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Editor's Introduction

Welcome to the twenty-seventh volume of *Journal of Law and Social Deviance (LSD Journal)*, an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume Twenty-seven is about finding the edge. In the end, the good decisions outweigh the bad, but without legal guidance disturbing memories, traumas, mistakes, errors, and accidents corrupt the progress requested by those using the system. This volume is asking for latitude to oppose pressure to accept inflamed, rushed, exaggerated, misstated, and excessive buy-in. *LSD Journal* remains committed to publishing articles, essays, and book reviews that strongly represent the journal's niche and offer readers important, substantive, and useful literature.

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ANALYSIS OF THE ISSUES RELATED TO THE LEGALIZATION OF ARTIFICIAL INTELLIGENCE, ITS USE IN LEGAL PROCEEDINGS, LEGAL CONSULTATION AND LAW ENFORCEMENT SYSTEM

Ihor Zhukevych,¹ Lidiia Moskvych,² Tamila
Manhora,³ Andriy Melnyk,⁴ Viktoriia Mykolaiets⁵

I. INTRODUCTION

Given the rapid progress of technologies and their deeper integration into our daily lives, the issue of legalizing artificial intelligence (AI) and its application in judicial proceedings, legal consultation, and law enforcement systems is gaining unprecedented relevance. The advancement of AI opens up new horizons of possibilities. However, it poses complex ethical, legal, and social challenges to society and

¹ Higher Educational Institution “King Danylo University,” Ivano-Frankivsk, Ukraine.

² Yaroslav Mudryi National Law University, Kharkiv, Ukraine.

³ Vinnytsia National Agrarian University, Vinnytsia, Ukraine.

⁴ Ivan Franko National University of Lviv, Lviv, Ukraine.

⁵ State Tax University, Irpin, Ukraine.

lawmakers. This Article aims to explore the nuances of artificial intelligence legalization, its role and impact on the judicial system, legal consultation, and law enforcement, as well as to outline the potential benefits and risks it may bring.

In this Article, the Authors aim to approach the analysis with a particular focus on ensuring that technological progress serves the interests of all segments of society without excluding anyone through its evolution. The evolution and implementation of AI in the legal sphere have the potential not only to make legal services more accessible and efficient but also to raise questions about decision autonomy, process transparency, and personal data protection.

People are on the threshold of a new era where artificial intelligence can become not only a tool in the hands of lawyers but also an active participant in legal processes. It requires a technical understanding of the new technologies and a deep understanding of their impact on the fundamental principles of the law and justice.

II. LITERATURE REVIEW

In modern scientific discourse, the issue of integrating AI into the legal sphere is becoming particularly relevant, attracting the attention of researchers from various parts of the world. The Authors begin this overview with the study by Robert Walters and Marko Novak.⁶ The authors elucidate a wide range of AI applications in the legal field, including cybersecurity, data protection, and legal aspects.⁷ This study lays a solid foundation for understanding key issues related to AI in law and serves as a starting point for further analysis.⁸

Harry Surden⁹ continues this line of inquiry, focusing on the values underlying legal artificial intelligence. The author¹⁰ emphasizes the need to integrate ethical norms into the development and

⁶ Robert Walters & Marko Novak, *Artificial Intelligence and Law*, in CYBER SECURITY, ARTIFICIAL INTELLIGENCE, DATA PROTECTION & THE LAW (Pompeu Casanovas & Giovanni Sartor eds., 2021) at 39–69.

⁷ *Id.*

⁸ *Id.*

⁹ Harry Surden, *Values Embedded in Legal Artificial Intelligence*, 41 IEEE TECH. & SOC'Y MAG. 66 (2022), <https://ieeexplore.ieee.org/document/9731832>.

¹⁰ *Id.*

implementation of AI technologies in legal practice, which logically complements the theses of Walters and Novak,¹¹ expanding the discussion to moral dilemmas.

Themistoklis Tzimas¹² expands the discussion, highlighting the international legal and ethical challenges of AI. The author draws attention to the global aspects of AI legal regulation, which allows for a better understanding of the scale and complexity of the problem, bridging national and international approaches.¹³ Stela Mecaj¹⁴ analyzes the legal challenges associated with AI in detail, including questions of responsibility and regulation. The author emphasizes the need to adapt existing legal frameworks to the new realities arising from the development of AI technologies.¹⁵ This analysis is critically important for understanding how the law can

¹¹ Walters & Novak, *Artificial Intelligence and Law*.

¹² Themistoklis Tzimas, *Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective*, 46 SPRINGER NATURE (2021).

¹³ *Id.*

¹⁴ Stela Mecaj, *Artificial Intelligence and Legal Challenges*, 20 REVISTA OPINIÃO JURÍDICA (FORTALEZA) 180 (2022).

¹⁵ *Id.*

evolve to ensure fairness and efficiency in the digital era.

Sylwia Wojtczak¹⁶ makes an essential contribution by exploring the concept of the legal subjectivity of AI. The work reveals potential ways of attributing AI elements of subjectivity, which can radically change the legal paradigm and the interaction between humans and machines in a legal context.¹⁷ Stamatis Karnouskos¹⁸ develops the idea of symbiosis between AI and society through the lens of law, robotics, and social relations. This approach allows for a deeper exploration of the social consequences of AI implementation, particularly in the context of legal norms and human interaction.

Jennifer Cobbe and Jatinder Singh¹⁹ analyze AI as a service, focusing on legal responsibilities, obligations, and political challenges. Their research

¹⁶ Sylwia Wojtczak, *Endowing Artificial Intelligence with Legal Subjectivity*, 37 AI & SOC'Y 205 (2022).

¹⁷ *Id.*

¹⁸ Stamatis Karnouskos, *Symbiosis with Artificial Intelligence Via the Prism of Law, Robots, and Society*, 30 A.I. & L. 93 (2022).

¹⁹ Jennifer Cobbe & Jatinder Singh, *Artificial Intelligence as a Service: Legal Responsibilities, Liabilities, and Policy Challenges*, 42 COMPUT. L. & SEC. REV. (2021).

emphasizes the need to establish clear legal frameworks for managing AI services, anchoring the discussion around responsibility and regulation in the era of digitization.²⁰ It is essential to note the work of Stanley Greenstein,²¹ which focuses on preserving the rule of law in the AI era. The author examines how AI can impact traditional legal principles, requiring society to adapt to new conditions.²² This study is a logical continuation of the debate on legal challenges and ethics initiated by previous authors.²³

Riya Sil and Abhishek Roy²⁴ examine the application of AI in the Indian legal system, offering valuable insights into the specifics of AI implementation in the legal systems of specific countries. Their work allows for a deeper understanding of the potential of AI to enhance the efficiency and accessibility of justice using the example of India, complementing the global context

²⁰ *Id.*

²¹ Stanley Greenstein, *Preserving the Rule of Law in the Era of Artificial Intelligence (AI)*, 30 A.I. & L. 291 (2022).

²² *Id.*

²³ *Id.*

²⁴ Riya Sil & Abhishek Roy, *A Review on Applications of Artificial Intelligence over Indian Legal System*, 69 IETE J. RES. 6029 (2023).

described in previous studies.²⁵ Rafael Dean Brown²⁶ explores issues of property ownership and legal personality of artificial intelligence. This analysis is critically important for understanding how AI can be integrated into existing legal frameworks and what changes may be necessary to recognize AI as a legal entity.

Krystyna Nizioł²⁷ addresses challenges in consumer rights protection associated with AI development, especially in the financial services sector. This perspective allows for assessing the potential risks and benefits of AI implementation in terms of consumer protection, which is an essential aspect in the broader context of AI legal regulation. Anne-Sophie Martin and Steven Freeland²⁸ examine the emergence of AI in space activities, highlighting

²⁵ *Id.*

²⁶ Rafael Dean Brown, *Property Ownership and the Legal Personhood of Artificial Intelligence*, 30 INFO. & COMMUNIC'NS. TECH. L. 208 (2020).

²⁷ Krystyna Nizioł, *The Challenges of Consumer Protection Law Connected with the Development of Artificial Intelligence on the Example of Financial Services (Chosen Legal Aspects)*, 192 PROCEDIA COMPUT. SCI. 4103 (2021).

²⁸ Anne-Sophie Martin & Steven Freeland, *The Advent of Artificial Intelligence in Space Activities: New Legal Challenges*, 55 SPACE POL'Y (2021).

new legal challenges. This study expands the analysis horizons, indicating the need to develop international regulatory norms to regulate the use of AI in space.²⁹

Nithes Naik and colleagues³⁰ focus on the legal and ethical aspects of AI use in healthcare, emphasizing responsibility issues. This research is vital for understanding how AI can serve the good of medicine while maintaining ethical standards and legal responsibility.³¹ David Leslie *et al.*³² provide an introduction to artificial intelligence, human rights, democracy, and the rule of law, laying the groundwork for discussing the impact of AI on societal values and institutions. This work is a valuable resource for assessing the balance between innovation and ensuring human rights and freedoms.³³

²⁹ *Id.*

³⁰ Nithes Naik et al., *Legal and Ethical Consideration in Artificial Intelligence in Healthcare: Who Takes Responsibility?* 9 FRONTIERS IN SURGERY 266 (2022).

³¹ *Id.*

³² DAVID LESLIE, CHRISTOPHER BURR, MHAIIRI AITKEN, JOSH COWLS, MICHAEL KATELL & MORGAN BRIGGS, *ARTIFICIAL INTELLIGENCE, HUMAN RIGHTS, DEMOCRACY, AND THE RULE OF LAW: A PRIMER* (2021), <https://arxiv.org/abs/2104.04147>.

³³ *Id.*

Łukasz Górski and Shashishekar Ramakrishna³⁴ explore the issues of explanatory artificial intelligence from lawyers' perspective. The authors point out the need to make AI more understandable and accessible to legal professionals.³⁵ This approach emphasizes the importance of transparency and accountability in the process of integrating AI into legal practice. The research by Hui Yan and John Zeleznikow³⁶ is worth noting. It focuses on the appropriate use of artificial intelligence in law, particularly on the responsibility of AI in legal decision-making processes.³⁷ This paper complements previous research by deepening the understanding of the complexity of legal aspects of AI applications.³⁸ The authors emphasize the need for clear rules and standards to ensure fairness and effectiveness in legal practice.³⁹

³⁴ Łukasz Górski & Shashishekar Ramakrishna, *Explainable Artificial Intelligence, Lawyer's Perspective*, EIGHTEENTH INTERNATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE AND LAW 60 (2021).

³⁵ *Id.*

³⁶ Hui Yan & John Zeleznikow, *The Appropriate Use of Artificial Intelligence in Law: Investigating the Liability of Artificial Intelligence in Legal Decision-Making*, 3 ANU J. L. & TECH. (2022).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Tambiama Madiega⁴⁰ offers an analysis of the European Parliament's draft law on artificial intelligence. This is a key document for understanding the future regulation of AI in Europe.⁴¹ This research is vital for assessing legislative efforts to create legal frameworks that address the wide range of challenges associated with AI use.⁴² The research by Maciej Jarota⁴³ is quite interesting. This study focuses on artificial intelligence and robotics in the EU concerning whether labor protection legislation should be amended.⁴⁴ The author highlights the need to adapt the regulatory framework to new challenges arising from technological development, emphasizing the importance of protecting workers in the digital age.⁴⁵

⁴⁰ TAMBIAAMA MADIEGA, ARTIFICIAL INTELLIGENCE ACT. EUROPEAN PARLIAMENT: EUROPEAN PARLIAMENTARY RESEARCH SERVICE (2021), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698792](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698792).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Maciej Jarota, *Artificial Intelligence and Robotization in the EU: Should We Change OHS Law?* 16 J. OCCUPATIONAL MED. & TOXICOLOGY 1 (2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

The study by Serena Villata *et al.*⁴⁶ summarizes three decades of research on artificial intelligence in law. This paper has a particular focus on the last decade.⁴⁷ The authors reflect on the evolution of the discipline and identify key achievements and challenges, outlining future directions in the field of AI and law.⁴⁸ The research by Patricia Gomes De Almeida *et al.*⁴⁹ proposes frameworks for regulating artificial intelligence, emphasizing the need to develop an effective AI management system. The authors focus on the importance of ethical norms in AI regulation, highlighting the need for transparency and accountability in AI use.⁵⁰

The work of Natalie Smuha *et al.*⁵¹ responds to the European Commission's proposal for an AI act, discussing how the EU can achieve legally trusted AI.

⁴⁶ Serena Villata *et al.*, *Thirty Years of Artificial Intelligence and Law: The Third Decade*, 30 A.I. & L. 561 (2022).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Patricia Gomes de Almeida, Carlos Denner dos Santos, & Josivania Silva Farias, *Artificial Intelligence Regulation: A Framework for Governance*, 23 ETHICS & INFO. TECH. 505 (2021).

⁵⁰ *Id.*

⁵¹ Natalie Smuha *et al.*, *How the EU Can Achieve Legally Trustworthy AI: A Response to the European Commission's Proposal for an Artificial Intelligence Act*, SSRN ELECTRONIC JOURNAL (2021).

The authors critically analyze the proposal, pointing out weaknesses in the draft law and suggesting ways to improve it.⁵² Lucia Zheng *et al.*⁵³ explore when pre-training helps to assess self-regulated learning for law. They analyzed a dataset of over 53,000 legal conclusions.⁵⁴ This work makes an essential contribution to understanding the potential of AI to support legal analysis and decision-making.⁵⁵

Rika Riyanti⁵⁶ examines the legal status of artificial intelligence-based medical insurance services. The author identifies challenges and opportunities for consumer protection.⁵⁷ This research underscores the importance of legal guarantees for consumers in the context of AI utilization in the insurance industry. Araz Taeihagh⁵⁸ analyzes AI

⁵² *Id.*

⁵³ Lucia Zheng *et al.*, *When Does Pretraining Help? Assessing Self-Supervised Learning for Law and the Casehold Dataset of 53,000+ Legal Holdings*, EIGHTEENTH INTERNATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE AND LAW 159 (2021).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Rika Riyanti, *Legal Status of Artificial Intelligence-Based Health Insurance Services: Challenges, Opportunities for Customer Protection*, 6 INT'L. J. HEALTH SCIS. (2023).

⁵⁷ *Id.*

⁵⁸ Araz Taeihagh, *Governance of Artificial Intelligence*, 40 POL'Y & SOC'Y 137 (2021).

governance, highlighting key aspects of global AI regulation. The author emphasizes the need for international coordination and cooperation for effective risk and opportunity management provided by AI.⁵⁹

Özlem Sogutlu⁶⁰ explores the legal status of artificial intelligence from the perspective of the legal status of robots in the context of contractual liability, pointing out historical parallels and contemporary challenges. This study makes a significant contribution to debates regarding the legal personality and liability of AI.⁶¹ Martin Ebers⁶² addresses the issue of AI accountability and EU consumer protection legislation. The author points to the need to adapt legal frameworks to new technological realities by examining existing legal norms and challenges arising from AI development.⁶³

⁵⁹ *Id.*

⁶⁰ Özlem Sogutlu, *The Legal Status of Artificial Intelligence from the Perspective of the Legal Status of the Slave in Terms of Contractual Liability*, 39 *BANKA HUK. DERGISI*, 277 (2023).

⁶¹ *Id.*

⁶² Martin Ebers, *Standardizing AI - The Case of the European Commission's Proposal for an Artificial Intelligence Act*, *SSRN ELECTRONIC JOURNAL* (2021).

⁶³ *Id.*

Esther Salmerón-Manzano⁶⁴ examines Legaltech and Lawtech from a global perspective. This research highlights the challenges and opportunities these technologies present to the legal industry.⁶⁵ The author underscores the importance of innovation in enhancing the accessibility and efficiency of legal services, aligning with the overarching theme of integrating AI into law.⁶⁶ Martin Miernicki and Irene Ng⁶⁷ discuss artificial intelligence and moral rights, expanding the discussion to the ethical aspects of AI usage. This paper is vital for understanding how AI can impact copyright and other related legal categories.⁶⁸

Richard A. Berk⁶⁹ investigates the application of artificial intelligence in crime forecasting and risk assessment in law enforcement activities. This research focuses on AI's potential to enhance law

⁶⁴ Esther Salmerón-Manzano, *Legaltech and Lawtech: Global Perspectives, Challenges, and Opportunities*, 10 LAWS 24 (2021).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Martin Miernicki & Irene Ng, *Artificial Intelligence and Moral Rights*, 36 AI & SOC'Y 319 (2021).

⁶⁸ *Id.*

⁶⁹ Richard A. Berk, *Artificial Intelligence, Predictive Policing, and Risk Assessment for Law Enforcement*, 4 ANN. REV. CRIMINOLOGY 209 (2021).

enforcement agencies' effectiveness while emphasizing the importance of ethical and legal considerations.⁷⁰ Geoffrey Currie and K. Elizabeth Hawk⁷¹ analyze the moral and legal challenges of using AI in nuclear medicine. The authors highlight the specificity of this field and the need for careful regulation and control.⁷²

Paul Grimm *et al.*⁷³ examine artificial intelligence as evidence in judicial proceedings, contributing to the discussion on the legal nature and use of AI-generated data in legal practice. This research underscores the importance of transparency and verification of information obtained through AI in the context of judicial review.⁷⁴ Our attention is drawn to the study by Daniel Vale *et al.*⁷⁵ This study focuses on explaining “post-factum” in the context of artificial

⁷⁰ *Id.*

⁷¹ Geoffrey Currie & K. Elizabeth Hawk, *Ethical and Legal Challenges of Artificial Intelligence in Nuclear Medicine*, 51 SEMINARS NUCLEAR MED. 120 (2021).

⁷² *Id.*

⁷³ Paul Grimm, Maura Grossman & Gordon Cormack, *Artificial intelligence as evidence*, 19 NW. J. TECH. & INTELL. PROP. 9 (2021).

⁷⁴ *Id.*

⁷⁵ Daniel Vale, Ali El-Sharif, & Muhammed Ali, *Explainable Artificial Intelligence (XAI) Post-Hoc Explainability Methods: Risks and Limitations in Non-Discrimination Law*, 2 A.I. & ETHICS 815 (2022).

intelligence (AI) and its risks and limitations under anti-discrimination legislation.⁷⁶ The authors emphasize the importance of ensuring that AI systems are technically efficient, understandable, and fair from a legal perspective, helping to avoid discrimination.⁷⁷

The study by John-Stewart Gordon and Sven Nyholm⁷⁸ makes a significant contribution to the discussion on AI ethics. It provides a comprehensive overview of moral dilemmas associated with the development and implementation of AI. The authors examine various ethical issues, from accountability to autonomy, emphasizing the need for careful analysis and a balanced approach. Adrien Bibal *et al.*⁷⁹ explore the legal requirements for explainability in machine learning. This research highlights the importance of ensuring that machine learning algorithms are not only effective but also clear and understandable to users, especially in light of European regulations.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ John-Stewart Gordon & Sven Nyholm, *Ethics of Artificial Intelligence*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY (2021).

⁷⁹ Adrien Bibal et al., *Legal Requirements on Explainability in Machine Learning*, 29 A.I. & L. 149 (2020).

Bernt Hugenholtz and Pedro Quintais⁸⁰ analyze whether EU copyright law protects results created with AI. This research reveals the complexity of defining authorship and originality in the context of artificially created intellectual property, emphasizing the need for adapting regulatory frameworks. George Maliha *et al.*⁸¹ discuss medical liability related to AI use. They investigate how the legal system can respond to challenges arising from AI integration into medical practice, particularly regarding responsibility and care standards.

Kristina Astromskė *et al.*⁸² examine ethical and legal challenges of informed consent in using AI in medical diagnostic consultations. The authors highlight the need for transparency and patient understanding regarding how AI is utilized in making

⁸⁰ Bernt Hugenholtz & Pedro Quintais, *Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?* 52 IIC-INT'L. REV. INTELL. PROP. & COMPETITION L. 1190 (2021).

⁸¹ George Maliha, Sara Gerke, Glenn Cohen, & Ravi Parikh. *Artificial Intelligence and Liability in Medicine*, 99 MILBANK Q., 629–647 (2021).

⁸² Kristina Astromskė, Eimantas Peičius, & Paulius Astromskis, *Ethical and Legal Challenges of Informed Consent Applying Artificial Intelligence in Medical Diagnostic Consultations*, 36 AI & SOCIETY 509, 509–520 (2020).

medical decisions.⁸³ Utpal Chakraborty *et al.*⁸⁴ edited a collection dedicated to artificial intelligence and the fourth industrial revolution. This work provides a deep analysis of AI's impact on society and the economy.⁸⁵ Besides, the authors explore opportunities and challenges arising from the integration of new technologies.⁸⁶

Trevor Bench-Capon⁸⁷ underscores the need to preserve and develop “good old” artificial intelligence in law. The author emphasizes the value of classical approaches to AI in law for understanding and solving complex legal issues, stressing the importance of balancing new technologies with time-tested methods.⁸⁸

We paid our attention to the study by Jozef Andraško *et al.*⁸⁹ This paper examines regulatory

⁸³ *Id.*

⁸⁴ UTPAL CHAKRABORTY ET AL., *ARTIFICIAL INTELLIGENCE AND THE FOURTH INDUSTRIAL REVOLUTION* (2022).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Trevor Bench-Capon, *The Need for Good Old Fashioned AI and Law*, 21 *JUSLETTER-IT* 23 (2020).

⁸⁸ *Id.*

⁸⁹ Jozef Andraško, Matúš Mesarčík, & Ondrej Hamulák, *The Regulatory Intersections between Artificial Intelligence, Data*

intersections between AI, data protection, and cybersecurity.⁹⁰ The authors illuminate challenges and opportunities for the EU legal framework.⁹¹ They emphasize the need for a comprehensive approach to regulating these areas to ensure adequate data protection and cybersecurity in the context of AI integration.⁹² Itziar Sobrino-García⁹³ analyzes risks and challenges associated with AI use in Spanish government administration through expert assessments. The study opens a discussion on potential problems and prospects of AI applications in the public sector.⁹⁴ It also highlights the importance of thorough analysis and regulation to minimize risks.⁹⁵

Filippo Santoni De Sio and Giulio Mecacci⁹⁶ discuss four “responsibility gaps” with AI,

Protection and Cyber Security: Challenges and Opportunities for the EU Legal Framework, 36 AI & SOC’Y. 623 (2021).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Itziar Sobrino-García, *Artificial intelligence risks and challenges in the Spanish public administration: An exploratory analysis through expert judgements*, 11 ADMIN. SCIS. 102 (2021).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Filippo Santoni De Sio & Giulio Mecacci, *Four Responsibility Gaps with Artificial Intelligence: Why They Matter and How to Address Them*, 34 PHIL. & TECH. 1057 (2021).

emphasizing their significance and resolution paths. The authors analyze how these gaps affect responsible decision-making and propose approaches to address them, which are critical for the ethical integration of AI into society.⁹⁷ Hadar Jabotinsky and Roe Sarel⁹⁸ investigate ethical dilemmas associated with collaboration with AI. This work examines issues of authorship, responsibility, and morality in the context of human-AI collaboration, contributing to debates on the boundaries of creativity and intellectual property.⁹⁹

Bartosz Brożek *et al.*¹⁰⁰ revisit the “black box problem,” pointing out real and perceived challenges for automated legal decision-making. The authors discuss difficulties related to transparency and comprehensibility of decisions made by AI, which is crucial for trust and fairness in legal practice.¹⁰¹ Fausto

⁹⁷ *Id.*

⁹⁸ Hadar Jabotinsky & Roe Sarel. *Co-authoring with an AI? Ethical Dilemmas and Artificial Intelligence*, ARIZ. ST. L.J. (2023), FORTHCOMING), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4303959.

⁹⁹ *Id.*

¹⁰⁰ Bartosz Brożek et al., *The Black Box Problem Revisited. Real and Imaginary Challenges for Automated Legal Decision Making*, A.I. & L. 1 (2023).

¹⁰¹ *Id.*

Martin De Sanctis¹⁰² investigates the use of AI and innovations in Brazilian justice, providing an overview of the current state and potential of AI to enhance the efficiency and accessibility of justice in Brazil.

Martin Ebers¹⁰³ analyzes the standardization of AI using the European Commission's proposal for an AI act as an example. The study reveals the importance of developing unified standards to ensure the safety, ethics, and effectiveness of AI at the international level.¹⁰⁴ The authors point out key aspects that require attention in shaping global AI regulation.¹⁰⁵

Each of these studies adds new perspectives to the understanding of the complex interaction between AI, law, ethics, and society. They emphasize the need for constant analysis, adaptation, and regulation to cope with the rapid development of technology and its impact on various aspects of life.

¹⁰² Fausto Martin De Sanctis, *Artificial Intelligence and Innovation in Brazilian Justice*, 59 INT'L. ANNALS CRIMINOLOGY 1 (2021).

¹⁰³ Martin Ebers, *Liability for Artificial Intelligence and EU Consumer Law*, 12 J. INTELL. PROP., INFO. TECH. & ELEC. COM. L. 204 (2021), https://www.jipitec.eu/archive/issues/jipitec-12-2-2021/5289/ebers_pdf.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

This Article aims to analyze the potential and challenges of AI application in the field of judicial proceedings, legal consultations, and law enforcement systems. This research seeks to assess how the integration of AI can contribute to the efficiency, fairness, and accessibility of justice, as well as to identify the main ethical and legal challenges arising from using these technologies.

