

HENRY M. ORDOWER

ADDRESS AND TELEPHONE

E-Mail Address: ordoweh@slu.edu

Saint Louis University School of Law
3700 Lindell
St. Louis MO 63108
USA

Telephone: (314) 977-2772
Mobile: (314) 498-9066
Facsimile: (314) 977-3332

ACADEMIC EXPERIENCE

Professor of Law, Saint Louis University School of Law, 3700 Lindell Boulevard, St. Louis, Missouri 63108.

Co-Director of the Center for International and Comparative Law (2002-2010)

Director Berlin Summer Program (2007-8)

Associate Professor 1980-1983

Assistant Professor 1977-1980

Course Responsibilities Federal Income Taxation, Partnership Taxation, Corporate Taxation, Estate and Gift Taxation, International Taxation, Business Associations, Corporate Finance, various seminars (small group, specialized topics, discussion and term paper based grading) including *Law and Literature*, *Exempt Organizations*, *Cultural Origins of Taxation Rules*, *Special Problems in Legal Ethics*.

Significant University Appointments: Chair of Provost's Select Committee to Design a Family Leave Policy (2003).

Visiting Lecturer, Juristische Fakultät, Ruhr-Universität Bochum, Bochum, Germany. Introduction to American Tax Law and Terminology (In English.) Spring 2006.

Visiting Docent, Juristische Fakultät, Humboldt-Universität zu Berlin, Bebelplatz 1, Berlin, Germany. Short course in American Investment Law (In German and English). Spring 2002.

Visiting Lecturer, Juristische Fakultät, Ruhr-Universität Bochum, Bochum, Germany Short course in Introduction to American Legal Thought and Methods. (In German and English.) Spring 1995.

Visiting Professor, Department of Law, Sichuan University, Chengdu, Sichuan, Peoples Republic of China. Lectures on American Taxation and Property Concepts. Spring 1993.

Bigelow Teaching Fellow and Instructor, The University of Chicago Law School, 1111 E. 60th Street, Chicago, Illinois 60637. October 1975 - June 1976.

PRACTICE EXPERIENCE

Expert Testimony. Expert legal evaluation and testimony for litigation concerning tax and business entity matters. Tax shelter litigation. Recent toxic torts: *Alexander v. Fluor* in St. Louis City.

Consultant/Of Counsel. Consulting in the private sector on taxation matters, corporate and partnership transactions, offshore investment planning, municipal financing, tax shelters, commodities pools and investments, exempt organizations, investment pools, and estate planning. . 1977 - present

Vice President and General Counsel. Managing legal function for an emerging markets capital management company ("hedge and private equity fund" manager). January - December 1998. Croesus Capital Management, New York NY 10017.

Associate Attorney. Sonnenschein, Carlin, Nath & Rosenthal, Chicago, Illinois 60606, responsibility to assist in tax structuring of business transactions, structuring, negotiation and documentation of real estate transactions. June 1975 - August 1977.

LANGUAGES

Relative fluency in all aspects of Swedish and German. Reading comprehension and limited oral ability in Norwegian, Danish, Dutch, Spanish, French, and Icelandic. Reading comprehension of several antique languages. Fundamental Hebrew and Russian.

RECENT PUBLICATIONS

Utopian Visions toward a Grand Unified Global Income Tax, 14 FLA. TAX REV. (forthcoming). Designs a uniform income tax apportioning worldwide income.

Tax neutrality between CIT and non-CIT subjects: how to improve our systems?

2013 EATLP Congress (Lisbon) Thematic Report, in Daniel Gutman, ed., CORPORATE TAXATION (Amsterdam, forthcoming). Recommends full tax transparency for corporations with corporate withholding at maximum individual rate of tax.

Corporate Taxation (U.S.) in Daniel Gutman, ed., CORPORATE TAXATION (Amsterdam, forthcoming). Describes generally taxation of corporations and other entities in the United States in a book dealing with corporate taxation internationally.

Schedularity in U.S. Income Taxation and its Effect on Tax Distribution, 108

NORTHWESTERN U L REV. ("100 Years under the Income Tax" Symposium Issue) (forthcoming). Identifies schedular elements and argues that those elements generally undercut both horizontal

and vertical equity in the in the U.S. income tax.

