November 21, 2015

Electronic Commerce and Incorporation by Reference in Contract Law

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By Alvin C. Harrell

In Walker v. Builddirect.com Technologies, Inc., the Oklahoma Supreme Court considered the standard that must be met to incorporate a separate (extrinsic) electronic record into a contract by reference. The issue arises when it is argued that separate records should be read together as parts of the contract by reason of a reference to the extrinsic record in the record executed by the contracting parties. The Walker court noted that Oklahoma authority on the issue is sparse, and treated the matter as an issue of first impression. It is an issue of increased importance in view of the expansion of electronic commerce, given that electronic contracts frequently involve the cross-referencing of extrinsic material via links between web pages.

As noted elsewhere, the cases on this issue often involve one or more of three subject areas that are lightning rods for modern controversies: 1) arbitration clauses; 2) choice-of-forum (or choice-of-law) clauses; and 3) warranty disclaimers. Sometimes these are intertwined with the effects of a change-in-terms notice, and in the electronic contracting context there may be additional issues relating to assent in a "clickwrap," "modified clickwrap," "browse-wrap" or "shrinkwrap" transaction.

In all of these scenarios the substantive law issues are governed by traditional contract law principles, supplemented on narrow issues by the Uniform Electronic Transactions Act (UETA) and/or the Uniform Commercial Code (UCC). The guiding principle in the analysis (as recognized in Walker) is to ascertain the expressed intent of the parties, recognizing the foundational concept that contract law is the embodiment of party autonomy. Thus, the issue of incorporation by reference addressed in Walker goes to the heart of the standards required for the legal recognition of private bargains, perhaps the single most important underpinning for a modern, just and prosperous society.

BACKGROUND OF THE WALKER CASE

The Walkers purchased flooring materials from Builddirect.com (BuildDirect) in a contract sent to the Walkers by email. They printed it out and signed the printed contract, and returned it to BuildDirect by facsimile (fax) transmission. The printed contract stated that: "[a]ll orders are subject to BuildDirect's 'Terms of Sale'.” The Walkers received and installed the flooring, and subsequently alleged that their home became infested with "nonindige-
nous wood-boring insects" which damaged their home, as a result of insect larvae contained in the BuildDirect flooring.

They filed a class action suit against BuildDirect, alleging fraud, breach of contract, negligence, trespass, breach of implied warranties, deceptive trade practices, products liability and nuisance.

BuildDirect moved to compel arbitration, based on an arbitration clause in the "Terms and Conditions" referenced in the printed contract signed by the Walkers. BuildDirect noted that the terms and conditions were separately available on the BuildDirect website, accessible by clicking on a hyperlink under that label, under the heading "Customer Service." The Walkers responded that they were not aware of these terms and that the terms were not properly incorporated by reference into the contract.

The district court denied BuildDirect's motion to compel arbitration, on grounds the contract was ambiguous and that the court could not say as a matter of law that the terms and conditions were incorporated by reference. BuildDirect appealed to the United States Court of Appeals for the 10th Circuit, which certified the question to the Oklahoma Supreme Court (as a matter of state law).

OKLAHOMA SUPREME COURT OPINION

Arbitration agreements are subject to the Federal Arbitration Act (FAA), but state contract law governs contract formation and interpretation issues. In Walker, the Oklahoma Supreme Court began its opinion by reemphasizing basic tenets of contract law, e.g., "the paramount objective of contract interpretation is to effectuate the intent of the parties as expressed by the terms of the contract." As noted, the question in Walker was whether the Terms and Conditions that included the arbitration clause were incorporated by reference into the parties' contract.

The Oklahoma Supreme Court read the existing, limited precedent on the issue as requiring that the incorporated material be "clearly identified in the text" of the contract, or subject to "words of express incorporation," but concluded that the specific legal standards needed to apply this general test on the facts of the Walker case were "lacking." The court proceeded to analyze the issue in view of the guidance articulated by Professor Williston in his treatise, Williston on Contracts.