III. METHODOLOGY

This research is based on a comprehensive approach that includes a systematic method, as well as analysis and synthesis. The systemic method is applied to study the interaction between various aspects of AI use in the legal sphere. This includes technological opportunities, legal frameworks, ethical principles, and social consequences. This method helps to evaluate AI as part of a more extensive system of legal practice. The analysis method is utilized to clarify various aspects of AI application in legal proceedings, consulting, and law enforcement systems. The synthesis method was employed to formulate overall

conclusions about the potential and challenges of AI in the legal field. As a result, the Authors have identified key trends and opportunities for practical application and outlined areas for further research.

IV. RESULTS

In jurisprudence, AI is already being applied for various purposes, such as analyzing legal documents, predicting court case outcomes, automating legal research, and even supporting judges in decision-making. This includes systems that can analyze large amounts of data, including precedents and legal norms, to provide recommendations for preventive measures.

One example of the use of AI in criminal justice is the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) software, which is used in some states in the USA to assess the risk of recidivism among offenders. This system is one of the most discussed examples of AI applications in criminal justice. Such a system sparks lively debates about its impact on the fairness and impartiality of judicial decisions. It was developed to assess the risk of

recidivism and assist in decision-making regarding preventive measures.

COMPAS uses machine learning algorithms to analyze a large amount of data about convicted persons, including information about previous crimes, personal characteristics, and social environment. Based on this analysis, the system generates a risk assessment for recidivism, which can influence judges' decisions regarding bail conditions, sentencing choices, or the development of rehabilitation programs.

The main problem in using COMPAS and similar systems is the risk of algorithmic bias. Studies have found that COMPAS tends to predict a higher risk of recidivism for African Americans compared to white offenders, raising concerns about racial bias. This problem underscores the importance of transparency and the ability to verify AI algorithms to ensure their fairness and impartiality.

China is one of the pioneers in integrating AI technologies into the judicial system. One of the most well-known examples is the establishment of “internet

courts” in cities such as Hangzhou, Beijing, and Guangzhou. These courts specialize in handling cases related to Internet transactions and other matters that can be efficiently resolved online. The use of the WeChat mobile application for submitting documents and conducting proceedings significantly simplifies the process for all participants and allows for judicial procedures to be carried out without the need for physical presence in court.

Internet courts in China use AI to assist in preliminary case analysis, evidence processing, and even certain procedural decisions. These technologies help reduce judges’ workloads and promote swift case resolution.

It is important to note that the implementation of AI in the judiciary also raises discussions about transparency, the accuracy of algorithms, and the protection of the rights of participants in the judicial process. Issues of confidentiality, ethics, and accountability for AI decisions are the subject of active debates in the legal community.

In light of advancing technology, the use of AI in justice is a double-edged sword. On one hand, AI promises increased efficiency and fairness. On the other hand, it raises new ethical and legal challenges. In this context, emphasis should be placed on ensuring equality, fairness, and human rights. Thus, it is necessary to deeply consider the impact of AI on the fundamental principles of our legal system.

First and foremost, it is necessary to ensure that the integration of AI into the judicial system does not undermine the fundamental principles of fairness and independence. The use of algorithmic decision-making must be transparent to ensure that no person falls victim to unnoticed biases or errors in software. Hence, AI systems applied in jurisprudence must be capable of explaining their decisions in terms understandable to human reasoning to allow for review and appeal.

Furthermore, ethical principles for algorithmic decision-making in the legal sphere must be developed and implemented. This includes creating mechanisms for detecting and correcting biases and ensuring equal

access to justice for all people regardless of their social, economic, or cultural backgrounds.

With the increasing influence of AI in various spheres of life, including the judiciary, an essential question of accountability arises for decisions made using or based on AI recommendations. This is particularly relevant in situations where such decisions directly impact the rights and freedoms of people. This includes their social status, financial standing, freedom, or even life.

Traditionally, in the legal system, responsibility for decision-making lies with people - judges, lawyers, and prosecutors. However, with the emergence of AI, which can analyze data, predict case outcomes, or even recommend certain judicial decisions, the question arises: who should be responsible in case of errors related to the operation of AI? Will it be the developer of the AI system, the legal entity using it, or the person making the final decision based on AI recommendations?

This issue requires careful consideration and the development of new legal frameworks and regulations

that can identify and allocate responsibility in cases of AI usage in the judiciary. Such frameworks should consider the need to protect the rights and freedoms of people and ensure that any mistakes or unlawful decisions are correctly accounted for. A key element here is AI algorithms' transparency and auditability to ensure fairness and objectivity in decision-making.

Transparency in using AI in the judiciary and ensuring the possibility of challenging its decisions are fundamental to maintaining citizens' trust in the judicial system. Every person has the right to understand the basis of decisions affecting their lives and to have the opportunity to challenge these decisions for review in case of error or injustice.

Therefore, the use of AI in the judiciary promises to increase efficiency and accessibility to justice. Still, it also requires us to be vigilant and committed to ensuring that the technology serves justice and protects all people's fundamental rights and freedoms. In this context, the embodiment of these principles is desirable and necessary for a future in which justice remains fair, accessible, and independent.

The application of AI in legal consultations opens up new opportunities for enhancing the efficiency, accessibility, and quality of legal services. AI can serve as a powerful tool for lawyers, providing them with access to advanced analytical capabilities and automation of routine tasks. Here are several key aspects illustrating the potential of AI application in legal consultations:

(i) Specifically, AI can automate the process of searching and analyzing legal documents, legislation, case law, and other sources. This reduces the time required for legal research and increases the accuracy of identifying relevant information, decreasing the risk of missing essential data.

(ii) AI can also be applied to analyze contracts and other legal documents, identifying potential risks, inconsistencies, or illegal terms. AI-based systems can offer recommendations for optimizing contract terms and better protecting the client's interests.

(iii) The development of chatbots using AI to provide initial legal assistance can significantly

increase the availability of legal services. Such bots can answer basic legal questions, assist with drafting simple legal documents, or even recommend further steps in resolving legal issues.

Given that AI can analyze large volumes of data to identify trends and patterns and predict the outcomes of legal cases, its use by lawyers allows for better assessment of case prospects, formulation of defense strategies, and advising clients on the most advantageous courses of action. However, the integration of AI into legal consultations raises essential ethical and legal questions, including those concerning data confidentiality, liability for errors, and ensuring the impartiality of algorithms. Clear rules and standards need to be developed to regulate the use of AI in legal practice. They provide the protection of the rights and interests of all participants in legal relationships.

The application of AI in legal consultations has the potential to radically transform the legal services sector, making them more efficient, accessible, and

high-quality. However, achieving these goals requires finding a balance between innovation and ensuring ethical standards in the use of advanced technologies.

AI is becoming increasingly important in the law enforcement system. It offers innovative solutions to enhance the efficiency, accuracy, and transparency of law enforcement procedures. The integration of AI into this field opens up new opportunities for combating crime, improving investigations, and ensuring public safety. Let the Authors consider several key directions that illustrate the potential application of AI in law enforcement.

First and foremost, it should be noted that AI can analyze vast amounts of data from various sources. This includes social networks, crime databases, video surveillance, etc. It enables law enforcement agencies to quickly identify patterns related to criminal activity, forecast potential threats, and respond to them promptly.

Facial recognition technologies developed based on AI can detect people in video materials from surveillance cameras or in photographs. This

significantly aids in the search for criminals, missing persons, and crime witnesses. However, the use of this technology also raises questions of confidentiality and the right to privacy.

Additionally, AI systems can analyze historical crime data to determine the places and times where the likelihood of crimes is highest. This allows law enforcement agencies to optimize resource allocation and focus efforts on preventive measures in the “hot spots.”

AI can automate many legal procedures related to law enforcement. They include processing applications and complaints, registering offenses, and even some aspects of the judicial process. As a result, law enforcement agencies can become more efficient and respond to citizens’ requests more quickly. AI can be an essential tool during investigations, helping to analyze evidence, model criminal events, and identify possible connections between different cases. AI can also be used to decode encrypted messages or analyze financial transactions that may indicate illegal activity.

However, there are certain ethical and legal challenges associated with the use of AI in law enforcement. They include the protection of personal data, the impartiality of algorithms, and liability for erroneous decisions. Appropriate legal frameworks should be developed to ensure the balanced use of AI, taking into account the need for efficiency and the need to protect the fundamental rights and freedoms of citizens.

The Authors believe that AI in the law enforcement system has the potential to radically improve the ability of law enforcement agencies to protect society and counteract crime. However, the achievement of these benefits requires a responsible approach to the implementation of technologies, attention to ethical aspects, and the development of a legal framework.

V. DISCUSSION

The use of AI in judiciary proceedings, legal consultations, and law enforcement raises many

debatable issues that would be worthwhile to delve into further.

The first point of contention is the balance between effectiveness and confidentiality in using AI for facial recognition. Advocates of using AI-based facial recognition systems in law enforcement argue that it significantly enhances the effectiveness of finding criminals, missing persons, and crime witnesses. This technology allows for the rapid analysis of large volumes of video data. It also facilitates the swift identification of people on a large scale. On the other hand, critics highlight the risks associated with privacy violations and potential abuse. They emphasize that the widespread use of AI for facial recognition could lead to the creation of a surveillance society, where every citizen's movement is recorded and analyzed without their consent or knowledge. In Authors' opinion, the key to this matter is finding a balance. It is essential to develop strict rules and mechanisms to control the use of facial recognition technologies to ensure the protection of personal data and privacy while not

forsaking the benefits these technologies can bring in combating crime.

The second point of contention is the use of AI to automate legal procedures. Supporters of automating legal procedures through AI argue that it can significantly reduce the workload on law enforcement agencies and the judicial system, simplify the procedures for filing applications and complaints, and increase the speed and accuracy of information processing. Meanwhile, their opponents fear that excessive reliance on AI could lead to the loss of the human element in justice. This is particularly crucial in cases requiring an individual approach and may reduce the quality of legal protection. The Authors believe that automation through AI should be considered as an auxiliary tool rather than a replacement for human participation in legal procedures. It is vital to ensure that automated systems are used to enhance efficiency while preserving the possibility of human review and intervention in critical cases.

The use of AI for predicting judicial decisions is also contentious. Supporters of using AI to predict the

outcomes of legal proceedings believe that it can help lawyers better prepare for cases and enable clients to make more informed decisions regarding their legal strategies. The critics, however, argue that reliance on AI predictions could lead to the standardization of justice and the disregard for the unique circumstances of each case, as well as distort the judicial process through possible errors in predictions. The Authors believe that predicting the outcomes of legal proceedings through AI should be viewed as a tool that can provide additional information for consideration, but no more than that. It is crucial to maintain an understanding that each case has its unique aspects that should be evaluated by judges or lawyers based on all available information.

VI. CONCLUSIONS

Artificial intelligence can significantly increase efficiency and accuracy in face recognition, crime prediction, data analysis, and automation of legal procedures. These innovations open gateways to faster and more impartial justice.

However, the application of AI is accompanied by ethical and legal challenges, in particular concerning confidentiality, impartiality, and accountability for decisions based on it. It is essential to develop mechanisms that ensure transparency and the possibility of reviewing AI decisions. Therefore, it is necessary to establish clear rules and regulations for the use of AI in the legal sphere to ensure the protection of fundamental rights and freedoms, as well as the responsible and ethical use of technology.

AI can potentially improve the accessibility and quality of legal services for a wide range of people, reduce the burden on the judicial system, and increase public safety through more efficient enforcement of the law. However, given challenges such as potential algorithmic bias and data privacy, further research should focus on improving AI algorithms to ensure their unbiasedness and protection of personal data.

Further research is recommended in the field of AI technology development that can be implemented in legal practice with minimal risks to human rights and

ensuring fairness and transparency of justice. The main areas for further research in this area should include:

- (i) the development of ethical standards for AI.
- (ii) analysis of the impact of AI on traditional legal practice.
- (iii) exploration of the potential of AI to address global legal challenges.

As a result, the legal community should join forces to develop and implement innovative and responsible approaches to using artificial intelligence. In this way, we will take advantage of the latest technologies and protect the fundamental rights and freedoms that form the basis of a fair society.

WATERING DOWN THE SEVENTH AMENDMENT: WILL TRIALS STILL LEAVE A BAD TASTE IN YOUR MOUTH?

Carmen M. Cusack¹ and Matthew E. Waranius

I. INTRODUCTION: RIGHT TO TRIAL COURT FACTS

A. Quoting the Internet

Facts are not easy to come-by.

Because the [I]nternet has brought the average person into contact with a volume of information that would have been nearly unimaginable to anyone outside a large university just a generation ago, we're now able to stay informed about a bewildering variety of events from the mundane (today's weather or the score of last night's

¹ Dedicated to my friends at the plant. *See e.g.*, Tom Hanks and Kevin Bacon, *Apollo 13* (1995). *See*, Doug Criss, "A University Studied the Water Quality on Planes. You May Want to Skip the Coffee on These Two Airlines," CNN (Sep. 19, 2019), <https://www.cnn.com/travel/article/airline-water-study-wellness-trnd/index.html>. *See also*, Isabelle Doctor, "Ryan Reynolds Donates \$500,000 to Charity Addressing Indigenous Water Crisis" (Mar. 24 2022), <https://dailyhive.com/vancouver/ryan-reynolds-blake-lively-donate-water-first>.

Yankees game) to the tawdry (hours of footage of Anna Nicole Smith) to the tragic (shootings at Virginia Tech) to the profound (videos showing the development of a human embryo). But the vast quantity of information available is not without a price. For every Abu Ghraib photo uncovered one can find a crank extolling his ‘proof’ that the destruction of the World Trade Center was a Jewish plot. A search for Martin Luther King Jr. may turn up ‘Letter from Birmingham Jail’ – or a [W]hite supremacist home page. No longer do consumers of information have to work to find information. The difficulty now lies in finding good information.²

This Article explains how facts about water were generated and how they should be recognized.³

B. The Hub

This Article is about how the federal agenda for cleaning water⁴ affected some courts when it cleaned

² "The Battle of the Experts," Annenberg Classroom, <https://www.annenbergclassroom.org/resource/the-battle-of-the-experts/#Background>. See also, *Korematsu v. U.S.*, 323 U.S. 214 (1944).

³ See, *Korematsu*, 323 U.S. 214.

⁴ See generally, Carmen M. Cusack, *The Driest Title on Earth: An Educational Study Proving That Crime in the West Affected the Greenland Shark*, 23 J. L. & SOC. DEVIANCE 130 (2022).

the water at the courthouse.⁵ This Article claims that people, many in the justice system, such as the Coast Guard, cleaned water around the world and that caused cleaner water to be available at the courthouse and evidence of water-cleaning activity to be evident in the courthouse.⁶ Because the Seventh Amendment of the United States Constitution guarantees fact-finding by the lower court, the government is obligated to admit the evidence of cleaner water when relevant and inform higher courts of that fact in its records.⁷ Relevance of facts may be discussed and relevant facts may be included in *in camera* hearings, minitrials,⁸ and

⁵ Cornell, "Sixth Amendment," Constitution,

https://www.law.cornell.edu/constitution/sixth_amendment.

⁶ 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule (pdf), Environmental Protection Agency (EPA), https://www.epa.gov/system/files/documents/2023-09/One-Page%20Fact%20Sheet%20on%20the%20Final%202023%20Rule_508.pdf.

⁷ U.S. Const. amend. VII.

⁸ Without legal guidance throughout a prolonged discovery phase and judgment phase witnesses and clients should seek financial guidance to reduce stress associated with damages. *See i.e.*, Mike Winters, "Mega Millions Jackpot Is up to \$1.1 Billion—What Billionaire Mark Cuban Says You Should Do If You Win," CNBC, (Mar. 25, 2024)

<https://www.msn.com/en-us/money/companies/mega-millions-jackpot-is-up-to-1-1-billion-what-billionaire-mark-cuban-says-you-should-do-if-you-win/ar->

BB1kw2mh?ocid=msedgntp&pc=ASTS&cvid=52f0687406f3407a8ff49421655a54d1&ei=13. "'Don't take the lump sum,' [Mark] Cuban told

remanded cases, etc. relating to water rights matters, such as the fact that courthouse water should be clean and accessible, the argument that people have a right to drink water in a specific place, including at the courthouse, and problems arising from the fact that some are forced, including those who are paid, to be there and others volunteer,⁹ so when water is served it should be cleanly and morally served, for example without drug residue.¹⁰

The Seventh Amendment is solid legislation.¹¹ Civil suit issues may be partly criminal and constitutional, including demands that will be met when evidence is recorded.¹² Suits under the Seventh Amendment will not include admiralty and maritime law, yet may resolve complaints that payment for water-cleaning was not achieved although it should be

the DALLAS MORNING NEWS in 2016. ‘You don't want to blow it all in one spot.’” *Id.*

⁹ Constitution Annotated, “Amdt7.1 Overview of Seventh Amendment,” Civil Trial Rights, https://constitution.congress.gov/browse/essay/amdt7-1/ALDE_00000263/.

¹⁰ Originally produced on the 7th of November for stimulus, merger, copy, and acceptance. Publication expected: June 2024/10p.

¹¹ U.S. Const. amend. VII.

¹² *Id.*

expected.¹³ Judges and juries may find that fines or remedies in equity apply and decide that owed money and remuneration for the clean water should be paid, for example sent to the Coast Guard to be disbursed by the President¹⁴ and other entities, such as corporations, individuals, and preserved sites.¹⁵

This Article explains this position and how this federal agenda that took shape as an international affair and hobby changed lower courts in America.¹⁶ This Article gives an explanation about how courthouses

¹³ *Id.*

¹⁴ National Association of Clean Water Agencies (NACWA), "Modernizing the Clean Water Paradigm," <https://www.nacwa.org/issues-in-depth/modernizing-the-clean-water-paradigm>.

In short, we are...using a mid-20th century statutory and regulatory framework to try and address 21st century challenges. The time has come to modernize the clean water paradigm in a way that preserves the strongest and most successful aspects of our current structure, while also creating a new suite of tools and resources to address the water quality realities of today and those of the coming decades. Developing a modern statutory construct for clean water will be a critical part of this effort, but it must go beyond this as well. Modernizing the paradigm will also require clean water utilities redefining their relationships with regulators, as well as engaging stakeholders and the public in new ways to elevate the importance of clean water. *Id.*

¹⁵ *See e.g.*, Environmental Protection Agency (EPA), 40 CFR Parts 121, 122, and 124, VI, "Statutory and Executive Order Reviews" (2023).

¹⁶ *See generally*, U.S. Const. art. II, s. 2, cl. 2. U.S. Constitution "treaties." *E.g.* Jessica Stewart, "Fishermen Rescue Arctic Fox Stranded on Floating Iceberg and Nurse It Back to Health," *My Modern Met* (July 3, 2018), <https://mymodernmet.com/arctic-fox-rescue/>.

must give people water in America and explains why all matters at the courthouse will now be better because of the improvements made by this group of people, and some animals, meeting the federal agenda and other requirements.¹⁷ The group realized the accomplishment after coming to believe and then stating that the water tastes better.¹⁸ It is relatively cleaner, and other measures and facts demonstrating improvement that are beyond the scope of this Article are available in detail and should be discovered, weighed, and attributed.¹⁹ Through armament, education, prosecution, pollution-free manufacturing, proactive intuitive contributions, etc. the people of America and the world fixed some of America's and the world's water problems enough to be able to taste the difference in the water.²⁰ Therefore, the court has evidence of the improved water and shall enter a judgment in all matters relating to the taste of water and the cleanliness of water.²¹ All judgments should be

¹⁷ Stewart, "Arctic Fox Stranded on Floating Iceberg."

¹⁸ *Infra* Part II.

¹⁹ *Id* and Part V.

²⁰ Part II.

²¹ Parts III and IV.

delivered around the world to complete cases where these facts are in use.²²

The outline for this Article is as follows: Part Two describes performance²³ and synergized avoidance of error performance by participants complying with the federal agenda; Part Three shows how the courthouse uses the cleaner water; Part Four describes benefits within the justice system that further demonstrate evidence of cleaner water; and Part Five concludes that courts are now able to record the evidence, establish facts, issue judgments, and close cases to help, pay, estop, reward, restore, etc. where appropriate.²⁴ The

²² American Bar, “Trial by Jury: Criminal Justice Standards,” https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_jurytrial_blk/.

²³ See *i.e.*, Leonardo DiCaprio Foundation.

²⁴ See *generally e.g.*, EPA Press Office, “EPA Issues Final Rule to Strengthen Water Protections, Support Clear and Timely Reviews of Infrastructure and Development Projects,” EPA (Sep. 14, 2023), <https://www.epa.gov/newsreleases/epa-issues-final-rule-strengthen-water-protections-support-clear-and-timely-reviews>. Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis directed EPA to review and, as appropriate and consistent with applicable law, take action to revise or replace the 2020 CWA Section 401 Certification Rule. On June 2, 2022, EPA announced the signing of a proposed rule to update the regulatory requirements for water quality certification under Clean Water Act Section 401. EPA conducted pre-proposal engagement and provided a 60-day public comment period on the proposed rule to help inform the content of the final rule. *Id.*

federal agenda utilizing international hobbies, work, court findings, etc. should be published in reporters around the world for similar, beneficial, and fair holdings.²⁵

²⁵ Part V.

II. IMPROVED WATER (ADD HERE)²⁶

²⁶ Lessons from Toxic Torts, *Causation in Environmental Law*, 128 Harv. L. Rev. 2256 (2015), Available at <https://harvardlawreview.org/print/vol-128/causation-in-environmental-law/>.

Environmental and toxic tort suits constitute broad, amorphous, and sometimes overlapping categories. To aid clarity, for the purposes of this Note, 'toxic tort suits' refer to personal injury cases that allege a harm, generally a physical injury, due to exposure to a toxic substance. Toxic tort suits can cover a wide variety of toxic exposures, including those from toxic products, toxic materials in a workplace, and toxic discharges into the environment. 'Environmental suits,' in contrast, refer to cases that allege an injury to plaintiffs' interests due to a harm to the environment or a violation of an environmental statute.

Environmental suits thus can be further divided into two subcategories: those asserting rights under common law, such as public nuisance, and those asserting rights created by statute. There are many similarities between toxic tort and environmental cases; indeed, some toxic tort suits are considered environmental suits by scholars and practitioners alike. *Id.*

"The conflation between causation in standing law and causation as an element of tort law has created a justiciability barrier in environmental law, under which judges find themselves considering the full extent of causation as a part of the standing inquiry." *Id.* "Given the similarities between toxic tort cases and environmental suits, reserving questions of specific causation for later determination would likely help relieve the burden on both courts and claimants without serious injury to courts' dockets and would result in more consistent and equitable hearings for those pursuing environmental claims." *Id.* M. Tyler Gillett, "US Supreme Court Hears First Two Cases Of New Term on Water Rights, ACCA," *Jurist* (Oct. 5, 2021), <https://www.jurist.org/news/2021/10/us-supreme-court-hears-first-two-cases-of-new-term-on-water-rights-acc/> *citing* "Oral Argument - Audio Mississippi v. Tennessee Docket Number: 143-Orig Date Argued: 10/04/21,"

https://www.supremecourt.gov/oral_arguments/audio/2021/143-Orig. Courts order economic and non-economic damages. Morgan & Morgan, "What Should I Do After Noticing Denture Adhesive Poisoning Symptoms?," For the People, <https://www.forthethepeople.com/practice-areas/medical-malpractice-attorney/what-should-i-do-after-noticing-denture-adhesive-poisoning-symptoms/> discussing Post-Traumatic Stress Disorder (PTSD).

A. Shifting Mindset Evidence²⁷

The production of facts for damages and payment, as much as the problems and forms of recompensed activity that continue, are the subject of this Article.²⁸ "There are different strategies to employ."²⁹ Defenders of Wildlife, People for the Ethical Treatment of Animals (PETA), and Sierra Club, for example, demonstrated projects that were evaluated by specialists to compile effects to improve water, and United Nations, Women's Rights Center, and World Health Organization provided paths to avoid error.³⁰

²⁷ "I have seen successes, sometimes dramatic successes. This post captures some of the lessons I have learned." Gary Klein Ph.D., "Shifting Mindsets: What Does It Take? Four Ingredients for Making Changes, PSYCHOLOGY TODAY (Mar. 20, 2023), <https://www.psychologytoday.com/us/blog/seeing-what-others-dont/202303/shifting-mindsets-what-does-it-take#:~:text=Key%20points%201%20Mindsets%20stem%20from%20beliefs%2C%20and,shift%20happens%20suddenly%20but%20usually%20it%20takes%20practice.>

²⁸ See Parts III and IV.

²⁹ *Id.*

³⁰ SeaWorld & Busch Gardens Conservation Fund, Human Impact and Conservation, <https://seaworld.org/animals/ecosystems/tide-pools/human-impact-and-conservation/>, *contra* "[D]olphins...are sexually abused and sometimes drugged so they can't fight." David Perle, "Dolphin Defenders to Disrupt 'Celebration' of 60 Years of Misery at SeaWorld San Antonio," PETA (Mar. 21, 2024), <https://www.peta.org/media/news-releases/dolphin-defenders-to-disrupt-celebration-of-60-years-of-misery-at-seaworld-san-antonio/>, *but see* Associated Press, "Florida Enlists Dolphins' Hartline, Other

Although these organizations worked apart from federal oversight at the command level, their missions coalesced and the people received direct and indirect forms of remuneration achieved through their effort.³¹ The contributions made to courthouse water should be analyzed according to each area's ability to detect

Athletes in Anti-Litter Campaign," WTVJ/NBC (Apr. 28, 2014), <https://www.nbcmiami.com/news/sports/florida-enlists-dolphins-hartline-other-athletes-in-anti-litter-campaign/69971/>.

