

Michigan Law Review

Vol. 104, No. 5

March 2006

CONTENTS

“BOILERPLATE”: FOUNDATIONS OF MARKET CONTRACTS SYMPOSIUM

FOREWORD *Omri Ben-Shahar* 821

PANEL ONE: BOILERPLATE IN CONSUMER CONTRACT

ONE-SIDED CONTRACTS IN COMPETITIVE
CONSUMER MARKETS *Lucian A. Bebchuk* 827
Richard A. Posner

ONLINE BOILERPLATE: WOULD MANDATORY
WEBSITE DISCLOSURE OF E-STANDARD
TERMS BACKFIRE? *Robert A. Hillman* 837

THE RETURN OF BARGAIN: AN ECONOMIC THEORY
OF HOW STANDARD-FORM CONTRACTS ENABLE
COOPERATIVE NEGOTIATION BETWEEN
BUSINESSES AND CONSUMERS *Jason Scott Johnston* 857

“CONTRACTING” FOR CREDIT *Ronald J. Mann* 899

PANEL TWO: BOILERPLATE AND MARKET POWER

THE BOILERPLATE PUZZLE *Douglas G. Baird* 933

BOILERPLATE AND ECONOMIC POWER IN
AUTO MANUFACTURING CONTRACTS *Omri Ben-Shahar* 953
James J. White

THE HIDDEN ROLES OF BOILERPLATE AND
STANDARD-FORM CONTRACTS: STRATEGIC IMPOSITION OF
TRANSACTION COSTS, SEGMENTATION OF CONSUMERS,
AND ANTICOMPETITIVE EFFECTS *David Gilo* 983
Ariel Porat

PANEL THREE: PRODUCTION OF BOILERPLATE

THE STRATEGY OF BOILERPLATE *Robert B. Ahdieh* 1033

THE ROLE OF NONPROFITS IN THE PRODUCTION
OF BOILERPLATE *Kevin E. Davis* 1075

PANEL FOUR: BOILERPLATE VERSUS CONTRACT

CONTRA PROFERENTEM: THE ALLURE OF
AMBIGUOUS BOILERPLATE *Michelle E. Boardman* 1105

CONTRACT AS STATUTE *Stephen J. Choi* 1129
G. Mitu Gulati

MODULARITY IN CONTRACTS: BOILERPLATE AND
INFORMATION FLOW *Henry E. Smith* 1175

COMMENTARIES

BOILERPLATE TODAY: THE RISE
OF MODULARITY AND THE WANING
OF CONSENT *Margaret Jane Radin* 1223

THE LAW AND SOCIOLOGY OF BOILERPLATE *Todd D. Rakoff* 1235

Copyright © 2006 by the Michigan Law Review Association. Except where otherwise expressly provided, the author of each article and note in this issue has granted permission for copies of that article or note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) the author and the *Michigan Law Review* are identified; (iii) prior written notice of the use is given to the Michigan Law Review Association; and (iv) proper notice of copyright is affixed to each copy.

Michigan Law Review (ISSN 0026-2234) is published monthly in October, November, December, February, March, May, June, and August. Subscriptions: United States, \$60 per year in advance, eight numbers; Foreign, \$70. Editorial and Business Offices: University of Michigan Law School, 625 S. State St., Ann Arbor, Michigan 48109-1215; 734/763-5870 (Business); 734/647-5817 (Fax). Internet Address: <http://students.law.umich.edu/mlr>. Periodicals postage paid at Ann Arbor, Michigan, and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, 625 S. State St., Ann Arbor, Michigan 48109-1215.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$8, Book Review \$14, and Special Issues \$10, postpaid, at Editorial and Business Offices.

Volumes 1 through 101, as well as single issues in those volumes, are available in printed and microform from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (18th ed. 2005) and *The Chicago Manual of Style* (15th ed. 2003). We regret that we can return only those manuscripts for which we receive postage and handling fees of \$4.05 for first-class and \$1.97 for media mail book rate.