

INDEX

ACTUAL INNOCENCE CLAIMS. See **Habeas Corpus**, 3.

ADMIRALTY.

Jurisdiction—Tort liability for flood damage.—A Federal District Court had admiralty jurisdiction to determine, and limit extent of, respondent's tort liability for flood damage allegedly caused by its negligence in replacing piles in a riverbed above an underground freight tunnel. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, p. 527.

ADMISSION OF EVIDENCE. See **Criminal Law**, 2; **Federal Rules of Evidence**.

ADOPTION. See **Stays**, 1.

ADVISORY JURY VERDICTS. See **Constitutional Law**, I.

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Relief for discriminatory discharge—Later discovered legitimate discharge grounds.—An employee discharged in violation of ADEA is not barred from all relief when, after her discharge, employer discovers evidence of wrongdoing that, in any event, would have led to her discharge on lawful and legitimate grounds had employer known of it. *McKennon v. Nashville Banner Publishing Co.*, p. 352.

AGENCY. See **National Bank Act**.

AGRICULTURE. See **Plant Variety Protection Act of 1970**.

AID FOR FAMILIES WITH DEPENDENT CHILDREN. See **Case or Controversy**.

AIRLINE DEREGULATION ACT OF 1970.

Pre-emption of state regulation.—Act's pre-emption provision bars state-imposed regulation of air carriers, but allows room for state-court enforcement of contract terms set by parties themselves. *American Airlines, Inc. v. Wolens*, p. 219.

ALABAMA. See **Constitutional Law**, I.

AMTRAK. See **Constitutional Law**, III, 2.

ANNUITIES. See **National Bank Act**.

ARBITRATION. See **Federal Arbitration Act.**

ATTORNEYS. See **Supreme Court**, 1.

BANKS. See **National Bank Act.**

BAN ON HONORARIA. See **Constitutional Law**, III, 1.

CALIFORNIA. See **Case or Controversy.**

CAPITAL MURDER. See **Constitutional Law**, I; **Habeas Corpus**, 3.

CASE OR CONTROVERSY. See also **Stays**, 2.

Ripeness—Change in Aid to Families with Dependent Children program.—This case, in which California AFDC recipients challenge a California law that would limit new residents, for first year they live in California, to AFDC benefits paid in State from which they came, is not ripe for review because Department of Health and Human Services approval is required for payment differential to take effect. *Anderson v. Green*, p. 557.

CERTIORARI PETITIONS. See **Federal Election Campaign Act.**

CHILD CUSTODY. See **Stays**, 1.

CHILDREN'S EXPLOITATION. See **Constitutional Law**, III, 3.

CIVIL JUDGMENTS. See **Vacatur.**

COMMERCE. See **Federal Arbitration Act; Interstate Commerce Act.**

COMMERCE CLAUSE. See **Federal Arbitration Act.**

COMPTROLLER OF CURRENCY. See **National Bank Act.**

CONSISTENT OUT-OF-COURT STATEMENTS. See **Federal Rules of Evidence.**

CONSPIRACY. See **Criminal Law**, 1.

CONSTITUTIONAL LAW. See also **Federal Arbitration Act; Habeas Corpus; Taxes.**

I. Cruel and Unusual Punishment.

Capital sentencing scheme—Weight accorded advisory jury verdict.—Alabama's capital sentencing statute, which vests sentencing authority in trial judge but requires him to "consider" an advisory jury verdict, is not rendered unconstitutional by its failure to specify weight judge must give to jury's recommendation. *Harris v. Alabama*, p. 504.

CONSTITUTIONAL LAW—Continued.**II. Due Process.**

Discriminatory taxes—Relief.—Georgia failed to provide a meaningful “clear and certain” remedy, consistent with due process and *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, for income taxes it collected from federal, but not state, retirees in violation of Federal Constitution. *Reich v. Collins*, p. 106.

