

THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

Numbers and Colors

In my prior two quarterly newsletter columns, I described recent changes to longstanding ALI practices. My Summer 2015 column, *Clarifying the Nature of the ALI's Work*, explained the revisions of our *Style Manual*, which distinguished among our major types of works—Restatements, Model or Uniform Codes, and Principles projects—based both on the primary audience for our guidance and the form in which such guidance is provided. It also explained the nature of Restatement black letter rules and the inquiry undertaken in fashioning such rules. My Fall 2015 column, *The American Law Institute and The Bluebook*, explained an important change in citation rules that will now identify the ALI as the institutional author of its works.

In this issue, I focus on changes in the way we number our series. Until last year, the ALI followed a protocol under which, once a new series was started, all subsequent projects acquired the number of that series. Between 1923 and 1944, the ALI developed the first series of its Restatements of the Law, publishing works in nine areas.

In 1952, the ALI launched its second series to update these Restatements. But one of the projects in this series, the Restatement (Second) of the Foreign Relations Law of the United States, was in fact the ALI's first foray into this area.

And in 1987, we began the Restatement (Third) series. But a number of the projects initially assigned to this series, including Restatements of Employment Law and American Indian Law, were in fact our first work in their respective areas. (I wonder how many law librarians were asked why the Restatement (Second) of one of these works was not in the stacks.)

And in 2012, we launched the Restatement (Fourth) of the Foreign Relations Law of the United States because in that area we already had a Restatement (Third), which actually was the second of our Restatements of Foreign Relations. If we had continued to follow this protocol, our new projects would all now have been part of the Restatement (Fourth) series. For example, if we launched a Restatement of Contracts, it would be a Restatement (Fourth) even though there never was a Restatement (Third) of Contracts. (We might have called it a "generation skipping" Restatement, even though it would not have generated any tax benefit to the ALI.)

The division of Torts into multiple projects complicated the issue further. Had we tackled a new portion of Torts, would it have been a Restatement (Third), because we are still working on that series in Torts, or a Restatement (Fourth) because any new projects would be in the Fourth series? A similar issue might have arisen in Contracts. If Contracts had been launched as a new project, it would presumably be a Restatement (Fourth)? But if Consumer Contracts, which had been a Restatement (Third), became part of Contracts, what number would the combined project have taken? Would Contracts have been grandfathered into the Third series? Or would Consumer Contracts have leapt over to the Fourth?

I am reasonably confident that if we were starting from scratch we would make a different decision, using a consecutive numbering protocol for each project. But we are not writing on a clean slate. We chose a different course of action in 1954 by launching the Restatement (Second) of the Foreign Relations Law of the United States even though there was no prior Restatement in the area. We cannot now renumber completed projects. Neither can we abandon the numbering altogether for future projects because courts that have adopted rules, say, of the Restatement (Third) of Torts would likely be quite perplexed if our next foray into this area bore no number at all.

After considering several options for how to avoid continuing to compound the confusion caused by our numbering system, the ALI Council adopted a new protocol. It decided to keep the numbering of completed projects unchanged, but to proceed sequentially in the future. Under this approach we would not go back and renumber the Restatement (Second) or the Restatement (Third) of the Foreign Relations Law of the United States on the grounds that in our first series we did not have a Restatement in this area. These works have been influential under the titles they currently have and there is no scenario under which it would make sense to change those titles retrospectively.

Prospectively, though, we will proceed sequentially. So, Employment Law will be simply a Restatement and not a Restatement (Third). The same will be true for American Indian Law. And Conflict of Laws will be a Restatement (Third) because the last one was in the second series and not a Restatement (Fourth) on the grounds that Foreign Relations Law is already a Restatement (Fourth).

But no good deed goes unpunished. As soon as the numbering got worked out we had to face another decision. The Restatement of Employment Law was about to get published. Having been reclassified from Third to First, what color should it take? The dark brown color of the original Restatements, which had been abandoned in 1944? Instead, we decided that, prospectively, the new Restatement would be burgundy, a new color for us. But what are we going to do about Conflict of Laws, which will carry a Third designation instead of a Fourth? Should it be blue, the color that we had been using for what we called Restatement (Third) under the old protocol? Or will we put on our color selection hats once more because Third now has a different meaning? Stay tuned!