WHERE DO YOU LIVE?
APPEAL TO THE ILLINOIS "HOME" APPELLATE DISTRICT

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INTRODUCTION

What would be the fate of a legislative bill that applies general criminal law on first-degree murder differently[1] to Illinois residents, depending on whether they live in or around Chicago, Elgin, Ottawa, Springfield, or Mount Vernon?[2] Most likely this bill would meet with howls of protest.

While Illinois legislators would hardly think to pass a general law that would be applied differently on the sole basis of the geographical location of the deciding court, due to splits of opinions of the "Appellate Court(s)" of Illinois, that is exactly what is happening. A trial judge may be faced with two or more conflicting judicial interpretations of the same law coming from several Illinois appellate districts[3] or from divisions within those districts.[4] When faced with conflicting opinions, what law is the trial judge to apply? The Illinois Supreme Court has not clearly answered this question. Most recently, in *Aleckson v. Village of Round Lake Park,*[5] the Illinois Supreme Court justices disagreed about how the judge should act in such a case. The majority opinion stated that, when conflicts arise among the appellate districts, a trial court is bound by the decisions of the Appellate Court of the district in which it sits.[6] However, two of the justices specially concurred to disagree on precisely this point.[7] Justices Harrison and Heiple stated that, because there is only one Illinois Appellate Court, a decision by any division of that court "is binding precedent on all circuit courts throughout the state, regardless of locale."[8] Because there is but one Appellate Court in Illinois, the majority's decision

is "wholly inconsistent with the principle that the [A]ppellate [C]ourt in Illinois is a single body whose decisions are binding on every circuit in that state."[9] Thus, the Illinois Supreme Court majority seems to have approved a checkerboard application of the laws, depending on whether the parties live in or around Chicago, Elgin, Ottawa, Springfield, or Mount Vernon.[10]

This Note will address the precedential value of decisions made by the five Illinois appellate districts. Part One of the Note will review the history of the Illinois Appellate Court and will conclude that the Illinois Constitution mandates one Appellate Court. Part Two will review recent Illinois Supreme Court decisions that seem to contradict the principle that the Appellate Court in Illinois is a single body. Part Three will explore Illinois Appellate Court decisions that appear to contradict the unitary nature of the Appellate Court. Part Four will argue that the appellate districts in Illinois are practicing a form of territorialism by developing the concept of a "home district,"[11] which has no basis in the Illinois Constitution. The Note will contend that territorialism dilutes the unitary nature of the court and creates an injustice[12] to litigants. "Justice" for the purposes of this Note is the treatment of a party in accordance with proper weighing all relevant criteria, and without consideration of any irrelevant factors.[13] The author will argue that, by following the notion of a "home" district, the Illinois courts consider an irrelevant factor (location of the court) and fail to consider a relevant factor (precedent) in reaching a decision, thus doing injustice to the litigants. The Note will conclude that there is one Appellate Court in Illinois and will suggest a consequentialist[14] approach to stare decisis. This approach will require that each appellate decision be reconciled with a prior appellate precedent. Because every appellate decision will then count, the appellate courts will not lightly ignore prior precedents.

I. ARGUMENTS FOR ONE APPELLATE COURT

A. Early Days of the Illinois Constitution

The Illinois Constitution has evolved substantially since the day President James Monroe signed an act of Congress admitting Illinois as a state in 1818.[15] The 1818 Constitution created only a Supreme Court.[16] The two houses of the General Assembly appointed the Illinois Supreme Court judges by a joint ballot.[17] Thirty years later the geographic representation in state courts became a constitutional standard.[18] The Illinois Constitution of 1848 established a Supreme Court of three judges who were elected by popular vote.[19] The Illinois Supreme Court had three divisions and circuit judges were elected from nine judicial districts.[20]

The 1870 Constitution continued the tradition of geographical election of judges but changed the number of districts from nine to seven, with one Supreme Court justice elected from each of the seven districts.[21] The districts were defined in the Constitution but the legislature could alter them.[22] The 1870 Constitution empowered the legislature to establish an appellate court.[23]

Following the constitutional mandate, in 1877 the General Assembly passed "[a]n Act to Establish Appellate Courts."[24] This Act created four intermediate appellate courts.[25] This appellate structure existed until the Judicial Article of the Constitution was revised in 1962. The revision became effective in 1964.[26]

Prior to the 1962 revision, there clearly were four intermediate appellate courts in Illinois.[27] Because the appellate courts were distinct and separate entities, a decision of one district had no precedential value in the other three.[28] The decisions of the appellate district courts not only lacked stare decisis effect in the other judicial districts,[29] but decisions

lacked precedential weight in the same district.[30] In addition to the lack of horizontal (in the other appellate districts) and vertical (in the trial courts) stare decisis, there was no centralized administration.[31] The appellate districts were badly disproportionate with more than half of the state population living in Chicago.[32] Around 1960, although Chicago included close to 60% of the state population, it elected only one of the seven Supreme Court judges.[33] The system of re-trials *de novo* from judgments was expensive, frustrating, and inefficient.[34] The 1870 Constitution failed to provide for administrative authority that could unify, coordinate, and supervise the lower courts. In order to cure the lack of coordination, a movement for a unified court system began to develop.

B. Political Movement for Judicial Reform

A movement for judicial reform began early in the Twentieth Century.[35] More concrete steps for improvement of the judiciary were taken in 1951, when the Illinois State and Chicago Bar Associations formed a Joint Committee on Judicial Reform to work with the Legislative Commission on Judicial Reform.[36] The Joint Committee and Legislative Commission presented a proposal for judicial reform to the legislature in 1953.[37] The House, which opposed the non-political selection and retention of judges, defeated this proposal.[38]

The Joint Committee and Illinois State and Chicago Bar Associations supported the non-political selection and retention of judges.[39] Because of the traditional partisan election of judges, the judges themselves were integrated with the political system and opposed non-political selection and retention.[40] In 1955, the newly elected mayor of Chicago, Richard J. Daley, also opposed the non-partisan appointment of judges and supported their political selection and retention.[41]

Mayor Daley, who was looking for a political initiative, and Governor Stratton began to press for judicial change in 1956.[42] The

legislature approved a judicial amendment in 1957 that had the support of Governor Stratton and Mayor Daley.[43] The judicial amendment, however, did not include the controversial proposal for non-political selection and retention of judges that the Joint Committee and Illinois State and Chicago Bar Associations supported.[44] The proposal for non-political selection failed by a narrow margin when it was presented to the voters.[45]

C. Constitutional Amendment of 1962

A new proposal for a judicial amended was made again in.[46] The amendment proposed a completely new Article VI of the Constitution of 1870.[47] The General Assembly approved the new Article in 1962, with a January 1, 1964 effective date.[48] Under the Judicial Article of 1964 the judicial power of Illinois was vested in one Supreme Court, an appellate court and circuit courts.[49] The amendment vested general administrative authority in the Illinois Supreme Court and created a unified, three-tier judicial structure.[50]

D. The Constitutional Convention of 1970

The movement for reform during the 1960s resulted in a constitutional convention convened on December 8, 1969. One of the main issues before the constitutional convention was selection and discipline of judges.[51] Problems with judicial misconduct in the 1960s had prompted demands for an appointed judiciary. The Illinois Constitutional Convention of 1970 adopted the judicial system that was established by the 1962 Amendment.[52] The Article VI vested the judicial power "in a Supreme Court, an Appellate Court and Circuit Courts."[53] The new Illinois Constitution retained the crucial structure of an integrated, three-tier judiciary, established by the 1962 Judicial Amendment.