III. Freedom of Speech.

1. *Ethics in Government Act of 1978—Honoraria ban.*—Insofar as § 501(b) of Act prohibits Federal Executive Branch employees below grade GS-16 from accepting honoraria for making appearances or speeches or writing articles, it violates First Amendment. *United States v. Treasury Employees*, p. 454.

2. *Government-created corporation as Government actor.*—Where Federal Government creates a corporation by special law for furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of corporation’s directors, corporation is part of Government for First Amendment purposes. *Lebron v. National Railroad Passenger Corporation*, p. 374.

3. *Protection of Children Against Sexual Exploitation Act of 1977—Scienter requirement.*—Because term “knowingly” in 18 U. S. C. § 2252 modifies that section’s later phrase “the use of a minor,” Act is not facially invalid under First Amendment as lacking a scienter requirement. *United States v. X-Citement Video, Inc.*, p. 64.

IV. States’ Immunity from Suit.

Bistate entity.—Respondent, a bistate entity created by New York, New Jersey, and Congress pursuant to Federal Constitution’s Interstate Compact Clause, is not entitled to its parent States’ Eleventh Amendment immunity from suit in federal court. *Hess v. Port Authority Trans-Hudson Corporation*, p. 30.

CREDIT REGULATIONS. See **Interstate Commerce Act.**

CRIMINAL JUSTICE ACT OF 1964. See **Supreme Court**, 1.

CRIMINAL LAW. See also **Constitutional Law**, I; III, 3; **Habeas Corpus**; **Supreme Court**, 1.

1. *Drug conspiracy—Proof of an overt act.*—Federal drug conspiracy statute, 21 U. S. C. § 846, does not require Government to prove that a conspirator committed an overt act in furtherance of conspiracy. *United States v. Shabani*, p. 10.

CRIMINAL LAW—Continued.

2. *Federal Rules of Evidence and of Criminal Procedure—Admission of statements made during plea discussions.*—A criminal defendant's agreement to waive Federal Rule of Criminal Procedure 11(e)(6) and Federal Rule of Evidence 410, which exclude from admissibility against him statements made during plea discussions, is valid and enforceable, absent some indication of fraud or coercion. *United States v. Mezzanatto*, p. 196.

CRUEL AND UNUSUAL PUNISHMENT. See **Constitutional Law**, I.

CUSTODY OF CHILDREN. See **Stays**, 1.

DEATH SENTENCES. See **Constitutional Law**, I.

DEBT SECURITIES. See **Taxes**.

DISABILITY BENEFITS. See **Veterans**.

DISCRIMINATION IN EMPLOYMENT. See **Age Discrimination in Employment Act of 1967**.

DISCRIMINATION IN TAXING. See **Constitutional Law**, II.

DISCRIMINATION ON ACCOUNT OF AGE. See **Age Discrimination in Employment Act of 1967**.

DRUGS. See **Criminal Law**, 1.

DUE PROCESS. See **Constitutional Law**, II; **Habeas Corpus**, 2.

EIGHTH AMENDMENT. See **Constitutional Law**, I.

ELEVENTH AMENDMENT. See **Constitutional Law**, IV.

EMPLOYEE PENSION PLANS. See **Multiemployer Pension Plan Amendments Act of 1980**.

EMPLOYER AND EMPLOYEES. See **Age Discrimination in Employment Act of 1967**; **Multiemployer Pension Plan Amendments Act of 1980**.

ETHICS IN GOVERNMENT ACT OF 1978. See **Constitutional Law**, III, 1.

EVIDENCE. See **Federal Rules of Evidence**.

EXHAUSTION OF STATE REMEDIES. See **Habeas Corpus**, 2.

EXPLOITATION OF CHILDREN. See **Constitutional Law**, III, 3.

EXTRAORDINARY WRITS. See **Supreme Court**, 2.

FABRICATION OF EVIDENCE. See **Federal Rules of Evidence**.

