

The American Law Institute

DEDICATED TO CLARIFYING AND IMPROVING THE LAW



Annual Report 2011-2012



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THE AMERICAN LAW INSTITUTE

Introduction to The American Law Institute

The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. It was created in 1923 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.

Publications and Projects

The ALI drafts, discusses, revises, and publishes Restatements of the Law, Principles of the Law, and model statutes that are enormously influential in the courts and legislatures, as well as in legal scholarship and education. The ALI has long been influential internationally and, in recent years, more of its work has become international in scope.

The ALI addresses uncertainty in the law by developing restatements of legal subjects for use by courts and lawyers applying existing law. Restatements of the Law contain clear formulations of common law and its statutory elements or variations and reflect the law as it presently stands or might plausibly be stated by a court.

Completed Restatements include:

- Agency
- Conflict of Laws
- Contracts
- Foreign Relations Law of the United States
- Judgments
- The Law Governing Lawyers
- Property
- Restitution and Unjust Enrichment
- Suretyship and Guaranty
- Torts
- Trusts
- Unfair Competition

The ALI also examines and analyzes legal areas in need of reform. Principles of the Law express the law as it should be, which may or may not reflect the law as it is.

These projects include:

- Aggregate Litigation
- Corporate Governance
- Family Dissolution
- Software Contracts
- Transnational Civil Procedure
- Transnational Insolvency
- Transnational Intellectual Property

Statutory projects include the Uniform Commercial Code (in conjunction with the Uniform Law Commission), Model Code of Evidence, and Model Penal Code.

Current Restatement or Principles projects include American Indian Law, Consumer Contracts, Election Law, Employment Law, Government Ethics, U.S. Law of International Commercial Arbitration, Liability Insurance, and Nonprofit Organizations, among others.

Membership

The ALI is made up of over 4300 lawyers, judges, and law professors of the highest qualifications. By participating in the ALI's work, its distinguished 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.

ALI CLE

ALI CLE (formerly ALI-ABA) provides education for the legal profession, offering live courses, webcasts, telephone seminars, on-demand courses, and periodicals such as *The Practical Lawyer*. Experienced and renowned faculty and authors work with the ALI to provide educational programs and materials of the highest quality and relevance.

Funding

The ALI's primary sources of operating revenue are from publishing, educational programs, membership dues and contributions, and rental income from its headquarters building in Philadelphia. The financial support of the 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 the ALI are tax-deductible to the full extent of the law.

President's Message



In our 89th year, but only our second Annual Report, there is great good news on all fronts. All of it due to the intellectual work and financial support of each of you, our distinguished and generous members. The very large array of our projects (and if you have not been to the

real Very Large Array in New Mexico, the scientific project that listens and looks for changes in the universe, it is so very strange and interesting that it is worth the trip) covers the intellectual waterfront of American law, has provided and will provide important practical guidance and new thinking in important areas, and meets our mission to modernize and reform the law to make it more useful and just.

Highlights from this year include beginning work on Indian Law, Intentional Torts, Economic Torts, and Privacy. The Council has approved starting the Restatement Fourth of the Foreign Relations Law of the United States. In our exploration of the need for this project, we were all deeply impressed by the response that we received from judges and lawyers demonstrating their heavy reliance on the Restatement Third and thus the need to bring this wonderful work up to date.

We continue important work in modernizing the Model Penal Code with a new project looking at the very outdated Sexual Assault portion of that work.

We have begun the first project that has come from an ALI Young Scholars Medal Winner. Oren Bar-Gill of NYU has joined with Omri Ben-Shahar of the University of Chicago Law School as Co-Reporters of Restatement Third, The Law of Consumer Contracts, which came from the work of the seminar Professor Bar-Gill put together as part of his Young Scholars Award. Professor Jeanne Fromer, the other winner of our first Medals, will have her seminar on patent law early in 2013.

Justice Goodwin Liu of the California Supreme Court is chairing our current Young Scholars Award Committee, which will announce the second round of ALI Young Scholars Medals in the early spring.

In 2012 there was a major change in a program we shared with the American Bar Association for 65 years: ALI-ABA has become ALI CLE. We are very proud of this effort to be of service in the most useful ways to the lawyers of the United States. We have maintained the high quality of these programs with their excellent volunteer faculty. The ALI CLE staff have adapted to the modern world in which more and more people participate by webcast and enjoy the convenience of on-demand programs. At the same time, in certain specialty areas and at certain times, in-person programs continue to be popular. Please remember that as an ALI member you can have free access to ALI CLE recorded programs by going to the ALI website “About ALI” tab and clicking on “ALI CLE.”

Finally, let me thank you for your financial support last year. This included our first Class Gift from the life member class of 2012 who, under the leadership of Professor Susan Appleton (our Secretary) of Washington University Law School and Greg Joseph of New York, raised \$65,000. This will be used to support our Model Penal Code project and to provide travel assistance for our MCG meetings and scholarships to the Annual Meeting for our members who are public-sector lawyers.

We recognize that for many of you—in the public sector, on the bench, and on law school faculty— this has not been an easy economic time, and that it has been similarly challenging for many in the private practice world. Nonetheless, you continue to give us your time, intellectual effort, and financial support. We hope as we approach 90 (a very vigorous age in ALI Treasurer years) you will redouble your efforts in all of the areas in which the ALI is so important and has rightly become greatly esteemed and relied upon not only in the United States, but world-round.

Thanks seem not quite enough, but you have mine.

A handwritten signature in black ink, which appears to read "S. Appleton". The signature is written in a cursive, flowing style.

