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- CIVIL RIGHTS ACT OF 1871.**

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a seventh-grade life science course that included showing of allegedly sexually explicit pictures and films. *Memphis Community School Dist. v. Stachura*, p. 299.

CIVIL RIGHTS ACT OF 1964.

Sexual harassment—“Hostile environment” claim.—A claim of “hostile environment” sexual harassment—not limited to “economic” or “tangible” discrimination—is a form of sex discrimination that is actionable under Title VII of Act; employers are not automatically liable for sexual harassment committed by their supervisory personnel. *Meritor Savings Bank v. Vinson*, p. 57.

CIVIL RIGHTS ATTORNEY'S FEES AWARDS ACT OF 1976.

Amount of fees—Effect of damages award.—Where (1) respondents filed a civil rights suit in District Court against petitioner city and some of its police officers, alleging violations of respondents' constitutional rights when officers used unnecessary force in breaking up a party attended by respondents, and (2) respondents were awarded compensatory and punitive damages and attorney's fees under Act that exceeded total amount of damages and that were based on time expended by attorneys and their law clerks, Court of Appeals' judgment, affirming District Court's, was affirmed. *Riverside v. Rivera*, p. 561.

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I. Commerce Clause.

1. *Prohibition of importation of baitfish—State statute.*—Where (1) appellee bait dealer was indicted for federal crime of transporting fish in violation of state law after he arranged to have live baitfish imported into Maine, despite a Maine statute prohibiting such importation, (2) he sought dismissal on ground that Maine statute unconstitutionally burdened interstate commerce, and Maine intervened to defend statute's validity, and (3) District Court upheld statute but Court of Appeals reversed, Maine properly invoked this Court's jurisdiction under 28 U. S. C. § 1254(2), which is not limited to civil litigation; Maine statute was constitutional. *Maine v. Taylor*, p. 131.

2. *State aviation fuel tax—Pre-emption.*—Florida's tax on aviation fuel sold within State to airlines regardless of whether fuel was used to fly

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within or without State—challenged by Canadian airline operating charter flights to and from United States—did not violate Commerce Clause; nor was tax pre-empted by Federal Aviation Act, which does not occupy field of international aviation. *Wardair Canada Inc. v. Florida Dept. of Revenue*, p. 1.

II. Cruel and Unusual Punishment.

Death penalty—Insanity of prisoner.—Eighth Amendment prohibits a State from inflicting death penalty upon a prisoner who becomes insane after sentencing. *Ford v. Wainwright*, p. 399.

III. Due Process.

Visible possession of firearm—Sentencing factor.—A State may, consistent with due process, treat visible possession of a firearm during commission of certain felonies as a sentencing consideration to be proved by only a preponderance of evidence, rather than as an element of offense that must be proved beyond a reasonable doubt; nor does such a state statute, that provides for sentencing by judge, rather than by jury, violate Sixth Amendment guarantee of a jury trial. *McMillan v. Pennsylvania*, p. 79.

IV. Equal Protection of the Laws.

Food Stamp Act of 1964—Eligibility and benefit levels.—Equal protection guarantee is not violated by distinction under Food Stamp Act of 1964 whereby—for purposes of determining eligibility and benefit levels—parents, children, and siblings who live together are treated as a “household,” but more distant relatives, or groups of unrelated persons, who live together are not so treated unless they also customarily purchase food and prepare meals together. *Lyng v. Castillo*, p. 635.

V. Right to Counsel.

1. *Accused's incriminating statements—Cellmate informant.*—Respondent's incriminating statements made while incarcerated prior to trial to his cellmate, another inmate who had agreed to act as an informant and who obeyed police instructions only to listen to respondent and not to question him about crimes charged, were not inadmissible at respondent's state-court trial on ground that they were obtained in violation of respondent's Sixth Amendment right to counsel. *Kuhlmann v. Wilson*, p. 436.