FARMERS. See **Plant Variety Protection Act of 1970.**

FEDERAL ARBITRATION ACT.

Written contract—Enforceability of arbitration provision.—Section 2 of Act—which makes enforceable a written arbitration provision in “a contract evidencing a transaction involving commerce”—should be read broadly as extending Act’s reach to limits of Congress’ Commerce Clause power. *Allied-Bruce Terminix Cos. v. Dobson*, p. 265.

FEDERAL COURTS. See **Vacatur.**

FEDERAL DEBT SECURITIES. See **Taxes.**

FEDERAL ELECTION CAMPAIGN ACT.

Federal Election Commission’s authority to file certiorari petition.—FEC lacks independent statutory authority to file a certiorari petition in this Court, and Solicitor General’s “after-the-fact” authorization in this case did not relate back to date of FEC’s unauthorized filing so as to make it timely. *Federal Election Comm’n v. NRA Political Victory Fund*, p. 88.

FEDERAL EMPLOYEES. See **Constitutional Law**, III, 1.

FEDERAL RULES OF CRIMINAL PROCEDURE. See **Criminal Law**, 2.

FEDERAL RULES OF EVIDENCE. See also **Criminal Law**, 2.

Recent fabrication or improper influence or motive—Rebuttal using consistent out-of-court statements.—Rule 801(d)(1)(B) permits introduction of a declarant’s consistent out-of-court statements to rebut a charge of recent fabrication or improper influence or motive only when those statements were made before charged fabrication, influence, or motive came into being. *Tome v. United States*, p. 150.

FEDERAL-STATE RELATIONS. See **Airline Deregulation Act of 1970.**

FILED RATE DOCTRINE. See **Interstate Commerce Act.**

FIRST AMENDMENT. See **Constitutional Law**, III.

FLOOD DAMAGE LIABILITY. See **Admiralty.**

FOURTEENTH AMENDMENT. See **Constitutional Law**, II; **Habeas Corpus**, 2.

FREEDOM OF SPEECH. See **Constitutional Law**, III.

FRIVOLOUS PETITIONS. See **Supreme Court**, 2.

GOVERNMENT CORPORATIONS. See **Constitutional Law**, III, 2.

HABEAS CORPUS. See also **Stays**, 1.

1. *Constitutional error—Harmless-error determination.*—A federal habeas court that (1) reviews a state-court criminal judgment, (2) finds a constitutional error, and (3) is in grave doubt about whether error is harmless, should treat error as substantially and injuriously affecting verdict and grant relief. *O’Neal v. McAninch*, p. 432.

2. *Exhaustion of state remedies.*—Respondent failed to exhaust his state remedies before seeking federal habeas review, when he did not apprise state court of his claim that evidentiary rule he was challenging violated not only state law, but also due process under Fourteenth Amendment. *Duncan v. Henry*, p. 364.

3. *Procedural bar—Actual innocence claim.*—When a habeas petitioner facing execution raises an actual innocence claim to avoid a procedural bar to his constitutional claims, proper inquiry is whether constitutional violation has “probably” resulted in conviction of one who is actually innocent. *Schlup v. Delo*, p. 298.

HARMLESS ERROR. See **Habeas Corpus**, 1.

HONORARIA BAN. See **Constitutional Law**, III, 1.

ILLINOIS. See **Stays**, 1.

IMMUNITY FROM SUIT. See **Constitutional Law**, IV.

IMPROPER INFLUENCE OR MOTIVE. See **Federal Rules of Evidence**.

IN FORMA PAUPERIS. See **Supreme Court**, 2.

INJUNCTIONS. See **Interstate Commerce Act**.

INTEREST INCOME AS TAXABLE INCOME. See **Taxes**.

INTERSTATE COMMERCE. See **Federal Arbitration Act**; **Interstate Commerce Act**.

INTERSTATE COMMERCE ACT.