Director's Message



I was shocked when, for this letter, I made a list of new ALI projects: projects recently started, just starting, or approaching a first meeting. The list has eleven very different legal subjects. I could see possible arguments that I (and the ALI) have become eclectic to an exaggerated degree. On the other hand, every one

of these subjects is appropriate for law reform recommendations. Every one is intellectually challenging (and many are also politically charged). And in every case my colleagues and I have identified first-class professors who, when recruited, quickly signed on to be a Reporter.

Ordering the list alphabetically, we seem committed to doing serious work about:

Children and the Law: two professors, Anne Dailey and Laura Rosenbury, are at work trying to describe a specific project and the first topics that should be taken up.

Consumer Law: Professors Oren Bar-Gill and Omri Ben-Shahar held one meeting attended by quality participants who agreed there is important work worth our effort, and they now begin to draft a Restatement of the Law of Consumer Contracts.

Election Law: Reporters Ned Foley and Steve Huefner, with the 2012 election a matter of history, initially will focus ALI's work on legal issues related to the extraordinary recent changes away from voting on a single day in a prescribed place.

Government Ethics: Professors Richard Briffault and Kathleen Clark continue to shape this important project that may cover conflicts of interest, public use of private office, and revolving doors.

Indian Law: Professors Matthew Fletcher and Wenona Singel led an outstanding initial meeting attended by federal, state, and tribal judges, top scholars, and expert practitioners. A practicing lawyer, Kaighn Smith, is joining the Reporter team, bringing an expertise in business law.

Liability Insurance: Professors Tom Baker and Kyle Logue have received valuable input from the Advisers, MCG, Council, and from the ALI membership at the Annual Meeting. Lawyers and judges have told us that this is an important subject and they are convinced that ALI work will be influential.

Privacy: A first meeting in San Francisco, led by Professors Paul Schwartz and Dan Solove, attracted a quality participant list including top outside and in-house lawyers from Silicon Valley and from all sides of the most challenging intellectual property and personally identifiable information issues. We now move toward a specific project that may revisit the Prosser privacy torts and also travel into previously uncharted waters.

Sexual Assault: These sections of the great Model Penal Code are not appropriate today. Two Professors, Steven Schulhofer and Erin Murphy, will address complex issues such as consent and collateral consequences.

Torts: We recently completed a project on Liability for Physical and Emotional Harm. We have two more projects as part of the Restatement Third of Torts: Economic Harm, led by Ward Farnsworth, with the project delayed (but only slightly) by his becoming the Dean of the University of Texas Law School; and Intentional Torts, with the work about to be undertaken by Professors Ellen Pryor and Ken Simons.

Finally, and out of alphabetical order, is our large and challenging work on the Foreign Relations Law of the United States. This must be called (our first) Restatement Fourth because Professor Louis Henkin's magisterial Restatement was the first project in the series called Restatement Third. Our effort is led by Professors Sarah Cleveland and Paul Stephan. For a start, eight different Reporters (two of whom are Sarah and Paul) will take up three subjects: jurisdiction and enforcement; treaties; and sovereign immunity.

Four important projects that are not new continue to make progress: Restatement of the U.S. Law of International Commercial Arbitration; Restatement of Employment Law; a project on the Law of Nonprofit Organizations; and our revision of the Sentencing portions of the Model Penal Code.

We thank our Reporters Petros Mavroidis and Henrik Horn for their leadership in taking to conclusion our work on Legal and Economic Principles of World Trade Law. We also thank our Reporters Ian Fletcher and Bob Wessels for completing Global Principles for Cooperation in International Insolvency Cases, a collaboration with the International Insolvency Institute.

As you can see, the ALI is hard at work. None of this would be possible without extraordinary effort from our officers, our Council, project Advisers, Members Consultative Groups, and the high-quality staff based in Philadelphia. In every aspect of this, Deputy Director Stephanie Middleton is a key person, as she is with all of our intellectual and law-reform work. We are also proud of the ALI members who have attended meetings, made motions, read drafts, and sent constructive criticism to our Reporters.

A handwritten signature in cursive script that reads "Lane Liebman".

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In Memoriam

Nicholas deB. Katzenbach, 1922-2012
Council Member 1983-2001

Louis H. Pollak, 1922-2012
Council Member 1978-2009

Publications

Publications during the 2011-2012 fiscal year included the two-volume Restatement Third of Restitution and Unjust Enrichment, as well as the final volumes of Restatement Third of Property (Wills and Other Donative Transfers) and Restatement Third of Trusts. The Institute also published the eighth volume in its series of legal and economic analyses of the case law of the World Trade Organization.

Projects on Principles of Transnational Insolvency (Global Principles for Cooperation) and World Trade Law concluded with reports to the membership at the Annual Meeting. The Council and the membership approved drafts or portions of drafts of Restatements of Employment Law, the U.S. Law of International Commercial Arbitration, and Torts: Liability for Economic Harm.

A proposed amendment to § 4A-108 of the Uniform Commercial Code was approved by the ALI and the Uniform Law Commission, making it applicable to certain funds transfers that are not governed by the Electronic Funds Transfer Act. A Report by the Permanent Editorial Board for the Uniform Commercial Code on Application of the UCC to Selected Issues Relating to Mortgage Notes published in November 2011 was cited in more than 20 court decisions.

Projects

Work continued on the Institute's ongoing projects, as Advisers and members reviewed drafts of Principles of the Law of Liability Insurance and the Model Penal Code: Sentencing and a report on Principles of Election Law. The Institute continued to explore technology that allows members to participate by web conference in Members Consultative Group meetings.

In 2012, the Council approved the initiation of several new projects: Restatements of consumer contract law, American Indian law, and intentional torts to persons; and updates of the Restatement of the Foreign Relations Law of the United States and the Model Penal Code's provisions on sexual assault and related offenses. Throughout the year the Institute explored issues that could lead to additional new projects. Topics currently being considered include privacy, criminal fraud, patent damages, and children and the law.