The 1970 Illinois Constitution provides for appeal as a matter of right to the Appellate Court in the district in which the trial court is located.[54] The only cases that can be appealed directly to the Illinois

Supreme Court involve novel state or federal constitutional questions, or very important questions that the Appellate Court will certify to the Illinois Supreme Court.[55] In all other cases the Appellate Court is the last court of appeal unless the Illinois Supreme Court grants leave to appeal.[56]

E. Approaches to Stare Decisis

When considering the decisions of intermediate appellate districts, there are a number of ways in which the horizontal stare decisis (in coordinate districts within the same structure) and vertical stare decisis (in lower courts within the same structure) may intersect.[57]

First, each appellate district or division may be an autonomous body whose decisions have no stare decisis effect either in the trial courts or in the intermediate courts in the judicial system, including subsequent cases decided by the same appellate district.[58] This was the effect of the Illinois appellate courts' decisions prior to 1935.[59]

Second, decisions of an intermediate appellate court may have both horizontal and vertical stare decisis effects. The decisions may bind all trial courts and all the coordinate divisions in the judicial system.[60] This approach means that there is one indivisible appellate court. The Illinois appellate system after 1964 and the Judicial Article of the Illinois Constitution of 1970 seem to mandate such a system.[61]

Third, the decisions of an appellate court may bind trial courts in the geographical district, in which the appellate court sits, but may not bind other appellate districts and trial courts within the other districts in the judicial system. The decisions of the appellate court under this approach have localized vertical, but not horizontal, stare decisis effect.[62] This is the approach adopted by a recent Illinois Supreme Court decision and seems to be the binding precedent in Illinois.[63]

Fourth, the decisions of an appellate court may bind all the trial courts within the state, but not bind coordinate branches of the appellate court.[64]

II. ONE APPELLATE COURT(S)?

Because in most cases the Appellate Court is the last court of appeal[65] litigants and trial judges look to appellate decisions to determine what the law is. Whether and to what extent these decisions carry precedential weight seem to be questions of importance. The answers to these questions depend on whether there is one Appellate Court or five independent appellate districts in Illinois.

The Judicial Article of the 1970 Illinois Constitution states that the judicial power "is vested in a Supreme Court, an Appellate Court and Circuit Courts."[66] The drafters omitted the plural suffix from "Appellate Court" and used an indefinite article before both the "Supreme Court" and the "Appellate Court."[67] This language contrasts with the language of 1870 constitution, which stated, "Appellate Courts of uniform organization and jurisdiction may be created."[68] It seems that The Judicial Article of the 1970 Illinois Constitution established one appellate court in Illinois.[69] The unitary nature of the Illinois Appellate Court implies that a decision of the Appellate Court, regardless of locale, should be binding in every appellate district and in every trial circuit in the state.[70] The geographical location of a district should be irrelevant.[71]

The conclusion that there is one appellate court in Illinois seems less certain when we examine the Illinois Supreme Court pronouncements made during the last thirty years concerning whether the appellate decisions carry stare decisis. Although neither the Constitution nor any statute mentions the concept of a "home" district, the Illinois Supreme Court has used the term to designate the geographical appellate district

that encompasses the territory of a trial court.[72] In a recent decision, the Illinois Supreme Court held that a party is not unreasonable if he or she relies upon a precedent her "home" appellate district even though there is contrary appellate authority from other appellate districts.[73] The Illinois Supreme Court divided the seemingly unitary body of the appellate court into five independent "home" districts whose decisions carry precedential weight only in the trial courts in which the districts sit.[74] The concept of territorialism thus has become a significant factor in the trial courts' determination of disputes brought before them.

The most peculiar feature of the recent Illinois Supreme Court cases undermining the unitary nature of the Appellate Court of Illinois is the lack of analysis in reaching its decisions. The Illinois Supreme Court has said very little about the binding effect of appellate court decisions either before or since the 1964 appellate court unification.

A. Support for a Unitary Appellate Court

The Illinois Supreme Court first addressed the question in *UMW Hospital v. UMW*[75] in 1972. The issue in this case was whether the Fifth District trial court properly issued a contempt order against defendant picketers for violating a temporary restraining order obtained by plaintiff hospital.[76] The central focus on appeal was whether the trial court had correctly determined the law, as it existed when the court issued its restraining order.[77] On the day the trial court found the defendants picketers in contempt for failure to obey the restraining order,[78] the Illinois Supreme Court reversed a decision of the First Appellate District, in an unrelated case, that peacefully striking and picketing a non-for profit hospital was against public policy and enjoinable.[79]

The defendants argued to the Illinois Supreme Court that since the trial court relied on a decision of the First District in issuing the temporary restraining order and since the Illinois Supreme Court had overruled the First District case, the restraining order was void.[80] Thus, a refusal to obey it could not serve as the basis for a contempt judgment.[81] The Illinois Supreme Court ruled that although the trial court was sitting in the Fifth District it was bound by the decision of the appellate court sitting in the First District at the time the trial court issued the restraining order.[82] Therefore, this early decision of the Illinois Supreme Court supported horizontal stare decisis.[83]

The Illinois Supreme Court buttressed the unitary nature of the court in *dicta* in *Yellow Cab Company v. Jones.*[84] The Court expressed no doubt that there was but one unitary appellate court. Quoting from the appellate court case of *DeBruyn v. Elrod*[85] the Court stated, "Constitutional provisions which are plain and explicit on their face, the meaning of which is clearly apparent, permit of no construction by the courts. The plain and explicit provisions of Article VI provide for a single appellate court and for districts from which the judges are selected."[86] The binding effect of appellate court decisions on other appellate districts, however, was not an issue in this case.