The Florida Department of Transportation is enlisting professional athletes as part of a new anti-litter campaign. The campaign launched Friday will include Jacksonville Jaguars safety Johnathan Cyprien, Miami Dolphins wide receiver Brian Hartline, Tampa Bay Buccaneers running back Mike James, golfer Kenny Knox and NASCAR driver Scott Lagasse, Jr. will take part in the campaign. The department is calling the effort 'Drive It Home ... Keep Our Paradise Litter Free.' It will use television, radio, newspaper ads and billboards to encourage people to properly dispose of trash." *Id.*

"Compared with other areas of Sweden, the level of air pollutants in the western part of Scania (where most people live) can be high because of road transportation to and from the European continent and a considerable amount of cargo shipping and ferry transport along the coast. However, air pollutant levels are generally well below the present World Health Organization air quality guideline (World Health Organization 2006) and low in a European perspective." Ebba Malmqvist, et al., *Maternal Exposure to Air Pollution and Birth Outcomes*, 119 ENVIRONMENTAL HEALTH PERSPECTIVES 553 (2011), <https://ehp.niehs.nih.gov/doi/10.1289/ehp.1002564>. "The analysis links birth records for Pennsylvania between 2003 and 2014 to data on drinking water contaminant levels in community water systems from the US Environmental Protection Agency and the Pennsylvania Department of Environmental Protection." Robin McKnight, "Drinking Water Contamination, Even at Low Levels, Affects Birth Outcomes, The Bulletin on Health, National Bureau of Economic Research (NBER) (Nov. 7, 2023), <https://www.nber.org/bh/20233/drinking-water-contamination-even-low-levels-affects-birth-outcomes>.

³¹ NBER (2023).

evidence of changes, for example taste and color, and then organizations and people known to contribute to these effects should be awarded enforceable payouts for structured performance and damages where previous or present cases call for restitution and other measures to be given.³²

Some excerpts, generally, from their websites show cohesion and vision.³³ “A flatland with tall grasses blowing in a gentle breeze,” “a mountain range with high, snow-capped peaks and low river-flowing valleys,” and “a wetland with mangroves climbing out of the slow-moving, grassy water” may be improved by Defenders of Wildlife.³⁴ “Unfortunately, much of the landscape has been converted to agriculture and developments....Between increasingly limited space for the animals to thrive and poor management of

³² Jacqueline MacDonald Gibson, John M. MacDonald, Michael Fisher, and Philip J. Cook, *Early Life Lead Exposure From Private Well Water Increases Juvenile Delinquency Risk Among US Teens*, Proceedings of the National Academy of Sciences of the United States (PNAS)(2022), <https://www.pnas.org/doi/10.1073/pnas.2110694119>.

³³ Allison Cook, “What Is Habitat Restoration and Why is It Important?,” Defenders of Wildlife (June 1, 2023), <https://defenders.org/blog/2023/06/what-habitat-restoration-and-why-it-important>.

³⁴ *Id.*

imperiled and keystone species, the biodiversity in this region has taken a major hit.”³⁵

When ecosystems are balanced the work is evident.

The [Bronx R]iver became highly polluted in the 19th and 20th centuries, according to the American Museum of Natural History, when it was used for the disposal of industrial waste, including fertilizers and oil. That pollution resulted in the loss of many plants and animals. But groups have been working for decades to restore the waterway. The Bronx Zoo stopped discharging more than 200,000 gallons of animal waste into the river in 2001 and the New York Botanical Garden stopped discharging thousands of gallons of pollutants into the water in 2002, according to the Bronx River Alliance. The latest sighting is a ‘sign of a healthy ecosystem,’ according to the parks department.³⁶

Rare dolphins returned to the river.³⁷ "The dolphins help provide ecological balance" "adding" "great social benefit."³⁸

³⁵ *Id.*

³⁶ Li Cohen, “Dolphins Spotted in Bronx River for the First Time in Years, Highlighting Cleanup Efforts,” CBS News (Jan. 24, 2023), <https://www.cbsnews.com/news/dolphins-bronx-river-new-york-city/>.

³⁷ *Id.*

³⁸ *Id.*

Defenders of Wildlife has described several regions and their problems.³⁹

Human development is one of the greatest threats to the Rocky Mountains. Stream flows are declining as the water is diverted and over-allocated for development, agriculture and energy production. Diminishing and fragmented habitat forces wildlife to navigate neighborhoods, highways, livestock and people, increasing chances of conflict between animals and humans. Intact habitats provide spaces for wildlife and outdoor recreation, promoting physical and mental well-being.⁴⁰

Although critical, they work closely with legislators and use legislation to defend animals and land.⁴¹

Water is defended by the group, which helped the government to produce cleaner courthouse water, an indirect effect of their contributions.

Despite its importance, the Greater Everglades has been halved from draining and other engineering for human

³⁹ Defenders of Wildlife (2023).

⁴⁰ *Id.*

⁴¹ *Id.* “Many forests are threatened by unsustainable forestry practices. Excessive logging and resulting fragmentation destroy habitat for imperiled species and force wildlife to make dangerous journeys across busy roads. Climate change, with warming temperatures and changing precipitation levels, has shifted the optimal zones.” *Id.*

development and agriculture to support Florida's ever-growing population. Additionally, the sea level is projected to rise three feet or more over the next century, threatening much of the low-lying ecoregion to submersion.⁴²

“Despite U.S. laws and varying state and private management practices,” facts about collaboration must be recorded.⁴³

“Defenders is a consistent force working to secure conservation gains across this unique landscape.”⁴⁴

The government and others are able to produce testimony and records demonstrating plans and changes, but the court should proceed on the theory that the work is being accomplished by Defenders of Wildlife because they have always claimed to do it.⁴⁵

When they are not regarded, the forces promoting economic, natural, and healthy cooperation intervene to produce results.⁴⁶

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Defenders of Wildlife (2023).

⁴⁶ Jaime D. Sigaran & Ted Illston, “River Budget: National Priorities for Healthy Rivers and Clean Water (FY24),” American Rivers, <https://www.americanrivers.org/resource/river-budget-national-priorities-for-healthy-rivers-and-clean-water-fy24/>.

Of the reported facts available through the press some report all of the details, while others mention only the problems. Properly the press achieves the results and should be considered in legal channels.⁴⁷ PETA, a member of the press, protested when the government needed to mount force against lawbreakers.⁴⁸ "People for Ethical Treatment of Animals (PETA) was protesting outside of the U.S. Department of Interior on Friday asking [the] Secretary" "to act on the fate of the 1,000 monkeys being held in limbo."⁴⁹ "They arrived from Cambodia and the federal government has been holding them for months, after questioning if the primates entered the country illegally."⁵⁰ Through the Department of the Interior, the animals expected a resolution.⁵¹ For

⁴⁷ Food & Environment Reporting Network (FERN), "Interior funds Project to Reduce Colorado River Water Use," FERN (Feb. 13, 2023) https://thefern.org/ag_insider/interior-funds-project-to-reduce-colorado-river-water-use/.

⁴⁸ Scott Taylor, "What's Happening to 1,000 Monkeys in Limbo in Frederick, Maryland?," ABC7 (July 21 2023), <https://wjla.com/features/i-team/1000-monkeys-frederick-maryland-lab-peta-animals-illegal-transport-cambodia-secretary-deb-haaland-us-department-of-interior-charles-river-labs-born-free-us>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* See PETA (2024).

example, "The Interior Department will provide \$125 million for a program that compensates water users, including farmers, on the Upper Colorado River who voluntarily conserve water. The money for the System Conservation Pilot Program was part of \$728 million announced by [the] Interior Secretary...on Monday for Western water projects."⁵² Courts should aid in these endeavors because eventually they add to the cleaner water enjoyed and needed inside courthouses.

The reports covered a range of descriptions about the Interior's response.⁵³ The results were positively proposed. "PETA believes the clock is ticking on successfully transporting the monkeys to Born Free USA, a monkey sanctuary in Texas, a much more natural environment than a steel cage in a lab."⁵⁴ Stepping stones were laid for successive interventions. The group described legal problems affecting water in other countries.⁵⁵

‘If these animals were illegally captured
that means infants were pulled from moms,

⁵² FERN (2023).

⁵³ PETA (2024).

⁵⁴ ABC7 (2023). *See* FERN (2023) and PETA (2024).

⁵⁵ PETA (2024).

and friends were separated. That entire troops were devastated and if you are a macaque the most important thing you have is the other macaques in your group,' says Dr. [Lisa] Jones-Engel.⁵⁶

The court can make a flow chart, for example from the responses of experts willing to serve as witnesses and representatives and direct paralegals and attorneys to funds for the groups' effort to clean water and prevent errors causing water problems.

B. Practicum

Water was improved by the team that mixed preexisting and *sui generis* contributions. The authorities led the large group with publicized parameters using a reliable method. The approach was documented through advancements and improvements. The legal boundaries were afforded by the Judge Advocate General (JAG) and the local lawyers. Teams of forensic specialists, international commands, foreign visitors, starring guests, religious

⁵⁶ABC7 (2023).

figures, shamans, animal specialists, and others were assigned and deployed to, over, around, under, etc. sensitive and unpopulated areas to monitor human presence and work and volunteer in areas that were not fully monitored by the group from land, air, and sea.⁵⁷

Human pollution, use, waste, and patterns were impacted by the entrance of trained and observing folks. The people giving time and money are individually able to explain how they treated each area around the world. This examination describes generally what some Americans did to improve taste.

Taste was improved by reducing corruption affecting employees and customers at the water company; collecting trash from coastal areas; scaring away poisoners seeking drug trades; preventing drug

⁵⁷ *I.e.*, Cohen (2023). "The Bronx River was considered an "open sewer" for years, in large part because of the large amounts of industrial waste dumped in the New York City waterway in the 19th and 20th centuries. Dolphins were among the several species that the pollution had driven out — but last week, for the first time in years, they made a return." *Id. See also*, History, *U.S. Agent William Eaton Leads U.S. Forces "to the Shores of Tripoli,"* April 27, 1805, <https://www.history.com/this-day-in-history/to-the-shores-of-tripoli>. "In April 1805, a major American victory came during the Derna campaign, which was undertaken by U.S. land forces in North Africa. Supported by the heavy guns of the USS Argus and the USS Hornet, Marines and Arab mercenaries under William Eaton captured Derna and deposed Yusuf Karamanli." *Id.*

trade on and near waterways; stopping deforestation, ending riots, and attacking terrorists; preventing filth, leading police to interrupt and referee domestic violence; and reducing body cleansing or altering rituals and luxuries that contaminate.

The people have worked, altered habits, and contributed recommendations consecutively for around three years to achieve better taste. Millions of people can claim that they worked part-/full-time and believed that they would receive remuneration adding to the vigor and strength of their work and output. People recruited others and can report their activities. Spiritual practitioners added chants, moved blockages, performed healing, and used other powers to stop enemies, protect wild lands, and bring about better taste. Though war zones attracted and repelled certain types of workers and volunteers, covert operations sufficed as they were given guidance through unexpected machinery, zesty military maneuvers, criminal justice (cj) cameras, and last resort measures such as projections and unidentified flying objects (UFOs).

III. RIGHT TO WATER IN A COURTHOUSE

People have the right to have courts produce the facts of cleaner and better tasting water.⁵⁸ The text of the Seventh Amendment states that a fact may be proven to a jury and that it cannot be challenged after that.⁵⁹ “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”⁶⁰

⁵⁸ See 49 CFR part 9 (2024); 25 U.S. Code § 2813 (2024). *But see*, Elizabeth A. O’Connell, “How to Subpoena a Government Agent: Compliance with Touhy Regulations for ICE, CBP, DEA and FBI,” Prison Legal News, <https://www.prisonlegalnews.org/media/publications/How%20to%20Subpoena%20a%20Government%20Agent%20Federal%20Public%20Defender's%20Office%20W.D.%20Tex.%202011.pdf> *citing* 28 C.F.R. §§ 16.21-16.26 (2011) and United States ex rel. Touhy v. Regan, 340 U.S. 462 (1951).

⁵⁹ U.S. Const. amend. VII.

⁶⁰ *Id.* See “Constitution of the United States: Seventh Amendment, Constitution Annotated, <https://constitution.congress.gov/constitution/amendment-7/>. Constitution of the United States: Seventh Amendment, “Amdt7.1 Overview of Seventh Amendment,” Civil Trial Rights, Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt7-2-1/ALDE_00013443/. “The Amendment traces its roots to English common law; some historians trace the origin of the English jury as far back as Ancient Greece.” *Id.*

In *Curtis v. Loether*, "The Court concludes that there is a two-part test for deciding whether a statute triggers a jury right: the kind of rights protected by the statute and the kind of remedy provided for under the statute."⁶¹ According to originalist theories rooted in 1791, "[t]his means that the Amendment does not guarantee trial by jury in cases under admiralty and maritime law and in other proceedings historically tried by a court instead of a jury, nor does it reach statutory proceedings unknown to the common law concerning the enforcement of statutory public rights created by Congress."⁶²

Facts can be recorded by a trial court.⁶³ Courts have established that water pollution has occurred and should establish that improvement has occurred. This fact should be distributed for use in matters relating to

⁶¹ "1974Seventh Amendment Right Applies to Statutory Claims," Annenberg Classroom, https://www.annenbergclassroom.org/timeline_event/seventh-amendment-right-applies-statutory-claims/ *citing* *Curtis v. Loether*, 415 U.S. 189 (1974).

⁶² Constitution of the United States: Seventh Amendment, "Amdt7.1 Overview of Seventh Amendment," Civil Trial Rights, Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt7-1/ALDE_00000263/.

⁶³ *Id.*

better tasting and cleaner water, including damage to the ecosystem and other elements.

A judge may allow a party to enter evidence and accept an expert's qualifications as a fact, such as a member of the Coast Guard being a qualified expert to talk about water protection.⁶⁴

There are different burdens of proof for a preliminary fact compared to an adjudicative fact. For a civil jury to find that an adjudicative fact is true, it must conclude the proponent proved its truth by a preponderance of the evidence (or, in some instances, by clear and convincing evidence). When a judge decides a preliminary fact question, the proponent's burden can be materially lower.⁶⁵

The experts are qualified to state, at times through their credentials, that they can clean and measure the cleanliness of water, including by tasting the water.

Poor taste has been reduced by the experts. The facts proved that the work was completed and that the

⁶⁴ *Infra* note.

⁶⁵ David Sugden, *The Judge's Factfinding Rule (In Jury Trials)*, Evidence at Trial (Nov. 10, 2021), <https://www.evidenceattrial.com/blog/Judge%27sFactfindingRole> (see also *Bourjaily v. United States*, 483 U.S. 171 (1987)).

experts should be paid. The experts guaranteed deliverable benefits and pay to some of the volunteers and teammates.

In federal courts, the procedure for making a ruling on a preliminary question is found in Rule 104: '(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege. (b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later. Fed. R. Evid. 104(a), (b) (emphasis added).'⁶⁶

The Coast Guard can state that water cleaning strategies have been used effectively.

Members of the justice system, such as officers of the court, and specifically, judges, can testify about improved water and the rights involved with the

⁶⁶ Sugden, *The Judge's Factfinding Rule* (2021).

procurement and consumption.⁶⁷ “But when considering the ‘role of the courts in decision-making and policy-making,’ ...take into account ‘[t]he way in which courts (when compared to individuals, institutions, and other decision-making bodies) operate under procedures and traditions that produce a systematically and predictably information-poor decision-making environment.’”⁶⁸ Rights emerge when there is no force against a practice.⁶⁹ Water is available in the courthouse. There are bathrooms, sinks, and water fountains. Therefore, the people rely

⁶⁷ “Judges Request Funding to Address Cybersecurity, Courthouse Safety, Growing Workload,” US Courts (May 12, 2022), <https://www.uscourts.gov/news/2022/05/12/judges-request-funding-address-cybersecurity-courthouse-safety-growing-workload>. Judges “testify before the House Appropriations Subcommittee on Financial Services and General Government.” *Id.* “Two federal judges testified that a Judiciary budget of \$8.6 billion is needed to keep pace with inflation and to pay for important new investments in courthouse security, IT modernization, and cybersecurity. They also requested staffing to address workload increases caused by issues outside the Judiciary’s control.” *Id.*

⁶⁸ Matthew Wills, “Fact-Based Courts, but What Facts?,” JSTOR Daily (Feb. 11, 2022), <https://daily.jstor.org/fact-based-courts-but-what-facts/>.

⁶⁹ See Kristin Plys, “Representing the Female Body” The Metropolitan Museum of Art (Mar. 8, 2024), <https://www.metmuseum.org/perspectives/articles/2024/03/representing-the-female-body>.

on water there. Courts often serve water and give cups to courthouse attendants.⁷⁰ Therefore, water is a right.

Officers of the court, for example, can produce stronger rights by documenting that the courthouse workers, inmates, animals, etc. have helped the courthouse and deserve access to fresher water. Many settlements have touched on the issues and facts, like this example:

The settlement will establish a court-monitored victims compensation fund that will provide direct payments to Flint residents – with nearly 80% of the money going to those who were younger than 18 at the time of the crisis, according to the terms of the settlement. Minors who were [six] years old or younger will receive the biggest share. In addition, \$35 million will be set aside for ‘future minor claimants’ to accommodate children who did not file claims immediately, according to the court documents.⁷¹

⁷⁰ See Understanding the Flint Water Litigation—Defining Justice in the Parameters of the Adversarial Process By Deborah Greenspan, https://www.americanbar.org/groups/judicial/publications/judges_journal/2023/fall/#:~:text=The%20Flint%20water%20litigation%20involves%20complex%20legal%20and,the%20facts%2C%20issues%2C%20and%20disputes%20in%20the%20courtroom.

⁷¹ Laura Ly, “Judge Gives Final Approval of \$626 Million Settlement for People Affected by Flint Water Crisis,” CNN (Nov. 10, 2021),

"These children will be given the opportunity to file a settlement claim before they turn 19 years old, subject to available funds."⁷² Courthouses may be surprised because "the defendants participating in the settlement do not include all individuals involved in litigation regarding the water crisis, so the settlement is 'only a partial settlement of the Flint Water cases.'"⁷³ "About \$600 million of the \$626 million settlement will be paid by the state of Michigan and other defendants associated with state agencies."⁷⁴ "The remaining portions will be split between the city of Flint and its associated defendants, McLaren Healthcare, and Rowe Professional Services Company, the order states."⁷⁵

Prisoners, indigent parties, and needy guests rely on the availability of water provided by the public. Their right to water includes a right to clean water. Children also have a right to clean toilet water.⁷⁶ Boys, for example, have a special right to clean urinal

<https://www.cnn.com/2021/11/10/us/flint-michigan-water-crisis-judge-approves-settlement/index.html>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Cook (2023).

water.⁷⁷ "For example, unlawful pollution of the nation's waters was prosecuted primarily under the Rivers and Harbors Act of 1899. 33 U.S.C. §403 et seq."⁷⁸

The Clean Air Act also contains a provision that imposes criminal penalties for negligent acts: '(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under Title 18, or by imprisonment for not more than [one] year, or both.' 42 U.S.C.A. §7413(c)(4). Generally, simply negligent

⁷⁷ *Id. accord* "Well Water, Lead, and the Link to Juvenile Delinquency" Penn Today, <https://penntoday.upenn.edu/news/Penn-criminology-well-water-lead-juvenile-delinquency>.

Research from Penn and other universities found that, compared to children with municipal water, those relying on private wells in the U.S. had a 21% higher risk of being reported for any delinquency and a 38% increased risk of being reported for serious delinquency after age 14. *Id.*
⁷⁸ Bruce Pasfield, "Simple Negligence and Clean Water Act Criminal Liability: A Troublesome Mix," Bloomberg Law (Oct. 7, 2010), <https://news.bloomberglaw.com/environment-and-energy/simple-negligence-and-clean-water-act-criminal-liability-a-troublesome-mix>.

conduct is not subjected to criminal penalties.⁷⁹

Yet courts may be willing to construct reference materials demonstrating how to advance good policies and interpret the law to further the law. “For example, the Florida Supreme Court declared unconstitutional the portion of the Florida Air and Water Pollution Control Act that penalized ‘mere negligent conduct.’”⁸⁰

The federal agenda is a guide. “As the court reasoned, a statute that criminalizes simple negligence fails to provide ‘clearly ascertainable standards of guilt by which a citizen may gauge his conduct,’ and is therefore unconstitutional.”⁸¹ “Historically, there may have been a need to prosecute simple negligence pollution violations through the criminal court system, but as modern environmental law has developed, that need has diminished.”⁸² The Seventh Amendment

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Pasfield (2010) *citing* State v. Hamilton, 388 So.2d 561 (1980) at 563-64.

⁸² Pasfield (2010) *cf.* Carmen M. Cusack & Matthew E. Waranius, Talking with JAG, New Orleans, Louisiana (Mar. 2024) *accord* Hassan Kanu, “Toxic Racism Confronted by DOJ’s Environmental

permits repair because it can complement criminal and constitutional law.⁸³

"The Clean Water Act does contain a provision that penalizes gross negligence, 33 U.S.C. §1321(b)(7)(D). This provision imposes civil penalties when the discharge of oil or hazardous substances into the navigable waters of the United States is the result of gross negligence or willful misconduct."⁸⁴ In the Clean Water Act "the gross negligence provision imposes...civil penalties, and [s]imple negligence is '[t]he failure to exercise the standard of care that a

Discrimination Probes," Reuters (July 28, 2022), <https://www.reuters.com/legal/government/toxic-racism-confronted-by-doj-environmental-discrimination-probes-2022-07-28/>. "The U.S.

Justice Department recently opened an environmental justice investigation." *Id.* E.g. Gidget Fuentes, "Marine Corps Begins Water Testing for Future Landing Ship Concept," U.S. Naval Institute (Feb. 26, 2024), <https://news.usni.org/2024/02/26/marine-corps-begins-water-testing-for-future-landing-ship-concept>.

Built two decades ago, the New Orleans, La.,-based Resolution was modified in Louisiana and traveled to Marine Corps Support Facility Blount Island, S.C., and Mayport, Fla....for the experimentation off California. Those modifications turned a ship built to support offshore oil facilities into a landing ship that can pull up onto a beach or drop its ramp on a rocky coast or quay." *Id.*

Prensa Latina, "Environmental Protection, a Priority in Cuba's Legislative Framework," *P L*. (June 5, 2022), <https://www.plenglish.com/news/2022/06/05/environmental-protection-a-priority-in-cubas-legislative-framework/>.

⁸³ U.S. Const. amend. VII.

⁸⁴ Prensa Latina (2022).

reasonably prudent person would have exercised in the same situation.”⁸⁵

Under the Clean Water Act any person whose negligence causes a discharge of pollutants from a point source into waters of the United States is subject to criminal prosecution and faces a fine of up to \$25,000 per day of violation and imprisonment for one year. 133 U.S.C. §1319(c)(1).⁸⁶

“At least two federal appellate courts have interpreted the degree of negligence that triggers criminal liability as simple negligence.”⁸⁷

“The Environmental Protection Agency and Department of Justice have been judicious in their use of this criminal negligence provision.”⁸⁸

Congress and the Obama administration have plans to amend the Clean Water Act’s definition of ‘Waters of the United States’ to provide more consistent protection of the nation’s waters. Most legal scholars would agree that the U.S. Supreme Court’s definition of ‘Waters of the United States’

⁸⁵ Pasfield (2010) *citing* 3 BLACK’S LAW DICTIONARY 1061 (8th ed. 2004).

⁸⁶ Pasfield (2010).

⁸⁷ *Id.*

⁸⁸ *Id.*

in *Rapanos v. United States*, 547 U.S. 715, 62 ERC 1481 (2006), is in need of a legislative fix.⁸⁹

The argument is well-supported and the system should concretize around the progressive stance.

"In *Tull v. United States*, the Court ruled that the Seventh Amendment requires a jury to determine whether an entity is liable for civil penalties under the Clean Water Act, which authorizes the Administrator of the Environmental Protection Agency to initiate a civil action in a federal district court to enforce the Act."⁹⁰ "In the Court's view, the penal nature of the Clean Water Act's civil penalty remedy distinguishes it from restitution-based remedies available in equity courts."⁹¹

Consequently, it is a type of remedy that only courts of law could impose. However, a jury trial is not required to assess the amount of the penalty. Because the Court viewed assessment of the amount of

⁸⁹ *Id.*

⁹⁰ Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt7-2-2/ALDE_00013444/#ALDF_00024379; [https://constitution.congress.gov/browse/essay/amdt7-2-2/ALDE_00013444/citing_Tull_v._United_States,_481_U.S._412_\(1987\)](https://constitution.congress.gov/browse/essay/amdt7-2-2/ALDE_00013444/citing_Tull_v._United_States,_481_U.S._412_(1987)).

⁹¹ *Id.*

penalty as involving neither the substance nor a fundamental element of a common-law right to trial by jury, it held permissible the Act's assignment of that task to the trial judge.⁹²

Courts have several options for establishing the fact of cleaner and better tasting water.

Treated water of the past meets that right.⁹³ Yet, better water is included in the right. The right to pollution free oceans, rivers, lakes, etc., is established.⁹⁴ The right to improved water has been granted.⁹⁵ The courthouse is now obligated to continue assuring this right and maintain case law with this right.⁹⁶

⁹² Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt7-2-2/ALDE_00013444/#ALDF_00024379 citing *Tull v. United States*, 481 U.S. 412 (1987).

