



The Modern Link to
Legal History

HEIN-ON-LINE LICENSE AGREEMENT

Licensee Name: Emory University

Agreement Date: September 27, 2000

Licensee Primary Contact

Name: Rosalie Sanderson, Assoc. Director

Address: Hugh F. Macmillan Law Library, Emory Univ. School of Law
1301 Clifton Rd. Atlanta, GA 30322

Telephone: (404) 727-6720

Facsimile: (404) 727-2202

E-Mail: RSANDER @ law.emory.edu

Licensee Technical Contact

(contact responsible for providing IP information for access)

Name: Elmer Masters, Director of Computing

Address: Emory Univ. School of Law

1301 Clifton Rd. Atlanta GA 30322

Telephone: (404) 727-~~6720~~ 6994

Facsimile: (404) 727-2202

E-Mail: emasters @ law.emory.edu

Hein-On-Line Contacts

Primary Contact: Jeanette M. Montegari
Marketing Department

E-Mail: j_montegari@wshein.com

Technical Contact: Daniel P. Rosati

Senior Vice President

E-Mail: d_rosati@wshein.com

Address: William S. Hein & Co., Inc.
1285 Main Street
Buffalo, New York 14209-1987

Telephone: 1-800-828-7571 or (716) 882-2600

Facsimile: (716) 883-8100

IP Information (addresses or domain ranges for computers on your campus):

Note: If IP information is not available upon completing this Agreement, **Hein-On-Line** staff will contact the Technical Contact listed above to obtain the information and initiate access.

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170.140.175.0-254

Are you currently using a proxy server to provide access to restricted resources?

Yes _____ No _____

If yes, please provide the IP Information of the proxy server: _____

If yes, please also provide the URL of the webpage that offers information about how to use the proxy: _____

Do you have plans to do so in the future? Yes _____ No _____

Do you provide to users any other means of access to restricted resources from machines outside of your campus IP domain? Yes _____ No _____

The parties agree to be bound by the terms and conditions of the **Hein-On-Line** License Agreement attached hereto, in witness whereof the parties have set their hands as of the Agreement date above.

Licensee

By: Robin K. Mills

Name: Robin K. Mills

School/Organization: Emory Univ School of Law

Title: Assoc Dean

Hein-On-Line

By: Brian Jablonski

Name: Brian Jablonski

Title: Marketing Manager

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HEIN-ON-LINE LICENSE AGREEMENT

This license agreement (this "Agreement") is entered into by and between William S. Hein & Co., Inc., formed under the laws of the State of New York, and the Licensee specified above as of the Agreement Date.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

"Authorized Users" means persons who are authorized to use Licensee's library facilities who:

1. Are affiliated with Licensee as students, faculty or employees, or
2. Are physically present in the Library (as hereafter defined).

"Agreement Date" means the date first above written.

"Database" means the electronic archive of journals and other materials provided by **Hein-On-Line** according to the terms of this Agreement, as well as portions thereof or Materials (as hereafter defined) contained therein.

"Derivative Work" means a work based upon one or more preexisting works such as a modification, enhancement, adaptation, translation, abridgment or any other form in which such preexisting work may be transformed or incorporated and which, if prepared without authorization of the owner of the copyright or other intellectual property right in such preexisting work, would constitute an infringement of such right.

"Intellectual Property" means any trademarks, issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, Derivative Works, and all other intellectual property rights relating to the Database.

"Library" means Licensee's library building(s).

"Materials" means any portion or portions of content in, or printed from, the Database.

"User Rules" means those terms and conditions for use of the Database that appear on certain screen displays in the Database as such may be amended from time to time, or that are otherwise provided to Licensee or to Authorized Users by William S. Hein & Co., Inc.. The User Rules shall include, but not be limited to, the right to make one printed copy, and one electronic copy for storage purposes, of an article or articles from the Database, solely for an Authorized User's personal, noncommercial use.

II. CONTENT OF DATABASE; GRANT OF LICENSE

- A. A list of all legal materials currently available in the **Hein-On-Line** Collections is provided upon request to William S. Hein & Co., Inc.
- B. William S. Hein & Co., Inc. hereby grants to Licensee a non-exclusive license to use the Database and to provide the Database to Authorized Users as permitted herein (the "License").