Filed rate doctrine—Enforcement of credit regulations.—Filed rate doctrine does not bar ICC from obtaining injunctive relief to enforce its credit regulations in a manner that would prevent collection of a rate filed in a published tariff. *ICC v. Transcon Lines*, p. 138.

INTERSTATE COMPACT CLAUSE. See **Constitutional Law**, IV.

JUSTICIABILITY. See **Case or Controversy**.

LAWYERS. See **Supreme Court**, 1.

MARITIME JURISDICTION. See **Admiralty**.

MOOTNESS. See **Stays**, 2.

MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.

Withdrawal from underfunded plan—Calculation of interest.—Under Act, interest on amortized charge a withdrawing employer must pay to cover its fair share of a plan's unfunded liabilities begins to accrue on first day of plan year following withdrawal. *Milwaukee Brewery Workers' Pension Plan v. Jos. Schlitz Brewing Co.*, p. 414.

MURDER. See **Habeas Corpus**, 3.

NATIONAL BANK ACT.

Annuities sales—National banks as agents.—Comptroller of Currency's determination that national banks may serve as agents in sale of annuities is a reasonable construction of 12 U. S. C. §§ 24 Seventh and 92, and therefore warrants judicial deference. *NationsBank of N. C., N. A. v. Variable Annuity Life Ins. Co.*, p. 251.

NEBRASKA. See **Taxes**.

NEW JERSEY. See **Constitutional Law**, IV.

NEW YORK. See **Constitutional Law**, IV.

OUT-OF-COURT STATEMENTS. See **Federal Rules of Evidence**.

OVERT ACTS IN FURTHERANCE OF CONSPIRACIES. See **Criminal Law**, 1.

PATENTS. See **Plant Variety Protection Act of 1970**.

PENSION PLANS. See **Multiemployer Pension Plan Amendments Act of 1980**.

PLANT VARIETY PROTECTION ACT OF 1970.

Sale of seed for reproductive purposes.—Under Act—which extends patent-like protection to novel varieties of plants grown from seed—a farmer may sell for reproductive purposes only such seed as he has saved for purpose of replanting his own acreage. *Asgrow Seed Co. v. Winterboer*, p. 179.

PLEA BARGAINS. See **Criminal Law**, 2.

PORNOGRAPHY. See **Constitutional Law**, III, 3.

PRE-EMPTION OF STATE REGULATIONS. See **Airline Deregulation Act of 1970**.

PRIVATE SALE CONTRACTS. See **Securities Act of 1933**.

PROCEDURAL BARS TO CONSTITUTIONAL CLAIMS. See **Habeas Corpus**, 3.

PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION ACT OF 1977. See **Constitutional Law**, III, 3.

PUBLISHED TARIFFS. See **Interstate Commerce Act**.

RATES FOR TARIFFS. See **Interstate Commerce Act**.

REPETITIOUS FILINGS. See **Supreme Court**, 2.

REPRODUCTION OF PLANTS. See **Plant Variety Protection Act of 1970**.

REPURCHASE AGREEMENTS. See **Taxes**.

RESCISSION RIGHTS. See **Securities Act of 1933**.

RIPENESS. See **Case or Controversy**.

SALES OF ANNUITIES. See **National Bank Act**.

SCIENTER REQUIREMENTS. See **Constitutional Law**, III, 3.

SECURITIES ACT OF 1933.

Private sale contract.—Section 12(2) of Act—which gives buyers an express right of rescission against sellers who make material misstatements or omissions “by means of a prospectus”—does not extend to a private sale contract, since a contract and its recitations that are not held out to public are not a “prospectus” under Act. *Gustafson v. Alloyd Co.*, p. 561.

SEED SALES. See **Plant Variety Protection Act of 1970**.

SETTLEMENTS. See **Vacatur**.

SEXUAL EXPLOITATION OF CHILDREN. See **Constitutional Law**, III, 3.

SOVEREIGN IMMUNITY. See **Constitutional Law**, IV.

