

Natalie M. Banta

Stetson University College of Law, 1401 61st St. S., Gulfport, FL 33707
(727) 562-7842 (work); (801) 915-5636 (cell)
nbanta@law.stetson.edu

EDUCATION

J. Reuben Clark Law School, Brigham Young University, Provo, UT
J.D., *summa cum laude*, April 2009

- Class Rank: 1 of 150
- Editor-in-Chief, *Brigham Young University Law Review*
- Order of the Coif
- Recipient of the John S. Welch Award for Outstanding Legal Writing

Brigham Young University, Provo, UT
B.S., *magna cum laude* and University Honors, April 2006

- Valedictorian of the School of Social Work
- Honors Thesis: *Debating Reform: An Analysis of Various Proposals for Social Security Reform*
- Academic full-tuition scholarship

ACADEMIC EXPERIENCE

Stetson University College of Law, Gulfport, FL
Bruce R. Jacob Visiting Assistant Professor of Law, July 2013–Present

- Trusts and Estates, Property, and Administrative Law

JUDICIAL CLERKSHIP

The Honorable Jay S. Bybee, U.S. Court of Appeals for the Ninth Circuit, Las Vegas, NV
Law Clerk, August 2009–August 2010

PUBLICATIONS AND PAPERS

Death and Privacy in the Digital Age (work-in-progress).

Inherit the Cloud: The Role of Private Contracts in Distributing or Deleting Digital Assets at Death, 83 *FORDHAM L. REV.* 799 (2014).

Substantive Due Process in Exile: The Supreme Court's Original Interpretation of the Due Process Clause of the Fourteenth Amendment, 13 *WYO. L. REV.* 151 (2013).

Death by a Thousand Cuts or Hard Bargaining?: How the Supreme Court's Indecision in Wilkie v. Robbins Improperly Eviscerates the Bivens Action, 23 *BYU J. PUB. L.* 119 (2008).

PROFESSIONAL EXPERIENCE

Covington & Burling LLP, Washington, DC

Associate, October 2010–May 2013

Summer Associate, May 2008–August 2008

- Member of the Mass Tort Litigation and Consumer Litigation Groups
- Member of trial team representing BP in civil litigation arising from Deepwater Horizon incident
- Researched issues arising from a company's extortion payments, including mass tort claims under the Alien Tort Statute
- Drafted tort justice reform on behalf of multinational companies
- Volunteered at the D.C. Bar Landlord Tenant Resource Center to assist self-represented individuals understand, prepare, and present cases in court

J. Reuben Clark Law School, Provo, UT

Teaching Assistant, January 2008–April 2008

- Planned and conducted weekly review sessions for first-year constitutional law students

DibbsBarker, Sydney, Australia

Legal Extern, July 2007–August 2007

- Researched commercial legal issues involving corporate leadership liability, Sydney Harbor developments, and property disputes

Justice Jill Parrish, Utah Supreme Court, Salt Lake City, UT

Judicial Intern, May 2007–June 2007

SELECTED PRESENTATIONS

Inherit the Cloud, Southeastern Association of Law Schools Annual Conference, Amelia Island, FL (August 2014)

Digital Assets and Private Contracts, Eleventh Circuit Legal Scholarship Forum, Stetson University College of Law, FL (November 2013)

TEACHING INTERESTS

Trusts and Estates, Property, Administrative Law, Family Law, Professional Responsibility, Torts, Contracts, Business Associations, Federal Courts, Legal History

BAR ADMISSIONS

District of Columbia (2010)

U.S. Court of Appeals for the Ninth Circuit (2010)

California (2009)

REFERENCES

Professor Ellen S. Podgor
Stetson University College of Law
1401 61st Street South
Gulfport, FL 33707
(727) 562-7348
epodgor@law.stetson.edu

Professor James W. Fox
Stetson University College of Law
1401 61st Street South
Gulfport, FL 33707
(727) 562-7890
fox@law.stetson.edu

Professor Frederick Gedicks
J. Reuben Clark Law School
Brigham Young University
504 JRCB
Provo, UT 84602
(801) 422-4533
gedicksf@law.byu.edu

The Honorable Jay S. Bybee
U.S. Court of Appeals for the Ninth Circuit
333 Las Vegas Blvd. South, Suite 7080
Las Vegas, NV 89101
(702) 464-5650

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RESEARCH AGENDA

My primary research interests are in the area of succession and posthumous property rights, specifically relating to digital assets. I am particularly interested in the future of American succession law and how our property system will or should adapt to the changing nature of property in the digital age. This is a ripe and increasingly important area of scholarship, and I look forward to contributing to the growing interest in digital asset succession. My secondary research interest focuses on minors in particular and their succession and inheritance rights. These ideas have been inspired by my teaching in Wills, Trusts, and Estates and Property as well as my personal interests in identity, legacy, and historical preservation. Ultimately, I aim to be a nationally recognized scholar in the field of digital asset succession and posthumous property rights.