2. *Ineffective assistance—Illegal search and seizure—Failure to seek pretrial suppression.*—Where (1) during respondent's state trial that resulted in a rape conviction, defense counsel sought to suppress introduction of a bedsheet taken from respondent's bed by a police officer acting without a warrant, (2) judge ruled that suppression motion was untimely, rejecting counsel's attempted justification of his omission, (3) appellate

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court rejected respondent's claim of ineffective assistance of trial counsel, and (4) Federal District Court granted habeas corpus relief on basis of such claim, rule against habeas corpus relief for Fourth Amendment claim that could have been litigated in state courts did not extend to Sixth Amendment ineffective-assistance claim founded primarily on incompetent representation with respect to a Fourth Amendment issue; although respondent satisfied "incompetence" portion of test for ineffective-assistance claim, District Court should determine whether respondent met "prejudice" portion. *Kimmelman v. Morrison*, p. 365.

VI. Taking of Property.

1. *Land use regulations—Validity.*—Where (1) appellant's proposal to subdivide property into residential lots was rejected by appellee county's officials, (2) appellant filed a state-court suit alleging that officials restricted property to agricultural use by denying all subdivision applications and thereby appropriated property's economic use for a public, open-space buffer, and (3) trial court sustained a demurrer to complaint and appellate court affirmed, this Court—absent County Planning Commission's authoritative determination as to how it would apply certain regulations to appellant's property—could not determine whether a "taking" occurred or whether county failed to provide "just compensation," and thus Court could not adjudicate constitutionality of regulations purporting to limit development. *MacDonald, Sommer & Frates v. Yolo County*, p. 340.

2. *Social Security Act—State employees—Withdrawal from coverage.*—A taking of a State's property within meaning of Fifth Amendment was not effected by Social Security Act's provisions relating to a State's withdrawal from elective coverage of employees of State and its political subdivisions under Social Security System. *Bowen v. Public Agencies Opposed to Social Security Entrapment*, p. 41.

CRIMINAL LAW. See Constitutional Law, I-III, V; Habeas Corpus.

Death penalty—Exclusion of venireman—Prosecution's improper argument—Assistance of counsel.—In petitioner's state-court trial that resulted in convictions for murder, robbery, and assault with intent to kill, in jury's recommendation of death sentence, and in judge's imposition of such sentence, record supported (1) judge's decision to exclude a venireman for cause because of his views opposing death penalty, (2) rejection of contention that prosecution's improper remarks in closing argument during trial's guilt phase rendered trial so unfair as to violate due process, and (3) rejection of petitioner's claim of ineffective assistance of counsel at trial's sentencing phase. *Darden v. Wainwright*, p. 168.

DAMAGES. See Civil Rights Act of 1871; Civil Rights Attorney's Fees Awards Act of 1976; Death on the High Seas Act.

DEATH ON THE HIGH SEAS ACT.

Recovery of nonpecuniary damages—Pre-emption of state law.—Where federal-court actions sought to recover damages based on deaths of passengers in helicopter that crashed in high seas off Louisiana coast, Act applied, rather than Outer Continental Shelf Lands Act, and pre-empted Louisiana wrongful-death statute so as to preclude recovery of nonpecuniary damages thereunder. *Offshore Logistics, Inc. v. Tallentire*, p. 207.

DEATH PENALTY. See **Constitutional Law, II; Criminal Law.**

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FEDERAL INCOME TAX. See **Internal Revenue Code.**

FEDERAL RULES OF CIVIL PROCEDURE. See also **Libel, 1; Trade Act of 1974.**

Wrongful-death action—Summary judgment.—In a wrongful-death action alleging that decedent's death resulted from his exposure to asbestos products of petitioner corporation, which moved for summary judgment on ground that respondent administratrix failed to produce any discovery evidence to show decedent's exposure to petitioner's products, Court of Appeals' position that summary judgment for petitioner was precluded because of petitioner's failure to support its motion with evidence tending to negate such exposure was erroneous under Rule 56. *Celotex Corp. v. Catrett*, p. 317.

FEDERAL-STATE RELATIONS. See **Constitutional Law, I; VI, 2; Death on the High Seas Act; Jurisdiction.**

FIFTH AMENDMENT. See **Constitutional Law, IV; VI; Mootness.**

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GOVERNMENT EMPLOYEES. See **Constitutional Law, VI, 2.**

GROUP INSURANCE PROGRAMS. See **Internal Revenue Code.**

HABEAS CORPUS.