Annual Meeting

At the Annual Meeting on May 21-23, 2012, in the District of Columbia, attendees heard thought-provoking addresses from prominent judges and lawyers. From Justice John Paul Stevens's thoughtful parsing of important cases at the Supreme Court, to William Lee's teaching about collaborative wisdom in lawyers' work, Nina Totenberg's light-hearted look at the Supreme Court

as a human institution, Trevor Potter's serious views about campaign finance after *Citizens United*, and Attorney General Eric Holder's perspective on voting-rights issues, the ALI's 89th Annual Meeting was a memorable one.

Awards

The Institute presented its Henry J. Friendly Medal to Justice Sandra Day O'Connor on October 20, 2011, in honor of her outstanding contributions to the law in the spirit of the Institute and the late Judge Friendly. The Friendly Medal, which is not awarded on an annual basis but is reserved for those considered especially deserving of it, recognizes Justice O'Connor's lifelong commitment to improving the administration of justice, focusing especially on her activities since retiring from the Supreme Court.

The 2011 recipients of the inaugural ALI Young Scholars Medals worked with the Institute to advance their academic work. Oren Bar-Gill of New York University School of Law planned a conference on consumer protection held on February 3, 2012. Julie Brill, Commissioner of the Federal Trade Commission, delivered the keynote address and prominent government officials, professors, and practitioners participated in discussions throughout the day. Professor Bar-Gill will serve as a co-Reporter, along with Professor Omri Ben-Shahar of the University of Chicago, for the Institute's new Restatement of the Law of Consumer Contracts.

Jeanne C. Fromer of Fordham University School of Law made a presentation on her intellectual-property work at the 2012 Annual Meeting and will have the opportunity to organize her own conference in the upcoming academic year.

Membership

99 new practitioners, judges, and law professors were elected to membership in ALI between July 1, 2011 and June 30, 2012.

The 1987 Life (25-year) Member Class was honored at a luncheon during the Annual Meeting. For the first time in the Institute's history, a Class Gift effort was undertaken and cochaired by Susan Frelich Appleton of St. Louis, MO, and Gregory P. Joseph of New York City. The 1987 Class Gift of \$65,000 will be used to fund the Model Penal Code: Sentencing project, the Members Consultative Group Travel Assistance Program, and the Public Lawyer Scholarship Program.

The Public Lawyer Scholarship Program, created in 2011, continues to provide financial assistance to ALI members working in the public sector (state and federal prosecutors, public defenders, civil legal aid lawyers, attorneys with defense and public policy nonprofits, state and federal government attorneys, and those working in the armed forces) to help defray travel and lodging expenses to attend the Annual Meeting.



In 2012 President Ramo established an Ad Hoc Committee on Membership Process to review and then recommend change, or to determine that no change is necessary, to ALI's current membership identification and election process. As the Institute approaches the 3000 limit on the number of elected members permitted, we want to ensure that its members are the best of the bench, the bar, and the academy.

Four local receptions, organized by members, were held in Chicago, Houston, and the San Francisco Bay Area to provide an opportunity for regional networking with ALI colleagues in an informal setting. A members reception honoring the completion of the Restatement Third of Property (Wills and Other Donative Transfers) was held in Philadelphia. Associate Reporter John H. Langbein spoke about the Restatement's role in the renewal of national trusts and estate law.

Leadership

In May 2012, the membership elected six new members to the Council. The new members, who join 50 others on the Council, are: Michele C. Kane, Associate General Counsel of The Walt Disney Company in Burbank, CA; Carolyn B. Kuhl, a judge of the Superior Court of California, County of Los Angeles; Carol F. Lee, General Counsel of Taconic Capital Advisors LP, in New York; Daniel B. Rodriguez, Dean of Northwestern University School of Law; Robert H. Sitkoff, the John L. Gray Professor of Law at Harvard Law School; and Steven O. Weise, a partner at Proskauer Rose LLP in Los Angeles, CA.

Long-serving Council members Shirley S. Abrahamson, William M. Burke, Herma Hill Kay, Martin Lipton, Robert H. Mundheim, and Michael Traynor transferred to Council emeritus status in May 2012.

ALI CLE

The Institute began a new chapter in its efforts to provide education for the legal profession after the ALI and the ABA ended their joint arrangement to offer CLE programs through ALI-ABA Continuing Professional Education as of April

30, 2012. Although ALI-ABA was recognized as a leader in continuing legal education for 65 years, it always functioned as a part of the ALI in its Philadelphia headquarters, sharing support staff and other resources. The new ALI CLE will continue to offer all of ALI-ABA's many educational products—live courses, webcasts, telephone seminars, on-demand courses, and periodicals such as *The Practical Lawyer*. Experienced and renowned faculty and authors will work with the ALI to provide educational programs and materials of the highest quality and relevance.

Headquarters

The Institute began renovating the conference center at its Philadelphia headquarters, the site of many educational programs and Adviser and Members Consultative Group meetings. Upon completion in early 2013, the conference center will have increased capacity, updated audiovisual technology, and an overall refreshed and modern appearance, with new furniture and lighting.

"I view my ALI membership as a privilege and a trust, and I am sensitive to the preservation of continuing the perception of the legitimacy of the ALI's mission and recognition of its work product as critical to the protection and progress of American jurisprudence."

Harvey Ernest Bines, Esquire
Sullivan & Worcester LLP
Boston, MA

“Although the rules are beautifully drafted, it is the detailed explanation of those rules in the commentary that give substance to them. The commentary provides rational explanations and reasons for why a particular choice of rule has been adopted, and generally avoids conclusory labels.”