I. Latest Work

A. Digital Asset Succession and Private Contracts

My latest article is entitled *Inherit the Cloud: The Role of Private Contracts in Distributing or Deleting Digital Assets at Death*, which has been published in the *Fordham Law Review*. In this article, I explore how private contracts have controlled succession in the past and demonstrate that traditional contracts dictating succession have been accepted as tools of succession because they promote transfer according to a decedent's intent. I then introduce private contracts controlling the distribution or deletion of digital assets and explore the growing importance of digital assets as they increase in number and value in our society. I explain how digital asset contracts are veering from established nonprobate contractual transfers and fundamentally undermining American succession law by prohibiting descendibility or ignoring a decedent's intent or both. I argue that these contracts should not be accepted by state legislatures, courts, or the public despite potential justifications for Internet service provider's contractual choice.

I then offer three normative considerations in order to reclaim digital asset succession. First, I argue that channeling public sentiment is the best way to successfully pressure Internet service providers to allow for digital asset succession. Second, I point out that our nonprobate system provides a solid framework for inheritability of digital assets, and it is possible to implement our nonprobate system into digital asset succession. Lastly, I argue that when a decedent's intent is unknown, courts and legislatures should defer to beneficiaries' desires instead of Internet service providers because beneficiaries are in the best position to make productive use of digital assets and their potential economic, emotional, or historical value.

B. Digital Asset Succession and Posthumous Privacy

My work on digital asset succession and private contracts raised compelling questions about privacy interests after death and inspired my next article on posthumous privacy. I am currently working on an article entitled *Death and Privacy in the Digital Age*, which explores posthumous privacy rights and attempts to reconcile how these rights affect digital assets at death. In the first part of the article, I examine the different ways the law treats posthumous privacy interests. Under the common law, privacy rights do not survive death: a dead person cannot be defamed, an action for invasion of privacy of a dead person cannot stand, and constitutional rights of a dead person cannot be vindicated. There are many ways, however, in which the law protects privacy after death, specifically in publicity interests, control of bodily remains, attorney client privilege, and through the formation of trusts.

After exploring the varied ways the law treats posthumous privacy interests, I turn to a discussion of posthumous privacy interests of digital assets. We could choose not to enforce privacy interests in digital assets and allow our digital assets and information to be released into the public domain, we could enforce privacy interests and simply delete accounts after death, or we could find some solution between these two extremes. I will consider the harms that may exist in allowing the free-flow of information after death and balance whether these harms outweigh the benefit of preserving digital assets. I will then offer suggestions on how posthumous privacy interests should be reshaped to accommodate the proliferation of digital assets in our society.

II. Planned Projects

A. Digital Asset Succession and Property Interests

I envision my next project in the area of digital asset succession will take a more theoretical approach to property interests as a whole and address the question of whether digital assets can be classified as property in the first place. I am interested in the right to transfer property at death in general and how that right plays into the bigger question of defining assets (digital or otherwise) as property. In order to examine this question, I plan on delving into labor theory, utilitarian theory, and personhood theory. I will examine how these theories support or undermine digital assets as property. I predict that no one answer will be forthcoming for all digital assets, but that theories of property may support one category of assets as property more than another.

I plan to give special attention to the ability to transfer property as a key right in the bundle of rights paradigm of property interests. I would like to explore indescendibility as a whole and discover instances where courts have classified something as “property” but not allowed it to be transferred at death. Conversely, I would like to find instances where courts have found both that something is not property and cannot be transferred at death. I believe examining interests that are indescendible will give us a better framework for how we treat digital assets during life and after death.

III. Future Projects

A. Minors' Succession Rights

As I have been working in the area of succession interests, especially relating to digital assets, I have become interested in how succession rules apply to minors. A famous case out of Virginia dealt with parents who were trying to access their minor's Facebook account after their minor committed suicide. After a very public battle between the decedent's parents and Facebook, Virginia passed legislation that required an Internet service provider to allow parental access to a deceased minor's digital asset accounts. Traditionally, minors do not have succession rights because they cannot contract or own property until the law recognizes them as adults. These rules, however, may be changing in the digital age. For example, courts have recognized contracts between Internet service providers and minors, despite the fact that under traditional law minors do not have the capacity to enter into a contractual agreement. If minors have limited rights to contract with Internet service providers, this may mean that minors should have a limited right to succession. I would like to explore a minor's rights to control the disposition of digital asset accounts. Perhaps it is time that our succession rules change to accommodate minors' desires about their online accounts in the event of their untimely death.

B. Minors' Inheritance Rights

I am also very interested in minors' inheritance rights. As the law stands, children do not have a right to inherit from their parents. The law does, however, enforce an elective share—a right of a spouse to inherit from a deceased spouse in a separate property state. The elective share protects a spouse from being left with nothing. I find it extremely curious and problematic that minor children do not have a similar protection. I would like to explore why this is so and how we can reconcile child support laws with succession laws.