Securities Act of 1933

Breaking Down Statutory Text

This chart details which preemption sections of various omnibus and sectoral statutes deal with federal preemption.

Codified Section	Type of Preemption	Are the circuit courts in general agreement on what this means?
15 U.S.C. §77p(b)	Express Preemption	Not litigated
15 U.S.C. §77p(c)	Express Preemption	Not litigated
15 U.S.C. §77p(d)	Anti-Preemption Provision	Not litigated
15 U.S.C. §77p(e)	Anti-Preemption Provision	Not litigated
15 U.S.C. §77r(a)	Express Preemption	Not litigated
15 U.S.C. §77r(c)	Anti-Preemption Provision	Not litigated
15 U.S.C. §77r-1(b)	Savings Clause w/ Sunset Provision	Not litigated
15 U.S.C. §77r-1(b)	Anti-Preemption Provision	Not litigated
15 U.S.C. §77r-1(c)	Express Preemption	Not litigated
15 U.S.C. §77r-1(c)	Savings Clause w/ Sunset Provision	Not litigated
15 U.S.C. §77r-1(d)(1)	Savings Clause w/ Sunset Provision	Not litigated
15 U.S.C. §77r-1(d)(2)	Savings Clause w/ Sunset Provision	Not litigated
15 U.S.C. §78bb(f)(1)	Express Preemption	No – after *Dabit*, the Court of Appeals have different interpretations of what "coincide" means.
15 U.S.C. §78bb(f)(1)	Anti-Preemption Provision	No – after *Dabit*, the Court of Appeals have different interpretations of what "coincide" means.
15 U.S.C. §78bb(f)(1)	Anti-Preemption Provision	No – after *Dabit*, the Court of Appeals have different interpretations of what "coincide" means.

Methodology

The statutory text overwhelmingly contains express preemption and various savings clauses. Express preemption is directly related to statutory text, and it is the only form of preemption with this quality. The remaining types of preemption – field, impossibility, and obstacle – are forms of *implied* preemption. As the name suggests, these preemption categories are implicit in every statute and consequently do not rely on statutory text. (However, sometimes a statute will explicitly address an implied preemption principle, such as 42 U.S.C. § 2000h-4.) Instead, implied preemption principles appear exclusively in case law. Case law that relies on a theory of implied preemption are appropriately notated.

Since courts have not addressed every issue, there may be areas that are marked as "Not litigated."

Legend:

Express Preemption
Field Preemption
Impossibility Preemption
Obstacle Preemption
Floor Preemption

Anti-Preemption Provision
Compliance Savings Clause
Remedies Savings Clause
Sunset Provision
Ceiling Preemption

Statutory Text

§ 77p
Additional remedies; limitation on remedies

(a) Remedies additional. …

(b) Class action limitations. No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(c) Removal of covered class actions. …

(d) Preservation of certain actions.

(1) Actions under State law of State of incorporation.

(A) Actions preserved. *Notwithstanding subsection (b) or (c), a covered class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.*

(B) Permissible actions. A covered class action is described in this subparagraph if it involves—

(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(ii) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(2) State actions.

(A) In general. *Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.*

(B) State pension plan defined. …

(3) Actions under contractual agreements between issuers and indenture trustees. *Notwithstanding subsection (b) or (c), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.*

(4) Remand of removed actions. …

(e) Preservation of State jurisdiction. *The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.*

(f) Definitions. …

§ 77r.
Exemption from State regulation of securities offerings

(a) Scope of exemption. Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934 [15 USCS § 78o-3], except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities**.** For purposes of this section, the following are covered securities:

…

(c) Preservation of authority.

(1) Fraud authority. Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, [in connection with securities or securities transactions]

(A) [in connection with securities or securities] with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to [with] a transaction described under section 4(6) [15 USCS § 77d(a)(6)], with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) Preservation of filing requirements.

(A) Notice filings permitted. Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title [15 USCS §§ 77a et seq.], together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees.

(i) In general. Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996 [enacted October 11, 1996], filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) Schedule. …

(C) Availability of preemption contingent on payment of fees.

