

**SOUTH TEXAS LAW REVIEW
&
JOURNAL OF
INTERNATIONAL ECONOMIC
LAW
JOINT WRITE-ON PACKET
SUMMER 2016**

I. INTRODUCTION

We are so excited you have chosen to compete in the *South Texas Law Review*¹ and *Journal of International Economic Law*² write-on competition. Journal membership strengthens one's research, writing, and editing skills and is, for many employers, an important hiring criterion.

The strategies and lessons propounded by Legal Research and Writing I and II are integral to success in this competition, so contestants are encouraged to review their coursework and *Bluebook* exercises. Timeliness and organization are also key components to succeeding in the write-on competition, as the writing topic typically concerns novel issues of complex law.

II. ASSIGNMENT

The summer 2016 write-on competition is divided into two parts: Part A involves completion of a case note and Part B involves completion of two editing exercises.

Part A

A case note is a detailed analysis of a recent case that either supports or criticizes the court's rationale and holding. The position you take is irrelevant, provided that your position is delivered clearly and is well supported. A case note should include analysis of relevant legal

¹ Please carefully review the *South Texas Law Review* Section of the 2015–2016 *South Texas College of Law Student Handbook* (pp. 239–40) to ensure your eligibility. Generally, you must have a minimum G.P.A. of 3.25, and you must have completed a minimum of thirty (30) credit hours and Legal Research and Writing I and II. Additionally, all *South Texas Law Review* candidates must have at least four remaining semesters, which may include summers. Specific questions regarding your eligibility for membership on the *South Texas Law Review* should be directed to Emily Pendleton, Editor in Chief, at: emily.pendleton@stcl.edu.

² The *Journal of International Economic Law* requires good standing with at least two remaining semesters. For additional information about the *Journal of International Economic Law*, refer to the Appendix. Please address all JIEL questions to Eric Utermohlen, Editor in Chief, at: eric.uterhohlen@stcl.edu.

principles, exploration of related cases in the same and other jurisdictions, and a prediction of appellate review, should the court's holding be challenged. The conclusion should include a summary of the argument, a predicted outcome, and the likely practical effect of the court's holding.

Part A is a *closed-source* assignment. Consequently, you may only cite the cases and authorities included in the source list provided. Note that contestants may not need to use all of the cited sources to succeed in this competition. The Editorial Board has attempted to select an interesting and controversial topic, and, as with many legal issues, there is no “right” or “wrong” answer—merely well or poorly reasoned arguments. Persuasive reasoning, strong authoritative support, and technical prowess are the keys to success in this competition.

Though the substance of your analysis is critical, the form is equally so. Remember that one purpose of a law review is to ensure the technical perfection of published articles. A persuasive and articulate case note that is littered with citation errors, spelling mistakes, and grammatical problems will not likely pass muster.

A good resource is *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* by Elizabeth Fajans & Mary R. Falk.³ This book contains a specific discussion of the content and organization of a case note and is available at the reference desk in the South Texas library and in the South Texas bookstore for purchase.

The case for Part A is *Pena-Rodriguez v. People*.⁴ Please read the case carefully before you begin writing.

ISSUE: Assuming CRE 606(b) bars the admission of juror statements evidencing racial

³ ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS* (West Publishing Co. 2005).

⁴ 350 P.3d 287 (Colo. 2015), *cert. granted*, 136 S. Ct. 1513 (mem.).

bias made during jury deliberations, does a defendant's Sixth Amendment right to a fair trial nevertheless require such statements' admission?

Part B

The editing exercise will show your ability to follow the guidelines set forth in the *Bluebook*,⁵ the *Greenbook*⁶ (if applicable), and the *Texas Law Review Manual on Usage and Style*.⁷ The *Bluebook* index is a great place to start if you are citing a source that you are unfamiliar with. Note that this exercise may involve more than one rule per citation. The *Manual on Usage and Style*, or "MoUS," is the controlling guide for any style matter NOT addressed by the *Bluebook*. Generally we do not encourage changing an author's style or word choice merely because you think something else may sound better. However, do not assume that any information contained in the exercise is correct. You will be required to verify the source and substantive accuracy of any information contained in the exercise, as well as correct any grammatical or citation errors in the text and footnotes. Please do not add or delete any footnotes. It is recommended that you complete the editing exercise first because it will help you in your case note citations. Regarding editing, please make sure that the "TRACK CHANGES" feature is turned OFF.

