

2020-2021 ANNUAL REPORT

THE AMERICAN LAW INSTITUTE



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Introduction to The American Law Institute

The American Law Institute was founded in 1923 in response to concerns that the body of American common law was both uncertain and complex. A group of prominent judges, lawyers, and academics formed the “Committee on the Establishment of a Permanent Organization for the Improvement of the Law” and published a report recommending that an organization be formed to improve the law and its administration. This led to the creation of ALI. The Institute’s mission, as set out in its charter, is “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.”

For nearly a century, ALI has gathered the best minds in the bar—judges, lawyers, and law professors—to accomplish its mission. The courts have come to trust and rely on ALI’s work due to its careful drafting process, its independence and integrity, and the intellectual caliber of those who participate in the Institute’s projects. Federal and state courts routinely look to ALI’s work for guidance in resolving questions of law.



Publications and Projects

ALI drafts, discusses, revises, and publishes Restatements of the Law, model statutes, and Principles of the Law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education.

ALI has long been influential internationally and, in recent years, more of its work has become international in scope. It collaborates with numerous international law organizations and served as a model for the European Law Institute founded in 2011.

The Institute addresses uncertainty in the law by developing restatements of legal subjects that are primarily addressed to courts. Restatements of the Law contain clear formulations of common law and its statutory elements or variations and reflect the law as it currently stands or might appropriately be stated by a court.

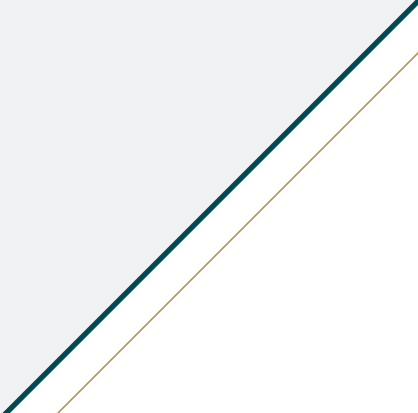
ALI also examines and analyzes legal areas in need of reform. Principles of the Law are primarily addressed to legislatures, administrative agencies, or private actors. They can, however, be addressed to courts when an area is so new that there is little established law. Principles may suggest best practices for these institutions. Statutory projects include the Uniform Commercial Code (in conjunction with the Uniform Law Commission), Model Code of Evidence, and Model Penal Code.

Membership

By participating in ALI's work, its members have the opportunity to influence the development of the law in both existing and emerging areas, to work with other eminent lawyers, judges, and academics, to give back to a profession to which they are deeply dedicated, and to contribute to the public good.

Funding

ALI's operating revenue is primarily derived from publishing, educational programs, membership dues and contributions, and rental income from its headquarters building in Philadelphia. The financial support of ALI's members and partners is vital to its long-term financial stability. As a public charity under section 501(c)(3) of the Internal Revenue Code, all donations to ALI are tax deductible to the full extent of the law.





President's Message

2021 proved to be a year that would continue to test our resilience as a nation and ALI's resilience and ability to continue our work as a trusted guide and important element in the rule of law. The deep divisions, mistrust, and misinformation that define

our public discourse continue to beset us and weaken our institutions, public and private. The Covid-19 virus continues to challenge us, causing so many deaths, further divisions, disruption to in-person communication, and feelings of isolation and despair among many.

We have seen this year many continuing challenges to the rule of law here and abroad. The forces of autocracy are on the march in many parts of the world, attacking the independent judiciary that is essential to the rule of law. The violence at the Capitol on January 6, and the effort to halt the constitutional transfer of power, was shocking. We see other indicators of the weakening of respect for law and for one another in the surge in violent crime in some cities, the weakening of academic freedom and respect for First Amendment values, and the nastiness of our political disagreements. We face many other pressing problems.

But there are bright spots, many of them, and I am proud to say that the ALI is one of those shining stars. How special is The American Law Institute, as a unique organization that brings together people who often wholeheartedly disagree on a topic, and challenges us to communicate in a courteous, informed, collegial, productive way in an effort to find rules and solutions that work for everyone.

Retired Supreme Court Justice Anthony Kennedy spoke of the special nature of the ALI in his Friendly Medal acceptance remarks at our 2019 Annual Meeting:

In a way, The American Law Institute, by its history and by its traditions and by its ethics, make [ALI] itself a restatement of civility. It's never been needed more than it is today. . . .

In just about four years, Dean [Levi], you're going to have the 100th anniversary of the ALI. And it should be our aspiration and our hope that at that point, we will have made some recovery in restoring decency and thoughtfulness and honor to our civic discourse.

Democracy presumes that there will be a consensus based on thoughtful debate. . . . This award will inspire me in future years to bring again the message of civility and decency and progress to all those who, like you, revere the law.

Like Justice Kennedy, the ALI and its members must remain inspired to stay united in a commitment to democratic and constitutional processes, equal justice under law, and a sense of decency and civility that must lie at the heart of any justice system worthy of the name.

We are now only two years away from celebrating ALI's 100th Anniversary. This provides us both a time of reflection and a chance to look ahead to consider what the next century will bring for the Institute.

When we look back at our first century, all of us should take great pride in what the Institute has accomplished. We have certainly fulfilled our founders' vision for the ALI to produce work that "should not only be to help make certain much that is now uncertain and to simplify unnecessary complexities, but also to promote those changes which will tend better to adapt the laws to the needs of life." Our first Restatements in Agency, Conflict of Laws, Contracts, and Torts, were immediately relied upon and have been updated throughout the years to keep up with a changing legal system and ongoing demand for our guidance. Our U.S. Foreign Relations Law Restatement was so influential that it is credited with formalizing foreign relations law as a legal field, and also legitimized the courts' role in this area. Our Prudent Investor Rule, which revised portions of the Restatement Second of Trusts, has been adopted in every state, dramatically transforming the law of trusts and other fiduciary investments. And these are just a few notable accomplishments in our first century.

As we look to our second century, we will certainly hold fast to what makes the Institute so significant. The ALI, in our own unique and special way, can continue to make important contributions to the rule of law by doing what we have done for the past 100 years—improve our legal system by providing clear, knowable, practical, and generally applicable rules and doctrines. We will continue to address pressing problems through reasoned, vigorous, informed, respectful debate and discussion.

In our second century, ALI must be prepared for unavoidable change. Technological innovations have already begun to affect the legal system, and will surely continue to do so. We completed our first project this year in partnership with the European Law Institute. With the increased globalization of our economy, this will not be the last project of its kind. The ALI must recognize that we are in a period when very profound change is possible, even likely.

In order to plan for this future, and secure the Institute's place in it, we have launched The American Law Institute's Second Century Campaign. A successful campaign will establish a solid financial foundation for ALI's future without compromising its independence.

I hope you will consider a donation to the ALI, and join me in helping the Institute celebrate our past and secure our future.

I wish you and yours a safe and happy end to 2021, and a prosperous future that brings us together as friends, colleagues, and as a nation. Despite the challenges and dark moments, we have much to be grateful for, including the opportunity to work together in this wonderful and historic organization.

Sincerely,

David F. Levi



Director's Message

When I wrote the 2020 letter for the Annual Report, the pandemic was only a few months old and I recounted how our plans to complete a number of projects had been derailed by the need to cancel the 2020 Annual Meeting. I also explained that, by last

Fall, our meetings had resumed with their usual intensity, but on Zoom as opposed to in person. That continued to be the case throughout all of 2020–21. Our more than a dozen project meetings for the Advisers and the Members Consultative Groups were unusually well attended and yielded productive feedback for the Reporters. And the ALI's Council did its work remotely without missing a beat.

Even though, by May 2021, we had definitely mastered the art of getting our work done despite the remote nature of our meetings, we approached the Annual Meeting with more than the usual sense of trepidation. The scale of our first virtual Annual Meeting, with more than 10 times as many participants as a typical project meeting, the need to consider multiple formal motions, and the numerous votes made it different in kind than anything that we had previously done during the pandemic. As a result, we had multiple training sessions for Reporters, Chairs, and the ALI staff. And my ALI colleagues and I worried about all the things that could go wrong in a meeting with more than 800 members spread out over the whole country (and perhaps overseas), with different technological abilities and connectivity quality. I cannot say that everything proceeded without a glitch, but the inevitable glitches were relatively inconsequential and did not stand in the way of having robust discussions on the projects.

To make up for the ground we had lost as a result of the cancellation of the prior Annual Meeting, this past May we scheduled four full days for the discussion of our projects, instead of the usual three days. I was really gratified that we were able to get final membership approval for five projects, which is a record for The American Law Institute! Three of the projects received their full final approval as a result of the membership vote: the Restatement of the Law Third, Torts: Intentional Torts to Persons; the Restatement of the Law, The Law of American Indians; and Principles of the Law, Compliance and Enforcement for Organizations. As to the other two, Principles for a Data Economy was a joint project with the European Law Institute (ELI), which had not yet considered it for final approval. But it did so in September, marking the successful completion of the first project undertaken jointly by our two institutions; I very much hope that more such projects will follow. And the Model Penal Code: Sexual Assault and Related Offenses underwent some substantive amendments as a result of successful motions at the Annual Meeting; those amendments will be presented for the Council's approval in January, which would pave the way for the project's formal completion.

All of us owe an enormous debt of gratitude to the Reporters and Associate Reporters on these five projects. Their extraordinarily hard work made it possible for us to get so much done even during the pandemic! And I am equally grateful to the Council; to the Advisers for each of the projects; and to the members who participated in Members Consultative Groups, at the Annual Meeting, and in other ways. Our work benefits enormously from their dedication and their willingness to devote significant amounts of time and energy—both as specialists and generalists—to improve each of our drafts.