(i) In general. During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 [enacted October 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) Delays. For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities. …

(E) [Not enacted]

(F) Fees not permitted on crowdfunded securities. …

(3) Enforcement of requirements. *Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.*

(d) Definitions. …

15 U.S.C. § 77r-1
Preemption of State Law

(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States.

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A)offered and sold pursuant to section 77d(5) [1] of this title,

(B)mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C)small business related securities (as defined in section 78c(a)(53) of this title), or

(D)securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2)Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 77d(5) 1 of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) Exception; validity of contracts under prior law. The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after the date of the enactment of this Act [enacted Oct. 3, 1984], enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

(c) Registration and qualification requirements; exemption; subsequent enactment by State. Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 [15 USCS § 77d(a)(5)], that are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or that are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934 [15 USCS § 78c(a)(53)]) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. *Any State may, prior to the expiration of seven years after the date of the enactment of this Act [enacted Oct. 3, 1984], enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.*

(d) Implementation.

(1) Limitation. The provisions of subsections (a) and (b) concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after the date of enactment of this subsection [enacted Sept. 23, 1994], enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

(2) State registration or qualification requirements. Any State may, not later than 7 years after the date of enactment of this subsection [enacted Sept. 12, 1994], enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.

§ 78bb(f)
"Securities Litigation Uniform Standards Act of 1988"
Limitations on remedies.

(1) Class action limitations. No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(2) Removal of covered class actions. …

(3) Preservation of certain actions.

(A) Actions under State law of State of incorporation.

(i) Actions preserved. Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(ii) Permissible actions. A covered class action is described in this clause if it involves—

(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(B) State actions.

(i) In general. Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(ii) State pension plan defined. For purposes of this subparagraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

(C) Actions under contractual agreements between issuers and indenture trustees. Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(D) Remand of removed actions. …

(4) *Preservation of State jurisdiction. The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.*

Summary

The 1933 and 1934 Securities Act expressly preserved state causes of action for securities litigation. (The preservation of state regulation is found in §18 of the 1933 Act, and §27 of the 1934 Act.) This decision to avoid preemption was based on political sentiment favoring state's retention of enforcement, state-law burden reduced However, preemption was still occurring.

Later, the Private Securities Litigation Reform Act of 1995 sought to curb frivolous class action litigation in federal courts. In doing so, the legislation may it increasingly difficult for class action lawsuits to succeed by creating heightened pleading requirements, safe harbor provisions, stays of discovery, judicial appointment of a lead plaintiff, and heightened judicial scrutiny of settlement terms. However, litigants found a loophole: filing claims in state courts. As a corrective measure, Congress passed the Securities Litigation Uniform Standards Act of 1988 ("SLUSA"), which precluded securities fraud class actions in all fifty states, in both common law and statutory law.

One Supreme Court case, *Merrill Lynch, Pierce, Fenner, & Smith Inc. v. Dabit*, has been particularly helpful in explaining the preclusion effect of SLUSA. In it, the Supreme Court had to choose between a narrow (articulated by Second Circuit) or broad (espoused by the Seventh Circuit) interpretation. After examining the text, background, and purpose of SLUSA, the Court supported the broader interpretation, that SLUSA precludes state-law class-action claims, irrespective of whether a federal law private remedy exists.

Defining "in connection with" has been a sticking point for courts. Before *Dabit*, the Supreme Court had construed "in connection with" in *S.E.C. v. Zandford* as flexible. 535 U.S. 813 (2002). When the same term was used in SLUSA, they were given the same meaning. The Court in *Dabit* required that "the fraud alleged coincide with a securities transaction—whether by the plaintiff or someone else." Unfortunately, this was not the end of the debate. Consequently, the Court of Appeals have different interpretations of what "coincide" means.

Importantly, the Court in *Dabit* noted a difference between preemption and preclusion:

> "SLUSA does not actually pre-empt any state cause of action. It simply denies plaintiffs the right to use the class-action device to vindicate certain claims. The Act does not deny any individual plaintiff, or indeed any group of fewer than 50 plaintiffs, the right to enforce any state-law cause of action that may exist."

