CONTENTS

EDITOR'S NOTE ......................................................... v

AN ADDRESS TO THE BAR

THE LAWYER'S ROLE IN THE PROFESSION AND THE COMMUNITY
By Francis Bergan ....................................................... 1

LEADING ARTICLES

INTERNATIONAL TORTS AND THE RESTATEMENT
By Philip Halpern ....................................................... 7

THE SUPREME COURT AND THE SPIRIT OF 1957
By Roger Paul Peters .................................................. 30

TESTAMENTARY FREEDOM AND SOCIAL CONTROL—AFTER-BORN
CHILDREN. PART II.
By Saul Touster ......................................................... 47

THE COURT OF APPEALS, 1956 TERM

ADMINISTRATIVE LAW (Carlo, Gibson, Rosinski)
Board Member Absent from Administrative Hearing (G.) ........ 63
Hotels Not Special Class of Housing Accommodations
Within Rent Control Law (R.) ........................................ 63
Regulation of Unprofessional Conduct (G.) .......................... 64
Retroactive Application of Administrative Order (C.) .............. 65
Denial of Certificate of Eviction—Bad Faith (R.) .................... 66
Timely Proceedings Under Article 78 (G.) ............................ 67

AGENCY (Barrett, Halpern)
Hospitality Liability for the Tortious Acts of its Doctors and
Nurses (H.) .................................................................... 69
Non Enforceability of Joint Venture (B.) ............................... 71

CIVIL PROCEDURE (W. Barrett, T. Basil, W. Gardner, G. Gibson,
Malin, Robinson, Sugnet)
Pleadings—Sufficiency of Notice (S.) ................................. 73
Prima Facie Case—Scintilla of Evidence (W.G.) ....................... 73
Summary Judgment—Fact Question Precludes Use (S.) ............. 74
Summary Judgment—Determination of the Nature
of the Action (G.G.) ...................................................... 75
Release—Existence of Cause of Action (W.B.) ........................ 76
Right to Appeal Intermediate Order After Trial (M.) ................ 78

Copyright 1957 by the Buffalo Law Review
CONTENTS

Poor Person—Notice to Satisfy Due Process (T.B.) ...................... 79
Per Curiam .......................................................................................... 80

CONSTITUTIONAL LAW (T. Basil, J. Brownstein, Gaylord, Kaiser, Yaeger)
Validity of Denial of License to Exhibit Motion Picture (T.B.) ... 82
Police Power—Unlawful Interference with Business (Y.) .......... 85
Constitutionality of Minimum Wage Law Provision (G.) .......... 87
Invoking Privilege Against Self Incrimination—Grounds for Discharge (J.B.) ................................................ 88
Civil Rights—Discrimination in Public Places (G.) ................. 90
Jurisdiction of State Court not Pre-empted by National Housing Act (K.) ................................................................. 91

CONTRACTS (Brownstein, Carlo, Lane, Morton, Tills, Yaeger)
Failure to Furnish Sample as Breach of Contract (C.) ............... 92
Statute of Frauds—Contract not to be Performed Within Year (L.) 94
Interpretation of Escalator Clause (M.) ...................................... 95
Waiver of Non-assignment Clause (T.) ....................................... 96
Application of Fire Insurance Proceeds to Purchase Price (B.) . . . 97
Contract—Measure of Damages (C.) .......................................... 98
Rescission—Fraud in the Inception (Y.) ..................................... 99
Per Curiam .......................................................................................... 100

CORPORATIONS (Gibson, Yaeger)
Director Action—Remedy of Aggrieved Party (Y.) ...................... 101
Power of Corporate Officers to Institute Litigation (G.) ............. 102
Alienation of Corporate Stock—Reasonableness of Restraint (Y.) 103

CREDITOR'S RIGHTS (Beecher, McGuire, Vogt)
Unavailability of New York Lien Law to out of State Realty. (V.) 104
Priority of Liens (McG.) ................................................................. 105
Damages on Lapse of Mechanics' Liens (B.) ................................ 107

