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Education

B.A. University of Florida, 1966

J.D. University of Florida, 1968

LL.M. Yale University, 1973

Professional Employment

University of Florida, 1968-1973

University of Kentucky, 1973-present

Visiting Professor, Indiana University,
1978-79, summer 1980, 1981, 1985

Visiting Professor, Washington University, summer 1987

Visiting Professor, University of Iowa, summer 1987

Current Teaching Interests

Property, Trusts & Estates, Products Liability,
Torts, Land Use Planning, Water Rights

Publications

Books

Florida Water Law (Fla. Water Resources Research Center 1980) (with Frank E. Maloney, S. Jay Plager & Bram Canter) (762 pp.).

A Model Water Code: Text and Commentary (1972) (University of Florida Press) (with Frank E. Maloney & J. Scott Morris) (373 pp.).

Articles and Book Chapters

Non-Charitable Purpose Trusts: Past, Present and Future, Real Prop., Tr. & Est. L.J. (2016)

Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit, 41 ACTEC Law Journal 241-305 (2016)

Sherlock Holmes and the Problem of the Dead Hand: The Modification and Termination of “Irrevocable” Trusts, 28 Quinnipiac Probate Law Journal 237-303 (2015)

“Danger Is My Business”: The Right to Manufacture Unsafe Products, 67 Arkansas Law Review 827-872 (2014).

When Is a Trust Protector a Fiduciary?, 27 Quinnipiac Probate Law Journal 277-316 (2014)

The Role of Litigation in the Fight against Prescription Drug Abuse, 116 West Virginia Law Review 1118-1165 (2014).

“The Disorderly Conduct of Words”: Civil Liability for the Dissemination of False or Inaccurate Information, 65 South Carolina Law Review 131-211 (2013).

The Supreme Court and the *PPL Montana* Case: Examining the Relationship Between Navigability and State Ownership of Submerged Lands, 31 Virginia Environmental Journal 168-225 (2013) .

“Fasten Your Seat Belt, Orville!”: Exploring the Relationship Between State of the Art, Technological and Commercial Feasibility, and the Restatement’s Reasonable Alternative Design Requirement, 45 Indiana Law Review 669-717 (2012).

Risky Business: Liability of Product Sellers Who Offer Safety Devices as Optional Equipment, 39 Hofstra L. Review 807-857 (2011).

The Role of Trust Protectors in American Trust Law, 45 ABA Real Property, Trust & Estate Law Journal 319-354 (2010).

The Impact of *Wyeth v. Levine* on FDA Regulation of Prescription Drugs, 65 Food & Drug Law Journal 247-284 (2010).

Product Liability’s Parallel Universe: Fault-Based Liability Theories and Modern Products Liability Law, 74 Brooklyn Law Review 633- 665 (2009) (symposium issue).

“There’s Danger Here, Cherie!”: Liability for the Promotion and Marketing of Drugs and Medical Devices for Off-Label Uses, 73 Brooklyn Law Review Rev. 1253-1326 (2008).

Providing a Safe Harbor for Those Who Play by the Rules: The Case for a Strong Regulatory Compliance Defense, 2008 Utah Law Review 115-157 (with Barfield, King, Denton & Jasper), (*reprinted in* 58 Defense Law Journal 1-55 (No. 3, 2009).

Conspiracy Theories: Is There a Place for Civil Conspiracy in Products Liability Litigation?, 74 Tenn. Law Review 383-420 (2007).

The Offshore Asset Protection Trust: A Prudent Financial Planning Device or the Last Refuge of a Scoundrel?, 45 Duquesne Law Review 147-193 (2007).

The *Welding Fume* Case and the Preemptive Effect of OSHA's HazCom Standard on Common-Law Failure-to-Warn Claims, 54 Buffalo Law Review 103-155 (2006).

"After You, My Dear Alphonse!": Should the Courts Defer to the FDA's New Interpretation of Section 360k(a) of the Medical Device Amendments?, 80 Tulane Law Review. 727-773 (2006).

Tell Me What You Eat and I Will Tell Whom to Sue: Big Trouble Ahead for "Big Food?," 39 Georgia Law Review 839-893 (2005).

Public Tort Litigation: Public Benefit or Public Nuisance?, 77 Temple Law Review 825-911 (2004).

