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SYMPOSIUM ON DOING BUSINESS IN LATIN AMERICA

FOREWORD

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The laws and legal processes of many Latin American countries are old and formalistic. The norms and principles at play in the continental-law system of Latin America can be traced directly back to the laws of the Roman republic, predating by many centuries the foundations upon which the Anglo-American or common-law system is based. This is particularly true in matters of commercial contracts and agency, in the complex relationships delineated in family law, the legitimacy of state authority, and the primacy of natural law. Add to this tradition the weight of ecclesiastical law and the bureaucratic and complex societal legacies of Iberian colonialism, and what emerges is a complex tapestry of code law, entrenched norms, and traditions of practice that resist change and defy easy explanation or understanding.

The applications and evolution of ancient legal traditions in Latin America's legal milieu is often perplexing and at times exasperating to those whose legal training is rooted solely in the Anglo-American legal system. Because the Latin American legal system in general seems so alien to lawyers in the United States, and because American lawyers tend to think ethnocentrically that the most important legal system is Anglo-American, they often

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look with some disdain, even arrogance, on the perceived backwardness and rigidity of the civil-law system. Lawyers in the United States find it difficult to fathom that a legal system without a principle of *stare decisis*, without a wholly independent judiciary, and lacking the adversarial legal process, can endure and be practicable in the modern legal and business world. Indeed, regardless of which legal system a practitioner embraces, the civil-law system has many flaws, and there are many problems in the application of the law to Latin American society and its business sector. Nevertheless, the system works and endures. Of course, the same can be said for the legal system in the United States. Yet, if we in the Americas are to succeed in developing regional business enterprise and trade, in bridging conflicts of laws and causes of action in civil disputes, and in cooperating more fully in international criminal matters, then lawyers in the United States must begin to understand the basic norms and principles at play in the legal systems of their southern neighbors. For whether we like it or not, the civil-law tradition in Latin America is not going away anytime soon, nor will it be completely replaced by the Anglo-American system.

This newest issue of the *Stetson Law Review* offers the reader three articles on Latin American legal practice. But more importantly, the readings give us a portal into the complexities and nuances of the continental legal tradition and its formalisms at play in Iberoamerica. Each author presents us with an in-depth analysis of practical benefit to those who will be engaged in commercial legal matters in Latin America. Of particular significance are the explanations offered about the unique elements of the civil code and civil procedure in commercial matters, such as the power and application of civil notaries, the unique rule and norms attendant to the formulation and perfection of contracts, and the establishment and constitution of agency in the civil-law system.

We hope this special issue will provide the reader with both interesting and practical insights.