Joachim Dietrich, Associate Professor, Bond University, Australia, “The Third Restatement of Restitution, the Role of Unjust Enrichment and Australian Law,” 35 Australian Bar Review 160 (2011)



The Institute’s electronic and print publications serve two crucial and related purposes: they are a principal source of the funds that make possible the ALI’s vital work of law reform, and they are the means by which that work is disseminated to legal practitioners, judges, academics, and students throughout the world. Most ALI publications are accessible online through Westlaw and LexisNexis.

Beginning with the Restatement of Contracts in 1932, the Institute’s Restatements of the Law, model codes, and Principles of the Law have earned an unparalleled reputation for excellence and objectivity. **As evidence of the respect that courts have traditionally accorded ALI publications, the Restatements and Principles of the Law have been cited by United States courts some 188,000 times through June 2012.**

During the fiscal year, the U.S. Supreme Court cited ALI’s publications 18 times. In *Maples v. Thomas*, 132 S.Ct. 912, 181 L.Ed.2d 807 (Jan. 18, 2012), § 31 of Restatement Third, The Law Governing Lawyers, and several sections of the Restatement Second of Agency were cited by both the majority and the dissent, with the majority holding that cause existed to excuse a state prisoner’s failure to timely appeal denial of his petition for postconviction relief when, in a capital case, the prisoner’s out-of-state pro bono counsel abandoned their representation of him in postconviction proceedings without notice to him and without leave of court. In *Kurns v. Railroad Friction Products Corp.*, 132 S.Ct. 1261 (Feb. 29, 2012), the Court cited § 2 of the Restatement Third, Torts: Products Liability, in holding that a former railroad worker’s failure-to-warn claims, like his design-defect claims, were “directed at” locomotive equipment and therefore were preempted by the Locomotive Inspection Act.

Recent Case Highlights

- ◇ The Supreme Court of Montana adopted the “reasonably abatable” standard for continuing nuisances articulated in § 839 of the Restatement Second of Torts. *Burley v. Burlington Northern & Santa Fe Ry. Co.*, 364 Mont. 77, 273 P.3d 825 (Feb. 7, 2012).
- ◇ The Supreme Court of Nebraska adopted a tentative draft of § 40(a) and (b)(4) of the soon-to-be-published Restatement Third, Torts: Liability for Physical and Emotional Harm, holding that, by virtue of the special relationship between an employer and an employee who is in imminent danger or is injured and thereby helpless, the employer owes a duty of reasonable care regarding risks arising within the scope of the relationship, even if the employer had no actual knowledge of the injury. *Martensen v. Rejda Bros., Inc.*, 283 Neb. 279, 808 N.W.2d 855 (Feb. 10, 2012).
- ◇ The Supreme Court of Texas adopted §54(5) of the Restatement Third, Restitution and Unjust Enrichment, holding that a homeowner was not a prevailing party on his claim against a contractor under the state Deceptive Trade Practices Act, but even if he were, he was not entitled to an order restoring all amounts paid under the contracts without deducting the value received under those agreements. *Cruz v. Andrews Restoration, Inc.*, 364 S.W.2d 817 (Apr. 20, 2012).



Recent Publications

Restatement Third, Restitution and Unjust Enrichment

Restatement Third, Property (Wills and Other Donative Transfers), Volume 3

Restatement Third, Trusts, Volume 4

Restatement Third, Torts: Liability for Physical and Emotional Harm, Volume 2

The WTO Case Law of 2010

Principles of the Law of Aggregate Litigation (e-book)

Report to ALI on Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases



The ALI Drafting Process

ALI publications are accorded such great respect because of the Institute's unique process of drafting, discussion, and revision, in which members from all facets of the legal profession—the bench, the bar, and the academic world—participate. After the Council approves the Director's recommendations of a project and a Reporter, project Advisers and Liaisons are appointed and ALI members may join the project's Members Consultative Group. The Reporter prepares a *Preliminary Draft* of a segment of the project for review by the Advisers, the Liaisons, and the 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. If the draft is approved by the Council, the Reporter prepares a *Tentative Draft*, incorporating any revisions directed by the Council, to be submitted for membership approval at an Annual Meeting. The drafting cycle continues until the entire work has been approved by the Council and the membership. Then the Reporter, subject to the Director's oversight, readies the final text for publication.



Model Penal Code: Sentencing:

This project is revisiting the Code's sentencing provisions in light of the many changes in sentencing philosophy and practice that have taken place in the more than 40 years since the Code was first developed. Drafts approved by the Council and the membership include material on the following topics: the authority of sentencing commissions, sentencing guidelines, the authority of courts in sentencing, and prison release and post-release supervision.

Reporter: Kevin R. Reitz, University of Minnesota Law School, Minneapolis, MN

Associate Reporter: Cecelia Klingele, University of Wisconsin Law School, Madison, WI

Model Penal Code: Sexual Assault and Related Offenses:

This new project will reexamine Article 213 of the Model Penal Code, which was ahead of its time when approved by the ALI in 1962, but is now outdated and no longer a reliable guide for legislatures and courts.

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

Principles of Election Law: Resolution of Election Disputes:

This project is expected to have two components. The first component will address the principles, rules, and procedures applicable to recounts and the resolutions of disputes over the counting of ballots after they have been cast. The second component will concern the rules for “non-precinct voting”—the casting of ballots by means other than the traditional polling place on election day. The Reporters have begun work on model calendars for the resolution of disputed elections.