Williston indicates as the basic test that an incorporation by reference is effective when (in the words of the Oklahoma Supreme Court) "the underlying contract makes clear reference to the separate document, the identity of the separate document may be ascertained beyond doubt, and the parties to the agreement had knowledge of and assented to the incorporation." These standards remain unchanged in the context of electronic contracts, and upon incorporation the extrinsic material becomes part of the parties' contract. The narrow question in Walker was whether the terms and conditions including the arbitration clause were properly incorporated by reference, using this standard.

BuildDirect argued that the terms and conditions containing the arbitration clause were expressly incorporated into the contract, placing the Walkers on notice of the relevant provisions. The Walkers argued that they did not have notice of, and did not agree to, the terms and conditions. As have other courts, the Oklahoma Supreme Court focused on whether the Walkers were provided reasonable notice of the incorporated material, applying the standard of a "reasonable prudent person." "Notice" includes "circumstances that would alert a reasonable, prudent person to investigate[,]" and "a party's failure to read duly incorporated terms will not excuse the obligation to be bound." As noted, this language in the court's opinion reemphasizes the basic tenets of contract law. "But," the court went on to state, "incorporation will fail when this Court must employ a forced construction to 'construe an ambiguity ... to import a more favorable consideration to either party than that expressed in the contract.'"

The language of incorporation in the Walkers' printed contract, making the contract "subject to" the separately available "Terms and Conditions," may seem to meet the test for incorporation by reference. But, the court went on to state, "incorporation will fail when this Court must employ a forced construction to 'construe an ambiguity ... to import a more favorable consideration to either party than that expressed in the contract.'"
ously state that the parties intended to incorpo-
rate any additional terms ...."39 The court con-
cluded "[t]hat [this] oblique reference falls short of this Court's demanding standard[,] and ... buttresses this Court's conclusion that the Walkers neither assented to nor had notice of the additional online terms."40

The court's opinion goes on to provide guid-
ance as to how BuildDirect could have provided for the desired incorporation by reference, e.g., by using "words of express incorporation or clearly referencing, identifying and directing the Walkers to the document to be incorporated."41

In contrast, the court concluded, the Walkers' printed contract gave "every appearance of being a complete agreement - capturing the price, payment method, delivery and sales terms ...."42 The court concluded that "[n]o reasonable prudent person ... would have notice to think otherwise."43

The conclusion to the court's opinion sets out three specific requirements to be met in order to have an effective incorporation by reference:

1) the underlying contract makes clear reference to the extrinsic document;[2] 2) the identity and location of the extrinsic document may be ascertained beyond doubt;[3] and 3) the parties to the agreement had knowledge of and assented to its incorporation.44

ANALYSIS OF WALKER

Issues of contract interpretation (ascertaining the intent of the parties based on their expression in the terms of the contract)45 often involve questions of fact, and indeed have some inherent subjectivity. For this reason it is essential that courts apply consistent legal standards of interpretation, in order to sustain the rule of law in an otherwise largely (and potentially chaotic) subjective analysis. Thus, articulation of these standards is an important function of the law, essential to the maintenance of the contract law principles that are necessary to modern society and distinguish us from our medieval ancestors.46

The Walker court deserves credit for reiterating the time-honored principles at the foundation of this legal structure.47 But, if these principles are to have meaning, they must be given effect in the context of widely-recognized modern practices. In essence, words of agreement must have meaning, and those meanings must be generally recognized by courts.

Several examples are presented in the Walker case. The first is the phrase "subject to."48 If this language is to have any meaning, it is to subordinate the subject text to the extrinsic, referenced material; that is, it incorporates the extrinsic material by reference. That is the way it has been interpreted by courts and others in American law,49 and there should be no doubt that this language in the Walker contract meets the first of the three tests articulated in the conclusion to the court's Walker opinion. Presumably the court did not intend to fault the use of this terminology to achieve incorporation by reference,50 and a careful reading of the Walker opinion indicates that this was not the problem identified by the court.