We entered the 2021 Annual Meeting with 17 pending projects and came out of it with only 12. And we might well complete two or three more in 2022. As a result, we are now giving serious thoughts to the launch of some additional projects. Like always, I welcome your suggestions.

The ALI is currently devoting considerable attention to the planning of its 100th anniversary. It is quite extraordinary to reach a century as a vibrant, relevant institution that does so much to improve the state of the law. We will devote part of the 2023 Annual Meeting to look back at our past, in part through the vehicle of a wonderful history book, edited by Professors Robert W. Gordon of Stanford Law School and Andrew Gold of Brooklyn Law School, which will have chapters by almost two dozen leading figures, who are reflecting on different aspects of our substantive work and about the nature of our institution. And we will also focus on the future, and, in particular, how disruptive technologies will affect the law, society, and institutions, and, consequently, the work that the ALI should be doing.

In connection with the planning for the anniversary, last month we launched the public phase of our development campaign: "The ALI Second Century Fund: Celebrating Our Legacy, Securing Our Future." The primary goal of the campaign is to ensure that we will be able to preserve our financial independence and continue performing our important work during our second century. All gifts to the ALI during the period of the campaign—which extends from July 1, 2016 to June 30, 2023—count towards the campaign goal, which our Development Committee recently set at \$35 million. (We are currently past the \$23 million mark.) I want to join President David Levi in urging you to keep the ALI in mind as you plan your year-end philanthropic giving, whether in the form of current gifts or bequests.

Strengthening the rule of law is a compelling goal and, day in and day out, The American Law Institute does so much on that score as a result of your substantive and financial commitment to our success!

The American Law Institute

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*President Emeritus and Chair of the Council Emeritus

Leadership Changes

Council Elections

The American Law Institute's membership has elected five new members to the Institute's Council.

At the 2021 Annual Meeting, the Institute's membership elected five new members to the ALI's Council, which determines projects and activities to be undertaken by the Institute and approves the work, along with the membership, as representing the position of the Institute.

The new Council members are Roberto Jose Gonzalez of Paul, Weiss, Rifkind, Wharton & Garrison, Eric A. Posner of University of Chicago Law School, Virginia A. Seitz of Sidley Austin, Laura D. Stith of the Missouri Supreme Court, and Larry D. Thompson of Finch McCranie.



Roberto Jose Gonzalez is a partner at Paul, Weiss, representing financial institutions and other companies in high-stakes litigation, investigations, and advisory matters spanning the areas of economic sanctions, anti-money laundering, export controls, antitrust, the False Claims Act, consumer financial protection, and cybersecurity and data privacy. He served as a law clerk to Justice John Paul Stevens of the

Supreme Court of the United States, and Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit.



Eric A. Posner is the Kirkland & Ellis Distinguished Service Professor of Law at the University of Chicago Law School. His research interests include financial regulation, antitrust law, international law, and constitutional law. He has written a dozen books and more than a hundred academic articles on law and legal theory. His latest book, *How Antitrust Failed Workers*, was published in September 2021.



Virginia A. Seitz is a partner in Sidley Austin's Supreme Court and Appellate practice. On behalf of a wide range of clients, she has handled cases in the Supreme Court of the United States, in virtually all federal courts of appeals, and in state appellate courts. Ms. Seitz returned to Sidley in 2014 after serving in the Senate-confirmed position of Assistant Attorney General for the Office

of Legal Counsel in the Department of Justice. She was the first woman to be confirmed to that position. Ms. Seitz clerked at the Supreme Court of the United States for Justice William J. Brennan, Jr., and Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit.



Laura D. Stith began serving as a judge on the Missouri Supreme Court in 2001 and assumed senior judge status on March 8, 2021. She was elected by her fellow Supreme Court judges to serve a two-year term as Chief Justice, from July 1, 2007, to June 30, 2009,

becoming the second woman to serve as Missouri's highest-ranking jurist. Judge Stith served as a law clerk for Chief Justice Robert E. Seiler of the Missouri Supreme Court and then entered private practice in Kansas City, Missouri, where she was an associate and then partner at Shook, Hardy & Bacon.



Larry D. Thompson joined Finch McCranie in July 2015, and is the former U.S. Deputy Attorney General (2001-2003). In a distinguished public- and private-sector career over more than three decades, Mr. Thompson also has prosecuted complex cases as

U.S. Attorney for the Northern District of Georgia, directed internal investigations and defended individuals and businesses in special matters as a partner in a major law firm, and served as General Counsel and Senior Vice President of PepsiCo, Inc.

Council Member Taking Emeritus Status

This year, Kathryn A. Oberly, former Associate Judge of the District of Columbia Court of Appeals, took emeritus status. Emeritus Council members often continue to participate in Council meetings.



Kathryn A. Oberly was Associate Judge of the District of Columbia Court of Appeals from 2009 to 2013. Prior to joining the bench, she was Vice Chair and General Counsel of Ernst & Young LLP.

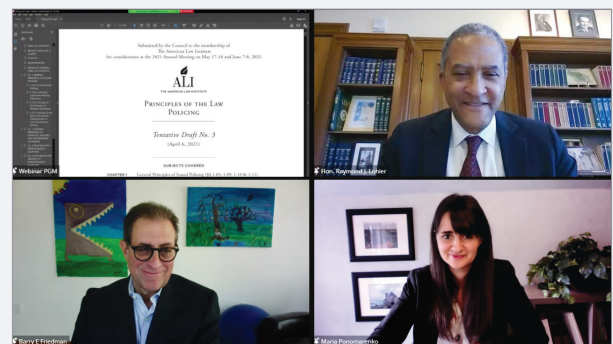
Judge Oberly previously was a partner in the Washington, D.C. office of Mayer, Brown & Platt, and also served as an Assistant to the Solicitor General of the United States and an appellate lawyer in the Land and Natural Resources Division of the U.S. Department of Justice. After law school, she clerked for Judge Donald P. Lay of the U.S. Court of Appeals for the Eighth Circuit.

She was elected to the ALI in 1995 and was elected to the Council in 2002. She currently serves as an Adviser on Principles of the Law, Government Ethics.

ALI's First Virtual Annual Meeting

In response to group-gathering and travel restrictions imposed as a result of the coronavirus pandemic, ALI held its 2021 Annual Meeting on a virtual platform—a first for the Institute. Members, project participants, and guests gathered virtually on May 17-18 and June 7-8.

The agenda included sessions on eleven projects, including four projects that were presented for the first time to the membership: Restatement of the Law, Copyright; Restatement of the Law Third, Conflict of Laws; Principles for a Data Economy; and Restatement of the Law Fourth, Property.



Principles of the Law, Policing session

Projects Approved at the 2021 Annual Meeting

This year, ALI members voted to approve four projects: Restatement of the Law, The Law of American Indians; Principles of the Law, Compliance and Enforcement for Organizations; Restatement of the Law Third, Torts: Intentional Torts to Persons; and Principles for a Data Economy (a joint undertaking with the European Law Institute), dealing with data rights and transactions. The Reporters, subject to oversight by the Director, will now prepare the Institute's official texts for publication. At this stage, the Reporters are authorized to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes agreed to during discussion with the membership or by motions approved at the Annual Meetings. Until the official texts are published, the drafts approved by the membership are the official position of ALI, and may be cited as such.

Additionally, the membership's approval of Tentative Draft No. 5 of Model Penal Code: Sexual Assault and Related Offenses may mark the final approval by membership of the project, subject to the Council's approval of the amendments approved at the Annual Meeting.

Restatement of the Law, The Law of American Indians

This is the first Restatement on this important area of law. The project was led by Reporter Matthew L.M. Fletcher and Associate Reporter Wenona T. Singel, both of Michigan State University College of Law, and by Associate Reporter Kaighn Smith, Jr., of Drummond Woodsum.

The project presents American Indian Law in six Chapters: Federal–Tribal Relations, Tribal Authority, State–Tribal Relations, Tribal Economic Development, Indian Country Criminal Jurisdiction, and Natural Resources.

“This project is generally about Federal Indian Law,” explained Reporter Matthew Fletcher. “Federal Indian Law is the relationship between the United States, Indian tribes, and state governments. The first three Chapters provide the big picture about federal, tribal, and state powers and prerogatives in the context of Federal Indian Law. Many of these principles have been around since the founding of the United States and really since the beginning of the constitutional era in 1789, but they are not necessarily well known. In Chapter 1, the project begins with a discussion of federal plenary power and all of the obligations the federal government has toward Indian people and Indian tribes. The project then covers the inherent powers of Indian tribes that federal law acknowledges, and also the state powers and the interaction primarily between states and local governments and tribes and tribal citizens.”

“While we were working on the project, it became clear that we needed to amend our original plan and add other topics,” continued Associate Reporter Wenona Singel. “There is a Chapter on tribal economic activity, both describing tribes as economic actors and as economic regulators; one on Indian country criminal jurisdiction, which many know is now an exceptionally hot topic, but you may not realize that this



Matthew L.M. Fletcher, Wenona T. Singel, and Kaighn Smith, Jr., 2018 Annual Meeting

has been a known area of law in need of clarification since early in U.S. history; and we finish the project with a Chapter on native natural resources, which includes treaty rights, water law, hunting and fishing, and generally who owns the resources and the property on the reservation.”

The project was launched in 2012. Including this year's Proposed Final Draft, which includes the complete project contents, 25 project drafts were produced by the Reporters and reviewed and edited by the Advisers and Members Consultative Group (MCG).