STATES' IMMUNITY FROM SUIT. See **Constitutional Law**, IV.

STATE TAXES. See **Constitutional Law**, II; **Taxes**.

STAYS.

1. *Child's custody.*—Applications to recall mandate of Illinois Supreme Court and to stay that court's issuance of a writ of habeas corpus directing that custody of Baby Boy Richard be transferred from his adoptive parents to his natural father are denied. *O'Connell v. Kirchner* (STEVENS, J., in chambers), p. 1303.

2. *Mootness.*—Dow Jones' emergency application for stay, seeking permission to publish and report on a Court of Appeals' order filed “under seal,” is moot, since Dow Jones can report and publish a second order of

STAYS—Continued.

same court, which referred to first order and its contents and was not filed “under seal.” In re Dow Jones & Co. (REHNQUIST, C. J., in chambers), p. 1301.

SUPREMACY CLAUSE. See **Taxes.**

SUPREME COURT. See also **Federal Election Campaign Act.**

1. *Application to withdraw as counsel.*—Application to withdraw as counsel is granted where attorney appointed under Criminal Justice Act of 1964 filed a brief in Fourth Circuit concluding that no meritorious appeals issues existed and then filed withdrawal application before certiorari filing deadline in this Court. Austin v. United States, p. 5.

2. *In forma pauperis filings—Repetitious filings.*—Under this Court’s Rule 39.8, *pro se* petitioner, who has filed numerous frivolous petitions with Court, is prospectively denied leave to proceed *in forma pauperis* on all petitions for extraordinary writs in noncriminal matters. In re Whitaker, p. 1.

TARIFFS. See **Interstate Commerce Act.**

TAXES. See also **Constitutional Law, II.**

State taxes—Interest income on repurchase agreements involving federal debt securities.—Nebraska’s tax on interest income derived from repurchase agreements involving federal debt securities is not prohibited by 31 U.S.C. § 3124 as a tax on “obligations of the United States Government” or by Supremacy Clause. Nebraska Dept. of Revenue v. Loewenstein, p. 123.

VACATUR.

Civil judgments of subordinate courts.—Federal appellate courts should not, absent exceptional circumstances, vacate subordinate courts’ civil judgments in cases that are settled after appeal is filed or certiorari sought. U. S. Bancorp Mortgage Co. v. Bonner Mall Partnership, p. 18.

VETERANS.

Disability benefits—Fault-or-accident requirement.—Title 38 CFR § 3.358(c)(3), which requires certain veterans’ benefits claimants to prove that disability resulted from negligent VA treatment or an accident during treatment, is not consistent with plain language of controlling statute, 38 U.S.C. § 1151. Brown v. Gardner, p. 115.

VIRGINIA. See **Constitutional Law, II.**

WAIVER OF FEDERAL RULES. See **Criminal Law, 2.**

WELFARE BENEFITS. See **Case or Controversy.**

WITHDRAWAL FROM PENSION PLANS. See **Multiemployer Pension Plan Amendments Act of 1980.**

WORDS AND PHRASES.

1. “A *contract evidencing a transaction involving commerce.*” Federal Arbitration Act, 9 U.S.C. §2. *Allied-Bruce Terminix Cos. v. Dobson*, p. 265.

2. “An *injury, or an aggravation of an injury [that occurs] as the result of.*” 38 U.S.C. §1151. *Brown v. Gardner*, p. 115.

3. “*Knowingly*”; “*the use of a minor.*” Protection of Children Against Sexual Exploitation Act of 1977, 18 U.S.C. §2252. *United States v. X-Citement Video, Inc.*, p. 64.

4. “*Obligations of the United States Government.*” 31 U.S.C. §3124. *Nebraska Dept. of Revenue v. Loewenstein*, p. 123.

5. “*Prospectus.*” §12(2), Securities Act of 1933, 15 U.S.C. §77l(2). *Gustafson v. Alloyd Co.*, p. 561.