III. USE OF DATABASE

- A. Licensee shall not permit anyone other than Authorized Users to use the Database, or display or otherwise make available the Database to anyone other than Authorized Users.
- B. No use that exceeds the User Rules may be made of the Database other than as provided herein. It is understood that the purpose of **Hein-On-Line** is to provide effective preservation of journals and other legal materials, and facilitate access to such journals and other legal materials by Authorized Users. Accordingly, Licensee may not utilize the Database for commercial purposes, including but not limited to the sale of Materials, fee-for-service use of the Database, or bulk reproduction or distribution of Materials in any form; nor may Licensee impose special charges on Authorized Users for use of the Database beyond reasonable printing or administrative costs.

Furthermore, under no circumstances may Licensee:

- i. Remove, obscure or modify any copyright or other notices included in the Database or the Materials;
 - ii. Use Materials in a manner that would infringe the copyright therein; or
 - iii. Copy, download, or attempt to download an entire issue or issues of a journal from the Database. Licensee shall contact William S. Hein & Co., Inc. in order to obtain a printed copy of one or more entire issues of such journal.
- C. Licensee shall use its best efforts to protect the Database from any use that is not permitted under this Agreement, and shall notify William S. Hein & Co., Inc. of any such use of which it learns or is notified. In the event of violation of the User Rules, Licensee agrees to implement further restrictions on access to, and downloading and printing from, the Database. William S. Hein & Co., Inc. and Licensee shall from time to time consult on the establishment of further measures to inform Authorized Users of the availability of the Database and of the User Rules.

- D. In the event of any unauthorized use of the Database by an Authorized User
- i. William S. Hein & Co., Inc. may suspend or terminate such Authorized User's access to the Database
 - ii. Upon notice to Licensee, William S. Hein & Co., Inc. may suspend or terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or
 - iii. Licensee shall suspend or terminate such Authorized User's access to the Database upon William S. Hein & Co., Inc. request.

IV. DELIVERY; SUPPORT

- A. The Database will be stored at one or more locations in digital form accessible by telecommunications links between such locations and Licensee's or Authorized Users' workstations. William S. Hein & Co., Inc. shall make the Database available online in digital form to Licensee and Authorized Users within ten (10) days of the date on which the initial subscription fee is paid, provided, however, that IP addresses or passwords shall have been provided to William S. Hein & Co., Inc. pursuant to **Section IV, B** herein.
- B. Access to the Database shall be controlled by William S. Hein & Co., Inc. through the use of IP addresses. Licensee shall be responsible for providing lists of sets of IP addresses to William S. Hein & Co., Inc., and updating such lists on a regular basis. Licensee shall cooperate with William S. Hein & Co., Inc. in the implementation of additional security procedures as they are developed.
- C. Licensee shall inform William S. Hein & Co., Inc. if it makes use of a proxy server to provide access to the Database, or if it becomes aware of a proxy server that is providing such access.
- D. William S. Hein & Co., Inc. shall provide support to Licensee and to Authorized Users in accordance with the terms set forth on Schedule B attached hereto and incorporated herein.
- E. Licensee is responsible for establishing and maintaining hardware and Internet access to provide access to, and to transmit, the Database to Authorized Users. Licensee understands that Internet browser software is required to access the Database. Schedule C attached hereto and incorporated herein sets forth hardware platforms and browsing software required and/or recommended for accessing the Database. Licensee understands that from time to time the Database may be added to or modified by William S. Hein & Co., Inc., that portions of the Database may migrate to other formats, and that the terms of Schedule C may be updated.

V. FEES

- A. Licensee shall make payment to William S. Hein & Co., Inc. for the License granted herein pursuant to the payment terms set forth on Schedule A.
- B. Licensee shall be responsible for all costs associated with establishing access to the Database as set forth in **Section IV, E** above, including but not limited to any telecommunications or other charges imposed by carriers, proprietary network operators and Internet access providers, or licenses for browser software, if any. Licensee shall also be responsible for all costs associated with printing from the Database, and for any taxes relating to Licensee's or Authorized Users' use of the Database.

VI. TERM AND TERMINATION

- A. This Agreement shall continue in effect for as long as Licensee pays the annual subscription fee.
- B. In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall so notify the breaching party in writing.

The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

In addition, William S. Hein & Co., Inc. may terminate the Licensee's access to the Database immediately:

- i. If in William S. Hein & Co., Inc. reasonable opinion, the cumulative effect of violations of User Rules by Authorized Users justifies such termination;
- C. Upon termination of this Agreement all online access to the Database by Licensee and Authorized Users shall be terminated.