United States in Eddy Wymeersch, ed. *ALTERNATIVE INVESTMENT FUND REGULATION*, International Banking and Finance Law Series v. 16, Chap. 17, 401-431 (the Netherlands 2012). Analyzes and presents the regulation in the United States of hedge funds, private equity funds, and sovereign wealth funds.

United States National Report on Burden of Proof in Tax Matters in *BURDEN OF PROOF IN TAX MATTERS INTERNATIONALLY* (Amsterdam, forthcoming) (available at <http://eatlp.org/uploads/public/Burden%20of%20Proof%20-%20USA.pdf>, the website of the European Association of Tax Law Professors in conjunction with the 2011 Meeting in Uppsala, Sweden). Describes the placement of the burden of proof in U.S. and the placement of tax litigation.

The Culture of Tax Avoidance, 55 Saint Louis U. L. J. 47 (2010) Analyzes the development of tax planning and sheltering comparatively as tax avoidance became an independent culture, general anti-avoidance rules, and proposes a broad-based approach to combating tax avoidance.

The Regulation Of Private Equity, Hedge Funds And State Funds, United States National Report, 58 American Journal of Comparative Law – Supplement 1 295-321 (2010). Describes United States regulation of hedge funds, private equity funds, and sovereign wealth funds and legislative proposals to control systemic risk associated with those funds.

United States of America Experience with and Administrative Practice concerning Mutual Assistance in Tax Affairs, in Roman Seer and Isabel Gabert, general reporter and ed., *MUTUAL ASSISTANCE AND INFORMATION EXCHANGE* 569-596, (Amsterdam, 2010), prepared for the 2009 Congress of the European Association of Tax Law Professors (Santiago de Compostela, 2009) (draft also available at http://eatlp.org/pdf/UnitedStates_HendryOrdower.pdf), and posted on Taxnet Pro, <http://www.taxnetpro.com/taxnet.pro> [subscription service] (Toronto, June 30, 2009) as US Commentary: United States of America Report on Mutual Assistance in Tax Affairs. Describes features of current U.S. treaties and administrative practice on exchange of information and comments on the usefulness and success of information exchange programs.

Methods for Study: Immutable Tax Rules and their Cultural Determinants (Discussion Draft) (available on the Meeting website for the Law and Society Association, July 2007). Argues that certain tax rules are immutable because they emanate from cultural factors rather than economic and tax theory and develops a methodology for study of such tax rules.

First Drafts of Technical Guidance: Industry Participation, 115 TAX NOTES 761 (May 21, 2007). Viewpoint supporting government proposal to permit industry experts to prepare first drafts of technical guidance on tax legislation.

Demystifying Hedge Funds: A Design Primer, 7 U. CAL. DAVIS BUSINESS L. J. 323 (2007), and as Working Paper Series No. 9, Institute for Monetary and Financial Stability, Johann Wolfgang Goethe Universität., Frankfurt am Main, Germany (2007). Describes and analyzes hedge fund structures in the context of the United States statutes and regulations that inform those structures.

General Report on Restricting the Legislative Power to Tax: Intersections of Taxation and Constitutional Law in K. Boele Woelki & S. van Erp (eds.), GENERAL REPORTS OF THE XVIIITH CONGRESS OF THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW – RAPPORTS GÉNÉRAUX DU XVII^E CONGRÈS DE L'ACADÉMIE INTERNATIONALE DE DROIT COMPARÉ (Utrecht 2007), and with all tax section reports in 15 Michigan State University International Law Journal (2007)) and also published in 11.3 ELECTRONIC JOURNAL OF COMPARATIVE LAW (December 2007), (available at <http://www.ejcl.org/113/article113-31.pdf>).

Comparative Law Observations on Taxation of Same Sex Couples, 111 TAX NOTES 229 (April 10, 2006), 42 TAX NOTES INTERNATIONAL 235 (April 17, 2006) and at ABA Section on Taxation, Mid-Year Meeting CD Rom, Teaching Taxation Section (2006). Identifies the various models for addressing the interplay between same sex relationship protections and taxation outside the United States.