The next Supreme Court case to directly address the binding effect of appellate court decisions was *People v. Harris.*[87] In *Harris*, the defendants were convicted at a jury trial of murder and conspiracy to commit murder. The Third District trial court sentenced them to natural life imprisonment on their murder convictions.[88] On appeal, the defendants contended that the trial court erred by not asking defense-requested supplemental voir dire questions concerning the State's burden of proof, the presumption of innocence, and the defendant's right not to testify on his own behalf.[89] As support for this contention, defendants

cited *People v. Zehr*,[90] a Third District Appellate Court opinion that, at the time of defendants' trial, was on appeal to the Illinois Supreme Court. After the trial, the Illinois Supreme Court affirmed the appellate court's holding in *Zehr* but, following the rule of *People v. Britz*,[91] gave the ruling in *Zehr* prospective application only.[92]

Defendants argued that *Zehr* was the law in the Third District, even though the *Zehr* decision was on appeal to the Illinois Supreme Court. The State countered that an appellate court decision is not binding on trial courts, even courts in its own district, as long as the case is before the Illinois Supreme Court on appeal.[93] The State further argued that *Zehr* could be given only prospective application.[94]

Citing the case of *People v. Thorpe*[95] the Illinois Supreme Court ruled it fundamental law in Illinois that the decisions of an appellate court are binding precedent in all trial courts, regardless of locale.[96] However, the Court held that even if the trial court erred in failing to follow the appellate court ruling in *Zehr*, this was not reversible error because the "Zehr rule" was to be applied prospectively only.[97] The Illinois Supreme Court then stated that "as a matter of public policy . . . . the precedential effect of an appellate court opinion is not weakened by the fact that a petition for leave to appeal has been granted and is pending in that case, and trial courts are bound by that appellate court ruling until this court says otherwise."[98]

Thus, on the one hand, the Illinois Supreme Court held that the decisions of an appellate court are binding precedent in all circuit courts, regardless of locale.[99] On the other hand, the court held that, although the "*Zehr* rule" was a binding precedent in the trial court the trial court's failure to follow the "*Zehr* rule" did not constitute reversible error.[100] The court stated that, to apply the *Zehr* appellate court opinion in this case, would be to apply *Zehr* retroactively, in violation of *Britz.*[101] By granting

only these defendants a new trial, the court would be unfairly discriminating against similarly-situated defendants who were tried within the 18-month period between the appellate court's ruling, and the Illinois Supreme Court's ruling in *Zehr*, but who happened to have been tried outside the third district.[102] However, the Illinois Supreme Court, did not address the fact that the Third District *Zehr* decision was the binding precedent in the Third District trial court before the Illinois Supreme Court affirmed it and decided to give it prospective application only. The court never directly answered whether a trial court is bound by decisions of the appellate court within its own district.

The Illinois Supreme Court seems to have answered this question in 1990 in *People v. Layhew.*[103] In this case the defendant appealed based on the trial court's failure to give formal instruction about the defendant's presumption of innocence.[104] A two-justice majority of the Fifth Appellate District reversed the defendant's conviction and held that the trial court must give this instruction *sua sponte* in all cases.[105] Otherwise, the appellate court would automatically reverse all trial decisions within the district.[106] The Illinois Supreme Court reversed. The Court noted that, instead of making the proper inquiry, the appellate court chose to "issue a 'directive' to all the trial court within that district."[107] The Illinois Supreme Court admonished the appellate district "that there is but one appellate court within the State of Illinois."[108] The concept that a panel of the appellate court has authority to issue "directive" to the lower courts within its district "is the relic of the pre-1964 Illinois Constitution of 1870, when appellate court decisions were considered binding only on the trial courts within that district."[109] This Court's pronouncement about the binding effect of the appellate court's decisions supported horizontal stare decisis.

B. The Development of a "Home" District Concept

A strange shift in the Illinois Supreme Court's view of the nature of the appellate court system occurred in *In re May 1991 Will County Grand Jury*.[110] In this case the appellants were subpoenaed before a Will county grand jury.[111] The grand jury subpoena required that they appear in a lineup and submit a blood standard and head and pubic hair samples to the grand jury.[112] One of the issues on appeal to the Illinois Supreme Court was whether the Third Appellate District erred when it held that head hair combings and clipping are not subject to Fourth Amendment protection. Another issue was whether the appellate court was correct when it held that pubic hair is subject to Fourth Amendment protection and pubic that the grand jury cannot subpoena it without probable cause.[113]

The Third Appellate District had relied on the ruling in *In re Grand Jury Proceedings*,[114] a federal case that held that head hairs are outside the protection of the Fourth Amendment because they are exposed in public. The Third Appellate District had rejected the holding of a Fourth Appellate District Illinois case with similar facts as the facts of the instant case.[115] In *In re September 1981 Grand Jury,* the appellate court had ruled that, absent a showing of probable cause, the petitioner was protected by the Fourth Amendment from having to submit head hair standards.[116]

Although the Illinois Supreme Court ruled consistently with *In re September 1981 Grand Jury* in requiring probable cause before an individual is compelled to submit a head hair sample, the court made a curious pronouncement. The court equated the lack of binding effect of state appellate district decisions on coordinate branches of the Appellate Court with the lack of binding effect of United States courts of appeals decisions on state court: "Decisions of a United States court of appeals are not binding on a State court. . . . By the same token, one district of the state appellate court is not always bound to follow the decisions of other

districts. . . . [S]uch decisions have only persuasive value for the appellate court."[117]

Thus, in its first direct pronouncement on the effect of appellate district decisions on other appellate districts, the court found only persuasive value, directly contradicting the concept of one appellate court in Illinois.

The Illinois Supreme Court created further confusion about both the horizontal and vertical stare decisis effect of the appellate court decisions in *People v. Granados*.[118] The issue on appeal was whether the Third District trial court could impose extended-term sentences to felonies that had been enhanced from misdemeanors by the defendant's prior convictions. The appellate court determined that the defendant's sentencing was governed by its decision in *People v. Spearman*[119] that held that the extended-term sentencing statute cannot be applied to felonies that had been enhanced from prior misdemeanors. The Third Appellate District noted that it had expressly overruled *Spearman* in *People v. Martin*,[120] and had given it prospective application only. Although at the time of the instant appeal *Spearman* had already been overruled, when the defendants committed the crimes, *Spearman* was good law. The appellate court found that to apply *Martin* to the instant defendants would violate due process as equal to an *ex post facto* law.[121] The Illinois Supreme Court disagreed.[122] The Court noted that when the defendants committed the crimes, other appellate districts had already rejected *Spearman*. Because at the time of the defendants' criminal conduct there were conflicting appellate decisions, the defendants had fair warning that they may be subject to enhanced sentence. The defendants argued that *Spearman* was not contradicted by any other decision of the Third District and therefore the Supreme Court's construction of the enhanced sentencing law was unforeseeable change in the law. To this argument, the Illinois Supreme

Court responded, "There is only one Illinois Appellate Court [*citations omitted*] and that court's pronouncements on the present issue were unsettled at the time of the defendants' crimes. Since [there were] conflicting views on the issue, the defendant[s] had no basis for allegedly relying upon one of those conflicting views and ignoring other views."[123] Thus, it seemed that in 1996, the Illinois Supreme Court rejected the notion that the Illinois Appellate Court decisions have either horizontal or vertical stare decisis effect.