Thus, it is important to note that the phrase "subject to" was not the focus of the Walker analysis. Instead, the stated basis for the Walker decision was the court's second and third tests,51 focusing on identification of the extrinsic material and the parties' understanding of its importance. The court stated that placing quotation marks around the phrase "Terms of Sale," "...without more, was insufficient to convey ... [a] reference to anything other than the multitude of sales terms already expressly enumerated within the four corners of the Contract."52 The court further explained its reasoning as follows:

That oblique reference falls short of this Court's demanding standard. And, it buttresses this Court's conclusion that the Walkers neither assented to nor had notice of the additional online terms.

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Therefore, BuildDirect's attempt at incorporation was nothing more than a vague allusion.53 It appears, then, that the problem in Walker was that the phrase "Terms of Sale" did not sufficiently connote a reference to the extrinsic contract terms, i.e., to terms outside the record being directly executed by the parties. To satisfy the court's "demanding standard," as articulated in the second test stated in the court's conclusion,54 the incorporation by reference (arguably using the phrase "subject to" would be sufficient) needs to identify the extrinsic material as such, in order to make clear that something outside the executed record is being incorporated in the agreement. In other words, it must be clear that the agreement is subject to something more than the record being directly executed by the parties. Then, under the third
test, the proponent must show that “the parties to the agreement had knowledge of and assented to its incorporation.”

For the most part these are reasonable standards, and have counterparts in electronic contracting cases from other jurisdictions. The Walker analysis does not require the use of any specific, or “magic” language, merely words indicating that the reference is to something extrinsic. On the facts of Walker, it appears that a minimal addition of language indicating that the terms of sale contained supplementary provisions that could be separately accessed would have been sufficient. Clearly the safest way to do this is by providing for a separate assent at the end of or adjacent to a link to the extrinsic terms or to provide a reference to the cite containing the extrinsic terms, although arguably this goes beyond what is required as a matter of contract law. The focal requirement, as indicated in Walker, is some indication that the parties had notice that the extrinsic material was part of their contract. Arguably the incorporation of the additional “Terms of Sale” in the Walker transaction came very close to meeting this standard. Thus, a selective review of other electronic contracting cases with similarities to Walker may be instructive in determining more precisely what contract law requires in this context.

OTHER CASES

Introduction

The cases noted here are not precisely on point for the Walker case, but the issues are similar enough to be related and relevant. In this regard, a few initial observations are appropriate.

First, these cases (like Walker) involve contracts for sales of goods, and therefore are subject to UCC Article 2, even if the contracts are formed (at least in part) electronically and are also subject to the UETA. The Walker court did not discuss either the UCC or the UETA, presumably because the issues in the case were governed by the general contract law principles that provide the foundation for both uniform laws. But this should not obscure the potential role for application of a uniform law in such cases, e.g., as to contract formation or procedural unconscionability.

Another introductory point worthy of note is to recognize again that many of these cases involve the possible application of an arbitration clause (or a forum selection clause with a similar purpose, e.g., avoiding an unattractive judicial forum). The Congress and United States Supreme Court have articulated a strong public policy in favor of arbitration, as provided in the FAA. But as others have noted, some courts remain somewhat hostile to arbitration, and a strict application of contract law requirements is one of the few ways to vent that hostility within the confines of the FAA.

Additionally, it can be noted that many of these cases relate to the question of whether a clickwrap or browsewrap assent has been sufficient to form a contract. While not the precise issue in Walker, these issues are related, even similar, to the question of assent to the Terms of Sale in Walker. The Walker court held that the incorporation by reference of BuildDirect’s terms of sale was not sufficient as assent to extrinsic terms including an arbitration clause. While not precisely the issue in the clickwrap and browsewrap cases noted below, the basic issue in Walker is similar, i.e.: What is required as evidence of assent to contract terms?

Finally, as others have also noted, there is an increasing division between business-to-business (B2B) transactions and business-to-consumer (B2C) cases. While there have always been reasons to distinguish between cases based on the sophistication levels of the parties, the increased emphasis on this factor (now enhanced by the expanded federal authority being exercised by the Bureau of Consumer Financial Protection) also inevitably means that freedom of contract is diminished for consumer transactions, and the transaction costs are increased due to the greater legal risks.