Horizontal and Vertical Equity in Taxation as Constitutional Principles: Germany and the United States Contrasted, 7 FLA. TAX REV. 259 - 334 (2006). Explores U. S. Supreme Court and German Constitutional Court decisions that apply their respective constitutions to taxation controversies, especially controversies in matters involving equal protection or due process protection.

The Lawyer's Responsibility to Non Clients, 5 J. OF CHONGJU UNIVERSITY ACADEMY OF SCIENCE, LEGAL SCIENCE Part 106 (2005). Lecture publication similar to "Toward a Multiple Party Representation Model" below.

Seeking Consistency in Relating Capital to Current Expenditures, 24 VA. TAX REV. 263 (2004). Identifies relational duration as the key factor that distinguishes capital from current expenditures for tax purposes and argues that inventory cost is fundamentally identical to capitalization. Barriers to deductibility such as illegal payment prohibitions should also be barriers to capitalization or inventory absorption.

Toward a Multiple Party Representation Model: Moderating Power Disparity, 64:5 OHIO STATE L J 1263 (2003). **Thompson Coburn Faculty Writing Award Winner**. Argues that the zealous representation model of contemporary legal practice with its emphasis on primacy of the client causes lawyers to assist and motivate their clients to exploit the clients' power advantages in non-litigation contexts. The article recommends that ethical rules shift to a multiple client representation model. The model would be based upon the Brandeisian "lawyer for the

situation” and would empower attorneys in non-litigation settings to consider and evaluate the impact of their activities on other constituencies that the representation affects. Attorneys would become better able to encourage their clients to seek distributional fairness and balance in their business and personal legal activities to the possible long term advantage of both client and lawyer.

Micro and Macro Economic Effects: Secreting Assets to Evade Non-Business (Private) Obligations and Responsibilities (with Ellen Harshman and others), 10 JOURNAL OF FINANCIAL CRIME 166-183 (2002). Argues that in the context of bank secrecy issues and money laundering, experts ignore the significant and adverse effects that asset hiding have on families.

Privatizing Regulation: Whistleblowing and Bounty Hunting in the Financial Services Industries (with James Fisher and others), 19 DICKENSON JOURNAL OF INTERNATIONAL LAW – Cambridge Symposium Issue 117-143 (2000) and as Privatising Regulation, 8 JOURNAL OF FINANCIAL CRIME 305-318 (London 2001). Addresses use of whistleblowers and suggests private enforcement methodologies to supplement or supplant public enforcement activities in financial services under new law.

Trusting our Partners: An Essay on Resetting the Estate Planning Defaults for an Adult World, 31 REAL PROPERTY, PROBATE AND TRUST JOURNAL 313-56 (1996). **Thompson Coburn Faculty Writing Award Runner-Up**. Demonstrates that there is no tax savings to be achieved by using a trust to restrict a donee's control of property and money transferred gifts during life or at death. Reviews reasons why donors wish to continue to control wealth even after death and suggests that such reasoning is fallacious. Recommends to the estate planning bar that it revise its approach to planning in order to fulfill its obligations to the principal client and other family members. Develops mathematical formulas for analysis of estate planning decisions.

Les Impôts Relatifs aux Investissements Étrangers aux États-Unis d'Amérique (observations générales), 1996-2 REVUE INTERNATIONALE DE DROIT ECONOMIQUE 185-201 (1996). Provides a primer for understanding the United States taxation of investment and activities in the United States for individuals and entities not otherwise subject to United States taxation. Includes discussion of state taxation of foreign individuals and entities.

A Theorem for Compensation Deferral: Doubling Your Blessings By Taking Your Rabbi Abroad, 47 THE TAX LAWYER 301-47 (1994). Develops a mathematical methodology for determining whether or not to defer compensation income. Identifies special planning opportunities for United States employees of non-U.S. employers.

Revisiting Realization -- Accretion Taxation, the Constitution, Macomber, and Mark to Market, 13 VIRGINIA TAX REVIEW 1 - 99 (1993). **Thompson Coburn Faculty Writing Award Winner**. Reviews the constitutional origin of the United States realization based income taxation system and concludes that modification of that system to an accrual or accretion system

would be constitutionally infirm. The article examines certain accretion rules currently in the United States tax laws, identifies the flaws in the reasoning in support of those rules in the legislative history and seeks to explain why the industries affected generally have not complained about the rules.