One year later, the Court revisited this notion and came to a different conclusion in *Aleckson v. The Village of Round Lake Park.*[124] This case involved an action brought by police officers against the board of fire and police commissioners of the Village of Round Lake Park, three board members in their individual capacities, the Round Lake Park chief of police, and the Village of Round Lake Park. The police officers challenged the validity of an examination for promotion. The circuit court decided that the complaint should have been filed within 35 days for a final review of the administrative decision and found that the officers' action was time barred, upholding the validity of the exams. The officers appealed, relying on the Second Appellate District case of *Barrow v. City of North Chicago*,[125] which held that that action considering police promotions fell beyond he purview of administrative law. The policemen argued that based on *Barrow* their action falls outside the scope of the Administrative Review Law and is subject to a one-year statute of limitations.[126] While the instant appeal was pending, the Second Appellate District issued its opinion in *Mueller v. Board of Fire & Police Commissioners*,[127] which overruled *Barrow* and held that the one-year statute of limitations for actions against local public entities did not apply to actions considering police promotions.

The issue on appeal in *Aleckson* was no longer whether the trial judge erred by not following *Barrows*. Rather, the relevant inquiry became whether the Second Appellate District should apply *Mueller* retroactively.[128] The appellate court declined to do so. In reaching its conclusion, the appellate court noted that plaintiffs filed their complaint in a manner that complied with second district case law, as it existed at the time. "[T]o give it retroactive effect would cause injustice and hardship. Accordingly, the court concluded that Mueller should not be given a retroactive application in this case."[129]

The issue on appeal to the Illinois Supreme Court in *Aleckson* was whether the appellate court could decline to apply one of its own decisions to a case that was pending at the time the ruling was made. In analyzing the question, the Illinois Supreme Court applied the "test" set out in the United States Supreme Court case of *Chevron Oil Co. v. Huson*.[130] The first factor of the *Chevron* test is whether the decision set forth a new principle of law because it either overruled clear past precedent on which the litigants had relied or because it decided an issue of first impression. The court found it beyond dispute that the *Aleckson* plaintiffs had relied on the clear case precedent of *Barrow* and its progeny and found that the plaintiffs were justified in doing so since *Barrow* was controlling authority in the second district. In response to defendant's argument that reliance on *Barrow* was unjustified given the fact that the First, Third and Fifth District appellate courts had taken the opposite view, the court responded, "Defendants, however, ignore the fact that when conflicts arise amongst the districts, the circuit court is bound by the decisions of the appellate court of the district in which it sits. . . . In view of these circumstances, we do not think it was unreasonable for plaintiffs, faced with conflicting appellate authority, to rely upon the authority from their home appellate district."[131]

Thus, a year after the Illinois Supreme Court said in *Granados* that the trial court should not rely on a decision from the Appellate District in which it sits (the "home" district), in *Aleckson* it bound the trial court to decisions in their "home district," regardless of what other appellate courts have decided. Disagreeing with the majority, Justices Harrison and Heiple in a specially concurring opinion, noted that "Illinois has but one appellate court. . . . Although the state is divided into five judicial districts, those districts have nothing whatever to do with the court's authority. Their sole purpose is to define the political units from which judges of the supreme and appellate courts are selected. Because there is only one appellate court, a decision by any division of that court is binding precedent on all circuit courts throughout the state, regardless of locale."[132]

That being so, Justices Harrison and Heiple failed to see how the majority could hold "that when conflicts arise amongst the districts, the circuit court is bound by the decisions of the appellate court of the district in which it sits."[133] Such a rule "is wholly inconsistent with the principle that the appellate court in Illinois is a single body whose decisions are binding on every circuit court in the state."[134]

Most recently, the Court again shifted towards an argument for the unitary nature of the appellate court in *People v. Ortiz*.[135] Quoting from *Renshaw v. General Telephone*,[136] the court repeated what it had stated earlier in *Yellow Cab v. Jones*,[137] that "Although the appellate court is divided into five districts for the purpose of election . . . . Illinois has but one unitary appellate court." [138]

Thus, while the Illinois Supreme Court describes the appellate court as unitary in nature, it binds the trial courts to the decisions of the appellate court of the "home" district in which the appellate district sits. The occasional pronouncements on "conflicts among the districts"[139] beg

the questions, what should a trial court do when it is faced with such conflicts? What mechanisms should prevent such conflicts from developing? The Illinois Supreme Court has not answered any of these questions.

III. APPELLATE COURT(S) DECISIONS

The Illinois Supreme Court cases of *Aleckson* and *In re May 1991 Will County Grand Jury* are creating progeny in the appellate court districts.

Citing *In re May 1991 Will County Grand Jury,* the First Appellate District in the case of *Stahulak v. City of Chicago* stated "One district of this court is not always bound to follow the decisions of other districts, although there may be compelling reasons to do so when dealing with similar facts and circumstances."[140] The case involved a conflict between the First and Second Districts as to whether an individual union member was entitled to judicial review of arbitration without first showing that the union's conduct in processing a grievance was arbitrary, discriminatory or in bad faith. The Second District case of *Svoboda v. Dept. of Mental Health*[141] held that a union member has standing to seek to vacate an arbitration award without the burden of alleging and proving a breach of duty by the union in the underlying proceeding. On the other hand, the First District case of *Parks v. City of Evanston*[142] required a union member to show that the union's conduct was arbitrary, discriminatory or in bad faith, before the union member can obtain judicial review of arbitration.

The most notable aspect of *Stahulak* was that after the court stated that it was not compelled to follow a ruling of the Second District, it nevertheless carefully reviewed the *Svoboda* court's analysis before finding no compelling reasons to follow *Svoboda*'s decision, given *Stahulak*'s facts and circumstances.[143] Thus, the First District afforded respect to the

Second District Court and felt it necessary to explain why it was ruling contrary to the Second District.

Similarly, the First District in *Schiffner v. Motorola, Inc.*[144] noted a split in divisions of the same district and concluded that the appellate courts in Illinois are bound only by Supreme Court decisions and are not bound horizontally by other appellate court decisions. [145] The court further observed in a note that because of the confusion caused by *Aleckson v. Village of Round Lake*, it may be hard for a circuit court to determine by which appellate court decisions it is bound.[146]

The issue in *Schiffner* was whether the federal Electronic Product Radiation Control Act preempted the plaintiff's cause of action against Motorola.[147] The Second Division of the First Appellate District had previously decided the same issue in the case of *Verb v. Motorola, Inc.*,[148] and had found that the federal law preempted the plaintiff cellular phone users' state law claims. The defendant in *Schiffner* asserted that the court was bound by *Verb*'s holding of preemption. Although rejecting the notion that it was bound by a decision of a court of equal stature, the *Schiffner* court seemed to accord great deference to the *Verb* court's decision. After examining the facts of *Verb* and carefully reviewing the analysis of the law, the *Schiffner* court concluded that the *Verb* court correctly decided the issue of preemption. Although the *Schiffner* court declined the invitation to be bound by *Verb,* the court found *Verb* persuasive.

