught by a committed faculty. Several nationally recognized programs - including the Government Law Center and the Albany Law Clinic & Justice Center - provide opportunities for students to apply classroom learning. Students have access to New York's highest court, federal courts and the state legislature, as well as a thriving tech-based economy. With 9,000-plus alumni practicing in every state in the country, and several continents, the employment rate for graduates has been well above the national average for law schools for the past 26 years. www.albanylaw.edu

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)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: bblack@northwestern.edu

RONALD J. GILSON
Stanford Law School, Columbia Law School
Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

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-SSRNMHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

Accounting Research Network