Reporter: Edward B. Foley, Ohio State University, Moritz College of Law, Columbus, OH

Associate Reporter: Steven F. Huefner, Ohio State University, Moritz College of Law, Columbus, OH

Principles of Government Ethics:

Just beginning, this project seeks to enunciate a set of principles or best practices that will both reflect the emerging law of government ethics and provide guidelines to shape its future development. The project will focus on standards applicable to the operations of the legislative and executive branches.

Reporter: Richard Briffault, Columbia University School of Law, New York, NY

Associate Reporter: Kathleen Clark, Washington University School of Law, St. Louis, MO

Principles of the Law of Liability Insurance:

This project is developing principles of contract law in the liability insurance context, principles of liability insurance coverage, and principles of the management of insured liabilities. Work has begun with drafts of basic liability insurance contract principles.

Reporter: Tom Baker, University of Pennsylvania Law School, Philadelphia, PA

Associate Reporter: Kyle D. Logue, University of Michigan Law School, Ann Arbor, MI

Principles of the Law of Nonprofit Organizations:

This project is drafting legal principles for the nonprofit sector, including principles relating to governance and to the duties of governing boards and individual fiduciaries. Material concerning charitable gifts, the duties and responsibilities of governing boards, and enforcement has been approved by the Council and the membership.

Reporter: Evelyn Brody, Illinois Institute of Technology, Chicago-Kent College of Law, Chicago, IL

Associate Reporter: Jill R. Horwitz, University of California at Los Angeles School of Law, Los Angeles, CA

Restatement Fourth, The Foreign Relations Law of the United States:

This new project will update the influential 25-year-old Restatement Third of The Foreign Relations Law of the United States. Topics will include jurisdiction, the domestic effect of treaties, and sovereign immunity.

Coordinating Reporters: Sarah H. Cleveland, Columbia University School of Law, New York, NY, and

Paul B. Stephan, University of Virginia School of Law



Restatement Third, Employment Law:

This project aims to clarify the common law of employment. Although federal and state statutes regulate the employment relationship, major aspects continue to be governed by law developed by state appellate courts, and doctrine has changed significantly in recent decades. Drafts approved by the Council and the membership include material on the following topics: the existence of an employment relationship, contractual law dealing with termination of employment, the tort of wrongful discipline in violation of public policy, employee obligations and restrictive covenants; compensation and benefits; and protections for workplace privacy and autonomy.

Chief Reporter: Samuel Estreicher, New York University School of Law, New York, NY

Reporters: Matthew T. Bodie, Saint Louis University School of Law, St. Louis, MO

*Michael C. Harper, Boston University School of Law, Boston, MA
Stewart J. Schwab, Cornell Law School, Ithaca, NY*

Restatement Third, The Law of American Indians:

This new project aims to cement the foundational principles of American Indian law. Topics are expected to include federal/tribal relations, state/tribal relations, tribal jurisdiction and authority, and Indian Country business law.

Reporter: Matthew L. M. Fletcher, Michigan State University College of Law, East Lansing, MI

Associate Reporters: Wenona T. Singel, Michigan State University College of Law, East Lansing, MI

Kaighn Smith, Jr., Drummond Woodsum & MacMahon, Portland, ME

Restatement Third, The Law of Consumer Contracts:

This new project will largely follow the structure of the Restatement Second of Contracts, focusing on aspects of the law unique to consumer contracts and on regulatory techniques that are prominently applied in consumer protection law. The project will be divided into three major parts: formation of contract, obligations in the contract, and enforcement and remedies.

Reporters: Oren Bar-Gill, New York University School of Law, New York, NY, and

Omri Ben-Shabar, University of Chicago Law School, Chicago, IL

Restatement Third, The U.S. Law of International Commercial Arbitration:

The goal of this project is to restate the American law of international commercial arbitration. Material on recognition and enforcement of awards, post-award relief, and the confirmation and vacatur of international arbitral awards made in the United States has been approved by the Council and the membership.

Reporter: George A. Bermann, Columbia University School of Law, New York, NY

Associate Reporters: Jack J. Coe, Pepperdine University School of Law, Westlake Village, CA

Christopher R. Drahozal, University of Kansas School of Law, Lawrence, KS

Catherine A. Rogers, Penn State University, Dickinson School of Law, University Park, PA

Restatement Third, Torts: Intentional Torts to Persons:

This is the latest installment of the ALI's ongoing revision of the Restatement Second of Torts that began with Products Liability in the 1990s.

Reporters: Ellen S. Pryor, Southern Methodist University, Dedman School of Law, and

Kenneth W. Simons, Boston University School of Law

Restatement Third, Torts: Liability for Economic Harm:

This project focuses on torts that involve economic loss, or pecuniary harm not resulting from physical harm or physical contact to a person or property. The project will update coverage of economic torts in the Restatement Second and address some topics not covered in prior Restatements. Material on unintentional infliction of economic loss has been approved by the Council and the membership.

Reporter: Ward Farnsworth, University of Texas School of Law, Austin, TX

Membership



To further its law-reform work, the Institute elects individuals who reflect the excellence and diversity of today's legal profession. ALI membership is a distinct professional honor, and the number that can be admitted is limited to 3000 (not including life, honorary, and ex-officio members). Our elected membership consists of eminent judges, lawyers, and law professors from all areas of the United States and from many foreign countries. The election of candidates is not guaranteed; therefore, current members are encouraged to propose for membership only those who combine high character, ability, and professional standing, together with a serious interest in the work of the Institute.

By participating in the Institute's work, its distinguished 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.