Similarly, in *Board of Managers of Weathersfield Condominium Association v. Schaumburg Limited Partnership*[149] the First District asserted that it was not bound by a Second District appellate court case with similar facts, but found the latter case persuasive. Citing *Aleckson,* the *Weathersfield* court held that the decision of one appellate district is not binding on other appellate districts. However, noting that the second

district case of *Maercker Point Villas Condominium Association v. Szymski*[150] was the only decision in the state on the issue in controversy, the court found the second district case persuasive and followed its ruling that a developer owes a fiduciary duty to a condominium association. Like the courts of *Stahulak* and *Schiffner,* the court in *Weathersfield* accorded great deference to a horizontal appellate district, despite asserting that it would not be bound by the other district's holding.

The Second District refused to be bound by another district's decision in *Hubeny v. Chairse.*[151] The Second District declared that it was bound by a Second Appellate District case, even though there was a more recent Fifth Appellate District case on point. The issue in this automobile negligence case was whether a defendant could introduce evidence of a prior injury to the plaintiff, without introducing expert testimony to establish a causal connection between the past injury and the present symptoms of the plaintiff.[152] The circuit court followed the Fifth District case of *Brown v. Baker*[153] in ruling that expert testimony was required. The *Hubeny* court, citing A*leckson*, ruled that the circuit court was bound by the Second Appellate District case of *Molitor v. Jaimeyfield*.[154] The *Molitor* court adhered to the rule that evidence of a prior injury to the same body part is admissible without expert testimony if the factual predicates for the rule were present.[155] However, the court then determined that the prior injury was not to the same body part and thus that *Molitor* was not relevant.

Finally, if circuit courts were not confused enough in determining by which appellate court decisions they may be bound, there is the Fourth Appellate Court District case of *In re the Marriage of A. Baylor.*[156] In deciding whether military allowances should be included in the calculation of net income for child support purposes, the court held it absolute duty of a circuit court in the Fourth Appellate District to follow a First Appellate District case that previously had ruled on that issue. The

court stated, "This was not a case in which the trial court was faced with conflicting decisions from various appellate districts, and in the absence of controlling authority from its home district was free to choose between the decisions of the other appellate districts."[157] The court cited *People v. Harris*[158] for the proposition that "It is fundamental in Illinois that the decisions of an appellate court are binding precedent on all circuit courts regardless of locale."

IV. RESOLVING CONFLICTS IN ILLINOIS

A. Consideration of Relevant Factors to Reach a Just Decision

Courts should try to decide cases consistently with prior decisions to promote certainty and predictability of law, protect reliance of the parties, enhance judicial efficiency, and constrain judicial activism. The reasons for consistency are driven by strategic considerations that lay the foundations for future cases.[159]

Two views dominate with regard to the extent to which stare decisis is part of this foundation. The deontological view dictates that following a prior decision has inherent value in itself.[160] Deontological theories do not tolerate compromise and advocate the concept that consistency has systemic value.[161] The courts, under the deontological view, should follow prior decisions for the sake of consistency. [162]

The consequentialist view[163] considers stare decisis justified only to the extent it serves justice.[164] Consequentialists value stare decisis as a part of the overall analysis of a case. Stare Decisis then is a relevant factor that always must be considered by a court. According to consequentialists, the court should give proper weight to all relevant criteria, without considering any irrelevant ones.[165]

Why are we concerned with relevant criteria? If we accept justice as the treatment of a party in accordance with the net result of all the

relevant criteria, properly weighed, without consideration of any irrelevant factors, then it is crucial to begin each inquiry with attempt to identify what the relevant criteria are for each case. It is logical to conclude that consideration of irrelevant factors may change the net effect, which will result in injustice. For example, it will be irrelevant for a court, ruling on liability in a car accident case, to consider the drivers' race, gender, marital status, income, choice of clothes. Consideration of any one of these irrelevant factors may change the net effect of the factors that the court will consider and may result in an unjust decision. Similarly irrelevant is in which appellate district a trial court sits.[166] Consideration of territorialism then may also bring an unjust result.

Following precedent does have value. For example, consistency has great value in business, tax, and estate planning law where attorneys base their advice on steady doctrines. That is not to say that in other areas of the law courts are free to disregard precedent. Stare decisis is a relevant factor that courts must weigh along with other relevant criteria. A court deciding a case should analyze all factors and examine the reasons to follow or not to follow a precedent.

B. Model for Illinois

Illinois has one Appellate court. In order to avoid territorialism and checkerboard application of Illinois law, each Illinois Appellate District should review cases with the presumption that, because there is one appellate court in Illinois, each District's decision is binding throughout the state. The shift to the concept of the "home" district has created a situation where laws are applied differently depending on the location of the court, contrary to the idea of a unitary court system. The question is what is the horizontal precedential value of an appellate decision. Although The Illinois Supreme Court has drifted to the notion of the home district, and progeny appellate court decisions have followed

this concept, the concept has never been analyzed or justified either by the Illinois Supreme Court or by the appellate districts. If the Illinois Appellate Court is of truly unitary nature and there is truly only one appellate court, as the Illinois Supreme Court has articulated on numerous occasions, the decision of one district appellate court should be binding horizontally and vertically. There has never been rational reason articulated why it should not be. This being the case, then the first case decided regardless of what appellate district decided the case should be considered presumptively binding in all districts. A good model would be *Stahulak*[167] and *Schiffner*[168], which come closest to the consequentialist approach to stare decisis. The courts there considered and weighed prior decisions as one of the relevant factors, along with others. After considering all relevant factors, the court should ask whether there is any compelling reason not to follow the prior decision. If, after careful analysis, the court concludes that there are no compelling reasons not to follow the precedent, then the court should follow the precedent. One factor that should not be a relevant criterion, given the unitary nature of the Illinois Appellate Court, is where the most recent prior case was decided. The court, knowing that it is overturning a prior precedent, should be very careful to have well thought and compelling analysis before it decides not to follow the prior decision.

However, if a court, after a thorough analysis, finds compelling reasons not to follow a precedent, it should not follow a case precedent because of the systemic virtues of doing so unless the values thus promoted outweigh other considerations.