Preemption of State Tort Law by Federal Safety Statutes: Supreme Court Preemption Jurisprudence Since *Cipollone*, 92 Kentucky Law Review 913-977 (2003-2004).

Tort Liability for the Sale of Non-Defective Products: An Analysis and Critique of the Concept of Negligent Marketing, 53 South Carolina Law Review 907-966 (2002) (symposium issue).

Will More Aggressive Marketing Practices Lead to Greater Tort Liability for Prescription Drug Manufacturers?, 37 Wake Forest Law Review 97-139 (2002).

The Application of Product Liability Principles to Publishers of Violent or Sexually Explicit Material, 52 Florida Law Review 603-670 (2000).

"Waive" Goodbye to Tort Liability: A Proposal to Remove Paternalism from Product Sales Transactions, 37 San Diego Law Review 293-345 (2000).

When Warnings Alone Won't Do: A Reply to Professor Phillips, 26 Northern Kentucky Law Review 627-654 (1999) (symposium issue).

Toward Justice in Tobacco Policymaking: A Critique of Hanson and Logue and an Alternative Approach to the Costs of Cigarettes, 33 Georgia Law Review 693-812 (1999) (with Paul A. LeBel) (symposium issue).

Replacing Strict Liability with a Contract-Based Products Liability Regime, 71 Temple Law Review 171-215 (1998), *reprinted in* 48 Defense Law Journal 293 (1999).

Paying for the Health Costs of Smoking: Loss Shifting and Loss Bearers, 27 Southwestern University Law Review. 537-575 (1998) (symposium issue).

Product Category Liability: A Critical Analysis, 24 Northern Kentucky Law Review 423-455 (1997) (symposium issue).

An Insurance-Based Compensation System for Product-Related Injuries, 58 University of Pittsburgh Law Review 669-717 (1997).

The Case for a "Strong" Regulatory Compliance Defense, 55 Maryland Law Review 1210-1267 (1996) (symposium issue).

Learned Intermediaries and Sophisticated Users: Encouraging the Use of Intermediaries to Transmit Product Safety Information , 46 Syracuse Law Review 1185-1241 (1996).

Regulatory Takings and Wetland Protection in the Post-*Lucas* Era, 30 Land & Water Law Review 349-414 (1995).

Tort Liability for Asbestos Removal Costs, 73 Oregon Law Review 505-550 (1994).

Wild Dunes and Serbonian Bogs: The Impact of the *Lucas* Decision on State Shoreline Management Programs, 70 Denver University Law Review 437-471 (1993) (symposium issue).

The Impact of the *Cipollone* Case on Federal Preemption Law, 14 Journal of Products & Toxics Liability 1-27 (1993).

Federal Preemption of State Products Liability Doctrines, 44 South Carolina Law Review 187-285 (1993).

Compensation for Smoking-Related Injuries: An Alternative to Strict Liability in Tort, 36 Wayne Law Review 1085-1148 (1990).

Unavoidably Unsafe Products and Strict Liability: What Liability Rule Should Be Applied to the Sellers of Pharmaceutical Products?, 78 Kentucky Law Journal 705-766 (1989-90).

Cigarette Company Liability: Preemption, Public Policy and Alternative Compensation Systems, 39 Syracuse Law Review 897-971 (1988).

The Influence of the Model Water Code on Water Resources Management Policy in Florida, 3 Journal of Land Use & Environmental Law 1-32 (1987).

Strict Liability for Chattel Leasing, 48 University of Pittsburgh Law Review 273-352 (1987).

Surrogate Immunity: The Government Contract Defense and Products Liability, 47 Ohio State Law Journal 985-1035 (1986), *reprinted in* 36 Defense Law Journal 537 (1987) *and* 24 Yearbook of Procurement Articles 201 (1987).

Water Rights, The Public Trust Doctrine, and the Protection of Instream Uses, 1986 University of Illinois Law Review 407-437 (symposium issue).

Consumptive Water Rights in Kentucky, in 1 Kentucky Mineral Law 119-158 (Banks Baldwin 1986).

Retribution and Deterrence: The Role of Punitive Damages in Products Liability Litigation, 74 Kentucky Law Journal 1-125 (1985), *reprinted in* 35 Defense Law Journal 467 (1986).