Selected B2B Cases

With these caveats in mind, consider some illustrative cases on assent to contract terms. In Appliance Zone, LLC v. TexTag, Inc., the NexTag
website provided for assent to the contract terms by clicking on a box adjacent to the following language: “I accept the NexTag Terms of Service.” The court held that this was sufficient as notice and assent, turning aside arguments that the arrangement was procedurally unconscionable and that the terms were inconspicuous. The court rejected the argument that the incorporated terms had to appear on the same page as the “I agree” box, noting that the incorporation by reference was “typical for the online retail industry.” The resemblance of these facts and legal issues to those in Walker, including even the contract language, is apparent, with the possibly relevant distinction that Appliance Zone was a B2B case.

Similarly, Margae was a B2B case involving assent to a forum selection clause (in a contract modification). The contract permitted a prospective modification by a posting on the defendant’s website, essentially incorporating future modifications by reference. In upholding the referenced terms, the court emphasized that both parties were sophisticated business entities.

In comparison to Walker, the browseswrap cases create even greater difficulties for the party seeking to enforce the contract, given that there is no adjacent manifestation of assent, only the ability to access the contested terms via a hyperlink. Yet a typical case is PDC Laboratories, Inc. v. Hach Co., where the online “Terms and Conditions of Sale” (containing the relevant warranty disclaimer) were hyperlinked. The buyer (the plaintiff suing for breach of warranty) was not required to click a box to accept the terms; instead, the last page of the order form instructed the buyer to “Review terms, add any comments, and submit order[,]” followed by a hyperlink to the terms including the disclaimer. The court held that the referenced terms were adequately communicated to the buyer, citing the UCC Article 2 definition of “conspicuous” and Hubbert v. Dell Corp. The PDC Laboratories court stated a rule similar to that of the Oklahoma Supreme Court in Walker, namely that the test is whether the referenced terms are reasonably communicated to the buyer, but reached a different result on similar facts.

These B2B cases are not exhaustive but appear to be illustrative of the broader case law. Among these cases, Walker is an outlier. But, if the law is to be divided between commercial and consumer transactions, perhaps a better comparison is the B2C cases, noted below.

B2C Cases

Hines v. Overstock.com, Inc. was a browseswrap case in a B2C transaction. Moringiello and Reynolds characterize the facts of this case as “a good lesson on how not to present website terms and conditions.” The website stated that merely “entering this site will constitute your acceptance of these Terms and Conditions.” The link to the terms was at the bottom of the page in small print, between a link to the seller’s privacy policy and its trademark, and the ordering process did not require scrolling to that portion of the web page. The court held that this was not sufficient as actual or constructive notice of the referenced terms. This seems more consistent with Walker (as compared to the cases noted above), but it should be noted that the problem in Hines was the inconspicuous location of the cross-reference (not noted as a problem in Walker), rather than the adequacy of the language. There was no indication in Hines that a hyperlink cross-reference to the relevant terms was problematic per se.

Another illustrative B2C case is Van Tassell v. United Marketing Group, LLC, again (as in Walker) involving assent to an arbitration clause. The defendants, seeking to enforce the arbitration clause in a browseswrap agreement, relied unsuccessfully on PDC Laboratories and Hubbert. The “Terms and Conditions” containing the arbitration clause were displayed on the defendants’ websites, but a hyperlink did not appear on either the home page or the checkout pages. To find the terms and conditions, it was necessary to scroll to the bottom of the home page and click the “Customer Service” link, then scroll to the bottom of the Customer Services page or click another link near the end of that list, entitled “Conditions of Use, Notices and Disclaimers.” The Van Tassell court concluded that a user could complete his or her transaction without receiving notice of the arbitration clause. Interestingly, the court seems to suggest that the B2B cases cited by the defendants (PDC Laboratories and Hubbert) would be persuasive authority in this B2C case, if the notice given in Van Tassell had been as conspicuous as the notice in those B2B cases.