Members are expected to take an active part in the Institute's activities, and such involvement is highly esteemed in the legal profession. Ways that members can participate include attending

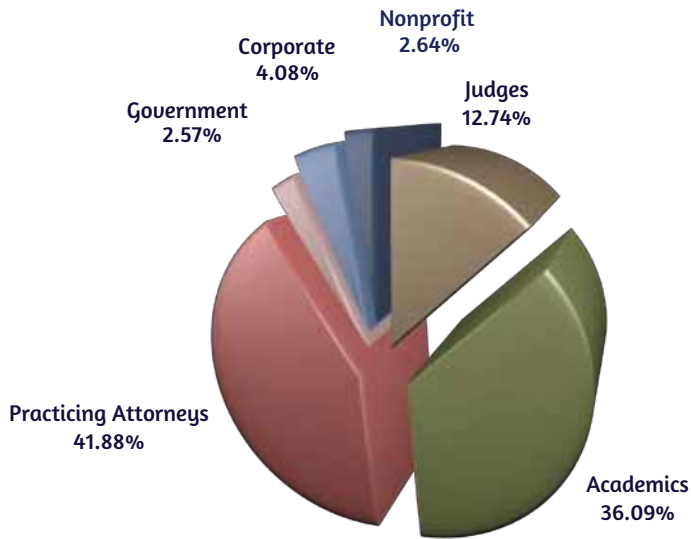
Annual Meetings and participating in Members Consultative Groups for Institute projects. The Institute encourages members to write, speak, and vote based on their own personal and professional convictions, without regard to client interests, so as to maintain ALI's respected reputation for thoughtful and impartial analysis.

99 new members were elected in fiscal year 2011-2012. Newly-elected members were welcomed at the 2012 Annual Meeting, where they attended two special events that provided an opportunity for them to get to know one another, meet with seasoned members, and learn more about how to become involved in the Institute's work.

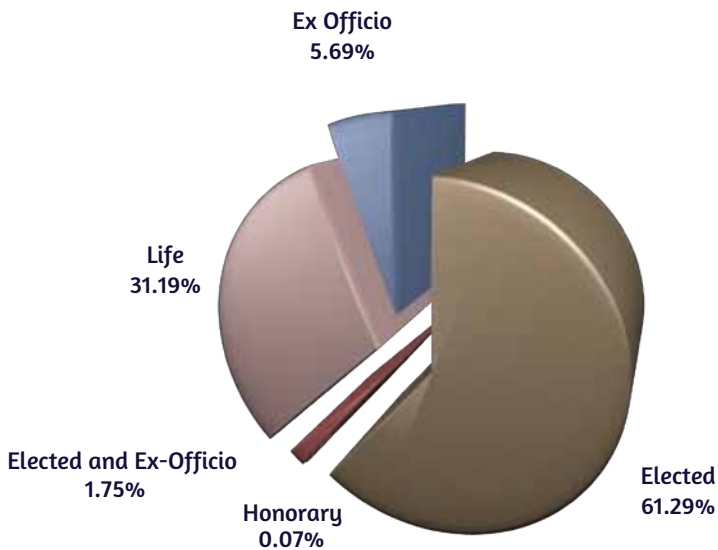
In addition to 2700 plus elected members, the Institute has roughly 1330 life members, 245 ex-officio members, and 3 honorary members. Life members are those who have been elected members for at least 25 years. Ex-officio members are considered members while they hold a specific office or position, with the exception of the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States who are ex-officio members for life.



**Membership by Type
June 30, 2012**



**Membership by Category
June 30, 2012**



“The Institute’s thought and process for these publications is a prime example, in my view, of the success that comes from aggregating the wisdom and experience of many very, very smart people on a particular subject in order to come up with the best statement of the law that a collective group can provide.”

William F. Lee, WilmerHale
Life Member Luncheon Speaker (May 2012)



Since 1947, the American Law Institute and the American Bar Association had jointly sponsored a continuing legal education provider known as ALI-ABA Continuing Professional Education. ALI-ABA grew from a small operation that produced a handful of courses a year to a national CLE producer of hundreds of courses and thousands of pages of online content. Dozens of employees worked full time on ALI-ABA products from the Institute's offices in Philadelphia.

On April 30, 2012, after much discussion, the ALI and the ABA amicably ended their 65-year collaboration in continuing legal education known as ALI-ABA, with each entity moving forward on its own to produce CLE. The ALI's effort is ALI CLE, the newest group within the ALI's offices.

ALI CLE maintains much of the same curriculum of courses as had ALI-ABA, and many of the same employees. Nancy Mulloy-Bonn, an experienced CLE producer and bar-association executive, heads the ALI CLE group.

ALI CLE Program and Marketing Committee

The ALI Council created a new standing committee—the ALI CLE Program and Marketing Committee—to advise ALI CLE on the types of continuing education it should be doing, the markets it should enter, and the trends in the law that affect how and what lawyers need to learn. The Committee is chaired by Steve Weise, a new member of the ALI Council and partner in the Los Angeles office of Proskauer Rose LLP. Mr. Weise has many years of experience in CLE as a speaker, writer, and member of both the ALI-ABA Board of Directors and the ABA Standing Committee on Continuing Legal Education.

The Committee will assist ALI CLE in focusing its efforts on areas of the law where it has a significant presence and an existing market.

The Committee has also determined that ALI CLE, like ALI-ABA before it, will continue to partner with outside entities, including ABA sections and premier specialty bar associations, where ALI CLE's ability to produce content quickly and efficiently makes it an attractive partner.

At the same time, the Committee has tasked the staff with developing new ways to take the pulse of its customers, with surveys, through blogs, and by post-course evaluations. This effort will run in tandem with another major effort being directed by the Committee: the revamping of ALI CLE in-person course presentations to make them more appealing to audiences.

All of these activities will be in addition to ALI CLE's ongoing improvements to its online distance learning courses. ALI CLE has several thousand hours of courses archived at www.ali-cle.org, and produces hundreds of hours of new content each year.