“We owe a debt of gratitude to the dedicated Advisers and MCG who reviewed and provided guidance to us, making the project stronger with each draft,” said Associate Reporter Kaighn Smith. “This is a difficult area of law, as many of us did not study this in law school, and so few lawyers practice in this area day-to-day. Yet, it is more often than we realize that transactions or litigation will cross into Indian Territory. The body of law that we call federal Indian law derives from

federal treaties, statutes, and executive orders with Supreme Court decisions fashioning principles in the nature of federal common law. The decisions that we see have shifted quite a bit in the modern era. We see decisions reflect a commitment to upholding the sovereign powers of Indian nations so that they can better their economies and preserve their rich cultural ways. Law in this area is progressive, and it is the right time for the ALI to have taken on this topic. With the completion of the Restatement of the Law of American Indians, the ALI is lending its hand in articulating doctrines that take account of the hard lessons of history.”

“The completion of any Restatement is cause for celebrating the Reporters’ accomplishment,” said ALI Director Richard L. Revesz.

“Making sense of a significant area of law and navigating the ALI’s system for institutional discussion and approval is always a complex and challenging endeavor. But the complexity and challenge are even greater when the Reporters are writing on a clean slate, with no prior Restatement to provide an organizing structure and guide their way. For this reason, I particularly admire the work that Matthew, Wenona, and Kaighn did on this very important and often misunderstood area of the law.”



2014 project meeting

Principles of the Law, Compliance and Enforcement for Organizations

This is the first time that The American Law Institute has produced Principles on this area of the law. Work began in 2015 under the leadership of Reporter Geoffrey P. Miller of New York University School of Law and Associate Reporters Jennifer H. Arlen of New York University School of Law, James A. Fanto of Brooklyn Law School, and Claire A. Hill of University of Minnesota Law School.

“The basis of this project comes out of the 1990s, 2000s, and 2010s, where we had an enormous growth in fines and criminal prosecutions of organizations for various misconduct and misdeeds,” said Reporter Geoffrey Miller. “This caused a very powerful set of discussions and set many legal minds thinking about, what is a way to both enforce the law against organizations’ misconduct, but also to encourage organizations to enforce the law on themselves, through the processes of compliance.”

This subject matter is one that combines legal and ethical standards. It deals with both externally imposed norms, such as laws and regulations, and internally imposed norms, such as corporate codes of ethics. And it is developed through discretionary actions of regulators and prosecutors and through settlements of enforcement proceedings that do not carry the force of generally binding law. Accordingly, the best course is to set out best-practice standards that may or may not draw on underlying legal norms. The Principles seeks to provide best practices for a variety of public and private entities, but its main audience is large, publicly traded corporations.

“We saw that there was basically a challenge with the role of lawyers because lawyers are very involved in this process, but not always in a strictly legal role,” said Reporter Miller. “They play a role that’s more holistic and involves non-legal and legal aspects, but it challenges the basic idea of what it means to be a lawyer. There’s also three new professions that have grown up: internal compliance, risk management, and internal audit, which had been around, but it’s been professionalized.”

“It is very exciting to see the completion of this important project,” said ALI Director Richard L. Revesz. “For this extremely significant accomplishment, I am very grateful to Professors Miller, Arlen, Fanto, and Hill, and to the very dedicated Advisers and Members Consultative Group. I believe these Principles will provide important guidance to organizations in this complex area of law.”



Geoffrey P. Miller, James A. Fanto, and Claire A. Hill, 2019 Annual Meeting



Jennifer H. Arlen, 2018 project meeting

Restatement of the Law Third, Torts: Intentional Torts to Persons

The project is led by Reporter Kenneth W. Simons of the University of California, Irvine School of Law, and Associate Reporter W. Jonathan Cardi of Wake Forest University School of Law. Ellen S. Pryor of UNT Dallas College of Law served as Associate Reporter from 2014 to 2015.

This project is part of ALI's ongoing revision of the Restatement Second of Torts. Intentional Torts to Persons is the fifth installment of the Restatement Third of Torts to be completed, following Liability for Economic Harm, Liability for Physical and Emotional Harm, Apportionment of Liability, and Products Liability. Remaining areas of tort law currently being drafted are Concluding Provisions, Defamation and Privacy, Remedies, and Property Torts.

"This Restatement deals with a subcategory of intentional torts," explained Reporter Kenneth Simons. "It focuses on the traditional torts of battery, assault, false imprisonment, and also a newly named tort called 'purposeful infliction of bodily harm.' The project also covers transferred intent and different types of consent that preclude liability. We spent quite a bit of time trying to identify the most helpful categories for courts to use when analyzing when consent does or does not exist. We also developed detailed and updated criteria for different defenses, including self-defense, defense of property, and citizen's arrest."

The Reporters worked closely with a diverse group of Advisers and Members Consultative Group and produced more than 20 drafts from the inception of the project in 2012.

"We paid close attention to the Second Restatement, many provisions of which were identical to the first Restatement. But the reality is that there have been significant developments in the law and the fabric of society since 1934," added Associate Reporter Jonathan Cardi. "For example, the definition of confinement is broader in our draft, making room for confinements by the mere assertion of legal authority. Also, with a more pervasive modern police force, privileges such as the defense of property and citizen's arrest (along with their sparse and dated case support) were beginning to look a bit long in the tooth."



*Ellen S. Pryor,
2019 Annual Meeting*

Portions of this project were presented to the membership at five prior Annual Meetings. Including the Sections approved in this draft, the completed project's overall table of contents consists of three Chapters. The first Chapter includes Sections on battery, assault, purposeful infliction of bodily harm, intentional (or reckless) infliction of emotional harm, false



Kenneth W. Simons and W. Jonathan Cardi, 2017 Annual Meeting



2019 project meeting

imprisonment, participation in an intentional tort, and transferred intent. A second Chapter addresses consent and includes Sections on actual consent, apparent and presumed consent, emergency doctrine, consent to sexual conduct, and medical treatment without legally effective consent as battery. The final Chapter deals with privileges and includes the topics of self-defense and defense of third persons; defense of the actor's interest in possession of land and personal property; arrest and prevention or termination of crime; and privileges to discipline or control children. Additional provisions address when to compare the responsibility of negligent, reckless, and intentional plaintiffs and defendants; and fraud causing physical harm to person or property.

"For this extremely significant accomplishment, I am immensely grateful to Ken and Jonathan, as well as Ellen, for their leadership of this project," said ALI Director Richard L. Revesz. "The Reporters worked tirelessly along with the dedicated Advisers and Members Consultative Group to get us one step closer to completing our third revision of the Torts Restatement. Since the first Restatement Volume on this area of law was published in 1934, Torts has been one of the Institute's most influential projects, to date being cited by U.S. courts more than 88,000 times."

Principles for a Data Economy

Launched in January 2018 by the ALI Council, this project is a joint undertaking with the European Law Institute (ELI), which, much like the ALI, is a membership-based, independent nonprofit organization with the mission of providing guidance on legal developments.

The project has two Reporters, one from each organization. The ELI Reporter, Christiane C. Wendehorst, is Professor of Private Law at the University of Vienna. She is also a founding member of the ELI and became the ELI's President in September 2017. The ALI Reporter, Neil B. Cohen, is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School and the longstanding Research Director of the Permanent Editorial Board for the Uniform Commercial Code, the ALI's joint venture with the Uniform Law Commission. To help coordinate the work of the two institutions, there also are two co-chairs: ELI Co-Chair Lord John Thomas of Cwmgiedd, who until recently served as Lord Chief Justice of England and Wales; and ALI Co-Chair Steven O. Weise, a Proskauer partner and member of the ALI Council.

The law governing trades in commerce in the United States and in Europe has historically focused on trade in items that are either real property, goods, or intangible assets such as shares, receivables, intellectual-property rights, licenses, etc. With the emergence of the data economy, however, tradeable items often cannot readily be classified as such goods or rights, and they are arguably not services. They are often simply “data.”

“As we all know, the modern economy is no longer just about goods or services, and other traditional commodities, to which our law has long adapted. The modern economy is, to a large extent, about data: collecting data, trading in data, analyzing data, and creating value with the help of data,” said Reporter Wendehorst. “So, our project looks specifically into how data transactions work and which terms should be governing them by default. We equally look into what kind of rights people have where data is created with their contribution.”

Both in the United States and in Europe, uncertainty as to the applicable rules and doctrines to govern the data economy is beginning to trouble stakeholders (such as data-driven industries; micro-, small-, and medium-sized enterprises; as well as consumers). This uncertainty undermines the predictability necessary for efficient transactions in data, may inhibit innovation and growth, and may lead to market failure and manifest unfairness, in particular for the weaker party in a commercial relationship.



2018 project meeting

“The data economy now is almost exclusively governed by legal doctrines that were developed for other purposes; one of our major tasks is to adapt those doctrines so that they can be applied appropriately to the data economy going forward,” said Reporter Cohen. “One of the purposes of this project is to think not only about what the rules are but what the rules could and should be. Unlike preparing a Restatement, for which a lot of the work involves looking back into the history of legal doctrines—how did we get here and how is the law developing?—this Principles project needs to look at the present and to the future without any real guarantee of what the future will look like, because it’s changing so quickly.”

This project proposes a set of principles that might be implemented in any kind of legal environment, and are designed to work in conjunction with any kind of data-privacy/data-protection law, intellectual-property law, or trade-secret law, without addressing or seeking to change any of the substantive rules of these bodies of law.

“We created a set of principles that works with whatever data-protection, data-privacy



Richard L. Revesz, Neil B. Cohen, Christiane C. Wendehorst, Lord John Thomas of Cwmgiedd, and Steven O. Weise, 2018 project meeting



2018 project meeting

framework you are dealing with,” explained Professor Wendehorst. “One of the decisions we made at a very early stage in our project was to stay abreast of data-privacy and intellectual-property rights. And when you do that, you realize that the principles that are just about data transactions and data rights are very similar.”