⁹³ *Jolly v. Eli Lilly & Co.*, (1988) 44 Cal.3d 1103, 1109 [245 Cal.Rptr. 658, 751 P.2d 923].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

IV. EFFECTS OF IMPROVED WATER IN CJ STUDIES

Improved water helps mental health, rehabilitation, retribution, and deterrence.⁹⁷ These aid courts. Those benefiting may continue to support water cleaning. “Dr. Masaru Emoto, a Japanese researcher and author, delved into this intriguing relationship through groundbreaking experiments that shed light on the profound impact our thoughts, attitudes, emotions, and intentions can have on water molecules.”⁹⁸ Active cycles help the government save money, make money, conserve resources, and distribute wealth, knowledge, and support. These fortify the social contract that provides, instills, and shields the aims of justice.

Communities, system members, and processed individuals foster improved water philosophies and programs. “Both in and out of the country, most presume that residents of the United States live with

⁹⁷ Rachel Branson, “The Remarkable Influence of Thoughts on Water: Dr. Masaru Emoto’s Pioneering Experiments,” *WELLBEING MAGAZINE* (Dec. 1, 2023), <https://wellbeingmagazine.com/the-remarkable-influence-of-thoughts-on-water-dr-masaru-emotos-pioneering-experiments/>.

⁹⁸ *Id.*

close to universal access to potable water and sanitation."⁹⁹ Rehabilitation is fostered by better water. It reduces addiction and controls behavior. Retribution is achieved when intentional and negligent contaminators are forced to consume that which they intended to damage or failed to protect. Deterrence is achieved when people taste the water and like it. Also, when they detect how many people stand against contamination and reduced water utility they are estopped.

Better water shows mentally ill people differences that help them to rely on facts and make good judgments.

Studies indicate that when your body is dehydrated, your brain mass will decline beyond the typical size, which can lead to cognitive disorders: fatigue, stress, short-term memory loss, etc. Severe cases may lead to dementia or to a period in which the brain deteriorates over time and is unable to distinguish people, items, or places. With

⁹⁹ J. Tom Mueller & Stephen Gasteyer, *The Widespread and Unjust Drinking Water and Clean Water Crisis in the United States*, 12 Nat Commun 3,544 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8219686/>.

the help of water, you can be able to prevent this kind of scenario and make it work even better when you fuel it by drinking your h₂O's.¹⁰⁰

The far-reaching effects can be acknowledged systemically to improve acceptance of water and its benefits. For example, "[t]his story begins with a bicycle-powered swimming pool pump in Haiti and ends with 400 inmates in Washington building water filtration systems for Ethiopian prisons."¹⁰¹

Courthouse pets, people, and visitors will predictably improve their behavior and patterns congruent with any study demonstrating that improved water quality, such as taste, causes betterment. Likely, their attitudes will shift upward, their skin will clear, their urine will be less odorous, their bodies will be calmer, their incidents of cancer will decrease, and

¹⁰⁰ Tommy Williamson, "The Impact of Water on Mental Health," PSYCHREG (Nov. 19, 2020), <https://www.psychreg.org/impact-water-mental-health/>.

¹⁰¹ Mary Bufe, *Washington Inmates Bring Drinking Water to Ethiopian Prisons Through One-of-a-Kind Program*, Water Environment Federation WEF Highlights (June 17, 2019), <https://news.wef.org/washington-inmates-bring-drinking-water-to-ethiopian-prisons-through-one-of-a-kind-program/>.

their need to eat vegetarian, vegan, Kosher, healthy food, etc. will escalate resulting in other benefits.¹⁰²

V. CONCLUSION

Federal courts, guided by the Supreme Court overseeing state courts, are to participate in the federal agenda to clean the country's water.¹⁰³ Recognition of expertise and reliance on relevance by judges and juries will show who deserves to be paid and the amount of payment owed. Work was reliably provided to many authorities, including courthouses with poor water quality.¹⁰⁴ Therefore, the authorities should advise people about how to collect the payment, distribute awards, and circulate information, for

¹⁰² Faezeh Khorsha, Atieh Mirzababaei, Mansoureh Togha, & Khadijeh Mirzaei, *Association of Drinking Water and Migraine Headache Severity*, 77 J. CLINICAL NEUROSCIENCE 81 (2020). "The results showed that the severity of migraine disability..., pain severity..., headaches frequency..., and duration of headaches...were significantly lower in those who consumed more water or total water." *Id.*

¹⁰³ Part III.

¹⁰⁴ See, Miika Mäkitalo, "I'm From the World's Happiest Country—Our Work Culture Is Different to the US Story," *Newsweek* (Mar. 19, 2024), <https://www.msn.com/en-us/news/world/i-m-from-the-world-s-happiest-country-our-work-culture-is-different-to-the-us/ar-BB1k9ID4?ocid=msedgntp&pc=ASTS&cvid=ec04308071564f908f10d330e42fc916&ei=16>.

example, about open jobs, volunteer labor, and community service for probation. Authorities should simply let be what is not in dispute or unknown and satisfy the problem by acknowledging the solution.

Fact-finding procedures should aim fairly and expediently to hear and conclude matters that involve the quality, such as cleanliness and taste, of water.¹⁰⁵ Where cases, remedies, and laws preclude new fact-finding and awards the people should rely on common law and *stare decisis* to instigate action and payment.¹⁰⁶ Alternative resolutions and corporate distribution, such as international commercial arbitration, are like jury trials and judicial findings when parties agree. Distribution of materials shall be made to participants around the world.¹⁰⁷ Information and commitment shall be gathered for future projects.¹⁰⁸ Similar progress is to be expected. The

¹⁰⁵ *Id.*

¹⁰⁶ U.S. Const. amend. VII.

¹⁰⁷ Prensa Latina (2022).

¹⁰⁸ *Id.*

benefits of water cleaning projects and efforts are to be recalled.¹⁰⁹

¹⁰⁹ Judge Larry Primeaux, *Reprise: How to Refresh Recollection*, The Better Chancery Practice Blog (Mar. 24, 2017), <https://betterchancery.com/2017/03/24/reprise-how-to-refresh-recollection/>.

Mississippi law has long recognized the right of a witness to have her memory refreshed, and our law has allowed anything to be used to refresh independent recollection. Refreshing recollection is not limited to written documents. As MRE 612 states ‘If a witness uses a writing, recording or object to refresh his memory for the purposes of testifying ...’ Or, as a law professor eloquently put it, you can use a pencil or a flower pot, if that will do the job. Bear in mind that the process of refreshing recollection is intended to restore the witness’s independent recollection of a matter. It is not a process of educating a witness about matters beyond his ken, nor is it a backdoor path to admission of an otherwise inadmissible item. Once the witness’s recollection has been restored, the witness continues her testimony based on her now-restored recollection, independent of the refreshing item. *Id.*

HEAVING RAGE WITHIN A STORY ABOUT A VICE PRESIDENT'S LEGACY AFTER DYING

LSD Journal Book Reviewer

Law graduate, Liz Cheney, attacks opponents, enemies, and adversaries as her life unfolds in *Oath and Honor*, a recount from former Vice President Dick Cheney's daughter. She shares photographs of leaders celebrating and working together throughout her life that developed her popular representation like her father. Gerald Ford at Camp David with her as a child; Ronald Regan with his wife and her father, a congressman when she was a young woman; and George W., George, and Jeb Bush with their family are some warm images.

Her strength is not rationalizing bad decisions. Her weakness is that she lays apparent traps and falls in them. She is fun, but cannot see that; and she sees herself as serious. The promise to uncover secret government affairs is a letdown, and throughout it all

LSD Journal Book Reviewer

she fights for gender protection and wins power for women.

Cheney's tone is uneasy and rejecting. She shunters upheaval. Consistently attributing to and mentioning her father she is the poster child chipping away an unfair veneer. This work is not for everybody, not readable, and not like a normal memoir. Her effort attempts to control her part of his legacy. It is an arrow flying from an American Bald Eagle's talon that calls for solidarity in D.C. among North Westerners. Money is a connection between opulence and preservation.

PATRIOTIC REFRESHMENT: GRANDDAUGHTER COMING AFTER GRAND PRIZE DELIVERY

Carmen M. Cusack

I. INTRODUCTION (100% PRESENT)

A. Thesis (Something):

This Essay is about nontaxable gifts.¹ A person retiring from a job may receive a gift from a coworker, such as a partner including a spouse, that is not taxable.² It is not the same as a large prize, estate receipt, and award, which are taxable.³ The 16th

¹ U.S. Const. amend. XVI. U.S. Const. amend. XXIV. The 24th Amendment is for prohibiting poll tax. U.S. Const. amend. XIX. The 19th Amendment assures suffrage. The Founders believed in household voting, but luckily household voting helped suffrage that countered poll tax.

² "26 U.S. Code § 102 - Gifts and inheritances," Cornell University, <https://www.law.cornell.edu/uscode/text/26/102#c>.

³ "Taxation of Gifts, Prizes and Awards to Employees," Office of Ethics, Compliance, and Risk, The George Washington University, <https://compliance.gwu.edu/taxation-gifts-prizes-and-awards-employees>. "Estate Tax," Internal Revenue Service (IRS), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>. "Gift Tax," IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/gift-tax>.

Amendment permits Americans to be taxed.⁴ Tax is a demand from the government for a portion of the money earned.⁵ Evidence of tax is present in the 24th Amendment and in the powers of Congress.⁶

Failure to pay tax, such as the tax prohibited in the 24th Amendment, causes consequences; and some that are not part of giving, for example within the normal family structure, because the amounts are so small and the legal meanings are emotional not economic.⁷ The Coast Guard has collected tax with Homeland Security, Customs and Borders, the Internal Revenue Service, the Federal Bureau of Investigation, county police, local magistrates, and others.⁸ “It was

⁴ U.S. Const. amend. XVI.

⁵ *Id.* Tax is a demand from the government for a portion of the money spent as well.

⁶ *Id.* U.S. Constitution - Article 1 Section 8, *The Taxing Clause*, Constitution Center, <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/751>.

⁷ U.S. Const. amend. XXIV.

⁸ Kay Bell, “U.S. Coast Guard, Created to Collect Some Taxes for a Young America, Turns 229 Sunday,” *Don't Mess with Taxes* (Aug. 4, 2019), https://www.dontmesswithtaxes.com/2019/08/us-coast-guard-created-to-collect-some-taxes-for-a-young-america-turns-229-.html#google_vignette. “The force that we know as the coastal defense and maritime law enforcement branch of the United States Armed Forces had its beginnings as Revenue Marine.” *Id.* See, Madison Dapevich, “Male Dolphins Form ‘Bromances’ to Help Each Other Hook Up with Females?: ‘Bros Before ... ‘ — Well, You Get the Gist,”

considered patriotic to...prevent[] funds from getting back to the” enemy “says Jennifer A. Gaudio, curator at the U.S. Coast Guard Museum at the U.S. Coast Guard Academy in New London, Conn[ecticut].”⁹ “Nowadays, the U.S. Customs and Border Protection handles taxes and duties.”¹⁰ While donors of large gifts, for example, may incur tax consequences like taxation and tax exemption, gifts almost never incur consequences.¹¹

Rules that protect emotional reasoning affect gift tax, but usually do not affect individuals.¹² Unlike other untaxed transfers, such as to a charity, a gift does

Snopes (Oct. 31, 2023), <https://www.snopes.com/fact-check/male-dolphins-form-bromances/>. “Snopes has seen this claim circulate on social media and on websites since at least 2012, including the below post shared to Reddit in October 2023: FACT: Dolphins have ‘bromances’ in which two males pair up for as long as 15 years and help each other hook up with females.” *Id.*

⁹ Olivia B. Waxman, “Why Alexander Hamilton Started the Coast Guard,” *TIME* (Aug. 4, 2017), <https://time.com/4881169/coast-guard-birthday-history/>.

¹⁰ *Id.*

¹¹ “Frequently Asked Questions on Gift Taxes,” IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes>.

¹² See *i.e.*, Don Kramer, “Is a Nonprofit Required To Report Anonymous Donors To the IRS?,” Nonprofit Issues, https://www.nonprofitissues.com/to-the-point/nonprofit-required-report-anonymous-donors-irs#google_vignette.

not need to be delivered to the next best person if the retiring spouse dies, such as is the case with a charitable donation if it is not properly given to an open charity; but, selling a gift incurs a tax consequence.¹³ Corporations include emotional retirements, like a cooperative and business partnership.¹⁴ A man that retires in order to receive the delivery of an office gift of a poster of appreciation, a nut basket, and a lottery ticket that he believes is a winning ticket, does not need to pay taxes on the delivery charge paid by the company, basket, and poster.¹⁵ The amount won will

¹³ Aaron Hall, "Who Can a Nonprofit Give Funds to When Dissolving?" (Apr. 20, 2022), <https://aaronhall.com/who-can-a-nonprofit-give-funds-to-when-dissolving/#:~:text=Thus%2C%20a%20dissolving%20nonprofit%20should%20donate%20its%20funds,consistent%20with%20the%20nonprofit's%20historical%20mission%20and%20purpose.> "Thus, a dissolving nonprofit should donate its funds to 501(c)(3) organizations that will use the funds in a manner consistent with the nonprofit's historical mission and purpose." *Id. See generally*, "Donation Delivery and Refund Policy," CanadaHelps (May 16, 2022), <https://www.canadahelps.org/en/donation-delivery-and-refund-policy/>. Compare Jackie Olling, "What's the Difference Between Winding Up and Liquidation?", Law Path, <https://lawpath.com/blog/whats-the-difference-between-winding-up-and-liquidation> with Matthew O'Grady, "Time to Fold: Keys To Gracefully Winding Down A Nonprofit," Blue Avocado (Jan. 14, 2020), <https://blueavocado.org/leadership-and-management/time-to-fold-keys-to-gracefully-winding-down-a-nonprofit/>.

¹⁴ Hall (Apr. 20, 2022).

¹⁵ "Man Wins Lottery After Palm Sunday Breakfast With Granddaughter," ABC13 (WTVD) (Apr. 30, 2019),

be taxed.¹⁶ A gift may be taxed before it is given, but for example, if a granddaughter receives a portion of a lottery payout from him, then it is still a gift.¹⁷

B. Explanation (Whatever):

Taxable income is from any source derived, but not gifts.¹⁸ Gifts are excluded because in a free society, people have a right to give and receive gifts.¹⁹ While they pay sales tax sometimes on gifts bought for another, they can give and get a small gift without gaining from missing income tax, being taxed, or causing the other to incur an income tax.²⁰ Tax is saved from those who earn money and can afford to pay for the government.²¹

<https://abc13.com/lottery-winning-winnings-man-gives-earnings-to-granddaughter/5277936/>. "The pair then waited for Thomas to get home from volunteering to tell her about the big surprise." *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. Const. amend. XVI.

¹⁹ *Id.*

²⁰ 26 U.S. Code § 102(c)(1) (2023). (Taxable gift that benefits a business from an employer.)

²¹ U.S. Const. amend. XVI.

Tax is spent when people need it.²² It is also spent regularly.²³ The government pays for roads, schools, water utilities, farm subsidies, the press, and other necessities.²⁴ The government pays for itself and for those who are needy.²⁵ Sometimes, the government pays for food and water, education, clothing, and shelter when people are

²² See Bell, "U.S. Coast Guard, Created to Collect Some Taxes for a Young America, Turns 229 Sunday" (2019). Verena Dobnik, "'Fearless Girl' Statue Stares down Wall Street's Iconic Bull," CityNews, The Associated Press (Mar. 8, 2017),

<https://toronto.citynews.ca/2017/03/08/fearless-girl-statue-stares-wall-streets-iconic-bull/>. "Well, we really wanted the bull to have a partner, and a partner that we thought was worthy of him," said Lori Heinel.

²³ "Randall Rittenhouse Rhodes 66, of Honolulu, Hawaii, died in Honolulu on October 9, 2023. He was born in Champaign, Illinois. Burial: 10 a.m. on Thursday, November 2, 2023, at the Hawaii State Veterans Cemetery, Kaneohe." Randall Rhodes Obituary, HAWAII STAR ADVERTISER,

<https://hawaiiobituaries.com/us/obituaries/hawaiiobituaries/name/randal-l-rhodes-obituary?id=53493688> and <https://obits.staradvertiser.com>.

²⁴ Andrew Kunesh, "Capital One Just Opened A New Airport Lounge In Denver — Here's Your First Look," CNN Underscored, <https://www.cnn.com/cnn-underscored/travel/capital-one-airport-lounge-den> (Updated 4:05 PM EDT, Fri Nov. 3, 2023).

²⁵ Thomas Gryta & Laura Saunders, "Jeff Bezos Plans Miami Move for Family, Work...and It Might Help Tax-Wise, Too: The Move Back To His Childhood Home Brings Emotions, Potentially Lower State Taxes And Fellow Billionaires," WALL STREET JOURNAL, https://www.wsj.com/business/amazon-founder-jeff-bezos-sets-move-to-miami-after-decades-in-seattle-441fae8d?mod=hp_lead_pos10 (Updated Nov. 3, 2023).

destitute.²⁶ The government also pays for arms and may aid in self-defense.²⁷

II. GIFT OR INCOME (50/50 SPLIT)

A gift may be given to a coworker when he departs for retirement.²⁸ When a person retires from one job and enters another with the same coworkers, the gift is nontaxed.²⁹ Retirement ends the business

²⁶ “2023 NFL Odds: Can A.J. Brown Win Offensive Player of the Year?,” Fox Sports, <https://www.foxsports.com/stories/nfl/2023-nfl-odds-can-a-j-brown-win-offensive-player-of-the-year> (Updated Nov. 4, 2023). (“historic run”) *id.*

²⁷ Chronicle Editorial Board, *S.F. ’S Hiring Process Is Broken and It’s Dumping Your Tax Dollars in a Bonfire*, SAN FRANCISCO CHRONICLE, <https://www.sfchronicle.com/opinion/article/san-francisco-sheriff-deputy-18465101.php>. “Would you wait a year to get hired for a job? If you want to become a San Francisco sheriff’s deputy, that’s exactly what the city expects you to do.” *Id.*

²⁸ Emily Burack, “The Crown Casts Pippa Middleton for Final Season,” TOWN & COUNTRY MAGAZINE (Oct. 17, 2023), <https://www.townandcountrymag.com/leisure/arts-and-culture/a45558960/who-is-matilda-broadbridge-pippa-middleton-the-crown/>. (“self-made”) *id.*

²⁹ David Wilson, “Miramar’s Offense Brings Balance As Patriots Rout of South Broward to Cap Regular Season,” MIAMI HERALD, <https://www.miamiherald.com/latest-news/> and www.miamiherald.com/sports/high-school/article281383023.html (Updated Nov. 4, 2023). “Patriots quarterback Kael Alexander threw three touchdown passes.” *Id.*

relationship.³⁰ Retirement compensation packages may continue to pay but the employment structure is gone.³¹ The person exists the work environment.³²

A retired person receives gifts upon departure.³³ Departure is a pleasant experience and that is why the gifts are not taxed.³⁴ Taxation results from income not

³⁰ Gail Mitchell, "Doja Cat Gives Commanding Performance at L.A. Stop on 'The Scarlet Tour'," MSN, <https://www.msn.com/en-us/music/news/doja-cat-gives-commanding-performance-at-l-a-stop-on-the-scarlet-tour/ar-AA1jnrd?ocid=msedgntp&pc=HCTS&cvid=f506b11e9bba48829b29d76cb00f427f&ei=17>. (Updated photo Nov. 3, 2023). "I got drive, I don't need a car." *Id.*

³¹ 26 U.S. Code § 102 (2023) (installments).

³² Frank Schwab, "NFL Picks Against the Spread: Bills-Bengals Will Cap Off Some Great Sunday Matchups," MSN, <https://www.msn.com/en-us/sports/nfl/nfl-picks-against-the-spread-bills-bengals-will-cap-off-some-great-sunday-matchups/ar-AA1jl7aI?ocid=msedgntp&pc=HCTS&cvid=f506b11e9bba48829b29d76cb00f427f&ei=25>.

"The Cincinnati Bengals and Buffalo Bills came into the season as part of a small group of Super Bowl favorites." *Id.* "That's what makes Sunday night's game so intriguing." *Id.* "The Bills are behind the Dolphins in the AFC East. The Bengals are behind everyone in the AFC North; they're technically the last-place team in the division as Week 9 begins." *Id.*

³³ Tara Mastroeni, "What Is The Gift Tax Rate?," FORBES (May 30, 2023), <https://www.forbes.com/advisor/taxes/gift-tax-rate/>. "The 1960s were one of the most interesting times in American history for a handful of sociopolitical reasons." Madison Troyer, "The Best TV Show of the '60s, According to Data—and See if Your Favorite Made the Top 100," MSN, <https://www.msn.com/en-us/tv/news/the-best-tv-show-of-the-60s-according-to-data-and-see-if-your-favorite-made-the-top-100/ss-AA1jnogL?ocid=msedgntp&pc=HCTS&cvid=f506b11e9bba48829b29d76cb00f427f&ei=31>.

³⁴ *Id.*

from work.³⁵ Yet, work is not given to the retiring member.³⁶

III. EMOTIONAL DECISIONS (LIKE GIVING 10% TO CHARITY)

Normally, a person exits work and enters retirement to be with his family.³⁷ Even a marriage can be part of a partnership, such as a herding nonprofit business, but the gift made inside marriage is not an asset, it is a gift.³⁸ The family supplies him with what he needs.³⁹ He uses their heat, water, food, clothing, and shelter.⁴⁰ While he may have paid for it the whole time, and may have a business partnership with his

³⁵ *Id.*

³⁶ *Id.*

³⁷ Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966).
IRS, "Hardships, Early Withdrawals and Loans," IRS,
<https://www.irs.gov/retirement-plans/hardships-early-withdrawals-and-loans>.

³⁸ Board of Elections, 383 U.S. 663. IRS, "Hardships, Early Withdrawals and Loans."

³⁹ U.S. Const. amend. V. U.S. CONST. amend. XIV. U.S. Const. amend. XVI.

⁴⁰ U.S. CONST. amend. XIV.

wife, he is using what they have.⁴¹ They have lived there and were dividing inside the home.⁴²

If his wife, his partner, gives him a gift from their home office, it is still a gift.⁴³ While his retirement compensation or salary may have been used by the wife to pay for it, if she gives it as a gift, the business and retiree incur no taxes.⁴⁴ The consequence is that the gift may be used in the business he shares with his wife without the calculation of depreciation, amortization, or other equations.⁴⁵

His wife is free to report the gift, but does not have to.⁴⁶ The business may continue as a small private business even if his retirement pay is quite large.⁴⁷ He is free to boast that he has retired without incurring a penalty, unless he agreed

⁴¹ 26 U.S. Code § 102(c)(1) (2023).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* (leisurely/ g*d)

⁴⁶ U.S. Const. amend. V. U.S. Const. amend. XVI (may).

⁴⁷ 26 U.S.C. § 408 (2023).

first.⁴⁸ An audit would attack him for bragging about unreported money, but under this structure, he would not be audited.⁴⁹ The potential attack is resolved, not through tax court or other avenues.⁵⁰

IV. A REASON TO GIVE (0% DOWN)

A person retires from a job and starts another when involuntary responses to his work change his performance.⁵¹ For example, he may use gift cash and credit to buy a truck with a bathroom and head to the federal parks with his wife.⁵² He begins to feel emotions and duties that he has never felt before.⁵³

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Amy Morin, "10 Things to Remember When Everything Seems to Be Going Wrong at Work," FORBES (Feb. 19, 2020) <https://www.forbes.com/sites/amymorin/2020/02/19/10-things-to-remember-when-everything-seems-to-be-going-wrong-at-work/?sh=282f31d64e7d>.

⁵² Rachel Hartman, "Pros and Cons of Retirement in an RV," US NEWS (May 27, 2022), <https://money.usnews.com/money/retirement/baby-boomers/articles/pros-and-cons-of-retirement-in-an-rv>.

⁵³ Lynn Taylor, "How to Manage Power-Mongering Coworkers You Can Stand Your Ground," PSYCHOLOGY TODAY (Sep. 16, 2013), <https://www.psychologytoday.com/us/blog/tame-your-terrible-office-tyrant/201309/how-to-manage-power-mongering-coworkers>.

When a person feels a duty, the duty begins.⁵⁴ Generally, a duty arises when a conscience dictates performance.⁵⁵

If his conscience changes then the duties change.⁵⁶ He has to act differently.⁵⁷ When retirees, like grandparents, retire their priorities shift.⁵⁸ This is a normal way to describe a change in conscience.⁵⁹ Also, when a wife ages, she needs help at home and a strong husband goes home

⁵⁴ “Two people sitting in a quiet, private space perhaps with a lighted candle on a table nearby, discussing whatever life experience the directee shares. That’s spiritual direction.” Teresa Blythe, “What a Spiritual Direction Session Looks Like,” PATHEOS (Sep. 14, 2012), <https://www.patheos.com/blogs/spiritualdirection101/2012/09/what-a-spiritual-direction-session-looks-like/>.