Reaching Out

ALI CLE continues innovative efforts begun by ALI-ABA to reach the lawyer population it serves. Most of ALI CLE's promotions are done via email and through "search engine optimization," or SEO. SEO is a process that researches the most popular and current searches being performed by lawyers looking for CLE, and then adjusts the description of our matching offerings so that they are more likely to be found by those lawyers.

A newly launched blog, www.MoreThanCLE.org, will generate more web-based notice of ALI CLE. The blog will cover legal and other issues.



ALI CLE Products and Services

- ◇ Live, in-person courses: ALI CLE produces dozens of live, in-person courses each year, in areas from corporate mergers and acquisitions to zoning. These courses typically are held in hotels in destination cities, and feature expert faculties from around the nation (many of them ALI members). All of these courses are also webcast live. A list of future courses can be found at [ALI-CLE Future Courses](#).
- ◇ Studio webcasts: these video presentations (mostly live, occasionally prerecorded) are broadcast from ALI CLE's studios in the ALI's Philadelphia offices and sometimes from other locations. Two- to six-person faculties present on current topics for the space of one to four hours.
- ◇ Audio webcasts/telephone seminars: these live presentations (from 60 to 90 minutes in length) are usually done by one or two faculty members and focus on current topics and breaking news. Registrants can either listen to them over the phone or listen online.
- ◇ Archived online courses: all of the courses described above are recorded and posted at www.ali-cle.org so that lawyers can purchase and access them at convenient times.
- ◇ ALI CLE Knowledge Portal: Law firms can purchase custom-tailored subscription access to ALI CLE's online and live content. This access includes online tools important to law-firm administrators, like MCLE management and in-house advertising of the available ALI CLE titles.
- ◇ Periodicals: ALI CLE publishes four periodicals in both print and electronic format: The Estate Planning Course Materials Journal, The Practical Lawyer, The Practical Real Estate Lawyer, and The Practical Tax Lawyer.
- ◇ Online subscriptions to forms and other print products: ALI CLE maintains a large online library of forms, course papers, and articles drawn from its course materials and periodicals. Lawyers can purchase individual items or subscriptions to entire categories of content, such as real estate forms or employee benefits coursebooks.

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“ALI meetings are conducted at the highest intellectual level and are a unique forum for the consideration of complex and interesting issues.”

The Hon. Christopher M. Klein, Chief Judge

U.S. Bankruptcy Court, Eastern District of California,
Sacramento, CA

The American Law Institute

Funds of The Treasurer and ALI CLE*

Condensed Consolidated Statements of Financial Position

June 30, 2012 and 2011

	2012	2011
ASSETS		
Cash and cash equivalents	1,813,367	1,497,364
Receivables and other assets	2,458,967	2,157,043
Investments, at fair value	47,952,552	48,038,086
Land, buildings, and equipment, net	1,787,212	1,666,059
Total assets	\$54,012,098	\$53,358,552
LIABILITIES AND NET ASSETS		
Accounts payable and accrued expenses	2,318,051	1,975,095
Deferred revenue	592,567	489,396
Registration fees received in advance	510,875	506,708
Postretirement health benefit obligation	2,404,213	2,019,535
Total liabilities	5,825,706	4,990,734
NET ASSETS		
Unrestricted		
ALI Funds of the Treasurer	32,195,095	31,691,531
ALI CLE	85,081	856,082
CLE Fund - Council designated	128,892	-
Noncontrolling interest in ALIP	452,972	436,154
Total unrestricted	32,862,040	32,983,767
Temporarily restricted	14,884,981	14,944,680
Permanently restricted	439,371	439,371
Total net assets	48,186,392	48,367,818
Total liabilities and net assets	\$54,012,098	\$53,358,552

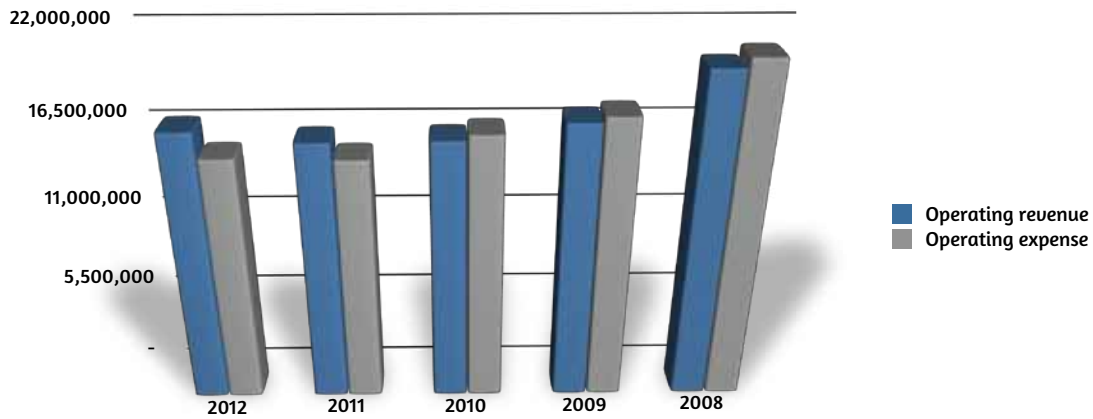
* The condensed consolidated financial statements for The American Law Institute include all accounts and activities of Funds of the Treasurer and ALI CLE. In addition, they reflect the accounts and activities of The American Law Institute Publishers.