“There is uncertainty, both in the United States and in Europe, concerning the legal rules that should apply to the data economy,” said ALI Director Richard L. Revesz. “I am very excited about the result of this transatlantic collaboration and proud that the type of work that we do is deemed valuable around the world.”

While the work was conducted jointly, each organization followed its respective approval processes. The ELI voted to approve this project in September 2021. The project Reporters will now correct and update citations and other references, make editorial and stylistic improvements, and implement any remaining substantive changes agreed to during discussion at the ALI Annual Meeting or the ELI Annual Conference.

**ALI WOULD LIKE TO
THANK THE REPORTERS,
PROJECT PARTICIPANTS,
AND ALI MEMBERS WHO
CONTRIBUTED THEIR TIME,
WISDOM, AND GUIDANCE
TO THESE PROJECTS.**

Publications

The Institute’s electronic and print publications fulfill two very important purposes: they are a major source of funds that support the Institute’s vital law-reform work, and they are the means by which that work is disseminated to practicing lawyers, judges, academics, and students throughout the world. Most ALI publications are accessible online through Westlaw, HeinOnline, and LexisNexis.

Beginning with the Restatement of the Law, Contracts, in 1932, the Institute’s Restatements of the Law, Principles of the Law, and model codes have earned an unparalleled reputation for excellence and objectivity. As evidence of the respect the courts have customarily accorded ALI publications, the Restatements and Principles of the Law have been cited in published decisions by U.S. courts over 215,600 times through June 2021.

In the State Supreme Courts and International Courts

The high courts of a number of jurisdictions relied on Restatement and Principles Sections during the past fiscal year. Some highlights follow:

ENKA INSAAT VE SANAYI AS V OOO INSURANCE COMPANY CHUBB [2020] UKSC 38

Supreme Court of the United Kingdom, citing **Restatement of The U.S. Law of International Commercial and Investor–State Arbitration** §§ 2.14 and 2.15 (Proposed Final Draft 2019)

FERGUSON V. FERGUSON 473 P.3D 363 (IDAHO 2020)

Supreme Court of Idaho, adopting the approach set forth in **Restatement Third, Trusts** § 96(2) and **Restatement Third, Property (Wills and Other Donative Transfers)** § 8.5; citing and quoting **Restatement Third, Trusts** § 50 and Comments *b* and *c* thereto, and § 76 and Comment *b* thereto; citing **Restatement of Trusts** § 214(1)

GEICO INDEMNITY COMPANY V. WHITESIDE

857 S.E.2D 654 (GA. 2021)

Supreme Court of Georgia, quoting **Restatement of Liability Insurance** § 27, Comment *a*

STATE V. MARTINEZ 478 P.3D 880 (N.M. 2020)

Supreme Court of New Mexico, relying on Reporters’ Notes to **Principles of the Law, Policing** §§ 10.01 and 10.02 (T.D. No. 2, 2019)

In the U.S. Supreme Court

During its October 2020 Term, the Supreme Court of the United States cited the work of The American Law Institute in nine cases:

BORDEN V. UNITED STATES 141 S. CT. 1817 (JUNE 10, 2021)

Plurality citing and quoting **Model Penal Code** § 2.02(2) and Comment 2 thereto; dissent citing **Model Penal Code**, Part II, citing and quoting § 2.02(2), and quoting § 2.02, Comments 3-5

BROWNBACK V. KING 141 S. CT. 740 (FEB. 25, 2021)

Majority quoting **Restatement of Judgments** § 49, Comment *a*, and citing § 49, Comment *b*

CEDAR POINT NURSERY V. HASSID 141 S. CT. 2063 (JUNE 23, 2021)

Majority citing **Restatement Second, Torts** §§ 196, 197, 204, and 205; dissent quoting **Restatement Third, Property (Servitudes)** § 1.2(3)

FEDERAL REPUBLIC OF GERMANY V. PHILIPP 141 S. CT. 703 (FEB. 3, 2021)

Majority citing **Restatement Fourth, The Foreign Relations Law of the United States: Selected Topics in Treaties, Jurisdiction, and Sovereign Immunity** § 455, Reporters' Note 15; citing **Restatement Third, The Foreign Relations Law of the United States** § 712 and quoting the Introductory Note to Part VII; and citing **Restatement Second, Foreign Relations Law of the United States** §§ 185 and 192

NESTLÉ USA, INC. V. DOE 141 S. CT. 1931 (JUNE 17, 2021)

Dissent citing **Restatement Third, Torts: Liability for Economic Harm** § 28 and **Restatement Second, Torts** § 876

PEREIDA V. WILKINSON 141 S. CT. 754 (MAR. 4, 2021)

Majority quoting **Restatement Second, Judgments** § 27 and Comment *f* thereto

TORRES V. MADRID 141 S. CT. 989 (MAR. 25, 2021)

Majority citing **Restatement of Torts** § 35 and quoting § 41 and Comment *h* thereto; dissent citing **Restatement of Torts** § 41, Comment *h*

TRANSUNION LLC V. RAMIREZ 141 S. CT. 2190 (JUNE 25, 2021)

Majority citing and quoting **Restatement of Torts** § 559 and Comment *a* thereto, and citing § 577, Comment *a*, and § 558; dissent quoting **Restatement of Torts** § 569

VAN BUREN V. UNITED STATES 141 S. CT. 1648 (JUNE 3, 2021)

Dissent quoting **Restatement Second, Torts** § 168 and Illustration 3 thereto, and citing § 214, Comment *e*; quoting **Model Penal Code** § 223.2(1); and citing **Restatement Second, Contracts** § 223(2)

Recent Publications

RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGANIZATIONS

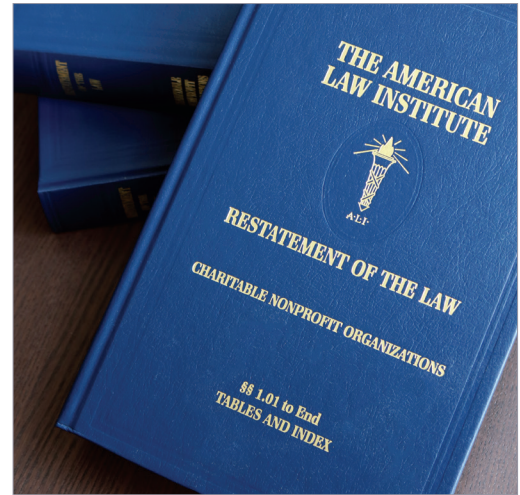
Restatement of the Law, Charitable Nonprofit Organizations, is now available. This Restatement addresses legal issues faced by nonprofit institutions, including choice of form, governance, changes to purposes and organization, gifts subject to restrictions, government regulation of charities, and standing of private parties.

Jill R. Horwitz of the UCLA School of Law served as Reporter for this Restatement; Nancy A. McLaughlin of the University of Utah S.J. Quinney College of Law served as Associate Reporter; and Marion R. Fremont-Smith of Harvard University's Kennedy School of Government served first as a Reporter on the project before taking on the role of Consultant.

From the Foreword by ALI Director Richard L. Revesz:

The nonprofit sector plays an essential role in our culture and in our lives—from relieving poverty in local communities to promoting the arts to tackling global environmental crises—and constitutes a significant part of our economy. There are approximately one and a half million nonprofit organizations registered with the Internal Revenue Service. They have assets of around six trillion dollars and contribute about one trillion dollars to the economy yearly, more than five percent of our gross domestic product. Health-care organizations and educational organizations are the two biggest components of the charitable nonprofit sector in terms of revenue and expenses, but the majority of the sector is made up of small organizations, and the full range of activities undertaken in this sector is extraordinarily varied.

The rules governing these institutions have traditionally received less scrutiny than those governing for-profit corporations. And volunteer nonprofit boards are often less knowledgeable about their responsibilities than their paid, for-profit counterparts. As a result, this Restatement fills an important gap, and I am confident that it will be one of The American Law Institute's most valuable resources.



On right:

*Nancy A. McLaughlin, Marion R. Fremont-Smith, and
Jill R. Horwitz (Charitable Nonprofit Organizations)*

*Steven F. Huefner and Edward B. Foley
(Election Administration)*

*Paul M. Schwartz and Daniel J. Solove
(Data Privacy)*

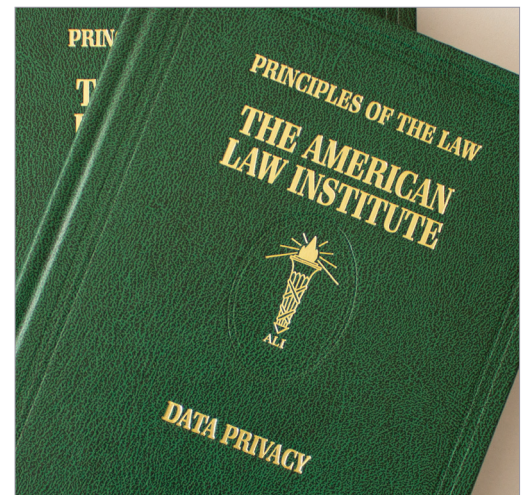


PRINCIPLES OF THE LAW, DATA PRIVACY

Principles of the Law, Data Privacy, is The American Law Institute's first venture into the field of information privacy law. This project identifies core principles useful for bringing greater coherence to this area. Like all Principles projects, it seeks to provide best practices for institutions other than the courts—in this case, entities that collect personal information and the legislatures and administrative agencies, state and federal, that regulate them.