⁵⁵ Tony Mauro, *They Are the Law Clerks of the Supreme Court From the archives | The Hidden Power behind the Supreme Court: Justices Give Pivotal Role to Novice Lawyers*, USA TODAY (Aug. 30, 2022), <https://www.usatoday.com/story/news/nation/2022/08/30/supreme-court-law-clerks-growing-influence-affects-case-rulings/10329339002/?gnt-cfr=1>. “This story originally published on March 13, 1998. It is being republished as part of the commemoration of USA TODAY’s 40th anniversary on Sept. 15, 2022.” *Id.*

⁵⁶ “In fact, the true dictionary definition of spirituality has nothing to do with religion or G*d. Spir-it-u-al-i-ty: the quality of being concerned with the human spirit or soul as opposed to material or physical things.” Barrie Davenport, “19 Examples of Spiritual Goals to Consider - Mindful Zen,” MINDFUL ZEN (July 18, 2022), <https://mindfulzen.co/spiritual-goals/>.

⁵⁷ *Id.*

⁵⁸ U.S. CONST. Am. XXIV. *Allen v. Milligan*, 599 U. S. 1 (2023) (things change).

⁵⁹ *Id.*

from work to help her with the chores.⁶⁰ A change in wellness is another reason people end work.⁶¹ They feel very healthy or unhealthy.⁶² They may change to improve.⁶³

V. STRANGE (1%ER)

Involuntary changes are a part of a profession relying on the right person.⁶⁴ The right person sticks with it until there is a systemic change responding to the person's reason for starting a new financial plan.⁶⁵

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² "The NFL is a long season. That stuff happens." Lapresse, "Patrick Mahomes Sends Message to Dolphins after His Illness and Cut Hand: I'm Fine," MSN (Nov. 4, 2023), <https://www.msn.com/en-us/sports/nfl/patrick-mahomes-sends-message-to-dolphins-after-his-illness-and-cut-hand-i-m-fine/ar-AA1jna7c?ocid=msedgntp&pc=HCTS&cvid=9f708361890d4b55acec6265d29124a2&ei=14>.

⁶³ U.S. CONST. Am. XXIV. *Allen v. Milligan*, 599 U. S. 1 (2023) (gets better).

⁶⁴ *Id.*

⁶⁵ *See e.g.* "The iconic operator of Oberweis Ice Cream and Dairy retail stores in the Midwest, which was founded in 1927, on April 12 filed for Chapter 11 bankruptcy to reorganize its business. Oberweis is a throwback to the heyday of dairies as it still sells its milk in glass bottles and offers home delivery of its dairy products in Illinois, Indiana, Michigan, Missouri, North Carolina, Virginia and Wisconsin." Kirk O'Neil, "Iconic Ice Cream Brand Files for Chapter 11 Bankruptcy," MSN, <https://www.msn.com/en-us/money/companies/iconic-ice-cream-brand-files-for-chapter-11-bankruptcy/ar->

That person continues to embrace the system and to perform other jobs that support the planned outcome by retiring after an involuntary change occurs.⁶⁶ An involuntary change may be spiritual, emotional, an average example given above, intellectual, religious, physical, or financial.⁶⁷ It is something that just happens.⁶⁸ The person cannot go on as before and there is no causation that exactly predicts the change.⁶⁹ Retirement is one way to express this process, but is not an exact science.⁷⁰

Retirement is unlike a crisis.⁷¹ A crisis tears apart the financial wellbeing of the family and

BB11G3JQ?ocid=msedgntp&pc=ASTS&cvid=a7df04a046c54fa1b60e1e6e6cb1f2b8&ei=20. Involuntary changes may happen to cows and bulls.

⁶⁶ *Id.* Sam Bader, "The Importance of Retirement Research," BOSTON COLLEGE LAW SCHOOL MAGAZINE (2022), <https://lawmagazine.bc.edu/2022/05/the-importance-of-retirement-research/>. "BC Law Professor Natalya Shnitser was instrumental in launching the Spring 2022 Retirement Research Seminar Series, an interdisciplinary initiative between Boston College Law School and the Boston College Center for Retirement Research (CRR)." *Id.*

⁶⁷ Bader, BOSTON COLLEGE LAW SCHOOL MAGAZINE.

⁶⁸ *Id.* "I'm Fine," MSN (2023).

⁶⁹ "I'm Fine," MSN (2023).

⁷⁰ *Id.*

⁷¹ See *Dixon v. United States*, 548 U.S. 1 (2006). Ohio R.C. § 2901.06 (2024). LENORE E. A. WALKER, BATTERED WOMAN SYNDROME (2009).

business.⁷² It may involve the husband beating the wife, neglecting his children, and abandoning the home.⁷³ He may join a gang and show interest in delinquents.⁷⁴ The proverbial midlife crisis is like a form of battered woman syndrome when the husband tries to sell the family's home without permission to feel younger.⁷⁵ It is an unexpected event in the family members' lives that the husband unreasonably professed to be chronological. It disrupts the system.

The worker's desire to retire, not his diseased focus on normal progression, such as age, likely leads to healthy retirement.⁷⁶ For example, a person may retire from the National Football League (NFL) at 33 years old.⁷⁷ It does not mean

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Kevin Dotson, "NFL Star Rob Gronkowski Announces His Retirement," CNN (June 21, 2022), <https://www.cnn.com/2022/06/21/sport/rob-gronkowski-retirement-spt/index.html>. Four-time Super Bowl champion Rob Gronkowski...announced his retirement.... This is Gronkowski's second time retiring from the

that he spent a lifetime at the same law firm like when a person retires at 65.⁷⁸ Retirement equates with a major life change—leaving one job and entering another or leaving a work environment altogether.⁷⁹

An involuntary change is not forcible, but it emotionally is like a physiological response to work.⁸⁰ Work is a fixed plan and performance corresponding to an industry.⁸¹ When people

NFL, . . . playing from 2010 to 2018 with the Patriots before returning in 2020 to play two seasons with the Buccaneers. Gronkowski, 33, wrote . . . , ‘I want to thank the . . . first class Buccaneers organization for an amazing ride.’ *Id.*

⁷⁸ Julie Miller, “Water Boy: The History of the NFL’s Unsung Heroes,” Yard Barker, Originally Posted on The Forkball, https://www.yardbarker.com/nfl/articles/water_boy_the_history_of_the_nfls_unsung_heroes/s1_17256_39324982 (Updated Sep. 30, 2023).

⁷⁹ Marc Freeman, *Taxi’ Turns 40: A Wild Ride Down Memory Lane With the Cast and Creators ‘Taxi’ Turns 40: Co-creators James L. Brooks and Dave Davis as well as Director Jim Burrows and Stars Including Danny DeVito, Marilu Henner, Christopher Lloyd, Tony Danza, Judd Hirsch and Carol Kane Share Memories of Andy Kaufman, Wild Parties and Two Cancellations*, THE HOLLYWOOD REPORTER (Sep. 1, 2018), <https://www.hollywoodreporter.com/tv/tv-news/taxi-turns-40-a-wild-ride-down-memory-lane-cast-creators-1139168/>.

⁸⁰ “I’m Fine,” MSN (2023).

⁸¹ Jared Leto, “World on Fire,” Thirty Seconds To Mars (Sep. 14, 2023), <https://www.youtube.com/watch?v=KxQBccfr1vI&list=PLx4687tYuMWivZSCCyROghF4wGlpHBG2T&index=6>. The lyrics seem to mention these feelings. “Feels like there’s no way out of the frozen snow.” “Runaway, run away.” “‘G*d’ knows who we are.”

change, such as perspectives or the way they feel, the work they perform may be impacted.⁸² This may change their jobs.⁸³ To do this he may need to retire from the first position.⁸⁴ The positions may coalesce and this may happen involuntarily.⁸⁵ The second profession is the right fit for a person because he incurs no legal liability attempting to perform the work.⁸⁶ He is the right person because he is not negligent or criminal.⁸⁷ Those are sub-issues emerging from taxable and nontaxable events.⁸⁸

⁸² “I’m Fine,” MSN (2023).

⁸³ *Id.*

⁸⁴ *Infra* note.

⁸⁵ “Scottie Pippen’s Eldest Son Antron Dies at the Age of 33,” THE GUARDIAN (Apr. 19, 2021), <https://www.theguardian.com/sport/2021/apr/19/scottie-pippens-eldest-son-antron-dies-at-the-age-of-33>. “Antron inherited his father’s athletic ability and played college basketball for Texas A&M International University. He was living and working in Atlanta at the time of his death.” *Id.*

⁸⁶ THE HOLLYWOOD REPORTER (Sep. 1, 2018).

⁸⁷ *Id.*

⁸⁸ Shannon Thaler, *Ken Griffin Threw Party for 1,200 Citadel Staffers at Disney Tokyo This Weekend*, NEW YORK POST (Oct. 30, 2023), <https://nypost.com/2023/10/30/business/ken-griffin-paid-for-citadel-staffers-party-at-disney-tokyo/>.

Griffin... provided express passes to his workforce, which allowed them to skip the lines on rides and other attractions, like the popular Space Mountain, Pirates of the Caribbean and Big Thunder Mountain rides

A retirement and involuntary change are symbols of the end of work.⁸⁹ Work ends because the person chooses.⁹⁰ Termination, at will employment, breach, layoffs, and strike are not the same thing.⁹¹ Similarly, they are sometimes caused by torts and crimes.⁹² This is caused by an X factor.⁹³ Often used as a defense in tax court, the

that are also at Disney World's Orlando amusement park. For reference, a one-day pass to the Japanese Disney location costs anywhere from 7,900 yen to 10,900 yen, or \$52.75 to \$72.78. If there were 1,200 adults with tickets, Griffin could have spent as much as \$87,336 for just one day at the park, not including fast passes. *Id.*

⁸⁹ Know Your Value, "Patti Labelle Has Two Words to Say About Retirement: 'Hell No': The 'Godmother of Soul' Shares Lessons from Her Multi-Faceted Career at An Event in New York City That Honored Women Who Made the 3rd Annual Forbes' '50 Over 50' U.S. List," MSN

(Oct. 26, 2023), <https://www.msnbc.com/know-your-value/career-growth/patti-labelle-has-two-words-say-about-retirement-hell-no-n1307788>. ("G*dmother of Soul") *id.*

⁹⁰ *Id.*

⁹¹ *Id.* U.S. Const. amend. IV, § 2, cl. 1.

⁹² Dr. Shaquille O'Neal said, "The reason why I showed the guys before me respect is because the way they played, the reason why I'm making so much money." Yakshpat Bhargava, "Shaquille O'Neal Credits Past Legends for Being so Successful," MSN (Nov. 5, 2023)

<https://www.msn.com/en-us/sports/nba/cause-they-making-too-much-money-now-shaquille-o-neal-on-why-modern-day-stars-haven-t-reached-out-to-him-for-advice/ar-AA1jqbQt?ocid=msedgntp&pc=HCTS&cvid=53af8d08d2124f25b52cb672c6c8c5b3&ei=15>.

⁹³ An X factor is discussed in a university classroom setting. "Wonks loved it for its elegant simplicity though there were (and are) real questions about how the tax would work."

X factor describes something that changed and cannot be quantified.⁹⁴ It is not a superseding or intervening cause.⁹⁵ It is indescribable.⁹⁶ Certain events help to describe it, but the description usually conforms to normal paths. It is a blanket expression.⁹⁷

Howard Gleckman, "An X Factor in the Tax Reform Debate," FORBES (June 21, 2012), <https://www.forbes.com/sites/beltway/2012/06/21/an-x-factor-in-the-tax-reform-debate/?sh=10459d906a75>.

⁹⁴ "However, depending on the state you live in and often once you hit your 60s (usually around the ages of 61 to 65), you may be eligible for a property tax exemption." *Infra*.

⁹⁵ Geoff Williams, "I'm a Senior. When Can I Stop Paying Property Taxes," MSN (Nov. 5, 2023), <https://www.msn.com/en-us/money/personalfinance/i-m-a-senior-when-can-i-stop-paying-property-taxes/ar-AA14mXMn?ocid=msedgntp&pc=HCTS&cvid=c1f6a735942141acb02d2db978ae3852&ei=70>.

⁹⁶ Jon Powell, "Joe Budden Questions Accuracy of City Girls' 'RAW' album sales," MSN (Nov. 4, 2023), <https://www.msn.com/en-us/music/news/joe-budden-questions-accuracy-of-city-girls-raw-album-sales/ar-AA1jo8Fp?ocid=msedgntp&pc=HCTS&cvid=a13762575ff34da7a91efe79e51e8995&ei=12>.

⁹⁷ Corrie Cooks, "12 Poverty Meals That Taste Like A Million Dollars," MSN (Nov. 5, 2023), <https://www.msn.com/en-us/foodanddrink/recipes/12-poverty-meals-that-taste-like-a-million-dollars/ss-AA1jhCXG?ocid=msedgntp&pc=HCTS&cvid=a13762575ff34da7a91efe79e51e8995&ei=16>.

VI. FINALITY (70% D)

The summary is that people changing jobs may receive gifts that are not taxable even when special circumstances apply.⁹⁸ For example, a tutor stopped giving lessons about his dog in his home.⁹⁹ The tutor's pet still tutors, receiving business and payments at the house, but the man who cashes the checks for the dog retired from the human tutoring job and receives retirement gifts from his former students who also study with his wife.¹⁰⁰ The gifts are not taxed because

⁹⁸ *Supra* Section I. Emotional reasoning persuades the court. See Shreveport Bar Foundation Pro Bono Project, "Louisiana Grandparents Raising Grandchildren Resource Guide," <https://goea.louisiana.gov/media/nxwl3bac/grandparentsraisingchildren.pdf>.

⁹⁹ Charlize Theron, Africa Outreach, charlizeafricaoutreach.org.

¹⁰⁰ "7 Secrets Comfortable Retirees Know About Hiring a Financial Advisor," Smart Asset (Nov. 2023), https://articles.smartasset.com/financial-advisor-secrets/ux/secrets.php?utm_source=mediago&utm_medium=referral&utm_campaign=bai_falc_content_fasecrets_msnaugv91_maxcvatsun&utm_content=7+Secrets+Comfortable+Retirees+Know+About+Hiring+a+Financial+Advisor&utm_term=msn.com&a0v5la7bquf89=23ef2e3ae48c6d9a07f369702e949ce4&uy3ubftvh0u6o8=417a0a3f1ff06bd1593f9b7f21a4af48&cusduxj27i=2063360&xnfr0ncac=75&zsmoi87pih9=trac.e.mediago.io&lzzgnpz8d=9220dd482c2a49631b4e66cca9f5f0ee. "Research suggests people who work with a financial advisor feel more at ease about their finances and could end up with about 15% more money to spend in retirement." (citing *Journal of Retirement*).

Americans have the right to give and receive gifts.¹⁰¹ The gifts are tax free.¹⁰² However, the income they may generate may be taxed.¹⁰³ In short, the tax system is a right belonging to government and the people.¹⁰⁴ Americans pay tax because they need it—representation and allocation.¹⁰⁵ When the tax system makes an exception it reminds Americans of who they are.¹⁰⁶

¹⁰¹ U.S. CONST. AMEND. I, V, and XVI.

¹⁰² Theron, Africa Outreach.

¹⁰³ Rob Maaddi, “The NFL Wants to Make Football More Popular Than Futbol Globally,” Associated Press (Oct. 21, 2023), https://pressofatlanticcity.com/the-nfl-wants-to-make-football-more-popular-than-futbol-globally/article_6b9e0596-13e2-5615-9cf8-e2ab92921b2a.html.

¹⁰⁴ U.S. CONST. AMEND. XVI. Maaddi (2023). “The league's 32 teams brought in a total revenue of approximately \$18.6 billion in 2022.” *Id.*

¹⁰⁵ U.S. CONST. AMEND. XVI. Maaddi (2023).

¹⁰⁶ U.S. CONST. AMEND. XVI. Maaddi (2023).

SHORTCOMINGS IN VIETNAMESE LAW ON GENERAL PARTNERS AND RECOMMENDATIONS FOR IMPROVEMENT

Cao Nhat Linh

I. INTRODUCTION

A general partnership business arrangement is a type of business whereby two or more investors get into a business venture with a vision of sharing the profits and liabilities that might arise from the business. It is generally understood that the partners in general partnerships bear unlimited liability for any liabilities that the general partnership business may accrue. This means that, if the assets of the general partnership business are depleted before completely offsetting its liabilities then the individual assets of the general partners are used to offset the balance.¹ Further, it is noteworthy that

¹ A. Bloomenthal, “General Partnerships: Definition, Features, and Example,” *Investopedia* (Aug. 14, 2023), <https://www.investopedia.com/terms/g/generalpartnership.asp>.

general partners are actively involved in running the business. They are compensated for this role and therefore can be held personally liable for the liabilities incurred by the business. On the other hand, the law recognizes another type of partner known as a limited or silent partner. This partner buys shares in the business but is not involved in the day-to-day running of the enterprise. Because they are not actively involved in the running of the business, they cannot be held personally liable for the liabilities of the business. The scope of their liability is limited to their investment in the business (their shareholding).² Therefore, a general partner invests in the partnership, controls its management, and is also actively involved in its day-to-day operations and hence bears personal responsibility for its liabilities. A general partner's assets may be confiscated and liquidated to pay off creditors. While a limited/silent partner invests in the enterprise but is

² W. Kenton, "Limited Partner: What It Is, Laws, Role, and Tax Treatment," *Investopedia* (Oct. 2, 2022), <https://www.investopedia.com/terms/l/limited-partner.asp>.

not involved in its operations and so is exempted from personal responsibility for its liabilities.³

According to the applicable law of Vietnam, Article 177 of the 2020 Law on Enterprises,⁴ a partnership is an enterprise in which there are at least two general partners who are joint owners of the company and do business under a common name. There can be limited partners in addition to general partners. General partners must be individuals who are liable for the obligations of the partnership with all of their assets. Limited partners may be individuals or legal entities and are liable for the company's debts equal to the promised capital contribution. Hence, according to Point dd, Clause 2, Article 181 of the Law on Enterprises the general partner of the partnership must be an individual.⁵ The founding general partners of the company must jointly pay the partnership's remaining debts after all

³ M. Horton, "Silent Partner vs. General Partner: What's the Difference?," Investopedia (Dec. 21, 2022), <https://www.investopedia.com/ask/answers/062515/what-difference-between-silent-partner-and-general-partner.asp>.

⁴ Vietnam, Law on Enterprises, art. 177 (2020).

⁵ *Id.* at art. 181, cl. 2, point dd.

of the partnership's assets are used to pay them. However, suppose a new general partner joins the company after its establishment. In that case, as per Clause 3, Article 186 of the 2020 Law on Enterprises the new general partner may not be jointly liable with all its assets for the debts and other property obligations of the company if there is an agreement between such partner and the others.⁶ In addition, Clause 1, Article 35 of the 2020 Law on Enterprises stipulates that all general partners must transfer the ownership of contributed assets.⁷ However, the provisions related to the conditions of becoming a general partner, the joint responsibility of a new partner after the establishment of the company, the transfer of ownership of contributed assets, internal disputes between general partners, etc., have not been finalized or interpreted clearly. Therefore, the study and analysis of these regulations is necessary to find solutions to propose amendments and supplements to contribute to the improvement of

⁶ *Id.* at art. 186, cl. 3.

⁷ *Id.* at art. 35, cl. 1.

Vietnam's law in general and the Law on Enterprises in particular.

II. MATERIALS AND METHODS

This research Article is solely based on library-based data. The researcher collected and analyzed existing publications concerning the law on partnerships. The research was also heavily based on Vietnam's expired Law on Enterprises (2005 and 2014), Law on Enterprises 2020, and Law on Investment 2020.⁸

III. RESULTS AND DISCUSSION

The general partners may be divided into two groups based on the time of joining the partnership. They are founding general partners and general partners contributing/buying capital contribution after the company is established. Both groups must comply with the general conditions of general

⁸ Vietnam, Law on Enterprises 2005 (expired), Law on Enterprises 2014 (expired), Law on Enterprises (2020), and Law on Investment (2020).

partners. However, some provisions on conditions to become a general partner of a partnership have been inadequate.

A. Legal Entities Shall Not Be a General Partner of the Partnership

The applicable law of Vietnam only allows individuals, not legal entities, to be partners. This provision has not met the development needs and the choice of business models of business entities. Indeed, the partnership model in Vietnam is the reception of the laws of the countries. However, the subject participating in the partnership as a general partner is limited, i.e., legal entities are allowed to participate.

The reason may be that the legal entities often have limited asset liabilities.⁹ According to N.V. Hung, it likely disrupts the nature of the general

⁹ N.H. Cuong, *Interpretation of Partnership in the 2005 Law on Enterprises*,
<http://www.lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=211233>.

partners, which is their indefinite asset liabilities.¹⁰ However, in Vietnam's law, not all legal entities have liability limited to the scope of that legal entity's assets. Typically, a partnership must have at least two general partners who are jointly liable for the company's activities with all their assets. It can be said that a partnership is also a legal entity but does not have liability limited to the company's assets.

Notwithstanding, a partnership as a legal entity should be fully entitled in its name to participate in legal relations, have full rights to its assets, use its assets, and be solely responsible for such use. Referring to the 2015 Law on Lawyers, when regulating foreign law firms operating in Vietnam, this Law stipulates: "A partnership law firm is a partnership law practice organization between a foreign law practice organization and a Vietnamese partnership law firm."¹¹ Thus, in essence, the Law on

¹⁰ N.V. Hung, *Development of Legal Regulations on Simple Syndicated Companies in Vietnam*, 32 VNU J. SCIENCE: LEGAL STUD. 42 (2016).

¹¹ Law on Lawyers (2015).

Lawyers has acknowledged a type of partnership between legal entities, of which Vietnam's partnership law firm is a partner.¹²

Thus, Vietnam's law has different conditions for becoming a general partner of a partnership. In particular, under the 2020 Law on Enterprises, only individuals can be general partners in a partnership.¹³ Meanwhile, under the 2015 Law on Lawyers, members of a partnership law firm may be legal entities (which is a combination of a foreign law practice organization and a Vietnamese partnership law firm).¹⁴ Only allowing an individual to be a general partner is a restriction on freedom of business and is not consistent with international practice.¹⁵ In many countries such as France, the United States, Japan, Singapore, etc., there are many cases where two jointly contribute capital to establish a corporation. For instance, under the laws of the

¹² *Id.*

¹³ Law on Enterprises (2020).

¹⁴ Law on Lawyers (2015).

¹⁵ D.D. Hanh, *Commentary on Provisions on Partnerships in 2020 Law on Enterprises*, <https://lsvn.vn/binh-luan-cac-quy-dinh-ve-cong-ty-hop-danh-trong-luat-doanh-nghiep-nam-20201632327822.html> .

United States, a partnership is a business entity established by individuals, at least two general partners. Each general partner shall be personally, jointly, and indefinitely liable for all debts and obligations of the company.¹⁶ Also, according to D.D. Dai, in France, especially in the fields of credit, real estate, or international trade, the majority of partnerships are established by legal entities.¹⁷ In Cambodia, general partnerships are governed by the Law on Commercial Enterprises as amended by The Royal Kram No. NS/RKM/0122/003 on the Law on the Amendment of the Law on Commercial Enterprise as promulgated on January 29, 2022.¹⁸

¹⁶ N.T.N. Uyen & L.N. Bao, *Provisions on Partnerships under 2014 Law on Enterprises: Inadequacies and Recommendations*, <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210493>.

¹⁷ D.D. Dai, *Lack for Reasonable Regulations on Partnerships*, https://vibonline.com.vn/bao_cao/can-quy-dinh-hop-ly-ve-cong-ty-hop-danh.

¹⁸ Cambodia's Law on Commercial Enterprises (2005), amended by the Law on the Amendment of the Law on Commercial Enterprise (2022). KPMG, "Technical Update: Law on the Amendment of the Law on Commercial Enterprise" (Apr. 2022), <https://assets.kpmg.com/content/dam/kpmg/kh/pdf/technical-update/2022/Law%20on%20the%20Amendment%20of%20the%20Law%20on%20Commercial%20Enterprise.pdf>. Law on Commercial Enterprises (2005), amended by The Royal Kram No. NS/RKM/0122/003, Law on the Amendment of the Law on Commercial Enterprise (Jan. 29, 2022).

The Law in Article 8 defines a general partnership “as a contract between two or more persons to combine their property, knowledge or activities to carry on business in common with a view to profit.”¹⁹

The 2020 Law on Enterprises stipulates that the application of specific laws takes priority over the Law on Enterprises.²⁰ Accordingly, according to the stipulations of Article 3 of the 2020 Law on Enterprises “in case another law contains particular provisions on the establishment, organization, reorganization, and dissolution of, and activities related to, enterprises, such law must prevail.”²¹ However, the Law on Enterprises should expand the conditions for a legal entity to become a general partner as prescribed by the Law on Lawyers, especially as these partnerships may become general partners of other partnerships.²² The purpose is to facilitate legal entity investors with unlimited liability and joint participation as a general partner of

¹⁹ Law on Commercial Enterprises, art. 8.

²⁰ Law on Enterprises (2020).

²¹ Law on Enterprises, art. 3 (2020).

²² Law on Lawyers.

other partnerships, especially foreign-invested legal entities established in Vietnam. However, to limit the risks for the remaining partners and ensure the interests of third parties (partners of the partnership), the consent of the remaining partners of the partnership is required for a partnership to participate in another partnership.