In contrast to Hines and Van Tassell, in Swift v. Zynga Game Network, Inc. the court enforced
an arbitration clause that was included in terms of service linked to but not visible on the transaction screen. The user was required to click an “accept” button directly above a notice stating that the assent constituted an agreement to the terms of service, along with a hyperlink to the terms. The court held that this provided sufficient notice of and an opportunity to review the terms of service. A similar case is Vernon v. Qwest Communications International, Inc., where Qwest sent existing customers a letter notifying them of new contract terms (a change in terms notice), including an arbitration clause, and new customers who signed up on the internet checked a box indicating agreement to the relevant “Terms and Conditions,” with a reference to the location of the terms and a request that the customer review them. The court held that this was sufficient notice and enforced the arbitration clause.

The B2C (and B2B) cases seem consistent with Walker in stating the general contract law rule, that the test is whether the incorporation by reference is conspicuous and notice is reasonably communicated to the other party. As noted by Moringiello and Reynolds: “[I]t is not enough that the terms can be found somewhere; the terms also must be presented in such a way that they can be found by the reasonable user.” Not surprisingly, this may require greater clarity with respect to less sophisticated consumer users. Although the precise parameters of this qualification may be somewhat murky in the context of a given scenario, it seems clear that the safest approach is to provide a specific notice that additional terms are being incorporated, together with directions to the location of those terms and adequate evidence of assent to the contract. Particular care is required in meeting these requirements in consumer transactions.

CONCLUSION

In addition to the basic contract law principles noted above, Walker illustrates a growing gap between commercial and consumer transactions law. Walker is an outlier compared to some of the commercial contracting cases; as between commercial entities it is quite possible the incorporation by reference in Walker would have been effective. It is in the context of other case decisions that focus on the protection of consumers that Walker fits more comfortably.

In Walker, the contract law requirement for assent on the basis of reasonable notice of the contract terms was interpreted to require that a merchant contracting with a consumer reach out to more fully highlight all of the applicable terms. In the view of the Walker court: “Such a standard ensures that Oklahoma consumers are protected from deceptive and unfair trade practices.”

It is difficult to argue with this purpose, and probably few would dispute the need for full and effective disclosure of contract terms and evidence of assent. However, it should be noted that the requirement for a heightened standard of technical compliance may not be entirely beneficial to consumers. To the extent that contracting with consumers is made more difficult and legally hazardous by the addition of a technical judicial gloss to consumer protection law (and then becomes more expensive due to increased legal risks), rather than following standard commercial practices, consumers may suffer reduced access or higher costs in transactions that are common in the commercial world. This has been an emerging trend in American law in recent decades, and may be accelerating.

It can be noted in this regard that some of the recent efforts to protect consumers have cut-off many consumers from access to home mortgage loans that formerly were widely available. Some may argue that this is the way it should be, and your author does not debate the point here. Nor is there any intent to suggest similar effects from Walker. But one need not disapprove of the Walker analysis in order to note that it fits a pattern of cases limiting the enforcement of consumer contracts. In this regard, it may tempting for lawyers and courts to focus on protecting an individual consumer from some of the traditional standards of contract law, without fully contemplating the cumulative effects (and costs) of such an approach. It is a point worthy of consideration in studying the rationale of cases like Walker.

1. 2015 OK 30, 2015 WL 2074964 (S.Ct. May 5, 2015). Supporting citations in the court’s opinion are omitted from this article unless otherwise noted.
2. The term “record” includes both written and electronic records. See Uniform Electronic Transactions Act (UETA) §2(7) & (13), and cmts. 6 & 10; Okla. UETA, 12A Okla. Stat. §§15-102(7), (9) & 16.
3. This is not to be confused with the composite document rule, a more discretionary rule that may apply even without an incorporation by reference, allowing the court to consider the evidentiary value of separate records that have sufficient relation to each other as to have probative value as regards the parties’ intent, e.g., for purposes of satisfying the statute of frauds. See, e.g., Mitchell v. Shepard Mall State Bank, 458 P.2d 700 (10th Cir. 1972); John D. Calamari & Joseph M. Perillo, Contracts §512 (1970).
4. Walker, 2015 OK 30, at ¶10. However, as noted below, similar issues have been the subject of litigation elsewhere.