VII. PROPRIETARY RIGHTS

- A. Licensee hereby recognizes and agrees that the Database and all Intellectual Property are proprietary to William S. Hein & Co., Inc., subject to the rights of third parties therein. Licensee hereby warrants that it will not, during the term of this Agreement or any time thereafter, attach, dispute or contest, directly or indirectly, William S. Hein & Co., Inc. rights and titles in and to the Database, nor assist or aid others to do so.

- B. Neither party may use the other's name or trademark(s) in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved. Notwithstanding the foregoing,
 - i. William S. Hein & Co., Inc. may use Licensee's name and/or the name of the Library in brochures or other materials to identify Licensee as a participant in **Hein-On-Line**, and
 - ii. Licensee is encouraged to use William S. Hein & Co., Inc. name to announce its participation to Authorized Users.

- C. Licensee may provide electronic links to the Database from Licensee's web page(s). William S. Hein & Co., Inc. requests notification of the URL(s) of Licensee's web page(s) containing such links. Licensee agrees to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by William S. Hein & Co., Inc. Other than the creation of such links, Licensee shall not modify, manipulate, or create a Derivative Work of the Database without the prior written permission of William S. Hein & Co., Inc.

VIII. REPRESENTATIONS AND WARRANTIES

- A. Each party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the party to the terms and conditions herein. Each party further represents and warrants that it has caused this Agreement to be executed by a duly authorized representative.

- B. Licensee represents and warrants that:
 - i. The list of IP addresses provided to William S. Hein & Co., Inc. in accordance with **Section IV, B** above is accurate and valid, and
 - ii. Licensee shall exert reasonable efforts to maintain sufficient security with respect to such IP addresses and/or passwords such that no one other than Authorized Users is or will be able to access the Database.

- C. Licensee represents and warrants that it is providing no IP addresses to William S. Hein & Co., Inc. that pertain to any campus other than those listed or indicated on page one of this Agreement, or for which access has otherwise been agreed in writing by William S. Hein & Co., Inc.

- D. The Database has been developed and is maintained with reasonable professional care. William S. Hein & Co., Inc. shall use reasonable efforts to provide continuous availability of the Database online subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of journals and other legal materials as they become available, and downtime related to equipment or services outside the control of William S. Hein & Co., Inc. including public or private telecommunications services or Internet nodes or facilities.

- E. William S. Hein & Co., Inc. shall use reasonable efforts to ensure that the journals and other legal materials contained in the Database are complete and faithful replications of the print versions of such journals. William S. Hein & Co., Inc. makes no representation or warranty, however, and expressly disclaims any liability with respect to the content of any Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the William S. Hein & Co., Inc. disclosure of confidential information. Notwithstanding the foregoing, Licensee agrees to notify William S. Hein & Co., Inc. of any infringement, libel, or other claim pertaining to any Materials of which Licensee becomes aware. Upon such notification or if William S. Hein & Co., Inc. learns of such a claim from another source, William S. Hein & Co., Inc. may remove such Materials from the Database pending the resolution of such claim.
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- G. William S. Hein & Co., Inc. shall not be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the Database, interruption of the services provided hereunder, or arising out of or in connection with Licensee's use of Materials. If the Database fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify William S. Hein & Co., Inc., and William S. Hein & Co., Inc. sole obligation shall be to use commercially reasonable business efforts to repair the nonconformity. In no event shall William S. Hein & Co., Inc. liability exceed the fees paid to William S. Hein & Co., Inc. by Licensee. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim.

IX. GOVERNING LAW

- A. This agreement shall be interpreted and construed according to, and governed by, the laws of the State of New York or United States Federal law, as applicable, excluding any such laws that might direct the application of the laws of another jurisdiction. The parties expressly exclude, if applicable, the application of the United Nations Convention on Contracts for the International Sale of Goods.
- B. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration, including joint and/or consolidated arbitration where practicable, conducted in English, in Buffalo, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
- C. The English language version of this Agreement shall be controlling over any other version.

X. NOTICES

All notices given pursuant to this Agreement shall be in writing and may be delivered by hand or by overnight carrier, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent as specified above. Either party may from time to time change its Notice Address by written notice to the other party.

XI. MISCELLANEOUS

- A. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of William S. Hein & Co., Inc. and Licensee.
- B. This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.
- C. Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties.
- D. Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

- E. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

- F. The parties hereto agree to execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of the Agreement.