Reporters Paul M. Schwartz of the University of California, Berkeley School of Law, and Daniel J. Solove of George Washington University Law School completed this project at a time when guidance on data privacy is more necessary than ever. High-profile scandals—such as the hacking of sensitive data from the credit-reporting agency Equifax and Cambridge Analytica's abuse of misappropriated personal data during the 2016 presidential election—underscore the dangers for individuals, who are often unaware that their personal information is being collected in the first place, as well as pitfalls facing businesses and organizations reliant on such data. In response to such events, states have passed privacy legislation and Congress has been considering several bills that would provide greater protection for personal data privacy, including proposals to overhaul the Federal Trade Commission or to create a new Data Protection Agency.

The global COVID-19 pandemic has given these important questions even greater urgency. Governments and public-health officials around the world have turned to digital data to track and seek to contain the spread of the virus. Many countries are employing digital contact tracing, which uses personal data collected from mobile devices or credit cards to identify anyone who was in contact with an infected individual. Even traditional tools, like temperature checks at workplaces and health surveys for travelers, involve the collection, use, and disclosure of personal



information. But while personal data offers promising avenues for limiting the spread of the virus and resuming economic activity, measures like digital contact tracing have elicited strong opposition from privacy advocates, who worry that these developments endanger civil liberties and give too much power to governments and technology companies.

These Principles will be of use in addressing the difficult questions raised by the pervasive use of personal data, including vital questions of public health, as well as financial and personal safety of individuals.

PRINCIPLES OF THE LAW, ELECTION ADMINISTRATION, NOW AVAILABLE AS AN EBOOK

In time for the 2020 elections, ALI converted Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes, to an eBook. Presented in three parts, the Principles are more valuable than ever this year. The Principles apply to any type of elective office and are structured to be useful to multiple audiences, including state legislatures, state courts, and state officers such as secretaries of state and local election officials.

Part I. Principles of Non-Precinct Voting: Early In-Person Voting and Open Absentee Voting outlines the ways in which states can securely and efficiently incorporate early voting and absentee voting to maximize accessibility and convenience for voters. Part I may be used by a judge in any case that involves an issue concerning early or absentee voting.

Part II. Principles for the Resolution of Ballot-Counting Disputes and Part III. Procedures for the Resolution of a Disputed Presidential Election address how states can manage post-election disputes, with Part II focusing on elections generally and Part III concentrating on the procedures necessary in disputed presidential elections in light of unique scheduling constraints.

The animating principle throughout is that government officials and institutions involved in counting ballots should neither favor, nor appear to favor, one side in the implementation of ballot-counting rules and that procedures should be adopted to promote a sense of legitimacy and integrity of the vote-counting and election process.

VISIT WWW.ALI.ORG/PUBLICATIONS TO ORDER NOW.

Current Projects

The ALI Drafting Process

ALI's drafting process brings together members of the bench, bar, and academia to review and discuss drafts of Restatements of the Law, Principles of the Law, and Model and Uniform Codes.

Project ideas are generally initiated by the Director and the Projects Committee. The Director then investigates a potential project and develops a project proposal, which usually includes a prospectus from a proposed Reporter (or Reporters). Once approved by the Council, work on the project begins.

A diverse group of Advisers is assembled by the Reporter, Director, and Deputy Director and approved by the Council. This group of subject-matter experts makes a commitment to review the project drafts and provide input to the Reporter. The Director may also appoint Liaisons from other legal organizations or appoint additional advisory panels. ALI members may join the Members Consultative Group (MCG) for a project. MCG participants are not necessarily experts in the project's area of law, but provide a vital perspective, as they read the drafts the way the project's intended audience would.

The Reporter prepares Preliminary Drafts of the project for review by the Advisers, Liaisons, and MCG. After revising the material in light of comments received from these groups, the Reporter submits a Council Draft for review and approval by the Council. Once a draft is approved by the Council, the Reporter prepares a Tentative Draft, incorporating any revisions directed by the Council, to be submitted to the ALI membership for approval at an Annual Meeting. After discussion, the members vote on a "Boskey Motion" to approve the draft subject to the discussion at the Meeting and to the usual editorial prerogative. This drafting cycle continues until each segment of the project has been approved by the Council and the membership. Then the Reporter, subject to the Director's oversight, readies the official text for publication.

Members interested in any of these projects can access drafts in the Projects section of the ALI website. Those who join a Members Consultative Group and current project participants will be alerted when future meetings are scheduled and when drafts are available.

Restatements

RESTATEMENT OF THE LAW, CHILDREN AND THE LAW

This Restatement deals comprehensively with the legal regulation of children, rather than solely with family-law matters. Portions of each of the project's four Parts—Children in Families, Children in Schools, Children in the Justice System, and Children in Society—have been drafted. Portions of all four Parts have been approved by the membership. At the 2021 Annual Meeting, the membership voted to approve Tentative Draft No. 3, which includes § 2.22 from Chapter 2, State Intervention for Abuse and Neglect; § 8.10 from Chapter 8, Student Speech Rights; §§ 9.10 and 9.20 from Chapter 9, Religion in Public Schools; §§ 10.10 and 10.20 from Chapter 10, School Searches; and §§ 12.10 and 12.11 from Chapter 12, Pre-Adjudication.

Reporter:

Elizabeth S. Scott, Columbia Law School, New York, NY

Associate Reporters:

Richard J. Bonnie, University of Virginia School of Law, Charlottesville, VA

Emily Buss, University of Chicago Law School, Chicago, IL

Clare Huntington, Fordham University School of Law, New York, NY

Solangel Maldonado, Seton Hall University School of Law, Newark, NJ

RESTATEMENT OF THE LAW THIRD, CONFLICT OF LAWS

This project reexamines the increasingly important subject of conflict of laws in light of significant legal developments in the field since the influential Restatement Second was published in 1971. The project will include Chapters on Domicile, Judicial Jurisdiction, Recognition and Enforcement of Judgments, and Choice of Law, among others. At the 2021 Annual Meeting, a motion to recommit § 1.03(1) and related Comments failed. The membership voted to approve Tentative Draft No. 2, which includes Chapter 1, Introduction; Chapter 2, Domicile; and Chapter 5, Choice of Law, Topic 2, Foreign Law (Introductory Comment, §§ 5.06-5.08).

Reporter:

Kermit Roosevelt III, University of Pennsylvania Carey Law School, Philadelphia, PA

Associate Reporters:

Laura Elizabeth Little, Temple University Beasley School of Law, Philadelphia, PA

Christopher A. Whytock, University of California, Irvine School of Law, Irvine, CA

RESTATEMENT OF THE LAW, CONSUMER CONTRACTS

This Restatement focuses on aspects of the law unique to consumer contracts and on regulatory techniques that are prominently applied in consumer-protection law with examples from specific statutes and regulations. A draft of the entire project was approved by the Council in 2018 and was presented to the membership at the 2019 Annual Meeting, where the membership voted to approve § 1 of the draft. The remainder of the project will be presented at a future Annual Meeting.

Reporters:

Oren Bar-Gill, Harvard Law School, Cambridge, MA
Omri Ben-Shahar, University of Chicago Law School, Chicago, IL
Florencia Marotta-Wurgler, New York University School of Law, New York, NY

RESTATEMENT OF THE LAW, COPYRIGHT

This Restatement encompasses general copyright law. This project was presented to the membership for the first time at the 2021 Annual Meeting for approval of Tentative Draft No. 2. The following are details of the actions taken at the Meeting:

- A motion to amend § 8 to add a new subsection (c) was accepted by the Reporters and passed by the membership.
- A motion to amend § 8, Comments *d* and *g*, failed.
- A motion to amend § 9 failed.
- A motion to amend § 22 failed.
- A motion to amend § 25 to add a new subsection (f) was accepted by the Reporters with a modification and passed by the membership. The new language reads:
 (f) When the owner of copyright in a contribution to a collective work authorizes the contribution's inclusion in the collective work, "[i]n the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series."
- A motion to amend subsection (a) of § 25 failed.
- Time expired before §§ 27-29 were discussed.
- The membership voted to approve §§ 1-9, 11, 13, 14, 16, 19, and 20-26 of the Tentative Draft.

Reporter:

Christopher Jon Sprigman, New York University School of Law, New York, NY

Associate Reporters:

Daniel J. Gervais, Vanderbilt University Law School, Nashville, TN
Lydia Pallas Loren, Lewis & Clark Law School, Portland, OR
R. Anthony Reese, University of California, Irvine School of Law, Irvine, CA
Molly S. Van Houweling, University of California, Berkeley School of Law, Berkeley, CA

RESTATEMENT OF THE LAW, CORPORATE GOVERNANCE

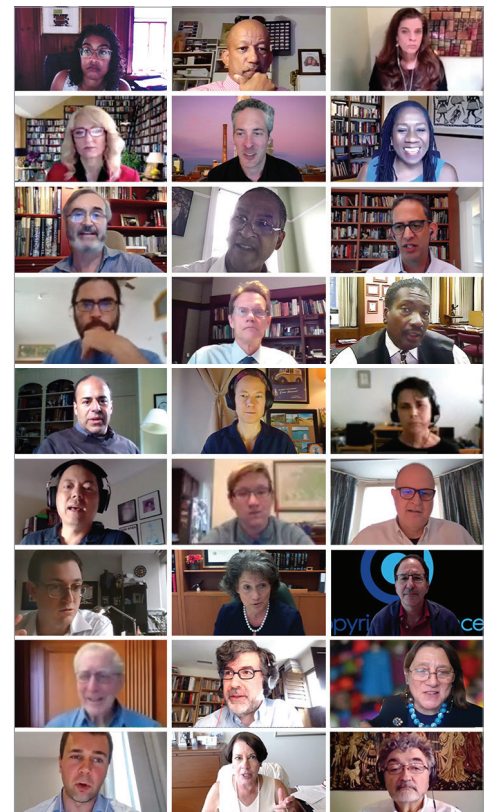
The Institute first tackled the subject of corporate governance more than 25 years ago in Principles of the Law, Corporate Governance: Analysis and Recommendations. Although it provided valuable guidance in a new and unfamiliar area of law at the time, this area has evolved quite a bit in the intervening decades. Launched in January 2019, this project will examine the state of the law today and reflect it in the Restatement.