Condensed Consolidated Statements of Activities

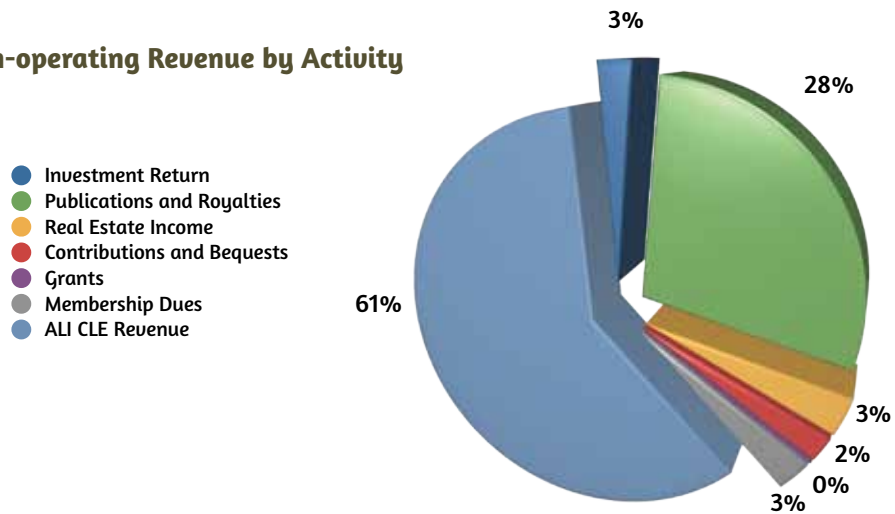
Years ended June 30, 2012 and 2011

	2012	2011
UNRESTRICTED		
Publications and royalties income	\$4,544,434	\$4,262,592
Membership dues	492,057	583,126
Net assets released from restrictions used for operations	1,194,645	1,189,785
Other Income	820,999	639,839
ALI CLE revenue	10,084,669	9,831,654
Total unrestricted revenue and other support	17,136,804	16,506,996
Total operating expenses	15,564,620	15,469,838
Increase in unrestricted net assets from operations	1,572,184	1,037,158
Investment return	299,627	3,415,600
Bequests	52,000	10,084
Non-operating expense, net	(2,045,538)	(1,118,622)
(Decrease) increase in unrestricted net assets	(121,727)	3,344,220
TEMPORARILY RESTRICTED		
Investment return	\$144,056	\$1,603,449
Net assets released from restrictions used for operations	(1,194,645)	(1,189,785)
Other income, net	990,890	809,024
(Decrease) increase in temporarily restricted net assets	(59,699)	1,222,688
(DECREASE) INCREASE IN NET ASSETS	\$(181,426)	\$4,566,908
Net assets, at beginning of year	48,367,818	43,800,910
Net assets, at end of year	\$48,186,392	\$48,367,818

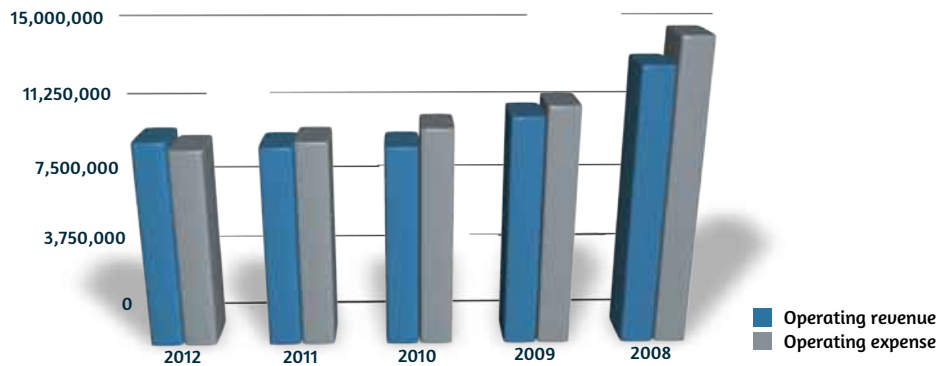
Operating Revenue and Expense Since 2008



2012 Operating and Non-operating Revenue by Activity



ALI CLE Operating Revenue and Expense Since 2008



Annual Giving Report



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We thank the following donors for their generous contributions to the Erwin Nathaniel Griswold Fund, which facilitates international aspects of the Institute's work:

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The Institute is proud to receive gifts that honor or memorialize dear friends and loved ones. We are pleased to recognize the following gifts:

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The 1987 Life Member Class Gift

The 1987 Life Member Class was honored at a luncheon on Tuesday, May 22, 2012, during the Annual Meeting. For the first time in the Institute's history, a Class Gift effort was undertaken and cochaired by Susan Frelich Appleton of St. Louis, MO, and Gregory P. Joseph of New York City. The Class Gift of \$65,000 was presented during the luncheon. We are proud that almost half of the class participated in the effort. The contributions will be used to fund the Model Penal Code: Sentencing project, the Members Consultative Group Travel Assistance Program, and the Public Lawyer Scholarship Program.

The feedback was so positive that the Institute will continue the Class Gift initiative with the 1988 Life Member Class that will be honored at the 2013 Annual Meeting; it has also decided to expand the Life Member Giving Circles to include members elected before 1987. Contributions made by Life Members elected before 1987 will be used to fund the Institute's mission to clarify and improve the law.

ALI celebrates each gift, large and small, that contributed to the success of this inaugural campaign. We deeply appreciate your generosity.



“I was very impressed by the high level of the discussions, the creativity of the proposals, and the members’ commitment to excellence. In addition, people were friendly and welcoming to newcomers. I am deeply grateful for the public-lawyer scholarship that made it possible for me to attend.”

Catherine C. Carr, Executive Director
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(October 2012)

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Arthur Corbin, “The Restatement of the Common Law by the American Law Institute” (1929)