Taxing Service Partners to Achieve Horizontal Equity, 46 THE TAX LAWYER 19-41 (1992). Argues that recent judicial and administrative decisions cause the federal income tax law to tax partners who receive their partnership interests in exchange for services more favorably than partners who acquire their partnership interests in exchange for money or property. Such dissimilar treatment undercuts the desired taxation objective of even-handed treatment of all taxpayers.

Protecting Defamatory Fiction and Reader-Response Theory with Emphasis on the German Experience, 22 GEORGIA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 249-282 (1992). Examines the litigation in Germany surrounding the publication of Klaus Mann's novel *Mephisto*. Analyzes the concepts of libel and defamation in fictional works and concludes that neither injunctive relief nor damages is appropriate because of the limited risk of injury and the potential for adverse impact on creative expression.

WORKS IN PROGRESS

Charitable Contributions of Services, [Saint Louis U. Legal Studies Research Paper No. 2012-29: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2182865](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2182865)

Methodology for the study of cultural origins of taxation rules.

Reconsidering Marriage Contracts

Owner-occupied, Residential Real Estate Income Imputation and Distributional Fairness.

SYMPOSIA ORGANIZER AND FACILITATOR

Sanford E. Sarasohn Memorial Conference on Critical Issues in International and Comparative Taxation at Saint Louis University School of Law, April 9, 2010 (with Kerry Ryan and Nancy Kaufman).

Lawyers and Jurists in the 21st Century: Celebrating the Centennial of Comparative Law in the United States and the Universal Congress of Lawyers and Jurists, St. Louis, 1904, at Saint Louis University School of Law and Washington University School of Law, November 12-13, 2004 (with John Haley and Stephen Thaman).

SELECTED RECENT SPEAKING ENGAGEMENTS

“Schedularity in the U.S. Income Tax, Effects on Distribution, Northwestern University symposium: 100 Years Under the Income Tax (April, 2013)

Teaching Taxation Panel Discussion on Transfer Pricing, A.B.A. Winter Meeting (January, 2013).

“Utopian Visions toward a Grand Unified Global Tax Base,” International Fiscal Association Tax Research Symposium, Boston (September 2012).

“Schedularity in U.S. Taxation.” Critical Tax Theory Conference, Seton Hall University (March 2012).

“Charitable Contributions of Services,” Law and Society Meeting, Honolulu (June, 2012)

“Tax Transparency and Private Investment Funds: Tax Construction of Hedge and Private Equity Funds including Carried Interests” Law Faculty, Stockholm University (May 2011)

“Tackling tax abuse: ‘a problem of burden of proof’?” Annual Meeting of European Association of Tax Law Professors (June 2011)

“Cooperative research projects involving practitioners and academics to identify issues and crystallize thinking about how to control the importance of tax planning to the structuring of financial transactions.” Tax and Economic Law Faculty, Lund University in Sweden (June 2011)

EDUCATIONAL BACKGROUND

The University of Chicago School of Law: October 1972 - June 1975, J.D. DEGREE 1975.

The University of Chicago, Division of Humanities, Department of Germanic Languages and Literatures/Scandinavian Languages and Literatures: October 1967 - June 1972, PH.D. COMPREHENSIVE EXAMINATIONS completed 1971, M.A. DEGREE 1970.

University of Gothenburg, Sweden, Nordiska Språk/Litteraturhistoriska Institutionen: September 1970 - June 1971.

Washington University (St. Louis, Missouri), Majors in German Language and Literature

and Comparative Literature: September 1963 - June 1967, A.B. DEGREE 1967.

BAR ADMISSIONS

Illinois 1975, Missouri 1978

MEMBERSHIPS

Elected Memberships: European Association of Tax Law Professors since 2006, International Academy of Comparative Law since 2010.

American Association of Law Schools, American Bar Association, American Society of Comparative Law, Society for the Advancement of Scandinavian Studies.