Reporter:

Edward B. Rock, New York University School of Law, New York, NY

Associate Reporters:

Jill E. Fisch, University of Pennsylvania Carey Law School, Philadelphia, PA
Marcel Kahan, New York University School of Law, New York, NY



RESTATEMENT OF THE LAW FOURTH, PROPERTY

This Restatement seeks to bring comprehensiveness and coherence to American property law. Subjects to be covered include the classification of entitlements, possession, accession, and acquisition; ownership powers; protection of and limits on ownership; divided and shared ownership; title and transfer; easements, servitudes, and land use; and public rights and takings. At the 2021 Annual Meeting, the membership voted to approve Tentative Draft No. 2, which contains material from Volumes 1, 2, and 3 on Possession, Trespass to Land, and Bailments: Volume 1, The Basics of Property: Division II, Possession, Chapter 1, Possession (§§ 1.1, 1.8); Volume 2, Interferences with, and Limits on, Ownership and Possession: Division I, Property Torts, Chapter 1, Trespass to Land, Topic 1, Trespass to Land (§§ 1.1, 1.3-1.5); and Volume 3, Powers and Duties Associated with Ownership: Division III, Bailments (§§ 1, 2).

Reporter:

Henry E. Smith, Harvard Law School,
Cambridge, MA

Associate Reporters:

Maureen E. Brady, Harvard Law School,
Cambridge, MA

Sara C. Bronin, Cornell University,
Ithaca, NY

Richard R. W. Brooks, New York University
School of Law, New York, NY

R. Wilson Freyermuth, University of
Missouri School of Law, Columbia, MO

John C. P. Goldberg, Harvard Law School,
Cambridge, MA

Daniel B. Kelly, University of Notre Dame
Law School, Notre Dame, IN

Brian A. Lee, Brooklyn Law School,
Brooklyn, NY

Thomas W. Merrill, Columbia Law School,
New York, NY

Christopher M. Newman, George Mason
University, Antonin Scalia Law School,
Arlington, VA

RESTATEMENT OF THE LAW THIRD, TORTS: CONCLUDING PROVISIONS

Launched in 2019, this project is part of ALI's ongoing revision of the Restatement Second of Torts. This Restatement addresses topics not covered in another part of the Restatement Third of Torts that either require updating since publication of the Restatement Second or were not previously addressed but should be covered in a modern torts Restatement. These topics will include medical liability, vicarious liability, wrongful death, and survival actions, among others. ALI's Council has approved portions of Chapter 11, Liability of Medical Professionals and Institutions, as well as § 48 A (Loss of Spousal Consortium); § 48 B (Loss of Child Consortium); § 48 C (Loss of Parental Consortium); § 48 D (Alienation of Affections Abolished); and § 48 E (Criminal Conversation Abolished).

Reporters:

Nora Freeman Engstrom, Stanford Law School, Stanford, CA

Michael D. Green, Wake Forest University School of Law, Winston-Salem, NC

Associate Reporters:

Mark A. Hall, Wake Forest University School of Law, Winston-Salem, NC

Tanya D. Marsh, Wake Forest University School of Law, Winston-Salem, NC

Guy Miller Struve, Davis Polk & Wardwell (Retired), New York, NY

RESTATEMENT OF THE LAW THIRD, TORTS: DEFAMATION AND PRIVACY

This project is part of ALI's ongoing revision of the Restatement Second of Torts. This Restatement addresses torts dealing with personal and business reputation and dignity, including defamation, business disparagement, and rights of privacy. Among other issues, the updates will cover the substantial body of new issues relating to the internet. Launched in 2019, the project's first draft included portions of Chapter 1, Invasions of Interest in Reputation, including Topic 1, Elements of a Cause of Action for Defamation and Topic 2, Defamatory Communications.

Reporters:

Lyrissa Barnett Lidsky, University of Missouri School of Law, Columbia, MO

Robert C. Post, Yale Law School, New Haven, CT

RESTATEMENT OF THE LAW THIRD, TORTS: REMEDIES

This project is part of ALI's ongoing revision of the Restatement Second of Torts. This Restatement addresses tort damages and other remedies. It will include issues related to identifying the types of recoverable damages, such as past and future lost wages, medical expenses, disfigurement, and pain and suffering, as well as measuring damages, including discounting future earnings to present value, the effect of taxes, and structured settlements. Launched in 2019, the Introduction, Chapter 1, Compensatory Damages, Topic 1, General Rules for Measuring Compensatory Damages, and part of Topic 2, Injury to the Person (§§ 19-23) have been drafted, as well as part of Chapter 3, Injunctions and Other Forms of Specific Relief, Topic 1, Permanent Injunctions (§§ 44-50).

Reporters:

Richard L. Hasen, University of California, Irvine School of Law, Irvine, CA

Douglas Laycock, University of Virginia School of Law, Charlottesville, VA

Principles

PRINCIPLES OF THE LAW, GOVERNMENT ETHICS

This project sets forth principles that will both reflect the emerging law of government ethics and provide guidelines to shape its future development. Specific topics include lobbying, gifts and other things of value given to public officials, conflicts of interest involving the private activities of public officials, the political uses of public office, and administration and enforcement mechanisms. At the 2021 Annual Meeting, the membership voted to approve Tentative Draft No. 3, which includes a portion of Chapter 5, Restrictions on Leaving or Entering Public Service (§§ 5.01(d), 514, 515); Chapter 6, Disclosure; and Chapter 7, Administration and Enforcement of Ethics Provisions.

Reporter:

Richard Briffault, Columbia Law School, New York, NY

Associate Reporter:

Richard W. Painter, University of Minnesota Law School, Minneapolis, MN

PRINCIPLES OF THE LAW, POLICING

This project tackles some of the hardest questions, where courts, legislatures, and police are most in need of guidance. At the 2021 Annual Meeting, the membership voted to approve Tentative Draft No. 3, which contains additions to Chapter 1, General Principles of Sound Policing; Chapter 2, General Principles of Searches, Seizures, and Information Gathering; Chapter 3, Policing with Individualized Suspicion; Chapter 5, Policing in the Absence of Individualized Suspicion; Chapter 6, Policing Databases; Chapter 8, General Principles for Collecting and Preserving Reliable Evidence for the Adjudicative Process; Chapter 9, Forensic-Evidence Gathering; and Chapter 13, Promoting Sound Policing Within Agencies.

Reporter:

Barry Friedman, New York University School of Law, New York, NY

Associate Reporters:

Brandon L. Garrett, Duke University School of Law, Durham, NC

Rachel A. Harmon, University of Virginia School of Law, Charlottesville, VA

Tracey L. Meares, Yale Law School, New Haven, CT

Maria Ponomarenko, University of Minnesota Law School,
Minneapolis, MN

Christopher Slobogin, Vanderbilt University Law School, Nashville, TN

PRINCIPLES OF THE LAW, STUDENT SEXUAL MISCONDUCT: PROCEDURAL FRAMEWORKS FOR COLLEGES AND UNIVERSITIES

This project recommends procedural frameworks that universities and colleges should have in place to respond to sexual assault and related student misconduct. All 10 Chapters have been drafted. Topics include notice and clarity of policies; support and interim measures; reporting; inquiries and investigations; informal and formal resolution of complaints; sanctions; processes for appeals; confidentiality, misrepresentation, and retaliation; and interaction between campus processes and the criminal-justice system.

Reporters:

Vicki C. Jackson, Harvard Law School, Cambridge, MA

E. Thomas Sullivan, University of Vermont, Burlington, VT

Model Codes

MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

This project is re-examining Article 213 of the Model Penal Code, which has become outdated since its approval in 1962. At the 2021 Annual Meeting, the membership voted to approve Tentative Draft No. 5. Approval of this draft marks the completion of the project, subject to the Council's approval of the amendments approved at this Annual Meeting. The following are details of the actions taken at the 2021 Annual Meeting:

- A motion presented by Kimberly Kessler Ferzan to amend the “recklessly” mens rea formulations in Article 213 and structure in certain offenses passed.
- Three motions to modify Section 213.3 failed.
- After the Reporters agreed in substance to a motion to add a new subsection (10) to Section 213.8, an amended motion to add the following language as a new subsection (10) was passed by the membership: “For an offense charged under Section 213.8, an actor younger than 14 may be adjudicated delinquent only as a misdemeanor, regardless of the penalty authorized by the statute for the offense.”
- A motion to delete Section 213.10 failed.
- Six motions to amend Sections 213.11A, 213.11E, 213.11F, 213.11G, and 213.11I were accepted by the Reporters and passed by the membership.
- A motion to remove subsection (1)(b) of Section 213.0 failed.