1. *State prisoner—Defense counsel's state-court procedural default.*—A federal habeas corpus petitioner cannot show cause for a procedural default in state-court proceedings by establishing that competent defense counsel's failure to raise a substantive claim of error was inadvertent rather than deliberate; thus, respondent, who was convicted in state proceedings, could not, in federal habeas corpus proceedings, show cause for a procedural default in state-court proceedings where (1) state judge denied defense counsel's pretrial motion to discover victim's statements to police, (2) defense counsel filed a petition for appeal that failed to include a claim based on such ruling, (3) after appeal was denied, respondent filed a *pro se* state habeas corpus petition, claiming he had been denied due process by prosecution's withholding of victim's statements, which petition was denied because respondent had failed to raise claim on direct appeal, (4) respondent-

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ent filed a *pro se* habeas petition in Federal District Court, which also held that discovery claim was barred by such procedural default, and (5) on appeal, respondent disavowed any claim of ineffective assistance of counsel, but asserted that counsel had mistakenly omitted discovery claim from state petition for appeal. *Murray v. Carrier*, p. 478.

2. *State prisoner—Psychiatrist's testimony—Claim not asserted on appeal.*—Where (1) prior to petitioner's state-court trial for murder of a woman, he was examined by a court-appointed psychiatrist at defense counsel's request, (2) petitioner told psychiatrist that he once tore clothes off a girl on a school bus before deciding not to rape her, (3) after petitioner was convicted, prosecution called psychiatrist at sentencing phase and, over defense's objection, he described school-bus incident, (4) on appeal, defense counsel did not assign any error concerning admission of psychiatrist's testimony because state law did not then support his position, and (5) State Supreme Court affirmed conviction and sentence, not addressing any issues concerning psychiatric testimony, federal habeas corpus relief was precluded because petitioner had defaulted his underlying constitutional claim as to psychiatrist's testimony by failing to press it on direct appeal. *Smith v. Murray*, p. 527.

HANDICAPPED PERSONS. See **Rehabilitation Act of 1973.**

HELICOPTER CRASHES. See **Death on the High Seas Act.**

"HOSTILE ENVIRONMENT" SEXUAL HARASSMENT. See **Civil Rights Act of 1964.**

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"INDISPENSABLE" PARTIES. See **Trade Act of 1974.**

INFORMANTS. See **Constitutional Law, V, 1.**

INSANITY AS PRECLUDING DEATH PENALTY. See **Constitutional Law, II.**

INTERNAL REVENUE CODE.

Income tax—Charitable organization—Group insurance for members.—Insurance program of respondent American Bar Endowment, a charitable organization which raised money for its charitable work by providing low-cost group insurance to its members, was a "trade or business" subjecting profits from program to unrelated business income tax under Code, and members were not entitled to treat portions of their premium payments as charitable contributions. *United States v. American Bar Endowment*, p. 105.

INTERSTATE COMMERCE. See *Constitutional Law*, I, 1.

JURISDICTION. See *Constitutional Law*, I, 1.

Abstention—Parochial school teacher's discharge—State administrative proceedings.—Where (1) after a pregnant parochial school teacher was told that her contract would not be renewed because of respondent employer's religious doctrine that mothers should stay at home with their preschool age children, her attorney threatened litigation under state and federal sex discrimination laws, (2) employer rescinded its nonrenewal decision, but terminated teacher because of her breach of a contract requirement that all disputes be resolved internally rather than through court actions, (3) teacher filed a sex discrimination charge with State Civil Rights Commission, which initiated administrative proceedings against employer, and (4) employer filed an action in Federal District Court, which denied injunction against administrative proceedings, holding that such proceedings would not violate employer's First Amendment religious rights, District Court should have abstained from adjudicating case. *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, p. 619.

JURY TRIAL. See *Constitutional Law*, III; *Criminal Law*.

JUST COMPENSATION CLAUSE. See *Constitutional Law*, VI.

LABOR UNIONS' STANDING TO SUE FOR MEMBERS. See *Trade Act of 1974*.

LAND USE REGULATIONS. See *Constitutional Law*, VI, 1.

LIBEL.