8. See, e.g., authorities cited supra at note 5.


10. See supra note 2. See also Moringiello & Reynolds (2009), supra note 5, at 322 – 25.


12. Walker, 2015 OK 30, at ¶3. In this article your author uses the term “printed contract” to mean the written documentation, recognizing that the contract is the agreement between the parties, not its documentation. See, e.g., Murray, supra note 11, at 2 – 6.

13. Walker, 2015 OK 30, at ¶3. Under the UETA, a facsimile copy is treated the same as the signed original. See supra note 2 and UETA §7 & cmt.


15. Id. at ¶¶4 & 5.

16. Id. at ¶5.

17. Id. at ¶6.

18. Id.

19. Id. at ¶7.

20. Id.

21. Id.


26. Id. at ¶11 (citing 11 Williston on Contracts §3.25 (4th ed. 1999)).

27. Id. This language overstates the latter requirement. See infra this text at notes 31 – 33 and note 44.

28. See Walker, 2015 OK 30, at ¶(also citing Okla. Stat. tit. 15 §156, and One Beacon Ins. v. Crowley Marine Serv., 648 F.3d 258 (5th Cir. 2011)).

29. Id. at ¶12.

30. Id.

31. See supra note 5.


33. Id. (citing: One Beacon Ins., 648 F.3d at 268 & 269; Cooper v. Fleischer, 103 P. 1016 (1909); and McDonald v. McKinney Nursery Co., 143 P. 191 (1914)).


35. See supra this text at note 14.


38. Id.

39. Id.

40. Id.

41. Id. at ¶15.

42. Id.

43. Id.

44. Id. at ¶16. As indicated above, this description overstates the third requirement, as proof of actual knowledge is not required. See, e.g., supra this text at notes 27 – 34, and discussion below.


47. See the precise language of the contract at issue in Walker, supra this text at note 14.

48. A typical, and instructive, example is in UCC Article 3 §3-106, cmnt., stating that language in a promissory note providing that “this note is subject to” extrinsic material will require examination of the extrinsic material to determine the resulting legal rights (in effect incorporating the extrinsic material and therefore rendering the note non-negotiable). 49. The court stated that: "BuildDirect could easily have accomplished that purpose by drafting the contract employing words of express incorporation..." Walker, 2015 OK 30, at ¶15. See also supra this text at note 35. Absent an unprecedented strictness of interpretation, it is difficult to conceive a more express incorporation than the phrase “subject to.”

50. 51. See supra this text at notes 41 – 44.

52. Walker, 2015 OK 30, at ¶14. See also supra this text at notes 35 – 40.

53. Walker, 2015 OK 30, at ¶14 – 15. See also supra this text at notes 40 – 43.

54. See supra this text at note 44.

55. Id. See also supra this text at notes 27 – 34.

56. Id. See also sources cited supra at note 5, and see discussion below.

57. See, e.g., Moringiello & Reynolds 2009, supra note 5, at 326 (citing American Law Institute, Principles of Software Contracts (Proposed Final Draft 2009)).

58. See supra this text at notes 40 – 43.

59. Id. Perhaps even adding the word “additional” or “separate” in front of the reference to “Terms of Sale” would be sufficient to address the Walker concerns. Almost certainly, a link or cross-reference to the location of the additional terms, if conspicuous, would be sufficient.

60. See UCC §2-102; and see infra note 61.

61. See, e.g., Moringiello & Reynolds 2009, supra note 5, at 322 – 23 (noting the relation between the UCC and the UETA).

62. See id.; and see UCC §1-103 & UETA Preliminary Note.

63. See UCC Article 2 pt. 2, and §2-302. See also supra this text at notes 5 – 7 & 9 – 10.

64. See supra this text at notes 5 & 7.

65. See supra notes 7 & 22.

66. See, e.g., email of Bob Luttrell, an attorney with McAfee & Taft in Oklahoma City, referencing the Walker decision in a distribution to owner-buyingokabar.org: “Oklahoma has never been too friendly to arbitration provisions.”