SCHEDULE A PAYMENT TERMS

Licensee: _____

The total Access Fee shall be \$ _____ and shall be due and payable as of the first day of every calendar year during the initial or renewal terms of this Agreement. The total Access Fee for the first year shall be prorated to reflect the number of months remaining in the calendar year following the date of this Agreement and shall be due and payable thirty (30) days after the date of invoice. The Access Fees are subject to reasonable annual increases.

Payment Terms

Any payments made more than thirty (30) days after they are due and payable shall be subject to a 18% annual interest charge.

SCHEDULE B SUPPORT

William S. Hein & Co., Inc. will offer the following support to assist Licensee and Authorized Users in use of the Database. This support will be provided by William S. Hein & Co., Inc. at reasonable levels during the subscription period.

William S. Hein & Co., Inc. will serve as contact points for Licensee. Support will begin with the initial implementation of the William S. Hein & Co., Inc. system. William S. Hein & Co., Inc. will be available by E-mail, phone or fax from 8am to 5pm EST, Monday through Friday for feedback, problem-solving, or general questions.

*The contact information for **Hein-On-Line** is as follows:*

Daniel P. Rosati, Senior Vice President
William S. Hein & Co., Inc.
1285 Main Street
Buffalo, New York 14209-1987
Telephone: 1-800-828-7571 or (716) 882-2600
Facsimile: (716) 883-8100
E-Mail: d_rosati@wshein.com

Installation procedures support will include:

Assisting with the implementation of the **Hein-On-Line** system
Providing general information, background materials, and information for further reading

Continuing support will include:

Troubleshooting to find solutions to individual problems
Regular system and project updates

In addition, William S. Hein & Co., Inc. will be responsible for the maintenance of help files and user documentation available online in a variety of formats.

SCHEDULE C

HARDWARE AND SOFTWARE REQUIREMENTS

The following hardware and software is required or recommended in order to access the Database. These requirements and recommendations will change as computer hardware and software technology evolves.

Minimum Requirements:

- Internet connectivity
- Graphical web browser
- PC, Mac or UNIX workstations with TCP/IP installed
- Display monitor with at least 800 x 600 resolution
- Locally addressable printer

Recommendations for Optimal Performance:

- Dedicated Internet connection
- Display monitor with 1024 x 768 resolution
- Minimum of 32M of RAM memory
- Laser printer
- Netscape 4.7 or Internet Explorer 5.0

**SCHEDULE D
INTERNATIONAL SITES**

This Schedule D is an addendum, and modifies and incorporates by reference all of the terms of the Agreement entitled **Hein-On-Line** license agreement between William S. Hein & Co., Inc. and ("Licensee").

Licensee has informed William S. Hein & Co., Inc. that it owns and operates the following campuses or sites which are located outside of the United States:

(please list names and locations of international campuses)

The I.P. addresses for these campuses are as follows:

(please list I.P. ADDRESSES for the international campuses listed)

William S. Hein & Co., Inc. agrees to include these campuses in the Agreement and to accord Authorized Users at these campuses access to the Database pursuant to the terms of the Agreement, subject to the following additional terms.

- I. Authorized Users will access the Database housed on William S. Hein & Co., Inc. U.S. server(s), or such other server(s) as may be determined by William S. Hein & Co., Inc.. Licensee understands that performance of the Database when accessed by Authorized Users outside of the U.S. is subject to available transmission bandwidth and other factors beyond William S. Hein & Co., Inc. control, and is unlikely to equal performance of the Database when accessed within the U.S.

- II. Licensee will comply with all applicable laws and regulations in its exercise of the License. Licensee represents and warrants that it will effect or obtain all non-U.S. governmental or regulatory filings, registrations, and approvals required in connection with the Agreement and will pay any costs associated therewith. Licensee will inform William S. Hein & Co., Inc. of any laws or regulations of any country listed above of which Licensee becomes aware that require any change to the Agreement. William S. Hein & Co., Inc. may revoke access to any of the above campuses if warranted, in William S. Hein & Co., Inc. sole opinion, by the laws or regulations of such countries.

- III. The Agreement will be interpreted according to, and governed by, federal or state laws of the United States, excluding any laws that might direct the application of the laws of any other jurisdiction. Any controversy or claim arising out of or relating to the Agreement will be settled or heard in the United States.

Licensee
By: _____
Name: _____
Title: _____
Date: _____

William S. Hein & Co., Inc.
By: _____
Name: _____
Title: _____
Date: _____