The second section of Part B includes ten international citations which must be edited according to the *Bluebook*. This will primarily be utilized by the JIEL to determine your international source citation capability; however, every applicant must complete this section.

⁵ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

⁶ THE GREENBOOK: TEXAS RULES OF FORM (Texas Law Review Ass'n ed. 2010).

⁷ TEXAS LAW REVIEW, MANUAL ON USAGE & STYLE (Texas Law Review Ass'n ed., 11th ed. 2008).

III. DEADLINES AND INSTRUCTIONS

The case note and editing exercise are due on **Wednesday, June 8, 2016, at 5:00 p.m.** Please deliver them to Jacob Hubble, the Coordinator of Scholarly Publications for the *South Texas Law Review*. His office is located in room 224 next to the Law Review suite. **No late papers will be accepted, without exception.** You must turn in **five (5) hard copies.** Students that are out of town during the time the case note is due must mail five copies of their case note and editing exercise to:

Jacob Hubble
Coordinator of Scholarly Publications
South Texas College of Law
1303 San Jacinto
Houston, Texas 77002.

Mailed copies must be physically mailed by 5:00 p.m. on Wednesday, June 8, 2016. In addition to the five hard copies, all participants must submit **one (1) electronic copy** to Jacob Hubble at jhubble@stcl.edu. These **must** be in Word document format. Each participant is **solely** responsible for ensuring the case note and editing exercise is received by the 5:00 p.m. deadline on Wednesday, June 8, 2016. There will be no exceptions to this deadline, so ensure your paper is turned in on time. Decisions will be posted by Wednesday, **June 29, 2016**, and mandatory orientation for new Law Review candidates will occur on Saturday, **August 20, 2016 at 9:00 a.m.**

The case note must be at least **eight (8) pages**, but no more than **eleven (11) pages** in length (excluding the editing exercises), twelve-point Times New Roman font, fully-justified, with one-inch margins, containing at least fifty footnotes. The text and footnotes should be formatted according to the *Bluebook*, the *Greenbook*, and the *Manual on Usage and Style*. The body text should be double-spaced, and footnote text should be single-spaced, but

double-spaced between each footnote, in ten-point font. Please include the following items in the case note:

- Title – a relevant phrase summarizing your thesis and a proper citation of the case;
- Table of Contents – reference the page numbers on which different sections begin;
- Page Numbers – centered at the bottom of every page, except the first page, which should not be numbered.

Your case note should also include the following sections:

- Introduction paragraph including a thesis and roadmap;
- Background of the law, including a discussion of the cases leading up to the selected case;
- Facts and the court’s reasoning of the selected case;
- Your analysis of why the court was right or wrong in the decision it came to;
- A “prediction” of the possible disposition of the Supreme Court of the United States regarding the case; and
- A conclusion.

Do not place your name or any identification number on the case note or editing exercise. You will be assigned an identification number when you turn in your five copies. Any case note submitted containing a name or any other mark identifying the student/author, other than the assigned identification number, will be disqualified from the write-on competition. Be sure to **complete and sign the attached pledge form** and submit it with five copies of your case note.⁸

The case note and editing exercise must be solely the work of the student. Students may not collaborate with anyone, including other students, attorneys, professors, or members of

⁸ The Write-On Competition Pledge Sheet is located at the end of this packet. If you submit your case note via mail, please make sure to include the signed and completed Write-On Competition Pledge Sheet with your packet.

South Texas Law Review or *Journal of International Economic Law*.

Feel free to look at previously published *South Texas Law Review* case notes for further guidance. Copies of the *South Texas Law Review* are available in the Law Review suite, the South Texas library, and on electronic legal databases. Remember—start early, work hard, and be precise. Good luck.