67. See supra note 7.

68. See, e.g., Moringiello & Reynolds 2010, supra note 3, at 175, for definitions of these terms.

69. See supra this text at notes 8 & 29 – 43.

70. See, e.g., Moringiello & Reynolds 2009, supra note 5, at 318 – 19.

71. See, e.g., supra this text & note 62, UCC §2-102 (deferring to consumer protection statutes); Murray, supra note 11, at 468 – 87.


75. Apartment Zone, id., at 79 – 10.

76. Id. at *11 – 12.

77. Id. at *12.

78. See Moringiello & Reynolds 2010, supra note 5, at 176 – 77.

79. Apartment Zone also was a clickwrap case involving a forum selection clause, but that distinction seems irrelevant here given that the means of assent was not at issue in Walker.

80. 2008 WL 2465450. See supra note 73.


82. Both parties were internet marketing companies. Id. at 5 – 6.

83. See, e.g., the definition of browsewrap in Moringiello & Reynolds 2010, supra note 5, at 175.

84. See infra notes 26 & 30.


86. Id. (as noted in Moringiello & Reynolds 2010, supra note 5, at 177).

87. UCC §1-201(b)(10). See also UCC §2-302.

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The Oklahoma Bar Journal
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ABOUT THE AUTHOR

Alvin C. Harrell is a professor of law at OCU School of Law and president of Home Savings and Loan Association of Oklahoma City. He is co-author of a dozen books, including *The Law of Modern Payment Systems and Notes* (with Professor Fred H. Miller). He is editor of Consumer Finance Law Quarterly Report.

He chaired the ABA UCC Committee task forces on State Certificate of Title Laws and Oil and Gas Finance.

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House of Delegates Actions

The following resolution and title examination standards report were submitted to the House of Delegates at the 111th Oklahoma Bar Association Annual Meeting at 10:30 a.m. Friday, Nov. 6, 2015, at the Sheraton Hotel in Oklahoma City. Actions are as follows:

RESOLUTION NO. 1: CLIENTS’ SECURITY FUND RULES

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the amendments to the Clients’ Security Fund Rules, as published in the Oklahoma Bar Journal and posted on the OBA website at www.amokbar.org, be approved and adopted by the Supreme Court. (Requires a majority vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Clients’ Security Fund Task Force and OBA Board of Governors.)

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examinations Standards revisions and additions published in The Oklahoma Bar Journal 86 2069 (Oct. 17, 2015) were approved in the proposed form. The revisions and additions are effective immediately.

ADOPTED

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OBA OFFICERS AND NEW BOARD MEMBERS
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ANNUAL MEETING

OBA President Poarch, Chief Justice John Reif and OBA Vice President Glenn Devoll enjoy the Wednesday evening President's Reception.

OBA President David Poarch welcomes keynote speaker Eric Liu to the Annual Meeting. Mr. Liu signed copies of his books for numerous meeting attendees.

Keynote speaker Eric Liu presents "The True Meaning of Patriotism" during the Annual Luncheon sponsored by the OBA Family Law Section.

State Sen. David Holt of Oklahoma City speaks during the Thursday CLE Plenary session. He was part of a panel discussing the topic "Democracy is Not a Spectator Sport."
David Poarch presents the OBA President’s Award to lawyer John E. Green of Oklahoma City. Mr. Green was honored in appreciation of his enduring and steadfast leadership. He was recognized for being a pioneering OBA member, a mentor of generations and a revered community leader.

Meeting attendees enjoyed great food and a festive atmosphere during the "It's Five O'Clock Somewhere" reception sponsored by the OBA sections.


TU Law Professor Anna Carpenter, Access to Justice Commission Chairperson David Riggs and Vice Chief Justice Douglas Combs discuss the status of the Access to Justice Commission during the annual President’s Breakfast.

Students from Oklahoma City’s Douglass High School Junior ROTC form a color guard to lead General Assembly attendees in the Pledge of Allegiance.
Oklahoma Bar Foundation President Jack Brown presents the 2015 Roger Scott Memorial Award to Lawton lawyer Dietmar Caudle.

Bartlesville lawyer Linda Thomas addresses the House of Delegates. Ms. Thomas was elected president-elect during the Annual Meeting and will serve as 2017 OBA president.