B. The Owner of the Private Enterprise Is Not Allowed to Be a General Partner of a Partnership, and the Conditions for the Member of a Household Business (Who Is Registering to Operate under the Business Household Model) to Be a General Partner of the Partnership

Clause 2, Article 17 of the Law on Enterprises 2020 stipulates cases where enterprises are not established and managed.²³ In particular, the following individuals do not have the right to establish and manage enterprises: officials and public employees defined by the Law on Officials and the Law on Public Employees;²⁴ commissioned

²³ Law on Enterprises, art. 17, cl. 2 (2020).

²⁴ Law on Officials and Law on Public Employees.

officers, non-commissioned officers, career military personnel, military workers, and public employees in agencies and units of Vietnam People's Army; commissioned officers, non-commissioned officers, and police workers in police authorities and units; executive officers and managers of state-owned enterprises; minors; people with limited legal capacity; incapacitated people; people having difficulties controlling their behaviors; organizations that are not juridical persons; people who are facing criminal prosecution, kept in temporary detention, serving an imprisonment sentence, serving an administrative penalty in a correctional institution or rehabilitation center, banned by the court from holding certain positions or doing particular works; and other cases prescribed by the Law on Bankruptcy and the Anti-corruption Law.²⁵

In addition to the above cases, this Law also provides additional cases where the owner of a private enterprise is not allowed to be a general

²⁵ Law on Bankruptcy and Anti-corruption Law.

partner of a partnership.²⁶ Specifically, Clause 1, Article 180 of the 2020 Law on Enterprises stipulates: “A general partner must not be the owner of a private enterprise; must not be a general partner of another partnership unless the other general partners accept it.”²⁷ Clause 3, Article 188 of the Law on Enterprises 2020 continues to stipulate that the owner of a private enterprise may not concurrently be a general partner of a partnership.²⁸

Based on the above provisions, it can be concluded that an individual who is a private enterprise owner cannot become a general partner of a partnership even with the consent of the remaining general partners. Meanwhile, an individual who is a general partner of a partnership may become a partner of another partnership if he/she has the consent of all the remaining general partners of both partnerships that he/she wants to be a member of. In addition, according to Clause 3 of Article 80 Decree No. 01/2021/ND-CP dated January 4, 2021, on

²⁶ Law on Enterprises (2020).

²⁷ Law on Enterprises, art. 180, cl. 1 (2020).

²⁸ *Id.* at art. 188, cl. 3.

enterprise registration, an individual who is the owner or a member of a business household may be a general partner of a partnership if agreed by the remaining general partners.²⁹

Further, Clause 1, Article 188 of the 2020 Law on Enterprises and Clause 1, Article 79 of Decree No. 01/2021/ND-CP dated January 4, 2002 on enterprise registration notes that “there must be the consent of the remaining general partners” means that the remaining partners commit to being jointly liable for the property obligations of that member when that member uses his/her assets to be infinitely liable for another economic organization.³⁰ Thus, the owner of the private enterprise uses his/her assets to be infinitely liable for the private enterprise without being a partner despite the consent of the remaining partners. In other words, according to the above provisions, there is an inequality between the owner of the private enterprise and the owner of the business household in the right to become a partner

²⁹ Decree No. 01/2021/ND-CP, art. 80, cl. 3 (Jan. 4, 2021).

³⁰ Decree No. 01/2021/ND-CP, art. 79, cl. 1 (Jan. 4, 2002) and Law on Enterprises, art. 188, cl. 1 (2020).

of the partnership. Meanwhile, the nature and infinite liability regimes of the owner of the private enterprise and the owner of the business household are the same.

Previously, under the Clause 1, Article 133 of the 2005 Law on Enterprises (expired), Clause 1, Article 175 of the 2014 Law on Enterprises (expired), “A general partner must not be the owner of a private enterprise or a general partner of another partnership unless the remaining general partners accept it.”³¹ This implies that in the past, the owner of a private business could still be a general partner if the remaining general partners agreed.

From the above inadequacies and the reasonableness of the previous Laws, the 2020 Law on Enterprises should amend the provisions in the same direction as before, which is to allow the owner of the private enterprise to be a general partner if there is the consent of the remaining general

³¹ Law on Enterprises, art. 175, cl. 1 (2014) and Law on Enterprises, art. 133, cl. 1 (2005).

partners.³² Specifically, Clause 1, Article 180 should be amended from “A general partner must not be the owner of a private enterprise; must not be a general partner of another partnership unless it is accepted by the other general partners”³³ to “A general partner must not be the owner of a private enterprise or a general partner of another partnership unless the remaining general partners accept it.”³⁴

In addition, for the conditions for business household owners and members of business households to become partnership members of a partnership, the only document recorded under the law is Decree No. 01//2021/ND-CP dated January 4, 2021, on enterprise registration.³⁵ On the other hand, this provision is still inadequate. Specifically, there is a lack of condition “the consent of the remaining business household members” when one of the business household members participates in the

³² Law on Enterprises, art. 175, cl. 1 (2014) and Law on Enterprises, art. 133, cl. 1 (2005). Law on Enterprises (2020).

³³ Law on Enterprises (2020).

³⁴ See Law on Enterprises (2020).

³⁵ *Id.* at Decree No. 01//2021/ND-CP (Jan. 4, 2021).

partnership member of the partnership.³⁶ Therefore, it is recommended to include the provisions of Decree No. 01/2021/ND-CP mentioned above in the 2020 Law on Enterprises and add conditions for business household members to become general partners of a partnership.³⁷

In other words, for easy application of the law and more complete provisions, Clause 1, Article 180 of the 2020 Law on Enterprises³⁸ should be added: “A general partner must not be concurrently a business household owner unless there is the consent of the remaining general partners. A general partner must not be concurrently a member of a business household unless there is a consensus of the remaining general partners and the remaining business household members.”

Simultaneously, for the agreement between the provisions of the same legal document, in the provisions on private enterprises, there is a need to amend the 2020 Law on Enterprises Clause 3, Article

³⁶ See Law on Enterprises, art. 188, cl. 3 (2020).

³⁷ *Id.* at Decree No. 01/2021/ND-CP.

³⁸ *Id.* art. 180, cl. 1.

188 from “The owner of a private enterprise must not concurrently own a household business or hold the position of a general partner of a partnership” into “The owner of a private enterprise must not concurrently own a household business or hold the position of a business household member unless there is the consent of the remaining business household members. The owner of a private enterprise must not concurrently be a partner of a partnership unless there is the consent of the remaining partners.”³⁹

This amendment will be reasonable, as the obligation of the general partners of the partnership in point d, Clause 2, Article 181 of the 2020 Law on Enterprises is “to jointly pay the partnership’s remaining debts after all of the partnership’s assets are used to pay them.”⁴⁰ Therefore, if there is a commitment of the remaining general partners, an individual, whether a business household owner or a private enterprise owner, can also become a general

³⁹ Law on Enterprises, art. 188, cl. 3 (2020).

⁴⁰ *Id.* at art. 181, cl. 2, point d.

partner of the partnership. Simultaneously, if an individual participates in two organizations with many members who are indefinitely and jointly liable, the consent of the remaining members of both organizations is required. This case applies to general partners of a partnership and members of a household business.

C. Foreigners Are Not Allowed to Be New Partners in a Partnership

The Law on Enterprises of Vietnam does not prohibit foreigners from being general partners of a partnership. However, suppose they are a founding partner of a partnership. In that case, foreigners only need to satisfy market access conditions and then carry out procedures to be granted an Investment Registration Certificate and an Enterprise Registration Certificate. However, if a partnership has been established, the foreigner must participate in the partnership in the form of capital contribution for the admission of a new partner or purchase of the capital contribution of an existing partner to become

a partner of the partnership. However, for partnerships, in Point c, Clause 2, Article 25 of the 2020 Law on Investment of Vietnam only acknowledges the form of investment by “Purchasing the capital contribution of the partner to become a partner of the partnership.”⁴¹ This means that the foreigner will not have a legal basis to purchase the capital contribution of the general partner to become a general partner of the partnership.

To reach an agreement between the Law on Investment and the Law on Enterprises and also create conditions for foreign individual investors to become new general partners of partnerships, the 2020 Law on Investment should supplement the provisions in the form of investment in capital contribution, share purchase, and capital contribution purchase:⁴² “Purchase the capital contribution of general partners in partnerships to become a general partner of a partnership.” The recognition of the

⁴¹ Law on Investment of Vietnam, art. 25, cl. 2, point c (2020).

⁴² *Id.* Law on Enterprises.

capital contribution right of a foreign individual as a general partner of a partnership is reasonable. It does not affect the nature of the partnership when it admits more general partners who are foreign investors. This is because both the Law on Investment and the Law on Enterprises recognize the legal status of foreign individual investors as partners of a partnership from the start.⁴³

D. Shortcomings in the Provisions on the Partner's Liabilities for the Company's Debts and Other Obligations and Recommendations for Improvement

Point b, Clause 1, Article 177 of the 2020 Law on Enterprises stipulates that general partners must “be liable for the obligations of the company with all their assets.”⁴⁴ Simultaneously, Point dd, Clause 2, Article 181 of the Law stipulates that general partners “must be jointly liable for paying the partnership’s remaining debts after all of the

⁴³ Law on Investment and the Law on Enterprises.

⁴⁴ Law on Enterprises, art. 177, cl. 1, point b (2020).

partnership's assets are used to pay them.”⁴⁵ Then, Clause 5, Article 185 of the 2020 Law on Enterprises notes that two years after termination of general partner status, such partner shall still be jointly liable with all their assets for the partnership's debts that arose prior to the date of termination of general partner status.⁴⁶ However, when the company admits a new general partner, “the new general partner shall be jointly liable for the debts and other property obligations of the company with all his/her assets unless otherwise agreed by such partner and other partners.”⁴⁷

The above provisions can be explained as follows: The founding partners of the company must be liable for the obligations of the company with all their assets and jointly liable for paying the partnership's remaining debts after all of the partnership's assets are used to pay them.⁴⁸ For a new general partner who the company admits after the

⁴⁵ *Id.* at art. 181, cl. 2, point dd.

⁴⁶ *Id.* at art. 185, cl. 5.

⁴⁷ *Id.*

⁴⁸ See Law on Enterprises, art. 177, cl. 1, point b; art. 181, cl. 2, point dd; and art. 185, cl. 5 (2020).

company is established, he/she may not be jointly liable for the debts and other property obligations of the company with all his/her assets if there is an agreement between the new general partner and the remaining partners of the partnership.⁴⁹ The above content of the joint liability of general partners shows the inadequacy. Details are as follows:

Firstly, is the newly admitted general partner jointly liable with all his/her assets for the debts and other property obligations of the partnership arising before this new partner is admitted; or only jointly liable with all its assets for the debts and other property obligations of the company arising since the new general partner joined the company? It is generally understood that a new general partner is only jointly liable for the debts and other property obligations of the company arising since such general partner joins the company. However, with such words, many people⁵⁰ have understood that a

⁴⁹ Law on Enterprises, art. 177, cl. 1, point b; art. 181, cl. 2, point dd; and art. 185, cl. 5 (2020).

⁵⁰ N.V. Hung, *Principles of a Partnership under the 2014 Law on Enterprises*, <https://danchuphapluat.vn/cac-nguyen-tac-cua-cong-ty-hop-danh-theo-luat-doanh-nghiep-nam-2014>. N.C. Dung, *Discussion*

new general partner is jointly liable for all debts and other property obligations of the company, including debts and obligations of the company incurred before such partner joined the company.

Secondly, does the phrase “the remaining partners” mean the remaining general partners or all remaining general partners and limited partners?

In addition, in case the partnership already has a new partner who is joining as a general partner not affiliated with the founding partners to take liability with all of its assets for the company’s debts and other property obligations: When the company continues to admit new partners for the second time or later, is it necessary to have the consent of all founding partners and newly admitted partners for the first time? For instance, a partnership has two general partners, A and B, who are jointly liable for the company’s debts and other property obligations with all their assets. The Company admits the first new general partner as C with the agreement between

on Joint Liabilities of Business Managers, <https://lsvn.vn/ban-ve-trach-nhiem-lien-doi-cua-nguoi-quan-ly-doanh-nghiep1612749870.html>.

C and A and B that C is not jointly liable to A and B for debts and other property obligations of the Company with all its assets. Thus, the problem is when the company admits a new member for the second time as partner D, such partner wants to negotiate with the “remaining partners” so as not to be jointly liable with all of his/her assets for the debts and other property obligations of the company. Which partners shall D negotiate with, A and B or A, B, and C?

Considering the nature and ability to take liability with all of its assets for debts and other property obligations of the company, the general partner D must only negotiate with A and B. However, the 2020 Law on Enterprises states: “The new general partner has a joint liability for the company’s debts and liabilities which is equal to his/her total assets unless otherwise agreed upon by the new partner and the other partners.”⁵¹ This provision is unclear for general partners joining the company for the second time or later.

⁵¹ Law on Enterprises (2020).

In addition, it is unreasonable for the Law on Enterprises not to allow a founding general partner to reach an agreement with the remaining founding members so that such a partner is not jointly liable.⁵² This is because the partnership at its establishment may have more than two partners. Thus, the third founding partner, who needs to negotiate with the other two founding partners so as not to be jointly liable with them, does not have a legal basis to do this. Meanwhile, if the two founding partners complete the establishment of the company, then the third member joins later; this third member is entitled to negotiate with the two founding members on not being jointly liable.

There are some ways to solve this problem. Firstly, in terms of the scope of joint liability of the new general partner, the 2020 Law on Enterprises⁵³ should stipulate: “A new general partner must be jointly liable with all his/her assets for debts and other property obligations of the company arising

⁵² *Id.*

⁵³ *Id.*

since this general partner officially becomes a general partner of the company.” The amendment in the above direction will create equity and reasonableness because it excludes the obligation of the new general partner to bear all the debts the company incurred before the admission of such a partner.

Secondly, regarding the agreement on not being jointly liable between the founding partners of the company, the 2020 Enterprise Law is forcing all founding partners to be jointly liable with all their assets, even when there are more than two founding partners.⁵⁴ Therefore, if the company has three or more founding partners, it should recognize the right of agreement between the founding partners on the lack of joint liability of the third member onwards as long as at least two partners are jointly liable with all their assets for the debts and other obligations of the company. Even if there is the consent of the creditors and other authorized persons, the Law should also allow the conversion from a fully liable general

⁵⁴ *Id.*

partner to a general partner who is not jointly liable or from a general partner to a limited partner.⁵⁵ In other words, for a partnership, the provision should be amended as follows:⁵⁶ “If there is the consent of at least two founding partners, the remaining partners (whether a founding partner or a partner who joins later) can also negotiate with those two partners so that they are not jointly liable with all their assets for the debts and other property obligations of the company.” It can be explained in terms of reasonableness as follows:

Firstly, this amendment maintains the nature and meaning of the partnership; that is, there are at least two general partners who are liable with all their assets for the debts and other property obligations of the partnership. This is because the condition for the establishment and existence of a partnership is that at least two general partners are jointly liable with all their assets for other debts and obligations of the partnership.

⁵⁵ *Id.*

⁵⁶ *Id.*

Secondly, this amendment creates equality between the newly joined general partner and the founding general partners in agreeing with the remaining general partners on the lack of joint liability for the debts and other property obligations of the company with all their assets.

Thirdly, this amendment will make it more transparent that there is only an agreement with the general partners, who are infinitely and jointly liable with all their assets for the debts and other property obligations of the company, not the consent of the general partners who are not jointly liable with other general partners in the company.

However, this recommendation must also take into account the interests of third parties (customers) when dealing with the company. Specifically, to avoid the situation that a third party trusts in the joint liability of many general partners when setting up transactions of economic contracts with the company, the Law on Enterprises needs to supplement the regulations on disclosure of the number of general partners who are jointly liable and

the number of general partners who are not jointly liable with all their assets for the debts and other property obligations of the company.⁵⁷

E. Shortcomings in the Provisions on the Legal Representation Competence of the General Partners and Recommendations for Improvement

According to Clause 1, Article 12 of the Law on Enterprises 2020, “The enterprise’s legal representative is the person that, on behalf of the enterprise, exercises and performs the rights and obligations derived from the enterprise’s transactions, in civil proceedings, acts as the plaintiff, defendant or person with relevant interests and duties before in court, arbitration, and performs other rights and obligations prescribed by law.”⁵⁸ For a partnership, Clause 1, Article 184 of this Law stipulates: “General partners are the partnership’s legal representative and shall administer its everyday

⁵⁷ *Id.*

⁵⁸ Law on Enterprises, art. 12, cl. 1 (2020).

business.”⁵⁹ It can be inferred that all general partners must be the representatives of the enterprise in civil proceedings, act as the plaintiff, defendant, or person with relevant interests and duties before court or arbitration, and perform other rights and obligations prescribed by law. However, in the provisions on partnerships, the Law on Enterprises only assigns this obligation to the Chairperson of the Members’ Council, the Director, or the General Director of the company. Specifically, Clause 4, Article 184 stipulates that the Chairperson of the Members’ Council, Director, or General Director has the following obligations: “... dd) Represent the company in civil proceedings, as the plaintiff, defendant, person with relevant interests and duties in front of the court or arbitral tribunal; represent the company in the performance of other rights and obligations prescribed by law.”⁶⁰ Meanwhile, the obligations of the general partner specified in Clause 2, Article 181 of this Law do not clearly state the

⁵⁹ *Id.* at art. 184, cl. 1.

⁶⁰ *Id.* at art. 184, cl. 4, dd.

obligation to represent the company in civil proceedings, act as the plaintiff, defendant, or person with relevant interests and duties in front of the court or arbitral tribunal; represent the company in the performance of other rights and obligations prescribed by law.⁶¹ Clause 2, Article 181 lists a series of obligations of general partners, of which point h of Clause 2 of this Article has a very general provision as “Other obligations prescribed by Law and the charter.”⁶²

Thus, the problem is when all general partners are legal representatives, are they obliged to represent the company in civil proceedings and act as the plaintiff, defendant, or person with relevant interests and duties in front of the court or arbitral tribunal? The answer in applicable practice is that there is no obligation to do so. This is because this obligation is only assigned to the Chairperson of the Members’ Council, the Director, or the General Director. It has shown inadequacies and

⁶¹ *Id.* at art. 181, cl. 2.

⁶² *Id.* at art. 181, cl. 2, point h.

inconsistencies among the provisions of the Law on Enterprises.⁶³

For unified and clear provisions on the legal representation of general partners, the 2020 Law on Enterprises should be amended in one of the following two directions:

The first direction: Clause 1, Article 12 of the 2020 Law on Enterprises⁶⁴ should be supplemented with “unless otherwise provided by this Law.” Specifically: “The enterprise’s legal representative is the person that, on behalf of the enterprise, exercises and performs the rights and obligations derived from the enterprise’s transactions, takes civil proceedings, acts as the plaintiff, defendant or person with relevant interests and duties before in court, arbitration, and performs other rights and obligations prescribed by law unless otherwise provided by this Law.” According to this proposal, the general partner, who is also the legal representative of the company, should be able to exercise all the rights and

⁶³ *Id.*

⁶⁴ Law on Enterprises art. 12, cl. 1 (2020).

obligations of the legal representative of the company. Still, the obligation to represent the enterprise in civil proceedings, act as the plaintiff, the defendant, the person with related rights and obligations before the arbitrator, the court, etc. This is because this obligation has been assigned to the Chairperson of the Members' Council, Director, or General Director.

The second direction: Remove the provision “Represent the company in civil proceedings, act as the plaintiff, defendant, person with relevant interests and duties in front of the court or arbitral tribunal” from the group of obligations of the Chairperson of the Members' Council, Director or General Director of the partnership.⁶⁵ This is because the obligation to represent is a general obligation of the legal representative as stipulated in Clause 1, Article 12 of this Law.⁶⁶ Therefore, in principle, all general partners must have this obligation. The proposal in the second direction is more reasonable

⁶⁵ *See id.*

⁶⁶ *Id.*

and consistent with all provisions on legal representatives in the Civil Code and Law on Enterprises when the general partners are required to be the legal representatives of the partnership.⁶⁷ In addition, this recommendation also facilitates the legal application of the court or arbitral tribunal when it is necessary to appoint a legal representative who is not the Chairperson of the Members' Council, Director, or General Director to participate in the proceedings. This is because Clause 7, Article 12 of the 2020 Law on Enterprises stipulates: "The court and other proceeding authorities are entitled to appoint the legal representative who participates in proceedings as prescribed by law."⁶⁸ Simultaneously, Clause 2, Article 47 of the 2014 Law on Bankruptcy also stipulates that on the perception that the insolvent entity is incapable of running the business operation or denoted to disperse assets, the judge shall decide to replace the legal representative of the insolvent entity upon the

⁶⁷ *Id.*

⁶⁸ Law on Enterprises, art. 12, cl. 7 (2020).

request of creditors' meeting or the asset management officers and/or asset management enterprises.⁶⁹ Therefore, for partnerships, because the Law on Enterprises has recognized all partners as legal representatives, this Law should also fully acknowledge the rights and obligations of all partners when they perform the role of legal representatives.⁷⁰

IV. CONCLUSIONS

Vietnam's Law on Enterprises is constantly amended, supplemented, and promulgated new laws to catch up with the development of the economy.⁷¹ Currently, the 2020 Enterprise Law has made more progress than previous Laws.⁷² However, the progress points of the 2020 Law on Enterprises, compared to previous Laws, mainly focus on enterprise registration procedures and the

⁶⁹ Law on Bankruptcy, art. 47, cl. 2 (2014).

⁷⁰ Law on Enterprises.

⁷¹ Law on Enterprises.

⁷² Law on Enterprises (2020). *See* Law on Enterprises 2005 (expired) and Law on Enterprises 2014 (expired).

organizational structure of all types of enterprises.⁷³ Particularly for provisions related to general partners of the partnership, although there are many new points. In particular, there are new provisions that lead to more restrictions on the right to participate as a general partner of a private enterprise owner. This is because, under the 2014 Law on Enterprises, the owner of a private enterprise is allowed to be a general partner of a partnership with the consent of the remaining general partners.⁷⁴ In addition, there are new provisions to create more opportunities for individuals who want to be general partners of the company but do not want to be jointly liable with all their assets for the debts of the company. However, these new provisions, as well as many other provisions on general partners of the partnership, are still inadequate, unclear, unreasonable, or inconsistent with other provisions in the same Law.⁷⁵ Therefore, some analysis and recommendations to amend and supplement the above-mentioned

⁷³ *Id.*

⁷⁴ Law on Enterprises (2014) (expired).

⁷⁵ *See* Law on Enterprises.

relevant provisions are essential for the law of Vietnam in general and the Law on Enterprises of Vietnam, in particular, to be completed, ensuring maximum freedom of business and the right to establish and manage enterprises of individuals and organizations.⁷⁶

⁷⁶ Law on Enterprises.

THE ADMISSIBILITY OF RAP LYRICS IN COURT: A REVIEW OF AS *WE SPEAK*

Michael Conklin*

I. INTRODUCTION

The use of rap lyrics at trial is a timely issue given the current confluence of events, including the Young Thug trial,¹ the Black Lives Matter movement, a growing “tough on crime” sentiment,² the introduction of the Restoring Artistic Protection (RAP) Act in Congress,³ and societal debate about

* Assistant Professor of Business Law, Texas A&M University School of Law; Lecturer, Texas A&M University School of Law; avid fan of 80s and 90s rap music.

¹ Deena Zaru, *Judge Rules Rap Lyrics Can ‘Conditionally’ Be Used as Evidence in Young Thug Trial*, ABC NEWS (Nov. 9, 2023, 12:19 PM), <https://abcnews.go.com/US/judge-rules-rap-lyrics-conditionally-evidence-young-thug/story?id=104760646>.

² Jeffrey M. Jones, *More Americans See U.S. Crime Problem as Serious*, GALLUP (Nov. 16, 2023), <https://news.gallup.com/poll/544442/americans-crime-problem-serious.aspx>.

³ Restoring Artistic Protection Act of 2023, H.R. 2952, 118th Cong. (2023).

separating the artist from the art.⁴ This review provides a critical analysis of the 2024 documentary *As We Speak: Rap Music on Trial*, a film that advocates against the use of rap lyrics as evidence in criminal trials.⁵ The cinematography is beautiful, creating an aesthetically pleasing experience. And it is engagingly structured as a road movie with the guide, rapper Kemba, taking the viewer to Chicago, Atlanta, Los Angeles, New York City, and London to interview rappers and legal experts. This results in a powerful documentary that has received glowing reviews from both film critics and audiences.⁶ Unfortunately, while the film's subject is certainly a legitimate topic of discussion, the film suffers from significant shortcomings. This review will analyze how the leading study regarding rap on trial is deceptively presented, misrepresentations of the

⁴ For example, recent debates about the acceptability of consuming art from controversial figures such as Michael Jackson, Woody Allen, and Kanye West.

⁵ *AS WE SPEAK: RAP MUSIC ON TRIAL* (Paramount+ 2024).

⁶ The movie currently has an 86% film critic score and 73% audience score on the movie review website Rotten Tomatoes. *As We Speak: Rap Music on Trial*, ROTTEN TOMATOES, https://www.rottentomatoes.com/m/as_we_speak_rap_music_on_trial (last visited Mar. 22, 2024).

topic as a free-speech issue whereby rap lyrics are “criminalized,” ineffective attempts to analogize rappers to Shakespearian actors, and claims regarding race that are contrary to the evidence.

II. 2016 ADAM DUNBAR STUDY

The documentary prominently touts the results of a 2016 study on how rap artists are perceived compared to that of other musical genres.⁷ The study provided participants with a written text of lyrics from a song that participants were told was from a specific genre of music; the song lyrics were:

Well, early one evening I was rollin'
around

I was feelin' kind of mean, I shot a deputy
down.