CONCLUSION

The notion of "home" appellate district has resulted in unpredictable application of the law, depending on the location of the court. This notion of a "home" district was created without any support

in constitutional or statutory law. It runs contrary to the concept of a unitary appellate court, and is intolerable. It has the same effect as if the legislature passed checkerboard statutes. Since the appellate court is unitary there is no reason why one district appellate court should not follow a decision of another.

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[*] Sofia Zneimer © 2003.

[1] Not long ago, in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the United States Supreme Court held that the legislature cannot remove from the jury the determination of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. Currently, there is a split in authority in Illinois regarding the prescribed range of penalties for first degree murder. In *People v. Beachem*, 740 N.E.2d 389 (Ill. 2000) the State argued that the sentencing range for first degree murder is anywhere from 20 years in prison up to and including the death penalty. However, the Third Division of the First Appellate District held that the maximum statutory penalty for first degree murder is that set forth in section 5-8-1(a)(1)(a) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(a) (West 1994) (stating that a term shall be not less than 20 years and not more than 60 years)). The court held that because 60 years is "the prescribed maximum sentence for first degree murder in this State," an extended-term sentence of more than 60 years that is based on a finding of exceptionally brutal and heinous behavior determined by a judge and not a jury, offends *Apprendi*. Similarly, the Second Appellate District in *People v. Nitz*, 747 N.E.2d 38, 50 (Ill. 2001), rejected the State's argument that the maximum statutory penalty for first degree murder is the death penalty. The defendant in *Nitz* was convicted of first degree murder and was sentenced under section 5-8-1(a)(1)(b) to natural life imprisonment based upon a finding of exceptionally brutal or heinous behavior indicative of wanton cruelty. The court held that the jury must "determine . . . . the facts that fix the limit of exposure to punishment," and that the court's finding under section 5-8-1(a)(1)(b) exposed the defendant to a punishment greater than that authorized by the jury's guilty verdict. 747 N.E.2d at 55. The Sixth Division of the First Appellate District, in *People v. Vi*da, 752 N.E.2d 614 (Ill. 2001), disagreed with *Nitz* and *Beachem*, and held that the statutory sections regarding extended-term sentencing of imprisonment for a felony should be read together as part of an overall sentencing scheme for murder when determining the statutory range of possible penalties for first degree murder. Under such an approach, an extended-term sentence imposed upon a judicial finding at sentencing that a statutory aggravating factor existed would not necessarily violate *Apprendi*.

[2] ILL. CONST. art. VI, § 3 (These are the locations of the five Judicial Appellate Districts).

[3] For example, there is a district split as to whether litigants have an absolute

right to voir dire the jurors. The Second Appellate District recently decided the criminal case of *People v. Allen,* 730 N.E.2d 1216 (2000). Three weeks later, the First Appellate District decided the civil case of *Grossman v. Gebarowski*, 732 N.E.2d 1100 (2000). The issue in both cases was whether parties have the absolute right to voir dire the jurors. Both courts examined Supreme Court Rule 234, which governs voir dire examinations. Prior to 1997, Supreme Court Rule 234 stated that the court "shall conduct the voir dire examination" and that the court "may permit the parties to submit additional questions to it . . . . or may permit the parties to supplement the examination by such direct inquiry as the court deems proper." The *Allen* court concluded that the word 'shall' in the Rule is not always construed as mandatory. Therefore, the court held that the word "shall" does not indicate mandatory language. The *Grossman* court also examined the significance of the change of "may" to "shall." However, unlike the *Allen* court, the *Grossman* court found that when The Illinois Supreme Court changed "may" to "shall" it signaled its intent to require a mandatory construction of "shall." The *Grossman* court concluded that the trial court must allow counsel to voir dire the jurors. The First District acknowledged that the Second District in the Allen court had given a different construction to the language of the rule. However, the *Grossman* court stated that it could not construe the language of the amended Rule 234 as anything but mandatory.

[4] *See, e.g.*, note 1.

[5] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1229 (Ill. 1997).

[6] *Id*.

[7] *Id*. at 1229-1230.

[8] *Id*. at 1230.

[9] *Id*.

[10] *See supra* text accompanying note 2.

[11] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1229 (Ill. 1997).

[12] *See* Christopher J. Peters, *Foolish Consistency: On Equality, Integrity, and Justice in Stare Decisis*, 105 YALE L.J. 2031, 2051(1996) [hereinafter Peters, *Foolish Consistency*](["A] treatment of someone is entirely "just" if, and only if, (1) it is the treatment that an omniscient judge (or other actor) would prescribe after correctly considering every relevant criterion (but no irrelevant ones) and giving each such criterion exactly its appropriate weight with respect to every other such criterion, and (2) it is in fact the result of a correct consideration of every relevant criterion but no irrelevant ones.").

[13] Id.

[14] *Id.* at 2037. Consequentialists recognize that stare decisis has value only if it serves justice.

[15] *A Short History of the Illinois Judicial Systems*, Supreme Court of Illinois, *at* http://www.state.il.us/court/SupremeCourt/History.htm (visited Nov. 14, 2001).

[16] GEORGE D. BRADEN & RUBIN G. COHN, THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS 329 (Inst. of Gov't and Pub. Affairs, Univ. of Ill. - Urbana 1969) [hereinafter BRADEN & COHN, AN ANNOTATED AND COMPARATIVE ANALYSIS]

[17] *Id.* at 334.

[18] *Id*.

[19] *Id.* at 336.

[20] *Id.* at 334.

[21] *Id*.

[22] *Id.*

[23] ILL. CONST. art. VI (1870).

[24] ILL. COMP. STAT. An Act to Establish Appellate Courts, 1877 Ill. Laws Par 1 at 69. (West).

[25] *Id.*

[26] BRADEN & COHN, AN ANNOTATED AND COMPARATIVE ANALYSIS, at 343.

[27] ILL. CONST. art. VI, § 11 (1870) ("Appellate Courts of uniform organization and jurisdiction may be created in districts formed for that purpose").

[28] Taylor Mattis & Kenneth G. Yalowitz, *Stare Decisis Among [sic] the Appellate Court of Illinois*, DEPAUL L. REV., 571, 573 (1979)[hereinafter Mattis & Yalowitz, *Stare Decisis*].

[29] Journal Co. of Troy v. F.A.L. Motor Co., 181 Ill. App. 530, 536 (1st Dist. 1913) ("But it must be noted that no Appellate Court decision is of binding authority on us unless affirmed expressly by The Illinois Supreme Court, or, ... implicitly so affirmed by a denial of a certiorari.").

[30] People ex. rel. Nelson v. Sherrard State Bank, 258 Ill. App. 168, 171 (2d Dist. 1930) ("[I]t is doubtful if the doctrine of stare decisis can be applied to an opinion of the Appellate Courts of this State, in view of section 17 of the Appellate Court Act, . . . which provides that the opinion of such courts shall not be binding authority in any cause or proceeding, other than that in which it may be filed.").