Reporter:

Stephen J. Schulhofer, New York University School of Law, New York, NY

Associate Reporter:

Erin E. Murphy, New York University School of Law, New York, NY

UNIFORM COMMERCIAL CODE

A joint project of ALI and the Uniform Law Commission, the UCC was promulgated to harmonize the law of commercial transactions. From time to time, the Permanent Editorial Board for the UCC issues PEB Commentaries to provide guidance in interpreting and resolving issues raised by the UCC. In 2021, several PEB Commentaries were drafted and posted for public comment, one PEB Commentary was issued: PEB Commentary No. 23: Protected Series Under the Uniform Protected Series Act (2017).

American Law Institute Continuing Legal Education (ALI CLE)

With continued pandemic restrictions forcing changes upon all CLE organizations this past year, ALI CLE met the challenge. We further upgraded our multimedia capabilities, webcast formats, faculty training, and marketing approaches to produce 13 multiday course webcasts in lieu of traditional in-person courses and more than 170 additional stand-alone webcasts. These programs were made possible through the efforts of the ALI CLE volunteer faculty and staff, all coming together remotely.

The five most popular multiday course webcasts adapted from traditional in-person programs this past year were *Life Insurance Company Products*, *Eminent Domain and Land Valuation Litigation*, *Legal Issues in Museum Administration*, *Regulation D Offerings and Private Placements*, and *Clean Water Act: Law and Regulation*. We hope to bring back in-person programming early in 2022, including *Eminent Domain and Land Valuation Litigation* in Scottsdale and the 50th anniversary of *Legal Issues in Museum Administration*, cosponsored with the Smithsonian, in Washington, D.C.

In addition to multiday course webcasts, this year ALI CLE stayed on top of legal developments to create high-quality, topical, skills, diversity, and ethics stand-alone webcasts for lawyers representing a wide range of practice areas. ALI CLE also produced webcasts specifically addressing practice changes in the new normal, including data security in a remote work environment; e-signatures and remote notarization; return-to-work issues and employment policies in the hybrid workplace; Round 2 PPP compliance; commercial real-estate bankruptcies and workouts; *force majeure*, contracting strategies, and enforcement; e-discovery in a hybrid environment; ethical issues for lawyers working remotely; business interruption and other insurance issues post-COVID; remote-litigation and pre-litigation techniques; and tax-compliance issues in a remote workplace. Other stand-alone webcasts addressed policy changes in the new Administration and Congress, and we are currently planning a series of high-level, fast-track webcasts targeting different aspects of the pending federal tax-law changes.



Children and the Law: Protecting the Vulnerable in a Time of Crisis webcast

Over the past year, ALI CLE partnered with ALI on two ALI project webcasts: *Children and the Law: Protecting the Vulnerable in a Time of Crisis*, with Elizabeth S. Scott, Kristin Nicole Henning, Clare Huntington, and Marsha Levick, and *Ethics in International Arbitration: The ALI Restatement of the U.S. Law of International Commercial and Investor-State Arbitration*, with project Reporter George A. Bermann and Associate Reporters Catherine A. Rogers, Christopher R. Drahozal, and Jack J. Coe, Jr. This fall, we are assisting in ALI's support of the *Wisconsin Law Review 2021 Symposium* at the University of Wisconsin Law School, featuring the Restatement of the Law of American Indians, with project Reporter Matthew L.M. Fletcher and Associate Reporters Wenona T. Singel and Kaighn Smith, Jr., and working with Steven O. Weise, Neil B. Cohen, and Juliet M. Moringiello on a new webcast exploring El Salvador's adoption of Bitcoin as a currency and the potential impact of that new status on security interests under the UCC.

2022 will mark the 75th anniversary of ALI CLE (formerly ALI-ABA). As we move forward with new capabilities, we remain as dedicated as ever to our original mission of providing post-admission education of the highest quality and relevance to lawyers across the nation and equipping practitioners with resources to meet the challenges of a changing legal landscape.

2021 Early Career Scholars Medal Winners

This year, The American Law Institute awarded its Early Career Scholars Medal to Professors Ashley S. Deeks of the University of Virginia School of Law and Francis X. Shen of the University of Minnesota Law School. The award recognizes outstanding law professors whose work is relevant to public policy and has the potential to influence improvements in the law.

“Ashley and Francis are two early-career law professors who are already making a tremendous impact on the way we think about some of the most important and current legal topics of our day,” said Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit, who serves as the Chair of ALI’s Early Career Scholars Medal Selection Committee. “I am thrilled, on behalf of ALI, to award the Early Career Scholars Medal to these extraordinary professors.”

Judge Wood continued, “Ashley’s work on national security, international law, and foreign relations has earned her national recognition. In fact, she is currently taking a leave from her school to serve as White House associate counsel and deputy legal adviser to the National Security Council. Francis has been a pioneer in establishing the interdisciplinary field of law and neuroscience. His research has helped lead to the better administration of justice in areas such as criminal and elder law, and it has been essential in developing tools to improve the legal system through the responsible use of neuroscientific evidence and neurotechnology.”

The ALI normally presents the Early Career Scholars Medal to the recipients at an Annual Meeting. Because the 2021 Annual Meeting was held virtually this year, Professors Deeks and Shen will receive their medals at a future in-person Annual Meeting.



Professor Deeks is the E. James Kelly, Jr. –Class of 1965 Research Professor of Law and a senior fellow at the Miller Center at the University of Virginia School of Law. She is currently on leave from the Law School to serve as White House associate counsel and deputy legal adviser to the National Security Council. Her primary research and teaching interests are in the areas of international law, national security, intelligence, and the laws of war. She is a member of the State Department’s Advisory Committee on International Law and The American Law Institute, and she serves as a contributing editor to the Lawfare blog.



Professor Shen is a Professor of Law and McKnight Presidential Fellow at the University of Minnesota Law School, where he conducts empirical and interdisciplinary research at the intersection of law and the brain sciences. He is coauthor of the first law coursebook on law and neuroscience (Aspen Publishers, 2d ed., 2021), and has explored the implications of cognitive neuroscience for criminal law, tort, and legislation in the United States. His additional research areas of focus are criminal law and crime policy, and education law and policy.

Complete biographies for both recipients can be found on the ALI website.

Membership

The Membership Committee and the Council are committed to fostering a membership that will reflect the broad diversity of the legal profession in the United States and abroad, including with regard to (but not limited to) age, gender, race, ethnicity, expertise, geographic region, viewpoints, and type and size of practice or other professional work. The overall goal is to ensure a membership that will keep the Institute a vibrant, relevant, and distinguished membership organization as it carries out its mission throughout the 21st century. Candidates for elected membership must have demonstrated exceptional professional achievement, outstanding personal character, and an avid interest in law reform.

During the 2020–2021 fiscal year, 115 distinguished legal professionals were elected upon accepting the nomination and committing to participate in our work. Members make invaluable contributions to our law-reform efforts by donating their time and expertise in numerous areas of the law. As of June 30, 2021, ALI membership included 2,832 elected members, 1,652 life members (a status achieved after 25 years of service to the Institute), 232 ex officio members, and two honorary members. While ex officio members are generally considered members only during the time they hold a specific office or position, the Chief Justice and Associate Justices of the Supreme Court of the United States are ex officio members for life.

MEMBERS BY CATEGORY

Includes Elected, Elected & Ex Officio, Life, Honorary, and Ex Officio



- **38%** ACADEMICS
- **36%** ATTORNEYS IN PRIVATE PRACTICE
- **14%** JUDGES
- **12%** CORPORATE, GOVERNMENT, AND NONPROFIT ATTORNEYS

115 NEW MEMBERS



- **51** 45% ACADEMICS
- **30** 26% ATTORNEYS IN PRIVATE PRACTICE
- **20** 17% JUDGES
- **14** 12% CORPORATE, GOVERNMENT, AND NONPROFIT ATTORNEYS

CURRENT MEMBERSHIP

Elected Members	2,832
Life Members	1,652
Ex Officio Members	232
Honorary Members	2
Total ALI Membership	4,718

In Memoriam



Shirley S. Abrahamson, the longest-serving member of the Wisconsin Supreme Court, died on December 19, 2020. She was 87.

Justice Abrahamson was elected to the Institute in 1977 and to the ALI Council in 1985. During her time on the Council, she served

on both the Membership and Executive Committees and was an Adviser on Restatement of the Law Third, Property (Wills and Other Donative Transfers), and Principles of the Law, Family Dissolution: Analysis and Recommendations.

She was the first woman to serve on the Wisconsin Supreme Court, appointed by Governor Patrick Lucey in 1976. She served as the chief justice from August 1996 to April 2015, and retired in 2019.

Justice Abrahamson is remembered for her commitment to making the judiciary more transparent and accessible. She supported and helped launch the “Court with Class” program, which brings high-school students into the supreme court’s hearing room to witness oral arguments, as well as the “Justice on Wheels” program, which sends the justices to other parts of the state to hear arguments, giving local residents the opportunity to observe the court in action.

In addition to her service to ALI and the Wisconsin Supreme Court, she sat on the board of directors of the Dwight D. Opperman Institute of Judicial Administration at New York University School of Law; was president of the National Conference of Chief Justices; chaired the board of directors of the National Center for State Courts; and was a member of the National Academies Committee on Science, Technology, and Law. Justice Abrahamson was also elected a Fellow of the American Academy of Arts and Sciences and a member of the American Philosophical Society. She received the ABA’s Margaret Brent Women Lawyers of Achievement Award in 1995 and the Opperman Award for Judicial Excellence from the American Judicature Society in 2004. At a celebration in her honor inside the Wisconsin State Capitol rotunda in June 2019, her longtime friend, U.S. Supreme Court Justice Ruth Bader Ginsburg, in a video message said, “[a]mong jurists I have encountered in the United States and abroad, Shirley Abrahamson is the very best, the most courageous and sage, the least self-regarding.”

