

INDEX

ABORTION. See **Constitutional Law**, II.

ABROGATION OF STATE SOVEREIGN IMMUNITY. See **Immunity from Suit**, 2.

ADMINISTRATIVE LAW. See **Individuals with Disabilities Education Act**.

AGGRAVATING FACTORS. See **Constitutional Law**, I, 1.

AMERICANS WITH DISABILITIES ACT OF 1990. See **Immunity from Suit**, 2.

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996. See **Habeas Corpus**, 2, 3.

ANTITRUST ACTS.

Robinson-Patman Act—Secondary-line price discrimination between competing retail dealers.—A manufacturer may not be held liable for secondary-line price discrimination under Act absent a showing that manufacturer discriminated between dealers competing to resell its product to same retail customer; Act centrally addresses price discrimination in cases involving competition between different purchasers for resale of purchased product; such competition ordinarily is not involved when a product subject to special order is sold through a customer-specific competitive bidding process. *Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc.*, p. 164.

APPEALS.

1. *Collateral order doctrine—Refusal to apply judgment bar.*—A refusal to apply Federal Tort Claims Act's judgment bar is not open to appeal under collateral order doctrine. *Will v. Hallock*, p. 345.

2. *Power of appellate court—Sufficiency of evidence.*—Because respondent failed to renew, after trial, its preverdict motion for judgment as a matter of law, as specified in Federal Rule of Civil Procedure 50(b), Federal Circuit had no basis for reviewing respondent's sufficiency of evidence challenge to verdict. *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, p. 394.

ARBITRATION.

Challenge to contract's validity.—Regardless of whether it is brought in federal or state court, a challenge to validity of a contract as a whole, and not specifically to that contract's arbitration clause, must be resolved by arbitrator, not by court. *Buckeye Check Cashing, Inc. v. Cardegna*, p. 440.

ASSISTANCE OF COUNSEL. See **Habeas Corpus**, 1.

ASSISTED SUICIDE. See **Controlled Substances Act**.

ATTORNEY'S FEES.

Remand of case removed to federal court.—Absent unusual circumstances, attorney's fees should not be awarded in an order remanding a case to state court under 28 U. S. C. § 1447(c) when party who previously removed case to federal court had an objectively reasonable basis for doing so. *Martin v. Franklin Capital Corp.*, p. 132.

AUTOMOBILE SALES. See **Antitrust Acts**.

BANKING. See **Jurisdiction**, 1.

BANKRUPTCY.

Set-aside of preferential transfers—Sovereign immunity.—A bankruptcy trustee's proceeding to set aside debtor's preferential transfers to state agencies is not barred by sovereign immunity. *Central Va. Community College v. Katz*, p. 356.

BENEFITS OFFSET. See **Social Security**.

BIPARTISAN CAMPAIGN REFORM ACT OF 2002.

As-applied challenge—"Electioneering communications" regulation.—District Court's judgment is vacated and case is remanded for that court to consider in first instance merits of appellant's as-applied challenge to application of BCRA § 203, which prohibits corporations from using their general treasury funds to pay for any "electioneering communications." *Wisconsin Right to Life, Inc. v. Federal Election Comm'n*, p. 410.

BURDEN OF PERSUASION. See **Individuals with Disabilities Education Act**.

CALIFORNIA. See **Habeas Corpus**, 2.

CAMPAIGN FINANCING. See **Bipartisan Campaign Reform Act of 2002**.

CAPITAL MURDER. See **Constitutional Law**, I.

CAR SALES. See **Antitrust Acts**.

CIVIL RIGHTS ACT OF 1866. See also **Discrimination Based on Race.**

Section 1981—Statement of claim.—Consistent with this Court’s case law, and as required by 42 U.S.C. § 1981’s plain text, a plaintiff cannot state a § 1981 claim unless he has (or would have) rights under an existing (or proposed) contract that he wishes “to make and enforce.” *Domino’s Pizza, Inc. v. McDonald*, p. 470.

CIVIL RIGHTS ACT OF 1964. See also **Discrimination Based on Race.**

Title VII—Employee-numerosity requirement—Subject-matter jurisdiction.—Fifteen-employee requirement contained in Title VII’s “employer” definition does not affect federal-court subject-matter jurisdiction but, instead, delineates a substantive ingredient of a Title VII claim for relief. *Arbaugh v. Y & H Corp.*, p. 500.

COLLATERAL ORDER DOCTRINE. See **Appeals**, 1.

COLLATERAL REVIEW. See **Habeas Corpus**, 2.

COLLECTION OF STUDENT LOAN DEBT. See **Social Security**.

COMPENSATION FOR TIME SPENT DONNING AND DOFFING PROTECTIVE GEAR. See **Labor**.

COMPLETE DIVERSITY. See **Jurisdiction**, 3.

CONSTITUTIONAL LAW.

I. Cruel and Unusual Punishment.

1. *Capital murder—Invalidated sentencing factor.*—An invalidated sentencing factor (whether an eligibility factor or not) will render a first-degree murder sentence unconstitutional by reason of its adding an improper element to aggravation scale in weighing process unless another sentencing factor enables sentencer to give aggravating weight to same facts and circumstances; jury’s consideration of invalid special circumstances in *Sanders*’ case gave rise to no constitutional violation. *Brown v. Sanders*, p. 212.

2. *Capital murder—Sentencing—Innocence-related evidence.*—Constitution does not prohibit a State from limiting innocence-related evidence a capital defendant can introduce at a sentencing proceeding to evidence introduced at original trial. *Oregon v. Guzek*, p. 517.

II. Right to Abortion.

Remedy for violation—Invalidating statute.—If enforcing a statute that regulates access to abortion would be unconstitutional in medical emergencies, invalidating statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and

CONSTITUTIONAL LAW—Continued.

injunctive relief. *Ayotte v. Planned Parenthood of Northern New Eng.*, p. 320.

