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## Introduction

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# INTRODUCTION

Welcome to the first issue of Volume 38 of the New Mexico Law Review! We are proud to publish an issue that touches upon a broad range of topics that we hope will be of interest to both scholars and practitioners.

The first two articles are indicative of a growing trend in legal scholarship—the re-evaluation of established legal doctrines in light of recent developments in cognitive psychology. In *Advertising and the Transformation of Trademark Law*, Mark Bartholomew outlines the historical underpinnings of trademark law and argues that trademark law should be re-examined in light of our current understanding of consumer psychology.

In *Free Offers: A New Look*, David Adam Friedman conducts a similar inquiry with regard to the law of “free” offers, i.e., promotions where a retailer offers some good for free in the hopes of generating increased business. Professor Friedman concludes that the use of the word “free” should be curtailed in light of our current understanding of the psychological bonds created by “free” offers.

In *Strict Liability and the Liberal-Justice Theory of Torts*, Alan Calnan explores a different area of law—strict liability tort law—from a rather different perspective: classical liberal political theory. Professor Calnan provides a liberal justification for strict liability and proposes some changes that would bring tort law closer to its liberal roots.

The issue then shifts to several articles proposing straightforward solutions to certain problem areas of the law. Rather than analyze the law through the lens of a different academic discipline, these authors identify areas where accepted legal principles are not being applied correctly and propose fixes.

In *An Unintended and Absurd Expansion: The Application of the Archaeological Resources Protection Act to Foreign Lands*, Andrew Adler argues that the Archaeological Resources Protection Act was intended by Congress to only apply to tribal and federal lands, and that some courts have impermissibly expanded its scope to include private and foreign lands. This could result, he argues, in a chilling effect on legitimate antiquities dealers.

In *Broken Government Promises: A Contract-Based Approach to Enforcing Plea Bargains*, Michael D. Cicchini argues that a contract-based approach is the most reliable way to adequately enforce plea bargains on behalf of criminal defendants but points out how some courts have failed to apply basic contract principles in allowing prosecutors to renege on their agreements.

Finally, in *Latching onto Laches: A Rules-Based Alternative for Resolving Questions of Waiver Following the Inadvertent Production of Privileged Documents*

*in Federal Court Actions*, Matthew A. Reiber conducts a thorough survey of how federal courts decide when privileges are waived through the inadvertent production of privileged documents. He demonstrates that different courts apply inconsistent tests, and the existing tests tend to either be unfair or create costly litigation. Mr. Reiber argues instead for a laches-based amendment to the Rules of Civil Procedure that is both fair to parties and reduces litigation costs.

Finally, on a different note, Kevin Washburn remembers a late United States Magistrate Judge for New Mexico, Robert DeGiacomo, in *Remembering DeGiacomo*. While Judge DeGiacomo's tenure on the New Mexico bench was not exceedingly long, Professor Washburn's warm account shows that the Judge certainly made his mark upon the State.

Whether you are a scholar, judge, or legal practitioner, we hope that you enjoy these articles as much as we have.