[31] DAVID KENNEY, BASIC ILLINOIS GOVERNMENT, A SYSTEMATIC EXPLANATION 276 (Southern Univ. Press, 1979) [hereinafter KENNEY, BASIC ILLINOIS GOVERNMENT].

[32] *Id*.

[33] *Id*.

[34] *A Short History of the Illinois Judicial Systems* , Supreme Court of Illinois, *at* http://www.state.il.us/court/SupremeCourt/History.htm (visited Nov. 14,

2001) ("[E]ven in 1870, the constitution was not flexible enough to cope with a growing population and the need for an expandable judiciary. The eventual confusion is best demonstrated by Cook County. In 1962, Cook County had 208 courts: The Circuit Court, the Superior Court, the Family Court, Criminal Court, Probate Court, County Court, Municipal Court of Chicago, 23 city, village, town and municipal courts, 75 justice of the peace courts, and 103 police magistrate courts. Many of those courts had overlapping jurisdiction which increased the already great organizational problems.")

[35] *See* KENNEY, BASIC ILLINOIS GOVERNMENT at 273 ("[A] proposed constitution in 1922 had a completely revised judicial article." The revision emphasized integrated court with centralized rule-making authority and provisions for the appointment of judges. *Id.*).

[36] *Id.* (The Legislative Commission on Judicial Reform was an interim body of the General Assembly).

[37] *Id.* at 274 (The proposal called for appointment of judges, however many judges, who were integrated into the state politics, wanted to keep the status quo of partisan election and influenced the legislators to oppose the judicial change.)

[38] *Id.* (The Senate approved the proposal in almost straight party vote); *See* Barnabas F. Sears, *New Judicial Article for Illinois - From the 1848 Horse and Buggy Days to 1955*, September A.B.A. J. 755, 755-58 (1954).

[39] *Id*. at 274.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 275.

[43] *Id*.

[44] *Id*. ("Political power thus prevailed over technical finesse.").

[45] *Id.* (In order to achieve approval the proposal needed either two-thirds of those voting or a simple majority of those participating in the general election).

[46] *Id*. at 276.

[47] *Id*. at 277.

[48] Seventy Second General Assembly, H.R.J. Res. 39 (Ill. 1961) (Laws 1961, p. 3917) ("The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.") The total vote cast for the Proposed Amendment to Article VI was 3,288,154. Of this number 1,800,449 came from Cook County, and 1,487,705 was from outside of Cook County. Of the Cook County votes 1,441,749 (80%) were cast for the Amendment and 358,700 (19%) against the Amendment. Of the votes outside of Cook County, 725,168 (49%) were cast for the Amendment and 762,537(51%) against it.).

[49] Constitutions of Illinois, 1818,1848,1870. Article VI, 1964

[50] BRADEN & COHN, AN ANNOTATED AND COMPARATIVE ANALYSIS at 344.

[51] KENNEY, BASIC ILLINOIS GOVERNMENT, at 283.

[52] BRADEN & COHN, AN ANNOTATED AND COMPARATIVE ANALYSIS at 344.

[53] *A Short History of the Illinois Judicial Systems*, Supreme Court of Illinois, *at* http://www.state.il.us/court/SupremeCourt/History.htm (visited Mar. 18, 2002) (The Constitution may best be described as a refinement of the 1964 Judicial Article. "The basic structure of a unified, three-tier judiciary was retained.").

[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] Taylor Mattis & Kenneth G. Yalowitz, *Stare Decisis Among [sic] the Appellate Court of Illinois*, DEPAUL L. REV., 571, 573 (1979)[hereinafter Mattis & Yalowitz, *Stare Decisis*].

[58] *Id*. at 573.

[59] Act to Establish Appellate Courts, 1877 Ill. Laws § 17 at 72.(West 1877) ("[The] Appellate Court shall state briefly in writing the reasons for [the decision]; Provided, that the reasons so filed shall not be of binding authority in any cause or proceeding other than that in which they may be filed or given.")

[60] Mattis & Yalowitz, *Stare Decisis* at 573.

[61] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1230 (Ill. 1997) (Justice Harrison said that "[g]iven the unitary nature of the Illinois appellate court and the reach of its decisions, what circuit courts should be doing is following the most recent appellate court decision on point." Justice Harrison, does not suggest, however, that a decision of one Appellate district bind a coordinate division or district. *Id*.)

[62] Mattis & Yalowitz, *Stare Decisis* at 573.

[63] *Aleckson* at 1229. ("[W]hen conflicts arise amongst the districts, the circuit court is bound by the decisions of the appellate court of the district in which it sits."). Although the court does not seem to expressly overrule any prior decisions, this pronouncement of the Illinois Supreme Court is a departure from prior pronouncements of the court that the decision of an appellate court is binding upon all circuit courts regardless of locale. *See,* People v. Harris, 526 N.E.2d 335, 340 (Ill. 1988); People v. Thorpe, 367 N.E.2d 960 (Ill. 1977).

[64] People v. Harris, 526 N.E.2d 335, 340 (Ill. 1988) ("It is fundamental in Illinois that the decisions of an appellate court are binding precedent on all circuit courts regardless of locale," *citing* People v. Thorpe, 367 N.E.2d 960 (Ill. 1977).

[65] *A Short History of the Illinois Judicial Systems*, Supreme Court of Illinois, *at*

http://www.state.il.us/court/SupremeCourt/History.htm (visited Mar. 14, 2002).

[66] ILL. CONST. art. VI, § 2.

[67] *Id*. at § 1.

[68] ILL. CONST. art. VI, § 11 (1870) ("Appellate Courts of uniform organization and jurisdiction may be created in districts formed for that purpose").

[69] *See* ILL. CONST. art. VI, § 1.

[70] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1230 (Ill. 1997) (Justice Harrison, concurring).

[71] *Id*.

[72] *Id*.

[73] *Id*. at 1229.

[74] *Id*.

[75] UMW Hosp. v. UMW, 288 N.E.2d 455, 457 (Ill. 1972)

[76] *Id*.

[77] *Id*.

[78] *Id*.

[79] Peters v. South Chicago Community Hospital, 253 N.E.2d 375 (Ill. 1969)

[80] UMW Hosp. v. UMW, 288 N.E.2d 455, 457 (Ill. 1972).

[81] *Id*.

[82] *Id*. at 458.

[83] *Id*.

[84] Yellow Cab Co. v. Jones 483 N.E. 2d 1278 (Ill. 1985).

[85] DeBruyn v. Elrod , 418 N.E.2d 413 (Ill. 1981).

[86] *Yellow Cab*, 483 N.E. 2d at 1281.

[87] People v. Harris, 526 N.E.2d 335, 335 (Ill. 1988)

[88] *Id*.