Court of Criminal Appeals Presiding Judge C. Clancy Smith and Chief Justice John Reif speak about issues related to the judiciary during Friday’s General Assembly.

2014 YLD Chair Kaleb Hennigh, Chair-Elect Bryon Will and 2015 YLD Chair LeAnne McGill attend the Young Lawyers Division Annual Meeting. Mr. Will was presented the YLD Officer of the Year Award.

OBA President-Elect Garvin Isaacs presides over the Friday meeting of the House of Delegates.
Enhance Your Networking, Join a 2016 OBA Committee

It is time for all of us to come together and promote public confidence in the judicial branch of government. We need to work together. OBA committees will help with this project. Please consider joining a committee and participate in educating the public on the history of our country and its three branches of government.

You benefit from the contacts you make, and the association benefits from the work that is done. New members with fresh ideas are encouraged to become involved. Geography is a non-issue with today's technology. Teleconferencing from your desk and videoconferencing in Tulsa make it easy to attend meetings if you can't be there in person.

Sign up today. Option #1 – online at www.okbar.org, scroll down to the bottom of the page. Look for “Members” and click on “Join a Committee.” Options #2 & #3 – Fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 11, 2015. I'm counting on your support next year to keep our committees active.

Garvin Isaacs, President-Elect

Note: No need to sign up again if your current term has not expired. Check www.okbar.org/members/committees.aspx for terms

Please Type or Print

Name ____________________________
Telephone _______________________ OBA # _______________________
Address __________________________
City __________________ State/Zip______________
FAX __________________ E-mail ____________________________

Committee Name
1st Choice __________________________
2nd Choice __________________________
3rd Choice __________________________

Have you ever served on this committee? If so, when? How long?
1st Choice  □ Yes  □ No __________________________
2nd Choice  □ Yes  □ No __________________________
3rd Choice  □ Yes  □ No __________________________

□ Please assign me to  □ one  □ two or  □ three committees.
Besides committee work, I am interested in the following area(s):

________________________________________
________________________________________
________________________________________

Mail: Garvin Isaacs, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152
Fax: (405) 416-7001

Standing Committees
• Access to Justice
• Awards
• Bar Association Technology
• Bar Center Facilities
• Bench and Bar
• Communications
• Disaster Response and Relief
• Diversity
• Group Insurance
• Law Day
• Law-related Education
• Law Schools
• Lawyers Helping Lawyers Assistance Program
• Legal Intern
• Legislative Monitoring
• Member Services
• Military Assistance
• Paralegal
• Professionalism
• Rules of Professional Conduct
• Solo and Small Firm Conference Planning
• Strategic Planning
• Uniform Laws
• Women in Law
• Work/Life Balance
Make sure you HAVE ALL YOUR CLE Before beginning the New Year!!!

Join featured speaker Stuart I. Teicher, Esq., a professional legal educator who focuses on ethics law and writing instruction. A practicing attorney for 20 years, Stuart’s career is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession. He teaches seminars, provides in-house training to law firms, legal departments, and also gives keynote speeches at conventions and association meetings.

The Code of Kryptonite: Ethical Limitations on Lawyers’ Superpowers

DECEMBER 30, 2015
1-4 p.m.
Oklahoma Bar Center
1901 N. Lincoln Blvd. OKC, OK

Did the drafters of our ethics code believe that lawyers are superheroes? It seems so. In this unique program, Stuart Teicher, Esq. (the “CLE Performer”) weaves together talk of superpowers, superheroes, and other fun stuff to explain important ethics rules and explore both the breadth and limitations on a lawyer’s power.

The Fear Factor: How Good Lawyers Get into Bad Ethical Trouble

DECEMBER 31, 2015
9 a.m. - 11:45 a.m.
Oklahoma Bar Center
1901 N. Lincoln Blvd. OKC, OK

The scariest stories are those tales where responsible lawyers who care about acting in an appropriate manner get into disciplinary trouble. In this program, we learn about the common missteps that are made by otherwise responsible attorneys. After hearing this program you’ll embark upon your career as a safer, stronger attorney.