CRIMINAL LAW (W. Barrett, T. Basil, R. Brocklebank, J. Brownstein, Carlo, J. Getman, G. Gibson, Lane, McGuire, Morton, Roberts, Yaeger)
Uniform Traffic Ticket Used as an Information for a Pleading (L.) 108
Grand Jury Indictment (C.) .............................................................. 109
Revocation of Driver's License (W.B.) ......................................... 110
Unlicensed Practice of Law (R.B.) .............................................. 113
Breach of Peace (G.G.) ................................................................. 115
Conviction for Speeding Based Upon Speedometer Reading (W.B.) 116
Receipt of Bribes by Labor Representative (M.) ......................... 117
Criminal Contempt (J.G.) ............................................................... 118
Criminal Negligence in Operation of Motor Vehicles (R.) ........ 119
Right to Counsel (L) ...................................................................... 122
Right to Speedy Trial (R.B.&G.G.) .............................................. 122
## CONTENTS

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Trial (J.G.)</td>
<td>123</td>
</tr>
<tr>
<td>Trial—Right of Defendant to be Free of Shackles (Y.)</td>
<td>125</td>
</tr>
<tr>
<td>Recantation (J.B.)</td>
<td>126</td>
</tr>
<tr>
<td>Sentence—Multiple Punishment (Y.)</td>
<td>127</td>
</tr>
<tr>
<td>Appeal and Error (J.G.)</td>
<td>128</td>
</tr>
<tr>
<td>Coram Nobis (T.B.)</td>
<td>130</td>
</tr>
<tr>
<td>Parole Violation (L.)</td>
<td>132</td>
</tr>
<tr>
<td>Surrender of Prisoner not Commutation of Sentence (McG.)</td>
<td>133</td>
</tr>
<tr>
<td>Per Curiam</td>
<td>134</td>
</tr>
<tr>
<td><strong>DECEDED'S ESTATES</strong> (Brownstein, Colucci, Halpern, Robinson, Stenger, Tills)</td>
<td></td>
</tr>
<tr>
<td>Improper Delegation of Judicial Authority—Waiver (H.)</td>
<td>134</td>
</tr>
<tr>
<td>Jury Trial in Will Contest (R.)</td>
<td>135</td>
</tr>
<tr>
<td>Appointment of Successor Trustee (C.)</td>
<td>136</td>
</tr>
<tr>
<td>Charitable Bequests—Liberal Construction (S.)</td>
<td>137</td>
</tr>
<tr>
<td>Construction of Wills (R.)</td>
<td>138</td>
</tr>
<tr>
<td>Date of Commutation of Annuity (T.)</td>
<td>141</td>
</tr>
<tr>
<td>Commission for Executor's Services (B.)</td>
<td>142</td>
</tr>
<tr>
<td><strong>DOMESTIC RELATIONS</strong> (D. Gaylord, J. Getman)</td>
<td></td>
</tr>
<tr>
<td>Bastards: Support Payments by Putative Father (D.G.)</td>
<td>143</td>
</tr>
<tr>
<td>Res Judicata in Matrimonial Actions (D.G.)</td>
<td>145</td>
</tr>
<tr>
<td>Full Faith and Credit—Foreign Judgment Based on Alienation of Affections (J.G.)</td>
<td>147</td>
</tr>
<tr>
<td><strong>EVIDENCE</strong> (Gibson, Halpern, Lane)</td>
<td></td>
</tr>
<tr>
<td>Attorney-Client Privilege (L.)</td>
<td>148</td>
</tr>
<tr>
<td>Husband-Wife Privilege (G.)</td>
<td>149</td>
</tr>
<tr>
<td>Deceased Witness—Prior Testimony Admissable in Subsequent Proceeding (H.)</td>
<td>150</td>
</tr>
<tr>
<td>Per Curiam</td>
<td>152</td>
</tr>
<tr>
<td><strong>INSURANCE</strong> (Kirchgraber, R. Malin, G. Morton)</td>
<td></td>
</tr>
<tr>
<td>Failure of Proper Notice to Insurer (G.M.)</td>
<td>153</td>
</tr>
<tr>
<td>Construction of Assignment of Insurance as Security (G.M.)</td>
<td>154</td>
</tr>
<tr>
<td>Liability for Injuries to Insured's Spouse (G.M.)</td>
<td>155</td>
</tr>
<tr>
<td>Indemnification—Accident Involving Vendee of Named Insured (K. &amp; R.M.)</td>
<td>156</td>
</tr>
<tr>
<td><strong>MUNICIPAL CORPORATIONS</strong> (Kaiser, Levy, R. Robinson, T. Rosinski)</td>
<td></td>
</tr>
<tr>
<td>Notice in Indemnification Action Against Public Corporation (L)</td>
<td>157</td>
</tr>
<tr>
<td>Municipal Disposal of Garbage—Governmental Function (T.R.)</td>
<td>158</td>
</tr>
<tr>
<td>Lodging Houses—Accessory to Hospital Use (T.R.)</td>
<td>160</td>
</tr>
<tr>
<td>Zoning Laws—Aesthetic Considerations (K.)</td>
<td>160</td>
</tr>
<tr>
<td>Local Bill—Unconstitutional (R.R.)</td>
<td>162</td>
</tr>
<tr>
<td>Covenants Running with the Land—Town Law (R.R.)</td>
<td>163</td>
</tr>
</tbody>
</table>
CONTENTS