The 2016–2017 *South Texas Law Review* and *JIEL* Editorial Boards

Journal Selection

Please rank the journals in order of preference by placing a “1” next to your first choice and a “2” next to your second choice. In the event you would like to apply only to one of the two journals, simply put an “X” next to the journal, leaving the other box blank.

South Texas Law Review

Journal of International Economic Law

Summer 2016 Joint Write-On Competition Part A: Source List

PLEASE NOTE: The sources cited below may or may not be correct *Bluebook* form and may or may not be relevant to the case note topic. It is the student's responsibility to cite these sources in their correct *Bluebook* form and to make sure that the sources are relevant, updated, and still good law.

SOURCES

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Summer 2016 Joint Write-On Competition Part B: Editing Exercise

II. Introduction:

Among the various fundamental rights afforded individuals in this Country is the right to publicly participate in are government, including petitioning, debating, or criticizing, among other forms of participation.⁹ Private participation, a right both guaranteed and encouraged by the Federal and State constitutions,¹⁰ "has not been a hallmark of american political live from its beginnings."¹¹ The U.S. court of appeals has also encouraged this fundamental right, recognizing "a profound national commitment two the principal that debate on private issues should be uninhibited, robust, and wide open."¹²

Recently, however, strategic lawsuits against private participation, or 'SLAP' suits, have threatened this fundamental right.¹³ Slapp suits are frivolous lawsuits, typically disguised as defamation, conspiracy, and business tort suits, among others,¹⁴ that aim too silence those whom exercise this right.¹⁵ In response to this threat, many States have enacted anti-SLAP statues.¹⁶ Thees statutes aim not only to protect the rights of targeted individuals but also the rights of those filling the lawsuits to bring meritous

⁹Penelope Pring and George W. Canaan, SLAPPS – GETTING SUED FOUR NOT SPEAKING OUT AGAINST RICK JAMES (1896).

¹⁰ See UNITED STATES CONST., § 1 (. . . "congress shall make no law abridging the freedom of press, or of speech; or 'the right of the people peaceably to assemble', and to petition the government for a redress of grievances."); *contra* TX. CONST., article 1, section 8 ("No citizen shall be at liberty to speak, write or publish his/her opinions on any subject . . . and no law shall ever be passed curtailing the liberty of speech or of the press.")¹) (*emphasis added*)

¹¹ PRING AND CANAAN, *infra* footnote 1.

¹² *Cf. New York Time Company vs. Sulivon*, 376 U.S. 250, at 270 (1954)

¹³ CANAAN & PRING, *supra* n. 3.

¹⁴Laura Lea Prather and Judge John Bland, *Bullies Beware: Safeguarding Constitutional Rights Through Anti-slap in TX.*, 47 TEX. REV. L. & POL. 725, 789 (2005)

¹⁵ PRATHER and BAND, *see* note 5, on 720.

¹⁶ *Id.* at 731, footnote 19; *but see State Anti-SLAPP Laws*, pub. Participation project, <http://www.anti-slapp.org/your-states-free-speech-protection/> (visited last on April 8th, 2016)

claims.¹⁷ The latter interest has been implicated in an disagreement among Texas Courts regarding the plaintiffs burden under Texas’ anti-SLAPP statute, the Texas Citizen’s Participation Act (“TCPA”).¹⁸

I. SLAP SUITS AND THE CONFUSION RESULTING FROM TEXAS’S ATTEMPT TO SLAP BACK

The purpose of SLAPP suits is to ‘discourage individuals from exercising there Constitutionally-protected right to speak out about issues of private concern.’¹⁹ Indeed, the affectiveness of a SLAPP suit depends in large part on the threat of costly, burdensome litigation, and although “[P]laintiffs . . . rarely win in court,” they ‘often realize their ‘ultimate goal’; to devastate the defendant financially and chill the defendants public involvement.”²⁰

Florida enacted the “TCPA” in 2011, the dual-purpose of which is to "encourage and safeguard the constitutional rights of persons to petition; speak freely; associate freely; and otherwise participate in government ... and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.”²¹ Under the TCPA, defendants may file for a expeditid dismissal of the action if they believe it was brought “in response to the exercise of their 1st amendment rights.”²²

In determining whether to grant an defendants motion to dismiss, the court engages in a twostep inquiry.²³ Under the 1st step, the defendant, the moving party, must show “by a preponderence of the evidence that the legal action is based on, relates to, or in response to the party’s exercise of 1) the right to

¹⁷ See, *i.e.*, TX CRIM. PRACT. & REM CODE § 27,002 (Lexis 2012).

