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# UNIVERSITY OF RICHMOND LAW REVIEW

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### ARTICLES

- THE COLLISION OF TORT AND CONTRACT IN THE  
CONSTRUCTION INDUSTRY . . . . . *Murray H. Wright* 457  
*Edward E. Nicholas, III*

Over the past two decades, several courts have allowed construction industry plaintiffs to assert tort claims to recover for purely economic losses (i.e. other than injury to person or property) from other participants in the construction process. Parties assert tort claims, instead of or in addition to contract claims, to take advantage of the more liberal tort damage rules and, probably more importantly, to escape unfavorable contract provisions. This article briefly discusses the different origins and goals of tort and contract law. It then reviews some of the decisions allowing recovery of purely economic losses in tort as well as several recent decisions, in both the product liability and construction fields, reflecting what the authors believe is an emerging trend away from allowing such actions. The authors' thesis is that the emerging "economic loss" rule reflects the fundamentally different goals of tort and contract law and serves to enforce the legitimate expectations of participants in the construction industry and other fields of commerce.

- VIRGINIA'S 'AFFILIATED TRANSACTIONS' STATUTE:  
INDULGING FORM OVER SUBSTANCE IN SECOND GENERATION  
TAKEOVER LEGISLATION . . . . . *Stanley K. Joynes, III* 489  
*Steven J. Keeler*

Virginia's recently enacted antitakeover statute, the "Affiliated Transactions" provision of the Virginia Stock Corporation Act, raises serious constitutional and economic questions. Although the form of the statute appears to regulate the internal affairs of Virginia corporations, the substance and practical impact of the statute render it violative of both the commerce and supremacy clauses. Constitutional analysis of state antitakeover legislation necessitates consideration of the economic desirability of an unrestricted market for corporate control. The United States Supreme Court's most recent statement on the subject, in *CTS Corp. v. Dynamics Corp. of America*, decided on April 21, 1987, reflects a noteworthy retreat from the Court's position in *Edgar v. MITE*. The debate concerning the role of economic analysis in the constitutional scrutiny of state antitakeover legislation, as well as the question whether such legislation is truly consistent with shareholder interests, appears to be far from settled.

**UNDERSTANDING THE NEW FAMILY FARMER**

**BANKRUPTCY ACT** . . . . . *Bruce H. Matson* 521

In response to the crisis in the United States farm economy and the inability of farmers to obtain meaningful relief from either Chapter 11 or 13 of the Bankruptcy Code, Congress passed the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986 (the "Act") in October of 1986. The Act includes a new chapter in the Bankruptcy Code—Chapter 12—exclusively for family farmers. This article outlines the substantive provisions of the new Chapter 12 and who may be eligible to take advantage of this new statute. In reviewing Chapter 12, the article attempts to show how concepts from both Chapter 11 and Chapter 13 have been employed in developing a statute that provides considerable benefits for eligible family farmers, largely at the expense of secured creditors.

**THE FIRST AMENDMENT AND THE POSTAL SERVICE'S  
SUBSCRIBER REQUIREMENT: CONSTITUTIONAL PROBLEMS  
WITH DENYING EQUAL ACCESS TO THE**

**POSTAL SYSTEM** . . . . . *Elizabeth Gorman* 541

Second-class mail rates are available only to publications that distribute one-half or more of all circulated copies either to paying subscribers or to persons who have requested that the publication be sent to them. A publication that distributes more than half of its copies free of charge to persons who have not specifically requested copies must pay the higher third-class rate. As a result, the lower rate is denied to many community newspapers and to publications designed to win converts to a political cause or religious faith. This article argues that the Postal Service's unequal treatment of publications without subscribers infringes those publications' first amendment rights. Part I argues that the publications have the right under the first amendment to use the postal system. That right is infringed by the imposition of higher postage rates for certain categories of mail. Part II argues that strict scrutiny should be applied to the regulations because they discriminate on the basis of content. Applying strict scrutiny to the discriminatory rates, Part II concludes that they violate the first amendment.

**COMMENTS**

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