1. *Diversity actions—Statute of limitations.*—Where (1) petitioners' diversity libel actions were filed in District Court on May 9, 1983, based on a story in May 31, 1982, issue of *Fortune Magazine*, (2) registered agent of *Time* received complaints on May 23, 1983, but refused service because *Time* was not named as a defendant, (3) on July 19, 1983, petitioners amended complaints to name as defendant "Fortune, also known as *Time, Incorporated*," and (4) amended complaints were served on *Time* on July 21, such complaint amendments did not relate back to May 9 filing, and actions were properly dismissed under applicable New Jersey statute requiring that a libel action be started within one year of alleged libel's publication. *Schiavone v. Fortune*, p. 21.

2. *Summary judgment—Actual malice—Evidentiary standard.*—In a libel action subject to rule of *New York Times Co. v. Sullivan*, 376 U. S. 254, a trial court ruling on defendant's summary judgment motion must be guided by "clear and convincing" evidentiary standard in determining whether a genuine issue of actual malice exists; plaintiff may not defeat defendant's properly supported motion without offering any concrete evi-

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dence from which a reasonable jury could return a verdict for plaintiff and by merely asserting that jury might disbelieve defendant's denial of actual malice. *Anderson v. Liberty Lobby, Inc.*, p. 242.

LIMITATIONS PERIODS. See *Libel*, 1.

MAINE. See *Constitutional Law*, I, 1.

MASSACHUSETTS. See *Social Security Act*.

MEDICAID. See *Social Security Act*.

"MEDICALLY NEEDY" PERSONS. See *Social Security Act*.

MENTAL PATIENTS. See *Mootness*.

MOOTNESS.

Former mental patients—Purchase of firearms—Amendment of statute.—Where (1) appellee, a former involuntarily committed mental patient, was unable to purchase a firearm because of 18 U. S. C. § 922(d), which also applies to felons, (2) § 925(c) allowed certain felons, but not former mental patients, to apply for administrative relief from disability imposed by federal firearms laws, and (3) District Court upheld appellee's challenge to statutory scheme as violating equal protection principles and as unconstitutionally creating an irrebuttable presumption that a mental patient was forever mentally ill and dangerous, such issues became moot when, after this Court noted probable jurisdiction and heard arguments, Congress amended § 925(c) to apply to former mental patients. *Department of Treasury v. Galioto*, p. 556.

NEW JERSEY. See *Libel*, 1.

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PAROCHIAL SCHOOL TEACHERS. See *Jurisdiction*.

PARTIES. See *Trade Act of 1974*.

POLICE INFORMANTS. See *Constitutional Law*, V, 1.

POSSESSION OF FIREARMS. See *Constitutional Law*, III.

PRE-EMPTION OF STATE LAW BY FEDERAL LAW. See *Constitutional Law*, I, 2; *Death on the High Seas Act*.

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PURCHASE OF FIREARMS BY FORMER MENTAL PATIENTS.
See Mootness.

REHABILITATION ACT OF 1973.

Commercial Airlines—Application of Act.—Section 504 of Act, which prohibits discrimination against handicapped persons in federally funded programs, is not applicable to commercial airlines, since they do not “receive” any federal funds even though they may benefit from federal aid to airports. *Department of Transportation v. Paralyzed Veterans of America*, p. 597.

“RELATION BACK” OF PLEADING AMENDMENTS. See Libel, 1.

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Medicaid—Eligibility determination.—Act’s “spenddown” and “same methodology” provisions with regard to determinations by States participating in Medicaid program as to eligibility of “medically needy” were not violated by Massachusetts’ 6-month spenddown period for calculating income of medically needy. *Atkins v. Rivera*, p. 154.

STANDING TO APPEAL. See Constitutional Law, I, 1.

STANDING TO SUE. See Trade Act of 1974.

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TAXES. See Constitutional Law, I, 2; Internal Revenue Code.

TEACHERS. See Jurisdiction.

TRADE ACT OF 1974.

Program for laidoff workers—Union's standing to sue.—A union had standing, on behalf of its members, to litigate an action challenging Secretary of Labor's interpretation of Act's eligibility provisions regarding benefits to workers laid off because of competition from imports; action can be maintained without joinder as defendants of state agencies administering benefit program. *Automobile Workers v. Brock*, p. 274.

UNIONS' STANDING TO SUE FOR MEMBERS. See **Trade Act of 1974.**

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"Household." § 3(i), Food Stamp Act of 1964, 7 U. S. C. § 2012(i). *Lyng v. Castillo*, p. 635.

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