¹⁸ § 27.002; *In re Lipsky*, 460 SW 3d 579, 587, (Tex 20152014)

¹⁹ George PRING & Penelope Canaan, SLAPPS: GETTING SUED FOR SPEAKING OUT 1-3 (1996).; Prater Bland, *supra* n. 5 at 715; (“The defining characteristic ... of a SLAPP suit is it’s purpose to deter First Amendment activities and to do so through costly and exhausting litigation”).

²⁰ Prather & Bland, *supra* noten. 6, at 730—31; TomThomas B. Wurwick, *A Cure for a ‘Public Concern’*: *Washingtons New Anti-SLAPP Law*, 86 WASH L REV. 663, (2012),

²¹ *C.f.* § 27.002

²² *In re Lipsky*, 460 S.W.3d at 586; § 27,003(a);).

²³ *In re Lipsky*, 460 S.W.2d 586; PRATER & Bland, noteinfra n. 6 at 550

free speech, 2) the right to petition, or 3) the right of association.”²⁴ If the defendant can satisfy this burden, the burden then shifts to the plaintiff, under the second step, at which point the plaintiff must [e]stablish by clear and specific evidence a prima face case for each essential element of the claim in question.²⁵ The second step—which sets forth the plaintiff’s burden—has been a point of disagreement among the Courts.²⁶

Some Courts have interpreted the statute as imposing a heightened burden on the plaintiff, requiring the plaintiff to establish each essential claim through direct evidence.²⁷ The Fourteenth Court of Appeals, for example, determined that

“the purposeful inclusion of a “clear specific evidence” requirement indicates that the non movant must satisfy an elevated evidentiary standard under section 27.005(c).”²⁸

Relying on two cases predating the tcpa, the court defined such evidence as “evidence that is unaided by presumptions ... inferences, or indictments.”²⁹

In contrast, some courts have taken the view that the statute does not impose a heightened standing.³⁰ The First Court Appeals, for example, has noted that “[a] prima facie case represents the maximum quantity of

²⁴ See § 27.005(c).

²⁵ See e.g., § 27.005(b)

²⁶ In re Lipsky, 360 S.W.2d. at 287.

²⁷ See e.g., *Rehak Creative Servs, Inc. v. Witt*, 404 S.W.3d 716, 726 (Tex. App. -- Houston [14th Dist.] 2013, pet. denied), *abrogated by In re Lipsky*, 460 S.W.3d 579, 591 (Tx 2015). *KBMT Operating Co v. Toledo*, 434 S.W.3d 276, 282 (Tex. App. — Beaut. 2014, pet. granted); *Rio Grande H2O Guardian v. Robert Muller Family Partnership*, No. 04-13-00441-CV, 2014 WL 309776, at 2 (Tex. App.—San Antonio January 29, 2014, pet. granted) (mem. op.), *abrogated by In re Lipsky*, 460 S.W.3d 579, 591 (Tex. 2015);

²⁸ *Rehak Creative Servs, Inc.*, 404 S.W.3d * 726 (comparing to a non-movant’s evidentiary standard under a no-evidence summary judgment, which requires only a “scintilla of evidence”).