Justice Abrahamson is remembered for her lifelong dedication to preserving the rule of law, her generosity, and her legacy in paving and lighting the way for the many women and others who follow her.



Mary Kay Kane passed away on June 3, 2021, at age 74. She was elected to the Institute in 1978 and to the ALI Council in 1998, taking emeritus status in 2018.

At a memorial service on September 9, 2021, ALI President David F. Levi said, “For the past 25 years, Mary Kay Kane has been for me one of those very special people to turn

to, so admirable was she in character, judgment, and intellect. I first met her sometime in the 1990s when I was a judge in the Eastern District of California. But I knew her by reputation for a much longer time.” He continued, “[W]henver Mary Kay spoke, the rest of us listened with unusually close attention, so balanced and thoughtful were her comments, so total was our confidence in her abiding good judgment. . . . We will miss our wonderful friend and colleague. We will treasure the love, dedication, and example of cheerful service she brought to us over so many years.”

A life member of the Institute, she generously gave countless hours to all of ALI’s projects, and additionally served as an Adviser on Restatement of the Law Third, Conflict of Laws; Restatement of the Law Third, Torts: Apportionment of Liability; Principles of the Law, Aggregate Litigation; and the ALI/UNIDROIT Principles of Transnational Civil Procedure. She also served as Co-Reporter for Complex Litigation: Statutory Recommendations and Analysis, as well as Chair of the Governance Committee and the Committee on Institute Style. In addition, she was a member of several other Council committees, including the 100th Anniversary, Development, Membership, and Executive Committees.

Her generosity to the Institute also provided for the Institute’s projects to continue through the establishment of the Geoffrey C. Hazard, Jr. fund, which was formed to provide the current Director with the resources necessary to take advantage of any and all opportunities to further ALI’s important work.

Professor Kane was born and raised in Detroit. She attended the University of Michigan where she received a B.A. degree in English and a J.D. in 1971. Upon graduation from law school, she became co-director, with her mentor Professor Arthur R. Miller, of a National Science Foundation project on privacy and social-science research data, spending one year at the University of Michigan and two years at Harvard Law School working on that project.

She began teaching in 1974 at the State University of New York at Buffalo Law School and came to University of California, Hastings College of the Law, in 1977. She served in several roles before becoming the first woman Dean from 1993 to 2006, and as Chancellor from 2000 to 2006. She was recognized as one of the world’s leading scholars on the subject of civil procedure, and wrote numerous articles and books in that field, including as a coauthor of the third and fourth editions of 14 volumes of the national treatise, *Federal Practice and Procedure*.

Committees

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Troy A. McKenzie - New York University School of Law
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David F. Levi - Duke University School of Law
Janet Napolitano - University of California Berkeley, Goldman School of Public Policy
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Chair - Jeffrey S. Sutton - U.S. Court of Appeals, Sixth Circuit
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Nathan L. Hecht - Texas Supreme Court
Samuel Issacharoff - New York University School of Law
David F. Levi - Duke University School of Law
Stephanie E. Parker - Jones Day
Lee H. Rosenthal - U.S. District Court, Southern District of Texas
Catherine T. Struve - University of Pennsylvania Carey Law School
Larry D. Thompson - Finch McCranie LLP

PROJECTS

Chair - Goodwin Liu - California Supreme Court
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Roberto Jose Gonzalez - Paul, Weiss, Rifkind, Wharton & Garrison LLP
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Eric A. Posner - University of Chicago Law School
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Daniel B. Rodriguez - Northwestern University Pritzker School of Law
Gary L. Sasso - Carlton Fields P.A.
Laura D. Stith - Missouri Supreme Court (Senior Judge)
Catherine T. Struve - University of Pennsylvania Carey Law School

ALI EARLY CAREER SCHOLARS MEDAL (2021-22)

Chair - Diane P. Wood - U.S. Court of Appeals, Seventh Circuit
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Allison H. Eid - U.S. Court of Appeals, Tenth Circuit
Paul A. Engelmayer - U.S. District Court, Southern District of New York
William A. Fletcher - U.S. Court of Appeals, Ninth Circuit
Jamal Greene - Columbia Law School
Howell E. Jackson - Harvard Law School
Ronald D. Lee - Arnold & Porter
David F. Levi - Duke University School of Law
Janet Napolitano - University of California Berkeley, Goldman School of Public Policy
Eric A. Posner - University of Chicago Law School
Roberta Cooper Ramo - Modrall Sperling
Cristina M. Rodriguez - Yale Law School
Patti B. Saris - U.S. District Court, District of Massachusetts
Randall T. Shepard - Indiana University, Robert H. McKinney School of Law

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William F. Lee - WilmerHale
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Richard L. Revesz - ALI Director, New York University School of Law
Stephanie A. Middleton - ALI Deputy Director

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Condensed Consolidated Statements of Activities

FOR THE YEARS ENDED JUNE 30, 2021 AND 2020

NET ASSETS WITHOUT DONOR RESTRICTIONS	2021	2020
Publications and program revenue	\$8,640,682	\$9,727,042
Membership dues and other income	966,240	1,057,818
Contributions and grants	1,601,150	472,024
Investment spending policy income	955,266	2,671,002
Net assets released from purpose restrictions	45,947	445,220
Total operating revenue and other support	12,209,285	14,373,106
Program expenses	8,362,151	9,196,675
General and administrative expenses	3,494,053	3,778,543
Total operating expenses	11,856,204	12,975,218
Change in net assets from operations	353,081	1,397,888
Investment return, net of spending policy	17,206,621	(314,144)
Bequests	-	1,068
Contributions	2,316,202	250,000
Interest expense	-	(2,644)
Non-operating income/expense, net	1,852,287	(909,714)
Change in net assets without donor restrictions	21,728,191	422,454
NET ASSETS WITH DONOR RESTRICTIONS		
Investment return	\$1,652,486	\$176,881
Net assets released from purpose restrictions	(45,947)	(445,220)
Contributions and grants	141,104	1,053,050
Change in net assets with donor restrictions	1,747,643	784,711
CHANGE IN NET ASSETS	\$23,475,834	\$1,207,165
Net assets, at beginning of year	72,881,987	71,674,822
Net assets, at end of year	\$96,357,821	\$72,881,987

Condensed Consolidated Statements of Financial Position

AS OF JUNE 30, 2021 AND 2020

ASSETS	2021	2020
Cash	\$2,795,310	\$2,337,801
Receivables and other assets	4,056,636	3,130,894
Investments, at fair value	90,565,907	69,640,926
Land, buildings, and equipment, net	2,276,142	2,486,801
Total Assets	\$99,693,995	\$77,596,422
LIABILITIES AND NET ASSETS		
LIABILITIES		
Accounts payable and accrued expenses	\$950,991	\$857,235
Note payable	-	1,286,556
Deferred revenue	660,468	759,586
Postretirement health benefit obligation	1,724,715	1,811,058
Total Liabilities	3,336,174	4,714,435
NET ASSETS		
Without donor restrictions		
ALI	87,385,853	65,642,430
Noncontrolling interest in ALIP	326,950	342,182
Total net assets without donor restriction	87,712,803	65,984,612
With donor restrictions	8,645,018	6,897,375
Total Net Assets	96,357,821	72,881,987
Total Liabilities and Net Assets	\$99,693,995	\$77,596,422

The condensed consolidated financial statements for The American Law Institute include all accounts and activities of Funds of the Treasurer and ALI CLE. In addition, they reflect the accounts and activities of The American Law Institute Publishers.

Annual Giving Report

Contributions to The American Law Institute provide a key source of support that allows us to remain independent as we continue our mission of clarifying and improving the law. By becoming a Sustaining Member, joining a Giving Circle, or making a general contribution, you help guarantee that the Institute is prepared for a second century of law reform.

To inquire about making a donation, please contact Kyle Jakob, Senior Development Manager, at 215-243-1660 or kjakob@ali.org.

To make a gift online, please visit www.ali.org/support.

Contributions to The American Law Institute help us:

MAXIMIZE PROJECT EFFICIENCY AND ATTRACT TOP TALENT

ALI pays stipends to top-tier law professors best suited to produce its project drafts, and also pays for the research assistants who support them. By providing funding necessary to maintain an increased number of Reporters, contributions help to expedite project completion times while retaining the high level of quality the Institute is known for.

PRODUCE, PROMOTE, AND DISTRIBUTE WORKS IMPORTANT TO THE PUBLIC INTEREST

The Institute's mission is driven by focusing on areas of law that are most in need of clarification, regardless of financial return. The current legal landscape includes a number of topics that are ripe for review, but the resulting publications may not generate revenue to cover the costs of the projects in the way ALI's Restatements do. The Institute also provides free public access to works that can be applied to addressing pressing legal and policy issues being faced in times of crisis. Projects on these topics—including Policing; Election Administration; and Data Privacy—are of great importance. Gifts to the Institute provide funding necessary to produce, promote, and distribute such works that benefit the public interest.

REDUCE BARRIERS TO PARTICIPATION

ALI's members are lawyers of the highest qualifications. Some have chosen service-oriented careers in which compensation lags far behind the private sector. The participation of these members is critical to maintaining the diversity of ideas that is the hallmark of ALI's approach and the key to our success. ALI's travel-assistance programs, which are supported by generous contributions, provide opportunities for the full spectrum of our membership to participate in the Institute's work regardless of financial means. Contributions also allow ALI to implement technological updates necessary to advance our work.

RAISE AWARENESS OF ALI'S WORK AND ENGAGE THE NEXT GENERATION

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The American Law Institute is deeply grateful to everyone who contributed to the success of the Class Gift campaigns.

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