Strollin' on home, and I went to bed.

Well, I laid my pistol up under my head.

⁷ Adam Dunbar, Charis E. Kubrin & Nicholas Scurich, *The Threatening Nature of “Rap” Music*, 22 PSYCH. PUB. POL'Y & L. 280 (2016).

Well, early in the morning 'bout the break
of day,

I figured it was time to make a getaway.

Steppin' right along but I was steppin' too
slow.

Got surrounded by a sheriff down in
Mexico.⁸

Participants who were told the lyrics were from a rap song were more likely to view the artist negatively than those who were told it was from a different musical genre.⁹ The documentary posits that this is the product of racism.¹⁰ However, a more robust understanding of the study not only does not support this conclusion but provides affirmative evidence against it.

The documentary conveniently omits another finding from the 2016 study. When the race of the artist was changed from Black to white, there was no difference in negative perceptions.¹¹ Therefore, the

⁸ *Id.* at 284.

⁹ *Id.* at 284–87.

¹⁰ AS WE SPEAK, *supra* note 5, at 25:00–28:15.

¹¹ Dunbar, Kurbin & Scurich, *supra* note 7, at 287.

different result between rap music and other musical genres lies in the genre, not in race. This is further demonstrated with how the debate is over rap lyrics in court and not other forms of traditionally Black musical genres such as gospel, R&B, jazz, or soul. This will come as no surprise to anyone with even a moderate understanding of different musical genres.

The two songs used in the 2016 study are illustrative of this point. The first is from the song “Bad Man’s Blunder” by The Kingston Trio.¹² While this song narrates a tale of killing a law enforcement officer just as Ice-T’s 1992 song “Cop Killer,”¹³ the differences are far more telling than that one similarity. In the former, the murderer is explicitly referred to as “bad,” and the perpetrator is sentenced to ninety-nine years of hard labor, thus serving as a cautionary tale.¹⁴ Even the murderer himself repents

¹² *Id.* at 284.

¹³ BODY COUNT, *Cop Killer*, on BODY COUNT (Warner Bros. Records 1992). The comparison between “Bad Man’s Blunder” and “Cop Killer” is one sometimes used by those opposing the use of rap lyrics at trial. See, e.g., Carrie B. Fried, *Who’s Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. APPLIED SOC. PSYCH. 705, 710 (1999).

¹⁴ THE KINGSTON TRIO, *Bad Man’s Blunder*, on STRING ALONG (Capitol Records 1960).

of his crime and concludes that “this whole thing has been a lesson to me.”¹⁵ Conversely, “Cop Killer” is explicitly “dedicated” to the Los Angeles Police Department, Ice-T encourages his audience “Don’t be a pussy . . . sing along, cop killer!” and when he asks the audience what they want to be when they grow up, they enthusiastically answer “cop killer!” to which Ice-T praises their decision by responding “Good choice.”¹⁶

Even the images portrayed on the covers of the two albums point to significant differences. The Kingston Trio’s album cover is borderline comical, with the three members holding banjos and smiling while wearing tucked-in dress shirts.¹⁷ Ice-T’s album cover portrays a menacing, muscular man with his shirt off, “Cop Killer” tattooed across his chest, a gun in his waistband, a chain wrapped around a clinched fist, and blacked-out eye sockets.¹⁸ A study is clearly not needed to conclude that, if you left the songs and

¹⁵ *Id.*

¹⁶ BODY COUNT, *BODY COUNT* (Warner Bros. Records 1992).

¹⁷ THE KINGSTON TRIO, *STRING ALONG* (Capitol Records 1960).

¹⁸ BODY COUNT, *supra* note 16.

the album cover the same while swapping out the races of the artists, the white “Cop Killer” would be viewed more negatively than the Black “Bad Man’s Blunder.”



The other song used in the 2017 study was “A Boy Named Sue” by Johnny Cash.¹⁹ As the name implies, the song is about a man named Sue, not

¹⁹ Dunbar, Kubrin & Scurich, *supra* note 7, at 285. The lyrics used were:

Well, I hit him hard right between the yes
And he went down, but to my surprise,
He come up with a knife and cut off a piece of my ear.
But I busted a chair right across his teeth
And we crashed through the wall and into the street
Kicking and a’ gouging in the mud and the blood and the beer.
Id.

Johnny Cash. Additionally, the song has an unmistakably comical tone, as evidenced by the uproarious laughter it receives when performed.²⁰ This is in contrast to the more reality-driven nature of rap music. Rappers routinely tout how their songs are “keeping it real” and that they are “spitting the truth.”²¹ Rapper KRS One explains that rap is “all about reality.”²² And rapper Chuck D. explains how rap music expresses the truth by saying that it is “the black CNN.”²³ One prosecutor explained in closing arguments, “Just because you write lyrics doesn’t mean they have true meaning. Johnny Cash was never really in Folsom Prison and didn’t shoot his old lady down. But [this rapper defendant] is living his lyrics.”²⁴ The following thought experiment further illustrates the unique nature of rap music. Imagine

²⁰ Johnny Cash, *Johnny Cash - A Boy Named Sue* (Live at San Quentin, 1969), YOUTUBE (Mar. 24, 2011), <https://www.youtube.com/watch?v=W0HPuY88Ry4>.

²¹ ERIK NIELSON & ANDREA L. DENNIS, *RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA* 55 (2019) (“There’s no shortage of rappers who assure us that their lyrics are, in fact, *real*.”).

²² *Id.*

²³ *Id.*

²⁴ Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 7–8 (2007).

someone telling a rapper, “Your music is full of empty threats. You haven’t actually done any of those things you rap about, and you wouldn’t do any of the things that you say you would do.” It is unlikely that such a comment would be well received.

III. FREE SPEECH

The film attempts to frame the topic of rap music as evidence as a First Amendment, free-speech issue. It refers to the practice as “the police, the state, com[ing] in and polic[ing] imaginations, polic[ing] artistic expressions, . . . crush[ing] political speech.”²⁵ Reviewers of the film are left with the impression that this is a free-speech issue. One reviewer states that the film is about “the boundaries of free speech.”²⁶ And another, “We want to protect the right of everybody to share who they are and

²⁵ AS WE SPEAK, *supra* note 5, at 37:10.

²⁶ Kathia Woods, *Sundance Showcases Exceptional Lineup of Documentaries*, PHILA. TRIB. (Feb. 3, 2024), https://www.phillytrib.com/entertainment/movies/sundance-showcases-exceptional-lineup-of-documentaries/article_19e0cbe9-279e-5710-8b46-1aec05f41175.html.

where they come from.”²⁷ And another still, “[The documentary] makes a powerful case for the necessity of being free to make art”²⁸ And finally, a reviewer opined how the film “leav[es] viewers questioning if the First Amendment actually does protect the freedom of speech for all Americans.”²⁹

However, properly understood, the issue of rap lyric admissibility at trial is not a free-speech issue. To help illustrate why, imagine you gave a speech at a political rally that included the statements, “I have had multiple meetings with Joe Smith,” “Jane Doe is destroying America,” and “We must pass the XYZ Legislation.” Those quotes could certainly be used against you in court to prove that you did in fact meet with Joe Smith, that you had animosity toward Jane Doe, and that you were in favor of the XYZ Legislation. The reality that these statements could

²⁷ AS WE SPEAK, *supra* note 5, at 1:20:10.

²⁸ Ben Kenigsberg, ‘*As We Speak: Rap Music on Trial*’ Review: *Weaponizing Lyrics in Court*, N.Y. TIMES (Feb. 27, 2024), <https://www.nytimes.com/2024/02/27/movies/as-we-speak-review.html>.

²⁹ Louisa Moore, *As We Speak*, SCREEN ZEALOTS (Feb. 28, 2024), <https://screenzealots.com/2024/02/28/as-we-speak/>.

be used against you at trial does not equate to a violation of your constitutionally protected free speech rights to say them.³⁰

Similarly, the film explicitly portrays the issue as if rap music is being criminalized. Examples in the film include: “The criminalization of hip hop,”³¹ “criminalization of rap music and rap lyrics,”³² and “The criminalization of hip hop, it’s not new, it’s an old tactic. It’s just about criminalization of Blackness.”³³ And Mac Phipps, a rapper who was convicted of manslaughter, is described as “[a] rapper [that] spent most of his life in prison for some lyrics he wrote in the 90’s.”³⁴ In the fictional court case that is prominently featured throughout the film, the defendant is convicted based solely on rap lyrics that did not even mention the crime in question.³⁵

³⁰ In the past, there have been legitimate free-speech issues involving rap lyrics, such as 2 Live Crew being arrested for their lyrics. *See Skywalker Records, Inc. v. Navarro*, 739 F. Supp. 578 (S.D. Fla. 1990).

³¹ AS WE SPEAK, *supra* note 5, at 10:35.

³² *Id.* at 8:40.

³³ *Id.* at 10:35.

³⁴ *Id.* at 17:45.

³⁵ As the fictional defense attorney explains, “all the prosecution has offered today is music. Just [defendant’s] creative expression.” *Id.* at 1:23:05.

This language used throughout the film is highly misleading, as the act of allowing rap lyrics as evidence to prove elements of a crime does not equate to criminalizing rap music any more than using social media posts at trial criminalizes that practice.

IV. SHAKESPEARE COMPARISON

Even more disanalogous than “Bad Man’s Blunder” and “A Boy Named Sue,” the film attempts to portray the actors in Shakespearean plays as analogous to rappers.³⁶ The clear implication is that just as we should not allow actors’ lines to be used against them in court, nor should we allow rap lyrics to be used against rappers. The film presents a scene in which rappers reenact a modernized scene from *Romeo and Juliet*.³⁷ While the scene is captivating, and the Shakespearean framework works surprisingly well when modernized, it is counterproductive to the intended purpose, as it only

³⁶ *Id.* at 59:00.

³⁷ *Id.*

serves to further emphasize the unique nature of rap lyrics. The people in the scene are clearly playing the role of a fictional character reading scripts written by someone else. As soon as the scenes ends, they do not continue to portray the fictional characters. If someone asked them the next day, “Are you really a Capulet like you said you were?” they would surely respond in the negative. Conversely, if someone asked them about their rap lyrics, “Are you really from the Queensbridge Projects like you say?” or “Did you really sell drugs like you say?” the answer would likely be in the affirmative.

V. RACE

A through line that is maintained in the movie is that the use of rap lyrics at trial is the result of racism. Not only is this something inferred throughout, but it is also explicitly stated: “Race is central to rap lyrics on trial.”³⁸ As previously explained, the findings of the 2017 study that were omitted from the film

³⁸ *Id.* at 28:40.

explicitly find that it is not the race of the artist that produces negative perceptions of rap music.³⁹ In fact, the most prominent trial involving rap lyrics as evidence was the Supreme Court case of *Elonis v. United States*, in which the rapper was white.⁴⁰ Any mention of this landmark case is peculiarly omitted from the film.

There are two other notable omissions from the film. The first is the case of Cameron Todd Willingham, who is touted by many as the best example of a factually innocent person being executed.⁴¹ He was convicted in part by testimony at trial from a psychologist who never met with Willingham and never published in the area of sociopathic behavior but was nevertheless allowed to testify that Willingham was a sociopath because he had heavy metal music posters displayed at his

³⁹ See *supra* note 11 and accompanying text.

⁴⁰ “The highest-profile case involving rap as evidence.” NIELSON & DENNIS, *supra* note 21, at 15.

⁴¹ Michael Conklin, *White Paper: Innocent or Inconclusive? Analyzing Abolitionists’ Claims About the Death Penalty*, NEB. L. REV.: BULL. (Sept. 4, 2018), at 4, <https://lawreview.unl.edu/downloads/Conklin%20-%20Innocent%20or%20Inconclusive%20PDF.pdf>.

home.⁴² The other omission is that of the Insane Clown Posse, a rap group whose fans—called “Juggalos”—were designated by the Federal Bureau of Investigation as a gang, resulting in some of them being detained as members of a crime syndicate for simply displaying the group’s logo on their automobiles.⁴³ While ultimately unknowable, perhaps the race of Willingham and the Insane Clown Posse, all white, did not fit the narrative for the film. This narrative appears to be highly effective, as many of the critics reviewing the film agree that the issue is ultimately about race. One movie critic describes how “the documentary highlights the glaring disparity in the treatment of Black artists compared to their white

⁴² David Grann, *Trial by Fire: Did Texas Execute an Innocent Man?*, NEW YORKER (Aug. 31, 2009), <https://www.newyorker.com/magazine/2009/09/07/trial-by-fire> (explaining that the “expert” testified that “[m]any times individuals that have a lot of this type of art have interest in satanic-type activities”).

⁴³ Techdirt, *Appeals Court Dismisses Gang Designation Lawsuit Against the FBI Brought by Insane Clown Posse Fans*, ABOVE L. (Jan. 5, 2018), <https://abovethelaw.com/2018/01/appeals-court-dismisses-gang-designation-lawsuit-against-the-fbi-brought-by-insane-clown-posse-fans/>.

counterparts”⁴⁴ While this is insinuated throughout the movie and even expressly stated on multiple occasions, no evidence is provided to support the claim.⁴⁵ Some information provided, properly understood, actually rebuts the claim.⁴⁶ Also inconsistent with this narrative is that some of the staunchest advocates for using rap lyrics at trial are Black prosecutors. For example, Fani Willis, whose office is prosecuting the high-profile Young Thug case stated, “I think if you decide to admit your crimes over a beat, I’m going to use it. I’m not targeting anyone. You do not get to commit crimes in my county, and then get to decide to brag on it.”⁴⁷

VI. THE UNSEEN

As explained in this review, the film contains a lot of misleading information. But perhaps more troubling is the information that was left out of the film. It never addresses any contradictory evidence

⁴⁴ Woods, *supra* note 26.

⁴⁵ See *supra* note 38 and accompanying text.

⁴⁶ See *supra* note 11 and accompanying text.

⁴⁷ Zaru, *supra* note 1.

or counterarguments in favor of using rap lyrics at trial. The documentary is clearly an advocacy piece, which is fine, but opposing views should nevertheless be presented, if for nothing else than to provide the best rebuttals available against these opposing views so that viewers are better equipped to address them.

For a documentary about evidential admissibility, it is a glaring omission to not even introduce the basic legal standard regarding admissibility. The film never mentions the balance between probative value and prejudicial effect.⁴⁸ Likewise, none of the relevant specifics—such as this evidential balance—from the cases they bring up are discussed.

The lack of any meaningful discussion about the rules of evidence or an honest assessment regarding the cases discussed is made even more striking as a missed opportunity when one considers there were numerous experts interviewed in the film, University of Southern California law professor Jody Armour,

⁴⁸ FED. R. EVID. 403.

MSNBC legal news analyst Ari Melber, and criminal defense attorneys John Hamasaki and Alexandra Kazarian. Instead of talking about the law as it pertains to rap lyrics as evidence, they discuss mass incarceration, aggressive prosecutors, underfunded public defender offices, plea bargaining, and the value of rap music to society.⁴⁹

Another unfortunate omission from the film is any specific solution.⁵⁰ The value of criticism is minimal when no preferable alternative is offered. This is because when the problems inherent in potential solutions are examined, the “solution” is often found to be worse than the initial problem. This is illustrated by the proposed solution from other advocates on the topic of a blanket ban on rap music at trial.⁵¹ Such a proposed solution would have

⁴⁹ The only exception is a fifty-one-second discussion regarding the inadmissibility of character evidence. As *WE SPEAK*, *supra* note 5, at 33:10.

⁵⁰ The closest the film comes to offering a concrete solution is a fifty-five second part in which different people state their intent to pass legislation limiting the use of rap music at trial. *Id.* at 1:21:25.

⁵¹ NIELSON & DENNIS, *supra* note 21, at 157 (proposing “rap shield rules” to “completely ban the use of rap lyrics, videos, or promotional materials as evidence in criminal proceedings”).

disastrous consequences.⁵² It would allow defendants to intimidate witnesses and jurors with impunity—such as when Jamal Knox rapped about the names and work schedules of the officers set to testify against him and urged his fans to kill them.⁵³ It would incur the difficulty of defining exactly what rap music is—as opposed to other genres or just spoken-word poetry—as well as explaining why rap artists should receive special protections not afforded to other musicians. It would bar juries from hearing rap lyrics in which the defendant confessed to specifics of the crime, as in *Greene v. Commonwealth*.⁵⁴ And it would even bar defendants

⁵² The Pennsylvania Supreme Court recognized the absurdity of such a rule in the Jamal Knox case:

If this Court were to rule that Appellant’s decision to use a stage persona and couch his threatening speech as “gangsta rap” categorically prevented the song from being construed as an expression of genuine intent to inflict harm, we would in effect be interpreting the Constitution to provide blanket protection for threats, however severe, so long as they are expressed within that musical style.

Commonwealth v. Knox, 190 A.3d 1146, 1161 (Pa. 2018).

⁵³ Recent Case, *First Amendment — True Threat Doctrine — Pennsylvania Supreme Court Finds Rap Song a True Threat.* — *Commonwealth v. Knox*, 190 A.3d 1146 (Pa. 2018), 132 HARV. L. REV. 1558, 1559 (2019).

⁵⁴ In *Greene*, after his wife was murdered by having her throat slit, but before he was charged with the crime, Greene recorded a rap video with the lyrics:

from using their rap lyrics as evidence for the defense.⁵⁵ Finally, this omission denies the viewer exposure to more practical solutions that have been proposed by others such as expert witnesses for the defense to explain the nature of rap music, judge training on the matter, and jury instructions that cover the issue.⁵⁶

VII. CONCLUSION

The extent to which rap music—or any artistic expressions—should be allowed as evidence is an important topic of discussion. Unfortunately, this documentary does little to educate the viewers on the issue. Even worse, mischaracterizing the issue as criminalizing rap lyrics and casting prosecutors as enemies to fight against is likely to stoke extremist

• “B—— made me mad, and I had to take her life. My name is Dennis Greene and I ain’t got no f——ing wife.”
• “I knew I was gonna be givin’ it to her . . . when I got home . . .”
• “I cut her motherf——in’ neck with a sword . . .”
Greene v. Commonwealth, 197 S.W.3d 76, 86 (Ky. 2006) (alterations in original).
⁵⁵ Michael Conklin, *The Extremes of Rap on Trial: An Analysis of the Movement to Ban Rap Lyrics as Evidence*, 95 IND. L.J. 50, 60 (2019).
⁵⁶ *Id.* at 61.

sentiment toward the legal system. These effects are perhaps already manifesting in those who support blanket bans on all rap lyrics at trial⁵⁷ and banning social media posts at trial.⁵⁸

⁵⁷ See *supra* note 51 and accompanying text.

⁵⁸ AS WE SPEAK, *supra* note 5, at 1:06:10 (“It’s not just music videos and lyrics that we see used as evidence in court now, it can be social media posts, captions, comments on social media.”).

PUBLIC SERVICE VS STATE SERVICE IN THE FIELD OF HEALTHCARE: LEGAL AND TERMINOLOGICAL ISSUES IN UKRAINE AND INTERNATIONALLY

Oksana Muzyka-Stefanchuk,¹ Mykola Stefanchuk,²
Lesya Muzyka,³ Mykhailo A. Anishchenko⁴

I. RELEVANCE OF THE RESEARCH TOPIC.

The problem of optimal organization and effective exercise of public authority is directly related to the preservation of the state in general, with

¹ Head of the Finance Law Department, Educational and Scientific Institute of Law, Taras Shevchenko National University of Kyiv, leading researcher at the Scientific-Research Institute of Intellectual Property of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine, Doctor of Law, Professor.

² Senior Researcher, Scientific-Research Institute for Private Law and Entrepreneurship Named After Academician F.G. Burchak, National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine, Doctor of Law, Professor, Honored Lawyer of Ukraine.

³ Professor of the Department of Private Law, National University 'Kyiv-Mohyla Academy,' Kyiv, Ukraine, Doctor of Law, Associate Professor.

⁴ PhD in Law, Associate Professor, Associate Professor of the Department of Social Medicine, Public Health, Medical and Pharmaceutical law of Zaporizhzhia State Medical and Pharmaceutical University, Zaporizhzhia, Ukraine.

its efficient adaptation in the context of interstate integration. After all, public authority accompanies all social processes in society, manages the affairs of the state, realizes its tasks and goals - serving the people as the only source of power, and contributes to the formation of a legal, democratic, social state.

For Ukraine, this problem is very relevant, because, it is the suboptimal organization of public power that contributes to the crisis tendencies of its economic and social development. As a part numerous concepts, programs, and other legal acts were adopted, but a large number of them did not pass into a new quality of legislative regulation of public authority: there is no legal definition of the concepts of “public authority” and “public service,” and the issues of their content, types, and legal status of subjects have not been settled, which leads to heterogeneous interpretation and implementation. The concept of “state service” is enshrined in national legislation, but these issues also need to be improved in their legal regulation.

As for the healthcare sector, in Ukraine for a long time (since 2009) the issue of transferring doctors to the status of state servants has been discussed. Arguments in favor of this transfer are the extremely low level of financial security and social guarantees for healthcare workers. At one time, in 2010, the Verkhovna Rada of Ukraine⁵ did not support the draft laws on granting the status of a state servant to medical, pedagogical, and scientific and pedagogical workers, as well as proposals to extend the provisions of the Law of Ukraine ‘On State Service’⁶ to the chief state sanitary doctors and their deputies.

In 2015, an electronic petition No. 22/005135-en on the recognition of doctors as state servants was registered on the official website of the President of Ukraine.⁷ The petition asked for the following: doctors who have been working in their specialty for more than ten years should be equated to the category of state servants, after which the length of service as a state servant should be accrued. Of the required

⁵ Verkhovna Rada of Ukraine (2010).

⁶ Law of Ukraine, ‘On State Service.’

⁷ President of Ukraine, electronic petition No. 22/005135-en (2015).

25,000 votes, the petition received 41 votes and was not supported.⁸ As time passes, as it turns out, the issue remains open and sometimes comes up to the level of discussions and proposals.

The purpose of the Article is to substantiate the expediency of recognizing healthcare workers as state servants based on a terminological analysis of the concepts of “public service” and “state service,” as well as taking into account world experience, formulating proposals for improving legislation on public service and healthcare.

II. PRESENTATION OF THE MAIN MATERIAL.

⁸ Recognize Doctors as State Servants,
<https://petition.president.gov.ua/petition/5135>.

A. General Provisions for Fixing the Concepts of ‘Public Service’ and ‘State Service’ in the Legislation of Ukraine

There is no legal definition of the concept of "public service" in the legislation of Ukraine, but after reviewing Article 4, namely paragraph 17 of the Code of Ukraine on Administrative Proceedings of the edition of November 4, 2023,⁹ the Authors see a certain definition of this concept, namely "public service"—activity on state political positions, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, and other state service, patronage service in state bodies, and service in the authorities of the Autonomous Republic of Crimea, local self-government bodies.¹⁰ At the same time, such a phrase is used by the subjects of law-making and law enforcement activities in their documents, which requires the development and legislative

⁹ Code of Ukraine on Administrative Proceedings, art. 4, para. 17 (Nov. 4, 2023).

¹⁰ Code of Administrative Procedure of Ukraine, № 35-36, 37, Information of the Verkhovna Rada of Ukraine (2005), <https://zakon.rada.gov.ua/laws/show/2747-15> at 446.

consolidation of the definition of the concept of “public service” for a correct and unanimous legal understanding.

In scientific and educational literature, the main types of public service include state service and service in local self-governments. It should be noted that special laws formulate the concepts of state service (Article 1 of the Law of Ukraine “On State Service” dated December 10, 2015):¹¹ “State service is a public, professional, politically impartial activity for the practical implementation of the tasks and functions of the state”¹² and service in local self-government bodies (Article 1 of the Law of Ukraine “On service in local self-government bodies” dated June 7, 2001) and “Service in local self-government bodies is a professional, permanent activity of Ukrainian citizens holding positions in local self-government bodies, aimed at the implementation by the territorial community of its right to local self-

¹¹ Law of Ukraine, “On State Service,” art. 1 (Dec. 10, 2015).

¹² Law of Ukraine, “On State Service,” No. 889-VIII, Information of the Verkhovna Rada of Ukraine (Dec. 10, 2015), <https://zakon.rada.gov.ua/laws/show/889-19>.

government and certain powers of executive authorities granted by law.”¹³

The thesis is recognized in science that a thorough definition of a concept is one that allows for the formulation of specific characteristics that distinguish the given concept from another, and reflects its connection with other concepts. From this standpoint, the provided formulations are imperfect.

The Authors can summarize the scientists' work on the characteristics of public service. N. Runova identifies the following features of public service: 1) the emergence of legal relations on the basis of the actual composition, an obligatory element of which, according to the norms of the current legislation on public service and service in local self-governments, is the act of appointment to a position or the result of elections; 2) constancy and professional basis for the performance by the servant of his powers; 3) holding a public position in a public authority; and 4) the orientation of the activities of servants to satisfy

¹³ Law of Ukraine, “On service in local self-government bodies,” No. 2493-III, Information of the Verkhovna Rada of Ukraine (June 7, 2001), <https://zakon.rada.gov.ua/laws/show/2493-14#Text>.

public interests determined by the state and secured by the law of interests.¹⁴ As for the types of public service, according to R. Botvinov, the public service system includes the following types of service: state service, service in local self-governments, political service, military service, law enforcement service, specialized service, and professional activities of judges and prosecutors depending on species differentiation—civil, military and law enforcement service.¹⁵ He defines areas of special competence of the public service—the performance of law enforcement functions of the state, which consists in the protection of the territorial integrity and security of the state, law and order, protection of the rights, and lives and health of citizens, and justifies the need to introduce the concept of “public service for special purposes.”¹⁶ L. Bila-Tiunova, referring to the Constitution of Ukraine as a source of legal

¹⁴ N. Runova, *Public Service in Ukraine: Problems of Definition*, № 3 (7), Public Law (2012) at 269–274.