²⁹ *Id.* (citing *S. Cantu and Son v. Ramirez*, 101 S.W.2d 820, 822 (Tex. Civ. App.—San Antonio 1936, no writ)) (quoting *Mcdonald V. Clemens*, 464 S.W. 2d 450, 465 (Tex. Civ. App.—Tyler 1971, no writ))

³⁰ See e.g., *Schimmel vs. McGregor*, 438 S.W. 3d 847, 855 (Tex App. -- Houston [14th Dist.] 2014, pet. denied), *Combined Law Enforcement Associations of Texas v. Sheffield*, No. 03-13-000105-CV, 2014 WL 411672, at *27–8 (Tex. App.—Austin Jan. 31, 2014, pet. denied), *Newspaper Holdings, Inc. v. Crazy Hotel Assisted living*, 416

evidence necessary to support a rationale inference that the allegation of fact is true.”³¹ The court none the less recognized that the plaintiff’s proof must be “clear and specific. . . .”³² However, noting that the phrase was undefined, the court gave the terms their ordinary meaning.³³ Considering the plain meaning of the clear and specific language—in light of the “prima facie case” language—the court implied that the plaintiff’s burden may be satisfied by providing circumstances evidence from which the court may draw rationale inferences. Similarly, the third court of appeals noted that the plaintiff must merely provide proof sufficient to establish a prima facie case, and “[t]he characteristics of the evidence needed to support the prima facie case as “Clear and Specific” does alter the burden or cause it to exceed a preponderance of the existence’.³⁴

S.W.3d 71, 80 (Tex. App.—Houston 1st Dist. 2013, pet. granted), *KRTK T.V. v. Robinson*, 409 S.W.3d 682, 688—89 (TX App.—Houston [1st Dist.] 2013, pet den’d).

³¹ *E.g.*, *Schimmel*, 438 S.W. 3d at 855 (quoting *Robinson*, 409 S.W.3d at 688); *Newspaper Holdings, Inc.*, 416 S.W.3d at 80 (quoting *Rodriguez v. Printone Color Corporation*, 982 S.W.2d 69, 72 (Tx App.-Houston [1st Dist] 1996, pet. denied)).

³² *Schimmel v. McGregor*, 438 S.W.3d 847, 855, *Newspaper Holdings, Inc.*, 416 S.W.3d 80

³³ *Robinson*, 409 S.W.3d at 689 (quoting BLACK’S LAW DICTIONARY 268, 1167 (8th edition 2004)).

³⁴ *Sheffield*, 2014 WL 411672, at *10 (rejecting the argument that the TCPA imposes an elevated standard).

International Citations

Please correct the following citations:

1. Kuwait Court of Appeals Decision, No 1091/1986, 9 December 1986.
2. Qatar Code of Civil and Commercial Procedure, art 16.
3. Decision of the Cassation Court in Egypt, No 2660, 27 March 1996.
4. *Nigerian Investment Promotion Commission Act* (1995), available at <http://www.nigeria-law.org/Nigerian%20Investment%20Promotion%20Commission%20Act.htm>.
5. INVESTMENT POLICY REVIEW-NIGERIA, *UNCTAD*, page14 (2009), http://unctad.org/en/docs/diaepcb20081_en.pdf.
 - a. Assume the above is cited at note 5. Cite it again at note 25.
6. Multi-lateral Trade Negotiations, General Assembly – Twenty-Seventh Session, 19 December 1972, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3040\(XXVII\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3040(XXVII)).
7. The Constitution of the Russian Federation, art. 80.
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
9. US-Rwanda BIT, Article 4, available at http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/pdf-agreements/RwandaBIT.pdf.
10. Agreement between United Kingdom and Albania for Promotion and Protection of Investments, Article 3(3), Article 9, available at http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=246235.

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I hereby pledge that the case note I have submitted for the write-on competition is exclusively my work and that I have not collaborated with or received assistance from any other person in its preparation.

In the event I am applying to become a member of the South Texas Law Review, I have read and I understand the requirements for Law Review eligibility. I acknowledge that if I do not meet the academic requirements for the South Texas Law Review that I will not be eligible for Law Review candidacy despite the fact that I have turned in a case note for the write-on competition.

Signature: _____

Print Name: _____

Date: _____

Appendix

About CURRENTS: *Journal of International Economic Law*

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- international anti-corruption law,
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