Water Rights Legislation in the East: A Program for Reform, 24 William & Mary Law Review 547-590 (1983) (symposium issue).

The Right of Publicity: A "Haystack in a Hurricane," 55 Temple Law Quarterly 977-1055 (1982).

Putting the Genie Back into the Bottle: U.S. Controls Over Sensitive Nuclear Technology, 16 Journal of International Law & Economics 65-118 (1981).

High-Level Radioactive Waste Management: The Nuclear Dilemma, 1979 Wisconsin Law Review 707-767.

Reclaiming Coal Surface Mines in Central Appalachia: A Case Study of the Benefits and Costs, 54 Land Economics 472-489 (1978) (with Alan Randall et al.)

Water Use Permits in a Riparian State: Problems and Proposals, 66 Kentucky Law Journal 191-265 (1977).

The Use and Significance of the Mean High Water Line in Coastal Boundary Mapping, 53 North Carolina Law Review 185-273 (1974) (with Frank Maloney) (symposium Issue).

Land Use Controls in Coastal Areas, 9 California Western Law Review 391-428 (1973).

A Survey of State Regulations of Dredge and Fill Operations in Nonnavigable Waters, 8 Land & Water Law Review 65-91 (1973).

From Caveat Emptor to Strict Liability: A Review of Products Liability in Florida, 24 University of Florida Law Review 410-432 (1972).

The Effect of Sovereign Immunity on Environmental Protection Suits Against Government Officials, 6 Valparaiso Law Review 1-25 (1971).

Long Range Planning Under a Comprehensive State Water Code, 73 West Virginia Law Review 209-230 (1971) (with Frank Maloney).

A Modern Proposal for State Regulation of Consumptive Uses of Water, 22 Hastings Law Journal 523-560 (1971) (with Frank Maloney) (symposium issue).

Water Quality Control: A Modern Approach to State Regulation, 35 Albany Law Review 28-59 (1970) (with Frank Maloney) (symposium Issue).

Libel *Per Quod* in Florida, 23 University of Florida Law Review 51-65 (1970).

Other Publications

What's It Like to be an Associate Dean?, UK Law Notes 47 (Fall 2016).

Book Review: A Review of Alexander A. Bove, Jr., *Trust Protectors: A Practice Manual with Forms*, 29 Quinnipiac Prob. L.J. 112-125 (2016).

Navigability and State Ownership of Riverbeds, *The Jurist* (Dec. 27, 2011) online at: <http://jurist.org/forum/2011/12/richard-ausness-navigability.php>

Liability of Standards Development Organizations: A Response to Professor Heidt, 1 Wake Forest L. Rev. Online 86 (2011) online at: <http://wakeforestlawreview.com/liability-of-standards-development-organizations-a-response-to-professor-heidt>

What Wealth Management Professionals, Trust Officers and Estate Planners Need to Know About Trust Protectors, *Wealth Strategies Journal*, April 25, 2011.

Trust Protectors, *Kentucky Bench and Bar* 38-39 (Sept. 2010)

Book Review: Products Liability in the Twenty-First Century: A Review of Owen's *Products Liability Law*, 58 S.C.L. Rev. No. 443-454 (2006).

United States v. Philip Morris: Fallout from the Federal Government's RICO Lawsuit Against the Tobacco Industry, 2 Univ. of Ky. Law Notes 36 (Fall 2005).

The Preemptive Effect of FIFRA on Tort claims Against Pesticide Manufacturers Based on Inadequate Labeling, *ABA Torts & Insurance Practice Section Newsletter* 14-22 (Winter 1993).

Tobacco Industry Liability, 8 Lane Report 37-38 (Sept. 1992).

Book Review: Opportunities to Protect Instream Flows, 3 Rivers 53-55 (1992).

Federal Preemption: A Comment on *Cipollone*, ABA Torts & Insurance Practice Section Newsletter 15-21 (Fall 1992).

Federal Pre-Emption of State Law Product Liability Claims, ABA Torts & Insurance Practice Section Newsletter 19-26 (Spring 1991).

Monograph, Opportunities to Protect Instream Flows and Wetland Uses of Water in New Hampshire and Connecticut. (1987) (with Lynda D. Carney, Curtis L. Michael & George A. Gould).