547 U.S. at 87 (2006). For the sake of this research, the preclusion is codified as express preemption.

Case Law

Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71 (2006)

Facts: This is a class action lawsuit on behalf of all former or current brokers who, while employed by Merrill Lynch, purchased certain stocks between December 1, 1999, and December 31, 2000. The lawsuit alleges Merrill Lynch breached its fiduciary duty and covenant of good faith and fair dealing by disseminating misleading research, which manipulated stock prices. The suit was originally filed in state court in Oklahoma. Merrill Lynch moved to discuss the complaint as preempted by SLUSA because it alleged "claim and damages based on wrongfully-induced purchases" and on "wrongfully-induced holdings." Dabit amended the complaint to only include *holding* claims, removing the *purchasing* claims.

Issue: Are state laws alleging "wrongfully-induced holdings" preempted by SLUSA?

Holding: SLUSA precludes state-law class-action claims, irrespective of whether the claim is brought by holders, purchasers, or sellers of securities who allege the fraudulent manipulation of stock prices.

Romano v. Kazacos, 609 F.3d 512 (2d Cir. 2010)

Facts: Plaintiffs, Xerox and Kodak retirees, allege state common law claims of negligence, breach of fiduciary duty, negligent misrepresentation, and breach of contract. (There was also one state statutory law claim.) Employees at Morgan Stanley's allegedly misrepresented that if plaintiffs retired early, their investment savings would be sufficient support.
Application: "Coincide" means to "necessarily allege, necessarily involve, or rest on."
Holding: SLUSA precludes the claims.

Rowinski v. Salomon Smith Barney Inc., 398 F.3d 294 (3d Cir. 2005)

Facts: Defendant is one of the world's largest stock brokerage and investment banking firms; it is accused of producing unlawfully biased research. Plaintiffs, a class action, allege breach of contract, unjust enrichment, and violation of state consumer protection statutes.
Procedural History: The District Court dismissed the claims, holding the complaint was framed as state law, but nonetheless alleged SLUSA violations.
Issue: Do plaintiff's state law claims allege a "misrepresentation" … "in connection" with the purchase/sale of a security?
Holding: Yes, the complaint alleges a misrepresentation in connection with the purchase or sale of securities, so it is precluded by 15 U.S.C. §78bb(f)(1).

Roland v. Green, 675 F.3d 503 (5th Cir. 2014)

***This case does a good job collecting authorities. ***
Facts: Defendant perpetrated a multi-billion-dollar Ponzi scheme. In the scheme, Defendant fraudulently induced individually to invest in an uncovered security. All the victims brought a state law class-action suit.
Application: This court adopts the Ninth Circuit's test from *Madden*, where "coincide" means "more than tangentially related."
Holding: SLUSA does not preclude Plaintiffs from using state class action to pursue recovery because the purchase or sale of securities is only tangentially related to the fraudulent scheme.

Segal v. Fifth Third Bank, N.A., 581 F.3d 305 (6th Cir. 2010)

Facts: Segal alleges Defendant breached its fiduciary and contractual duties. Particularly, Segal alleged Defendant invested fiduciary assets in propriety mutual funds rather than superior funds, promised individualized management but operated standardized and largely automated management, and investment too many assets in low-yield investments. The district court relied on SLUSA when granting Defendant's motion to dismiss for failure to state a claim.
Application: "Coincide" means to "depend on."
Holding: Plaintiff's claims were precluded by SLUSA because the allegations depended on securities transactions.

Siepel v. Bank of Am., N.A., 526 F.3d 1122 (8th Cir. 2008)

Facts: Plaintiffs are beneficiaries of trust accounts maintained by Defendant. Plaintiffs allege state-law claims for unjust enrichment and breach of fiduciary duties. The Bank consolidated its trust management activities in Nations Funds; to do this, the Bank sent misleading letters to co-trustees and beneficiaries and failed to disclose related conflicts of interest, higher expenses, and increased tax liability.

Holding: The state-law claims were precluded by SLUSA.

Knowles v. TD Ameritrade Holding Corp., 2021 U.S. App. LEXIS 18814 (8th Cir. 2021)

Facts: TD Ameritrade failed to disclose information about the operation of its computerized tax-loss harvesting tool, causing Knowles to lose approximating over $16,000 in an 18-day delay. Knowles filed a class-action lawsuit alleging breach of contract and negligence.