REAL PROPERTY (Beecher, D. Gaylord, J. Getman, Rosinski)
Wrongful Dispossession of Statutory Sub-Tenant—
  No Damages (R.) ......................................................... 164
Breach of Covenant of Quiet Enjoyment (D.G.) .......................... 165
Eminent Domain—Valuation of Cemetery Property (B.) ............... 167
Eminent Domain—Just Compensation (J.G.) ................................ 167
Per Curiam ........................................................................... 169

TAXATION (Basil, Gardner, Kantor, Lane, Robinson, Stenger, Vogt)
Leasehold Interest: Personal Property, Not Subject to Taxation (G.) 169
State Income Tax—Exemption for Nondomiciliaries (K.) .............. 171
City Sales Tax on Alcoholic Beverages (V.) ................................ 172
City Sales Tax—Liability of Vendor (S.) ..................................... 173
City Use Tax—Not Applicable to Interstate Carrier (B.) ............... 174
Foreclosure of In Rem Tax Lien (L) ........................................ 175
Claim for Refund of General Business Tax (B.) ............................ 175
Recovery of Taxes Paid Under Mistake of Law (R.) ....................... 176

TORTS (Brownstein, Gaylord, Halpern, J. Magavern, G. Morton, Rosinski, Yaeger)
Interference with At Will Contracts—Cause of Action Allowed
  (J.M.) ............................................................................ 178
MacPherson v. Buick—Applicable to Real Property (R.) ................. 181
Duty to Provide Safe Equipment (H.) ....................................... 183
Recovery of Illegal Receipts (G.M.) .......................................... 184
Admissibility of Evidence of Adverse Reaction in Libel Action
  (J.M.) ............................................................................ 185
Admissibility of Evidence of Religious Faith in Libel Action (J.M.) 187
Violation of Local Traffic Ordinance—Evidence of Negligence (Y) 190
Negligence—Question of Fact .................................................. 190
Negligence—Incidental Injuries (G.) ......................................... 190
Tortfeasors in Pari Delicto—No Indemnification (G.M.) ................. 192
Right of Indemnification (B.) .................................................... 193

WORKMEN'S COMPENSATION (Barrett, Green, Kantor)
Heart Attack—Arising out of Employment? (K.) ........................... 195
Allocation Between Employers of Compensation Award (B.) ........ 196
Assemblyman not an Employee (G.) .......................................... 196

MISCELLANEOUS (W. Gardner, D. Gaylord, J. Getman, Levy, Roberts)
State not Liable under Jones Act for Injuries to its Seamen (L) ...... 198
Substitution of Attorneys (W.G.) ............................................. 199
Sovereign Power of State (J.G.) .............................................. 201
Labor Law—Matters for Arbitration (D.G.&R.) ............................ 202
Per Curiam ........................................................................... 204

TABLES OF OPINIONS .......................................................... 205
TABLE OF CASES ............................................................... 206