Book Review: Agricultural Law, 17 John Marshall Law Review 243-47 (1984).

Book Review: Kentucky Tort Law, 72 Kentucky Law Journal 199-205 (1983-84).

Acquiring Water for Energy: Institutional Aspects (Water Resources Publications 1982) (contributing author) (Gary Weatherford, ed.)

Monograph: Institutional Constraints on Alternative Water for Energy (U.S. Dept. of Energy 1980) (with Gary Weatherford et al.).

Monograph: A Proposed Revision of Kentucky's Water Rights Legislation (Kentucky Water Resources Research Center 1978).

Monograph: Estimating Environmental Damages from Surface Mining of Coal in Appalachia: A Case Study (U.S. Environmental Protection Agency 1977).

Monograph: Legal Institutions for the Allocation of Water and Their Impact on Coal Conversion Operations in Kentucky (Kentucky Water Resources Research Center 1976) (with Bill Flynn).

Kentucky Law Survey: Torts, 65 Kentucky Law Journal 301-35 (1976).

Kentucky Law Survey: Torts, 64 Kentucky Law Journal 201-31 (1975).

Kentucky Law Survey: Torts, 63 Kentucky Law Journal 753-75 (1975).

Monograph: The Law of Water allocation in Kentucky (Kentucky Water Resources Research Center 1975).

Book Review: Riparian and Littoral Rights, 40 Fordham Law Review 185-87 (1971).

Honors and Awards

Robert & Joanne Duncan Award for Outstanding Teaching (2009).

Lowell T. Hughes Award (for best faculty publication in the Kentucky Law Journal in 2004).

Robert & Joanne Duncan Award for Outstanding Teaching (1999).

Lowell T. Hughes Award (for best faculty publication in the Kentucky Law Journal in 1990).

University of Kentucky Presidential Grant (1989-91).

Charles S. Cassis Award (for best faculty publication in the Kentucky Law Journal in 1987).

Other Significant Professional Activities

Member, Florida Bar 1968--present.

Co-draftsman, Florida Coastal Mapping Act of 1974 (with Dean Frank E. Maloney).

Co-draftsman, Florida Water Resources Act of 1972 (with Dean Frank E. Maloney).

Panelist, ALI/CLE Video Webcast, Trust Protector: The Role and Character of a Third Party Decision Maker, July 26, 2012 (with Kathleen Sherby & Justin Flach).

Keynote Speaker, Fishable, Swimmable? 40 Years of Water Law in Florida and the United States, 18 Annual Public Interest Environmental Conference, University of Florida Fredric G. Levin College of Law, Gainesville, FL, Feb. 23, 2012.

Speaker, Faculty Colloquium, Indiana University (Bloomington), Nov. 4, 2011.

Speaker, Annual Midwest/Midsouth Estate Planning Institute, Lexington, KY, July 21, 2011.

Speaker, ALI-ABA Course of Study, Representing Estate and Trust Beneficiaries and Fiduciaries, Chicago, IL, July 14, 2011.

Keynote Speaker, Water Law & Policy: Navigating the Maze, University of Arkansas-Little Rock, November 9, 2010.

Panelist, Symposium: The Products Liability Restatement: Was It a Success?, Brooklyn Law School, November 13-14, 2008.

Panelist, Southeastern Association of Law Schools, Amelia Island, Florida, July 21, 2003

Speaker, Randall-Park Colloquium, University of Kentucky College of Law, November 21, 2002

Speaker, Current Issues in Toxic Torts and Products Liability, Indiana University-Indianapolis, Indianapolis, IN, October 10, 2001

Speaker, Symposium on the Third Restatement of Torts, Northern Kentucky University, Highland Heights, KY, February 6, 1999

Speaker, Randall-Park Colloquium, University of Kentucky College of Law, January 21, 1999

Speaker, Cordell Hull Speaker's Forum, Cumberland Law School, Samford University, Birmingham, AL, October 22, 1998.

Speaker, Symposium on Tobacco Litigation and Regulation: The Settlement and Beyond, Southwestern University Law School, Los Angeles, CA March 6, 1998.

Speaker, Symposium on Tobacco Litigation and Regulation: The Growing Controversy, Northern Kentucky University, Highland Heights, KY April 5, 1997.