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Introduction

Matthew Zidovsky

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Introduction

Welcome to the third and final issue of Volume 45 of the *New Mexico Law Review*. It is unusual for us to publish three issues during one academic year, but we are pleased to do so in order to provide our readers with additional New Mexico-specific legal scholarship. A professional article focused on the intersection of civil law and immigration status anchors this issue, which also includes four case notes by incoming *New Mexico Law Review* editorial board members.

We begin this issue with *A Question of Excluding Immigration Status in Civil Court: Why Torres Got it Right*, by Nicholas T. Davis, F. Michael Hart and George (Tex) Quesada. In this article the authors discuss how New Mexico's unique cultural development has led the legislature and courts to embrace the notion that our undocumented immigrant population is entitled to the same social services and civil litigation opportunities as New Mexico citizens. The authors then outline how application of precedent from *Torres v. Sierra*¹ is a proper mechanism to ensure that immigration status is not inappropriately injected into civil trials in a way that creates prejudice for undocumented parties. In support of this argument, the authors provide extensive analysis of cases from other jurisdictions in an effort to show how a state's immigrant population may cause differences in this area of civil law.

In our first student case note, *The Palsgraf "Duty" Debate Resolved: Rodriguez v. Del Sol Moves to a Foreseeability Free Duty Analysis*, Brenna Gaytan analyzes the New Mexico Supreme Court's recent holding in *Rodriguez v. Del Sol*.² After offering a historical overview of the varied role foreseeability has played in the legal duty analysis in New Mexico, Ms. Gaytan examines how the court's decision in *Rodriguez* represents a departure from precedent by removing any consideration of foreseeability from the legal duty analysis. Ms. Gaytan argues first that the court's decision properly reserved factual-based analyses for the jury and furthermore, that by requiring lower courts to state specific public policy considerations in limiting duty, the court ensured greater transparency and trust in the judicial process.

Next, in *New Mexico Gross Receipts Tax: Giving Notice and Creating Certainty*, Jazmine J. Ruiz examines the recent New Mexico Supreme Court case, *New Mexico Taxation and Revenue Department v. Barnesandnoble.com, LLC*.³ After outlining how courts have interpreted the standard for interstate companies' susceptibility to gross receipts

1. 1976-NMCA-064, 89 N.M. 441.

2. 2014-NMSC-014, 326 P.3d 465.

3. 2013-NMSC-023, 303 P.3d 824.

taxes, Ms. Ruiz argues the standard is vague and should provide more notice of potential liability. She also proposes that legislatures and courts should create a clear standard. Ms. Ruiz concludes the standard should be based on whether the interstate company purposefully availed itself of the benefits of the state such that it should reasonably expect to be susceptible to state taxes.

Our next offering is by Taylor Zangara and is entitled *Extending Premises Liability Beyond the Premises: Encinias and the Expansion of the New Mexico Tort Claims Act*. This note analyzes the recent New Mexico Supreme Court case *Encinias v. Whitener Law Firm, P.A.*⁴ and begins with an overview of the legal history of the Tort Claims Act (“TCA”). Ms. Zangara then argues the continuous expansion of the statutory language of the TCA reaches its apex in *Encinias*. She concludes that the evidentiary barrier for pleading “negligent operation or maintenance of a building” is significantly lowered under *Encinias* and concludes by offering practical advice for practitioners in this new legal landscape.

Finally, in *Drowning in the Stream of Commerce: A Critique of Sproul v. Rob & Charlies, Inc.*, Elliot Barela analyzes the implications of a recent New Mexico Court of Appeals opinion related to civil procedure. Mr. Barela argues that *Sproul v. Rob & Charlies, Inc.*⁵ was wrongly decided given its failure to conform to binding United States Supreme Court precedent.

As I wind down my tenure as Editor-in-Chief of the *Review*, I must thank my colleagues on the editorial board. Academic journals are a truly collaborative effort, and the accomplishments of this year are attributable to the efforts of each member. I would also like to thank our 1L colleague Svitlana Anderson for her assistance during the editing process of this issue. The editorial board wishes her, as well as the incoming board members, continued success in their academic endeavors.

—Matthew Zidovsky, Editor-in-Chief

4. 2013-NMSC-045, 310 P.3d 611.

5. 2013-NMCA-072, 304 P.3d 18.