¹⁵ R.G. Botvinov, *Development of Public Service of Special Purpose in Ukraine: Author's Ref. Dis. ... Dr. of Science*, State Administration: 25.00.03 / NADU DRIDU. Dnipro (2018) at 37.

¹⁶ *Id.* at 8-9.

regulation of public service, defined the following types of it: public political service, public service (administrative, specialized, and military), service as a judge, and service in local self-governments.¹⁷ T. Zhelyuk refers to the public service municipal and state, which, in turn, is divided into general and specialized public services.¹⁸ That is to say, in the scientific community there is a consensus on the recognition of state service and service in local self-governments as types of public service. Yet there is a difference in the allocation of other species, which accordingly requires clarification at the legislative level.

As part of the Authors' research, the Authors support the position of O. V. Petryshyn, a supporter of a broad interpretation of the public service, who understands it as a state, municipal service and service in non-governmental organizations (public organizations, political parties and even private

¹⁷ L.R. Bila-Tiunova, *Public Service as an Administrative and Legal Category*, SCIENTIFIC WORKS OF ODESSA NATIONAL LAW ACADEMY (2009) at 143.

¹⁸ T.L. ZHELYUK, *STATE SERVICE: SCIENTIFIC GUIDE FOR UNIVERSITIES* (2005) AT 41.

enterprises), formulates the features: 1) holding a position in relevant bodies and organizations, regardless of the form of ownership and specific organizational structures; 2) the service orientation of activity, which consists in activities not for oneself, but for serving ‘foreign’ interests; 3) the professionalism of service activities, that is to say, the implementation of such activities on a permanent basis, requiring certain knowledge and continuity, and is the main source of employee's material support.¹⁹

The given definitions formulate public and state service as a certain activity carried out in a certain way, by certain subjects with certain goals. These definitions lack information about the content of this activity. The Authors find the answer in the Concept of development of the system of providing administrative services by executive authorities, approved by the Order of the Cabinet of Ministers of

¹⁹ V. YA MALINOVSKY, PUBLIC SERVICE IN UKRAINE (2018) AT 44.

Ukraine dated February 15, 2006 No. 90-p.²⁰
Services constitute the main content of public and state service. According to this document,

Services provided by state authorities, local self-governments, enterprises, institutions, organizations under their control constitute the sphere of public services. Depending on the subject providing public services, state and municipal services are distinguished. State services are provided by state authorities (mainly executive power) and state enterprises, institutions, organizations, as well as local self-governments in the exercise of delegated state powers at the expense of the state budget. Municipal services are provided by local self-governments, as well as executive authorities and enterprises, institutions, organizations in the manner of exercising the powers delegated by local self-governments at the expense of the local budget.²¹

²⁰ Concept of development of the system of providing administrative services by executive authorities, Order of the Cabinet of Ministers of Ukraine, No. 90-p (Feb. 15, 2006).

²¹ On the approval of the Concept of development of the system of providing administrative services by executive authorities, Order of the Cabinet of Ministers of Ukraine, No. 90-p. (Feb. 15, 2006), <https://zakon.rada.gov.ua/laws/show/90-2006-%D1%80#Text>.

So, taking into account all aspects, we propose the following definition: “Public service is a professional, politically impartial activity of subjects of public and private law of all forms of ownership and organizational forms, carried out by providing public services for the practical implementation of the tasks and functions of the state.” This should be enshrined in the Law of Ukraine “On Public Service,” which should regulate the issues of types of public service, subjects, their legal status, etc. for unambiguous interpretation and application.²² The definitions of “state service” and “service in local self-government bodies” should have similar content, starting with the words “this is a type of public service.”

B. Specificity of Public and State Service in the Field of Healthcare in the Countries of the World

Analyzing world experience, the Authors conclude that doctors abroad are often state servants.

²² Law of Ukraine “On Public Service.”

However, it should be noted that if the Authors take developed European countries as an example, they have a public service, which includes state authorities and local self-governments (their analogues). At the same time, “public service” refers to public services provided, in particular, to the population by state authorities, local self-governments, certain institutions, and organizations. Medical services are one of them.

In countries of the American legal system, the term “public service” applies to all public sector organizations, and the status of public servant applies to most public sector workers, including teachers, doctors, etc. To define the activities of professional officials—employees of the state (government) apparatus in these countries, as a rule, the term “civil service” is used.²³

In the countries of the Romano-Germanic legal system, the concepts of “public service” and the

²³ V.L. Knyazevich, N.O. Vasyuk, and T.V. Savina, *Public Service in the Healthcare Sector in Ukraine and the World: Regulatory and Legal Aspect*, No. 14. 74-78, *Investments: Practice and Evidence* (2017).

scope of such service are defined differently. According to the words of Jean-Sébastien Pilczer, the concept of state service is characterized by the stagnant legal regime before it.²⁴ Any activity of the government service must be subject to the principles of zeal, assertiveness and flexibility. It is possible that these principles are based on their high place in the hierarchy of standards and the multiplicity of their variations. The concept of civil service is as lively as it is flexible. Whatever its forms and names, they form the basis of social action and the cement of social cohesion. In the words of Leon Duga, public service covers any activity, the performance of which must be ensured, regulated and controlled by those in power, because the performance of this activity is necessary for the achievement and development of social interdependence and that it is of such importance. a character which can only be fully realized by the intervention of the ruling power.²⁵

²⁴ Jean-Sébastien Pilczer, *La Notion de Service Public*, 2010/2 (n° 158), *Informations Sociales*, at 6-9.

²⁵ *Id.*

As is known, in France the concept of “public service” (*fonction publique*) covers service in the administrations of the state, regions, departments, communes, and their public institutions. It includes three components: central public service or state public service - 2.47 million employees (43.87%), local public service or territorial public service - 1.98 million (35.17%), and hospital public service - 1.18 million employees (20.96%).²⁶

Servants also include teachers, university professors, and doctors of public health institutions. In the general statute of the public service, the public service of the state, the territorial public service, and the medical public service are distinguished. At the same time, among all “agents,” the emphasis in legal regulation is on “officials,” that is, persons appointed in accordance with public law.²⁷ There are certain inaccuracies in this opinion. Thus, the term “public service” can be translated into French as “*services*

²⁶ L. Prokopenko, “Management System of the State Service of France,” Theory and Practice of Public Service: Materials of a Scientific and Practical Conference, December 21, 2018, at 122-124.

²⁷ Public Service. Foreign Experience and Proposals for Ukraine / For the general. ed. V.P. Timoshchuk, A.M. Shkolik (2007) at 12-13.

publique,” and “*fonction publique*” can be translated as state service.²⁸ Also in the French-Ukrainian and Ukrainian-French legal dictionary by N.R. Malysheva and I.S. Mikitin actually the term “public” is translated as state, social, public.²⁹ That is to say, there is a certain terminological inconsistency in the literal translation of the terms we are studying.

In our opinion, based on what is denoted by the terms “state” and “public,” public service is often understood as public services. In France, the state service includes all agents who hold positions in the state, local authorities (municipality, department or region) and certain public hospitals.³⁰

Also, for example, in France there is the Ministry of Transformation and State Service (in French - *Ministre de la Transformation et la Fonction Publiques*), which has an online state service portal.

²⁸ FRENCH-UKRAINIAN AND UKRAINIAN-FRENCH LEGAL DICTIONARY (EDS. N.R. MALYSHEVA & I.S. MYKYTYN, 2017) AT 433

²⁹ *ID.* AT 253, 433.

³⁰ *La Fonction Publique, Qu'est-Ce Que C'est ?*, <https://www.lafinancepourtous.com/pratique/vie-pro/fonctionnaires/la-fonction-publique-quest-ce-que-cest/>

If the Authors talk about the correctness of the translation, then we give the literal correct translation of the name of the Ministry. However, if we proceed from what it does and what it is about on the “online portal of the state service,” then it is still appropriate to operate with the concept of “public service.” So, the state (more precisely, public) service in France has three levels: state, territorial, and hospital or medical (health and social institutions, in French—*Fonction publique hospitalière*). In this context, mention should be made of the translation and use of the term “public” in the work “Public Service. Foreign experience and proposals for Ukraine.” The Authors of this work write that “The general statute of the public service distinguishes the public service of the state, the territorial public service and the medical public service.”³¹ That is to say, it focuses on the public service, which covers both the state and the medical service, which, in the Authors’ opinion, is inherently correct.

³¹ Public Service. Foreign Experience and Proposals for Ukraine / For the general. ed. V.P. Timoshchuk, A.M. Shkolik (2007) at 13.

In France, there are three principles of state service: recruitment by competition; the right to a career; and the right to mobility.³² It is provided that the state (and in fact public) service in the hospital, as defined by the law on the state medical service of 9 January 1986 (Loi n 86-33 du 9 janvier 1986 portant dispositions statutaires relatives à la fonction publique hospitalière³³), combines, with the exception of medical personnel (doctors, biologists, pharmacists and orthodontists), all workplaces in the following institutions: state hospitals; state nursing homes; public or state institutions under which subordinate child support services fall; state institutions for minors or adults with disabilities; and public accommodation and social rehabilitation centers (shelters).³⁴

³² La Fonction Publique en France Des Métiers au Service des Citoyens, https://www.fonction-publique.gouv.fr/files/files/publications/coll_les_essentiels/la-fonction-publique-en-France-2013.pdf.

³³ Law No. 86-33, Portant Dispositions Statutaires Relatives à la Fonction Publique Hospitalière (Jan. 9, 1986), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000512459/>.

³⁴ Le Portail de la Fonction Publique, <https://www.fonction-publique.gouv.fr/la-fonction-publique-hospitaliere>.

The basis of the legal regulation of the state service and the determination of the status of state servants in France are the following laws (*Statut général des fonctionnaires*):

- • General Provisions: Section I: Law No. 83-634 of 13 July 1983 on the Rights and Duties of State Servants (Le Pors Law).³⁵
- • State Service: Section II: Law No. 84-16 of 11 January 1984 on the statutory provisions relating to the state service.³⁶
- • Territorial State Service: Section III: Law No. 84-53 of 26 January 1984 on statutory provisions relating to territorial state service.³⁷
- • State Hospital Service: Section IV: Law No. 86-33 of 9 January 1986 establishing provisions relating to the state hospital service.³⁸

In Art. 1 of Law No. 86-33 of 9 January 1986 stipulates that Art. 2-10 of this Law constitute

³⁵ General Provisions § I, Rights and Duties of State Servants (*Le Pors Law*), No. 83-634 (July 13, 1983).

³⁶ State Service § II, No. 84-16 (Jan. 11, 1984).

³⁷ Territorial State Service § III, No. 84-53 (Jan. 26, 1984).

³⁸ State Hospital Service § IV, No. 86-33 (Jan. 9, 1986).

Section IV of the general statute of state servants of the state and local authorities.³⁹

Professions that are present in French state health institutions (hospitals, nursing homes, rehabilitation centers, care centers, etc.) are combined into the state hospital service, which mainly includes nurses, paramedical and medical personnel, and technical and administrative workers.⁴⁰

In the Spanish doctrine, Garrido Falla, collecting the traditional concept of Jordana de Posas, indicates that the public service is "the activity of providing (material or immaterial benefits) with or without a monopoly and in the regime of public or private law." Villar Palaci, García de Enterría and García Treviñano note that a public service is "the activity of providing intangible goods (or services) with a monopoly (regalistic exclusivity) and with a regime of public law," which distinguishes it from economic management (or industrial activity) or the provision

³⁹ Law No. 86-33, art. 1 (Jan. 9, 1986). *See id.* at art. 2-10 and *Le Pors* Law § IV.

⁴⁰ *Employeur: Fonction publique hospitalière*, <https://vocationservicepublic.fr/employeur/fonction-publique-hospitaliere>.

of market goods, which characterize it as "the activity of providing material goods under conditions of competition and in accordance with private law." López Candela defines it as "that activity of economic and social content, which, under the responsibility of the administration, is carried out constantly and everywhere to meet the basic needs of the social community."⁴¹

The Spanish model for determining the status of medical workers is interesting. Thus, all doctors working in hospitals and up to 75% of other medical workers are considered "half-state employees" and receive salaries, not fees, depending on the services provided. Its size depends on the number of years of medical practice and certain professional degrees; it increases every year for everyone at once, regardless of the level of professionalism or patient feedback.⁴²

⁴¹ Servicio Público. Guías Jurídicas, https://guiasjuridicas.laley.es/Content/Documento.aspx?params=H4sIAAAAAAAAAEAMtMSbF1jTAAAUMTQ3MTtbLUouLM_DxbIwMDCwNzAwuQQGZapUtckhlQaptWmJOcSoAXqUo0DUAAAA=WKE

⁴² Michael Tenner, "A Look at the World's Healthcare Systems – 5," 23 CITIZEN OF UKRAINE WEEKLY 230, <http://gukr.com/article2678.html>.

That is to say, doctors and most medical professionals in Spain are not absolutely equal to state servants. They are only subject to certain provisions of the legislation on state service.

In Portugal, therapists and doctors, who work in hospitals, have the status of state servants and are provided by the national health system. However, this does not prohibit such doctors from private practice, which is very common. If the Authors talk about specialized specialists, then they are usually doctors who conduct private practice and work for the state under a contract.⁴³ That is to say, such a model assumes the extension of the status of state servants to doctors with their inherent rights, duties and guarantees.

In Norway and Japan, doctors working in state hospitals are state servants and receive salaries from the state budget. All other doctors working in the

⁴³ Michael Tenner, "A Look at the World's Healthcare Systems – 7," 26 CITIZEN OF UKRAINE WEEKLY 233, <http://gukr.com/article2709.html>.

private sector receive remuneration for their services in an amount determined by the state.⁴⁴

Also, in some foreign countries (for example, in the UK and Canada) there is a state civil service (Civil Service), which is considered as a kind of auxiliary to the state service. If the Authors consider a specially created body of the civil service, then it can be an analogue of the Ukrainian National State Service Agency of Ukraine, for example, in Poland (in Polish—*sz służbę cywilną*, in Ukrainian it is translated as a state service);⁴⁵ in the UK (in English—Civil Service Commission, in Ukrainian—State Service Commission). Canada also has a State Service Commission (in English—Public Service Commission, French—*Commission de la fonction publique*). According to Abraham Jackson, in order to promote the effective functioning of the public service, particularly in the area of economic and

⁴⁴ Michael Tenner, “A Look at the World's Health Care Systems – 6,” 25 CITIZEN OF UKRAINE WEEKLY 232, <http://gukr.com/article2699.html>.

⁴⁵ Ustawa z dnia 21 listopada 2008 r, o służbie cywilnej (Dz.U. 2021 poz. 1233), <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001233/T/D20211233L.pdf>

social welfare, leadership in the public service should be provided with mandatory services available to the community. They usually include basic services such as transport, education, healthcare and, in addition, a legal system that facilitates the proper functioning of markets—a deliberate requirement to stimulate growth in an economy.⁴⁶

In Germany, doctors are given the highest rank of state servants (from A13 to A16, from B1 to B11, from W1 to W3, from C1 to C4, from R1 to R10). The official name of these ranks is tied to the pay grades of Federal law. The salary of a state servant is determined by a fixed salary scale and legally approved salaries. The level of payment depends on the position, seniority and rank of the civil servant. They are also exempt from social security contributions and only pay income tax.⁴⁷

⁴⁶ Emerson Abraham Jackson, Importance of the Public Service in Achieving the UN SDGs, MPRA, University of Birmingham (2020) at 1-16.

⁴⁷ T. Gumenyuk, Public Service in EU Countries, European Information Research Center (2016), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://infocenter.rada.gov.ua/uploads/documents/28926.pdf.

M.I. Tsurkan points to this question that the analysis of the forms of government in European countries allows us to conclude that simultaneously with the term “state service” such terms as “civil service,” “public service,” “professional bureaucracy,” and “public administration” are used.⁴⁸ Here again, one should address the problem of literal and correct translation of titles.

In this Article, the Authors will not delve into the features of state and public service in foreign countries as a whole—let this issue be the subject of further scientific research in the comparative legal aspect. However, it should be noted that one should be more attentive to the use of foreign legislation and find out more deeply what exactly regulates certain laws, and how exactly legislative terms are defined, and not “blindly” identify the state and public service in literal translation.

Consequently, the experience of foreign countries shows that activities in the healthcare

⁴⁸ M.I. TSURKAN, LEGAL REGULATION OF PUBLIC SERVICE IN UKRAINE, FEATURES OF LITIGATION: A MONOGRAPH (2010) AT 216.

sector have the status of a state service, which means that it is provided with state guarantees for financing, social benefits, etc.

C. Justification for Establishing the Legal Status of Healthcare Workers as State Servants

As for the healthcare sector, the relevant activity is one of the main directions for the implementation of the social function of the state, the fulfillment of the main duty of the state to establish and ensure human rights and freedoms (Art. 3 of the Constitution of Ukraine).⁴⁹ Also, the provisions of Art. 49 of the Constitution of Ukraine establish the right of everyone to healthcare, medical care, and medical insurance.⁵⁰ The right to healthcare is ensured by state funding of relevant socio-economic, medical and sanitary, and health-improving and preventive programs. The state is obliged to create conditions for effective and affordable medical care

⁴⁹ Constitution of Ukraine, Law of Ukraine, No. 254к/96-BP (June 28, 1996), Information of the Verkhovna Rada of Ukraine, No. 30 (1996) at 141. Constitution of Ukraine, art. 3.

⁵⁰ Constitution of Ukraine, art. 49.

for all citizens. It is also indicated that in state and municipal healthcare institutions, medical care is provided free of charge; the existing network of such establishments cannot be reduced. The state promotes the development of medical institutions of all forms of ownership.⁵¹ One of the basic principles of healthcare in Ukraine according to the content of Art. 4 of the Law of Ukraine ‘Fundamentals of Ukrainian Legislation on Healthcare’ is the recognition of healthcare as a priority for society and the state, one of the main factors for the survival and development of the people of Ukraine and the observance of human and civil rights and freedoms in the field of healthcare and the provision of related state guarantees.⁵² Hence, it seems necessary to recognize doctors as state servants because of their special role in ensuring the state constitutional rights to healthcare and medical care. This position is substantiated by the fact that for the development of

⁵¹ Constitution of Ukraine, Law of Ukraine, No. 254к/96-BP.

⁵² Law of Ukraine, Fundamentals of Ukrainian Legislation on Healthcare, No. 2801-XII (Nov. 19, 1992), <https://zakon.rada.gov.ua/laws/show/2801-12#n551>. Law of Ukraine, art. 4.

any state it is necessary that the people living in it should be educated and healthy. This is one of the main conditions for the effective development of the state and society.

Currently, the situation of doctors is truly destitute, as they are equated in pay to the lowest-paid specialties. The most educated and smartest of them are forced to either leave the profession or look for additional jobs in order to secure a decent existence for themselves. It turns out that less educated, initiating, and energetic people remain in their positions because they simply have nowhere else to go.

To stop the outflow of personnel in the field, people need social guarantees, decent salaries, and confidence in the future. The best solution seems to be the recognition of doctors as state servants. The status of a state servant will dramatically increase the importance of the profession in society, attract the best personnel, and strengthen the financial situation. People will not think about survival, but will be able to fully devote themselves to their vocation.

In the letter of the Ministry of Justice of Ukraine dated December 18, 2009 No. 967-0-2-09-22 “On providing an explanation of the terms used in the Law of Ukraine” “On Amendments to Certain Legislative Acts of Ukraine on Liability for Corruption Offenses,” it is noted that in accordance with the Concept of development of the system of providing administrative services by executive authorities, the scope of public services consists of services provided by state authorities, local self-governments, enterprises, institutions, and organizations under their management.⁵³ Depending on the subject of providing public services, state and municipal services are distinguished.⁵⁴ From the foregoing, it can be concluded that doctors, medical and medicinal institutions provide a variety of public services if their funding is provided for in the state or

⁵³ On providing an explanation of the terms used in the Law of Ukraine, “On Amendments to Certain Legislative Acts of Ukraine on Liability for Corruption Offenses,” No. 967-0-2-09-22, Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine (Dec. 18, 2009), <http://zakon3.rada.gov.ua/laws/show/v967-323-09>. *See* Concept of development of the system of providing administrative services by executive authorities (Feb. 15, 2006).

⁵⁴ Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine (2009).

local budgets. Private healthcare institutions can provide public services if the medical institution has a contract with the National Health Service of Ukraine (NHSU). As of January 2023, 2,200 contracts have been concluded with primary healthcare centers, 241 contracts were signed, proposals for which were submitted by medical institutions under a simplified procedure. In general, specialized medical institutions have submitted more than 15,000 proposals, of which 13,500 have been confirmed and are awaiting a draft agreement.⁵⁵

Reforming the healthcare sector has a state level. From 2020, according to the Law of Ukraine “On State Financial Guarantees of Medical Care for the Population,” medical institutions at all levels were supposed to switch to the NHSU financing model on the basis of a concluded agreement.⁵⁶ Thus, the

⁵⁵ O.V. Ustinov, The Program of Medical Guarantees: The Status of Concluding Contracts for 2023, <https://www.umj.com.ua/article/237654/>.

⁵⁶ Law of Ukraine, On State Financial Guarantees of Medical Care for the Population, No. 2168-VIII, Information of the Verkhovna Rada of Ukraine (Oct. 19, 2017), <https://zakon.rada.gov.ua/laws/show/2168-19>.

program of medical guarantees, according to the Law, includes services for emergency medical care, primary medical care, secondary (specialized) medical care, tertiary (highly specialized) medical care, palliative care, rehabilitation in the healthcare sector, medical care for children under 16 years old and medical care for pregnancy and childbirth.⁵⁷ Hospitals have been transferred from the status of budgetary institutions to the status of economic entities engaged in non-commercial economic activities aimed at achieving economic, social and other results without the purpose of making a profit. From April 2020, this period has been extended.

It is important that now local authorities must realize that they have a responsibility for the availability of medical care for patients; it is responsible for the purchase of equipment, repair of medical institutions of communal ownership, etc. Currently, local authorities face a number of tasks that have already been completed for primary healthcare, namely the autonomy of all medical

⁵⁷ *Id.*

institutions that they own, as well as ensuring computerization and connection of institutions to the eHealth system. Of course, this entails certain costs, but the main thing is the result. The Authors also add that in the process of medical reform private healthcare institutions and private entrepreneurs were able to provide public medical services, thereby unloading the state and municipal healthcare sectors.

As for administrative services, in accordance with the Concept of development of the system of providing administrative services by executive authorities, approved by the Order of the Cabinet of Ministers of Ukraine dated February 15, 2006 No. 90-p. they are the most important component of both state and municipal services.⁵⁸ That is to say, “any administrative service is public by legal nature... Administrative services in the healthcare sector are the result of the exercise of power by an authorized subject that implements public functions in the healthcare sector and, in accordance with the law and

⁵⁸ Botvinov, *Development of Public Service of Special Purpose in Ukraine*. See Order of the Cabinet of Ministers of Ukraine (Feb. 15, 2006).

the application of an individual or legal entity, provides legal registration of the acquisition, change or termination of the rights and / or obligations of such a person.”⁵⁹

Therefore, it is necessary to legislate that the provision of public services (which, according to the above definition, include both administrative services for the management of a healthcare institution, and services for the provision of medical care, medical service and health insurance) is the basis for classifying their providers as state servants.

Therefore, considering the healthcare sector as a priority in the life of the Ukrainian state and society, it is advisable to grant the status of state servants to all its employees with the system of guarantees and benefits provided for by law.

According to Carmen M. Cusack and Matthew E. Waranius, Americans have the law and their shared principles to help them through suppression, hurt,

⁵⁹ O.A. Muzyka-Stefanchuk, *Public Administrative Services in the Field of Healthcare*, 22 ZAPOROZHYE MED. J. 261, 263 (eds. O.A. Muzyka-Stefanchuk, O.O. Otradnova, T.V. Danchenko, L.A. Muzyka, & V.G. Savenkova, 2020).

and confusion. Citizenship is a safety barrier under them that will allow them to rise.⁶⁰

Perhaps for Ukrainian healthcare workers, the status of a state servant will be a protective barrier and a good incentive for effective work.

III. CONCLUSIONS.

Terminological analysis and research of the peculiarities of legal regulation in the legislation of Ukraine of the concepts of "public service" and "state service" leads to the conclusion that it is necessary to formulate and consolidate new and improved definitions in the legislation. They should reflect the legal nature, features, types, correlations. Author's suggestions are provided in the text of the article.

Based on world experience, taking into account the priority of the healthcare sector for the very existence and effective development of the state and society, the expediency of establishing the legal

⁶⁰ Carmen M. Cusack & Matthew E. Waranius, *American Capitalism and the Protestant Work Ethic: "I'll Always Be Your Slave,"* 25 J. L. & Soc. Deviance 40 (2023).

status of state servants for all healthcare workers with the system of guarantees and benefits provided for by the legislation of Ukraine is substantiated.