Rule: SLUSA does not preempt contract actions; the claim must be "rooted in interpretation of contract terms."

Application: Plaintiff generally cites to the contract but does not demonstrate that claims are "rooted in a violation of any specific contract provision." Instead, the claims are allegation of misrepresentations/omissions.

Holding: Plaintiff's claims - breach of contract and negligence - were precluded by SLUSA because the claims were rooted in Defendant's omissions in disclosures.

Madden v. Cowen & Co., 576 F.3d 957 (9th Cir. 2009)

Facts: Madden and fellow plaintiffs owned a majority interest in St. Joseph Medical Corporation, which then owned a controlling share in Orange Coast Managed Care Services. The two companies sought a buyer, and retained Defendant, an investment bank for various services. Cohen recommended a buyer, FPA Medical Management, and concluded the merger would be financially fair to shareholders of Orange Coast and St. Joseph. Two months after the merger, FPA declared bankruptcy. Madden sued FPA, who settled. Then plaintiffs filed this suit, alleging state-law claims of negligent misrepresentation and professional negligence, against the investment bank.

Application: "Coincide" means to be "more than tangentially related to."

Holding: The suit was precluded under SLUSA. *The Delaware carve-out (§77p(d)(1)(B)) does not preserve the action because the suit is under California law, not Delaware law. However, the case is remanded to determine if Madden's actions involve "a communication made by Cowen on behalf of St. Joseph to St. Joseph's shareholders.*

Northstar Fin. Advisors, Inc. v. Schwab Invs., 904 F.3d 821 (9th Cir. 2018)

Facts: Northstar, a registered investment advisory and financial planning firm, traded through Defendant's Institutional Advisor Platform and purchased shares in Defendant's Total Bond Market Fund for clients. In 1997, Defendant's shareholders approved two proposals which required Schwab Trust to seek to track the investment results of Lehman Brother Aggregate Bond Index and cap investment in any industry to 25% off the Fund's total assets. For ten years – the "Pre-Breach" – investments performed consistently with the Index. From 2007-2009 – the "Breach" – the Fund deviated from the Index and exceeded the 25% threshold, leading to plaintiff's financial injury.

Rule: The Delaware carve-out saves actions when the action 1) is based on stator or common law of the State where the issuer is organized and 2) constitutes "permissible actions" as defined in 15 U.S.C. §77p(d)(1).
Application: The first prong is satisfied because Schwab Trust is organized in Massachusetts, and the claims are based on statutory and common law of Massachusetts. However, neither the Pre-Breach class claims nor the Breach class claims are permissible actions.
Holding: The claims are precluded by SLUSA. *The Delaware carve-out does not save the claims.*

Anderson v. Merrill Lynch Pierce Fenner & Smith, Inc., 521 F.3d 1278 (10th Cir. 2008)
Facts: John Rendall was the CEO of Sol-Ex, a New Mexico corporation. In March of 1997, Rendall took out a $4 million loans with Merrill Lynch, secured against 2.61 million shares of Solv-Ex common stock. One month after the agreement, Merrill Lynch demanded payment for the entire debt. Solv-Ex filed for bankruptcy and remains dormant. The current action requires an equitable bill of discovery, or thirteen counts of state statutory and common law claims.
Holding: SLUSA precluded the shareholders' claims.

Instituto de Prevision Militar v. Merrill Lynch, 546 F.3d 1340 (11th Cir. 2008)
Facts: Pension Fund of America (PFA) claimed to be investing money from Latin American investors but was allegedly stealing it instead. Plaintiff, IPM, claims to be a victim of this fraud. Merrill Lynch allowed PFA to hold itself out as Merrill Lynch's agent and thereafter did not stop the misappropriation.
Application: "Coincide" means "induced by" or "depended on."
Holding: Plaintiff's suit for state law claims was precluded by SLUSA.

Further Readings

Richard Painter, *Responding to a False Alarm: Federal Preemption of State Securities Fraud Causes of Action*, 84 CORNELL L. REV. 1 (1998)