[89] *Id*.

[90] People v. Zehr, 442 N.E.2d 581 (Ill.App.3d. 1982)

[91] People v. Britz, 493 N.E.2d 575 (Ill. 1986)

[92] People v. Harris, 526 N.E.2d 335, 340 (Ill. 1988)

[93] *Id*.

[94] *Id*.

[95] People v. Thorpe, 367 N.E.2d 960 (Ill. App. 2d Dist. 1977).

[96] *Harris* 526 N.E.2d at 335.

[97] *Id*.

[98] People v. Harris, 526 N.E.2d 335, 341 (Ill. 1988).

[99] *Id*.

[100] *Id*.

[101] *Id*.

[102] *Id*.

[103] People v. Layhew, 564 N.E.2d 1232, 1238 (Ill. 1990).

[104] *Id*.

[105] *Id*. at 1233.

[106] *Id*.

[107] *Id*. at 1238.

[108] *Id*.

[109] People v. Layhew, 564 N.E.2d 1232, 1238 (Ill. 1990).

[110] In re May 1991 Will County Grand Jury, 604 N.E.2d 929, 929 (Ill. 1992)

[111] *Id*.

[112] *Id*.

[113] *Id*. at 932.

[114] In re Grand Jury Proceedings, 686 F.2d 135, 135 (3d Cir. 1982).

[115] In re September 1981 Grand Jury, 432 N.E.2d 625, 625 (Ill. App. Ct. 4th Dist. 1982)

[116] *Id*.

[117] In re May 1991 Will County Grand Jury, 604 N.E.2d 929, 938 (Ill. 1992)

[118] People v. Granados, 666 N.E.2d 1191, 1997 (Ill. 1996).

[119] People v. Spearman, 438 N.E.2d 1320, 1320 (Ill. App. Ct. 3d Dist.

1982).

[120] People v. Martin, 606 N.E.2d 1265, 1265 (Ill. App. Ct. 3d Dist.

1992).

[121] *Granados*, 666 N.E.2d at 1193.

[122] *Id*. at 1197.

[123] *Id*..

[124] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1224 (Ill. 1997)

[125] Barrows v. City of N. Chi., 336 N.E.2d 596, 596 (Ill. App. Ct. 2d Dist. 1975)

[126] *Aleckson*, 679 N.E.2d at 1225.

[127] Mueller v. Board of Fire & Police Commissioners, 643 N.E.2d 255, 255 (Ill. App. Ct. 2d Dist 1994)

[128] Aleckson, 679 N.E.2d at 1226.

[129] *Id*.

[130] Chevron Oil Co. v. Huson, 404 U.S. 97, 97 (1971)

[131] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1229 (Ill. 1997)

[132] Aleckson v. Vill. of Round Lake Park, 679 N.E.2d 1224, 1230 (Ill. 1997)

[133] *Id*.

[134] *Id*.

[135] People v. Ortiz, 752 N.E.2d 410, 423 (Ill. 2001).

[136] Renshaw v. Gen. Tel. Co., 445 N.E.2d 70 (Ill. 1983)

[137] Yellow Cab Co. v. Jones 483 N.E. 2d 1278 (Ill. 1985)

[138] *Ortiz*, 752 N.E.2d at 423.

[139] *Aleckson*, 679 N.E.2d at 1229.

[140] Stahulak v. City of Chicago, 684 N.E.2d 907,910 (Ill. App 1 Dist. 1997).

[141] Svoboda v. Dept. of Mental Health 515 N.E.2d 446 (Ill App. 2 Dist 1987).

[142] Parks v. City of Evanston, 487 N.E.2d 1091 (Ill. App. 1 Dist. 1985).

[143] *Stahulak*, 684 N.E.2d at 910.

[144] Schiffner v. Motorola, Inc., 697 N.E.2d 868 (Ill. App. 1 Dist. 1998)

[145] *Id*.

[146] *Id*.

[147] U.S.C.A. Const. Art. 6, cl. 2;

[148] Verb v. Motorola, Inc. 672 N.E. 1287 (1st. Dist. 1996)

[149] *Bd. of Managers of Weathersfield Condo. Ass'n v. Schaumburg Ltd. P'ship* 717 N.E. 2d 429 (1st Dist. 1999)

[150] Maercker Point Villas Condo. Ass'n v. Szymski 655 N.E.2d 1192 (Ill. App. 2d Dist. 1995)

[151] Hubeny v. Chairse 713 N. E. 2d 222 (Ill. App. 2 Dist. 1999)

[152] *Id*.

[153] *Brown v. Baker, 672 N.E.2d 69 (Ill. App. 2 Dist. 1996)*

[154] *Molitor v. Jaimeyfield* 622 N.E. 2d 1250 (Ill. App. 2 Dist. 1993).

[155] *Id*.

[156] *In re the Marriage of A. Baylor* 2001 WL 884062 (Ill. App. 4 Dist.)

[157] *In re the Marriage of A. Baylor* 2001 WL 884062(Ill. App. 4Dist.)

[158] People v. Harris, 526 N.E.2d 335, 340 (Ill. 1988)

[159] Peters, *Foolish Consistency,* 105 YALE L.J. at 2114.

[160] Peters, *Foolish Consistency*, 105 YALE L.J. at 2037.

[161] For deontoligists, "the right precedes the good." *See,* SIR W. DAVID ROSS, FOUNDATION OF ETHICS 115-40 (1939).

[162] *Id*.

[163] Consequentialists, like utilitarianists, view actions in terms of the goodness stemming from these actions. However, unlike utilitarianism, which centers on the creation of happiness, consequentialism defines 'value' or 'good consequences' differently. For example, "a consequentialist could consistently say that an action is right if it maximizes the level of the sea, so long as she also held that the level of the sea was morally significant." *See*, *Alan Strudler, The Power of Expressive Theories of Law*, 60 Md. L. Rev. 492, 495 (2001); Brian Barry, And Who Is My Neighbor?, 88 Yale L.J. 629, 630 (1979) (book review).

[164] I am borrowing Christopher J. Peters' definition of Justice as the idea that justice is the net effect of all relevant criteria where the effect is a result of correct consideration of every relevant criterion (but no irrelevant ones), and after properly weighing each relevant criterion with respect to every other such criterion. *See*, Peters, *Foolish Consistency*, 105 YALE L.J. at 2050.

[165] *Id*. at 2051.

[166] ILL. CONST. art. VI, § 1; *Aleckson*, 679 N.E.2d at 1230; *Harris*, 526 N.E.2d at 335.

[167] Stahulak v. City of Chicago, 684 N.E.2d 907,910 (Ill. App. 1 Dist. 1997).

[168] Schiffner v. Motorola, Inc., 697 N.E.2d 868 (Ill. App. 1 Dist. 1998).