CONTRACTS. See **Arbitration.**

CONTROLLED SUBSTANCES ACT. See also **Religious Freedom Restoration Act of 1993.**

Physician regulation—Assisted suicide.—Act does not allow Attorney General to prohibit doctors from prescribing regulated drugs under a state law permitting physician-assisted suicide. *Gonzales v. Oregon*, p. 243.

CORPORATE FUNDS AND ELECTIONEERING. See **Bipartisan Campaign Reform Act of 2002.**

CREDITORS AND DEBTORS. See **Bankruptcy.**

CRIMINAL LAW. See **Constitutional Law**, I, 1.

CRIMINAL PROCEDURE. See **Federal Rules of Criminal Procedure.**

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

DEATH PENALTY. See **Constitutional Law**, I; **Habeas Corpus**, 4.

DEBTORS AND CREDITORS. See **Bankruptcy.**

DELIVERY OF MAIL. See **Immunity from Suit**, 1.

DISABLED STUDENTS. See **Individuals with Disabilities Education Act.**

DISCRIMINATION BASED ON RACE. See also **Civil Rights Act of 1866.**

Civil Rights Act of 1866—Civil Rights Act of 1964—Employment discrimination—Discriminatory animus—Asserted reasons for hiring decisions.—Eleventh Circuit erred in holding that modifiers or qualifications are necessary in all instances to render term “boy” probative of bias in an employment discrimination case based on race, and erred in articulating standard for determining whether asserted nondiscriminatory reasons for Tyson’s hiring decisions in this case were pretextual. *Ash v. Tyson Foods, Inc.*, p. 454.

DISCRIMINATION IN EMPLOYMENT. See **Civil Rights Act of 1964; Discrimination Based on Race.**

DISCRIMINATION IN PRICING. See **Antitrust Acts.**

DIVERSITY JURISDICTION. See **Jurisdiction**, 1, 3.

DOCTOR-ASSISTED SUICIDE. See **Controlled Substances Act.**

DONNING AND DOFFING PROTECTIVE GEAR. See **Labor.**

DRUG REGULATION. See **Controlled Substances Act.**

EDUCATION PROGRAMS FOR DISABLED STUDENTS. See **Individuals with Disabilities Education Act.**

EFFECTIVE ASSISTANCE OF COUNSEL. See **Habeas Corpus**, 1.

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

ELECTIONEERING COMMUNICATIONS. See **Bipartisan Campaign Reform Act of 2002.**

EMPLOYEE-NUMEROSITY REQUIREMENT. See **Civil Rights Act of 1964.**

EMPLOYER AND EMPLOYEES. See **Civil Rights Act of 1964; Discrimination Based on Race; Labor.**

EMPLOYMENT DISCRIMINATION. See **Civil Rights Act of 1964; Discrimination Based on Race.**

FAIR LABOR STANDARDS ACT OF 1938. See **Labor.**

FEDERAL RULES OF CIVIL PROCEDURE. See **Appeals**, 2.

FEDERAL RULES OF CRIMINAL PROCEDURE.

New trial motion.—Because time prescriptions in Rules 33 and 45 are nonjurisdictional, claim-processing rules, Government forfeited its defense that petitioner's untimely memorandum could not support his new trial motion when it did not raise that defense until after District Court had reached merits of petitioner's claim. *Eberhart v. United States*, p. 12.

FEDERAL-STATE RELATIONS. See **Attorney's Fees; Controlled Substances Act; Habeas Corpus**, 4; **Jurisdiction**, 2, 3.

FEDERAL TORT CLAIMS ACT. See also **Appeals**, 1; **Immunity from Suit**, 1.

Construction of Act—Waiver of sovereign immunity.—United States waives sovereign immunity under FTCA only where local law would make a “private person” liable in tort, 28 U.S.C. § 1346(b)(1), not where local law would make “a state or municipal entity” liable. *United States v. Olson*, p. 43.

FELONY MURDER. See **Habeas Corpus**, 1.

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976.

Status of Iran's Ministry of Defense.—Judgment is vacated and case remanded for Ninth Circuit to consider whether Iran's Ministry of Defense is an “agency or instrumentality” of a foreign state whose property is

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976—Continued.

“not . . . immune from attachment” under FSIA or if it is an inseparable part of foreign state itself. Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi, p. 450.

FOURTEENTH AMENDMENT. See **Immunity from Suit**, 2.

FREEDOM OF RELIGION. See **Religious Freedom Restoration Act of 1993**.

FUEL TAXES. See **Taxes**.

GASOLINE TAXES. See **Taxes**.

HABEAS CORPUS.

1. *Aggravated felony murder—Assistance of counsel.*—Sixth Circuit erred in finding respondent entitled to habeas relief on grounds (1) that transferred intent was not a permissible theory for aggravated felony murder under Ohio law and (2) that respondent’s trial counsel’s performance had been constitutionally deficient under *Strickland v. Washington*, 466 U.S. 668. Bradshaw v. Richey, p. 74.

2. *Antiterrorism and Effective Death Penalty Act of 1996—Limitations period—Application to state collateral review system.*—Ninth Circuit departed from this Court’s interpretation of AEDPA’s 1-year limitations period as applied to California’s collateral review system when it found respondent’s petition timely despite a 3-year, 1-month, delay in appealing denial of his state collateral review petition. Evans v. Chavis, p. 189.

3. *Antiterrorism and Effective Death Penalty Act of 1996.*—Ninth Circuit’s use of debatable inferences to set aside a reasonable state-court conclusion does not satisfy requirements for granting habeas relief under AEDPA. Rice v. Collins, p. 333.

4. *Death penalty eligibility—Mental retardation claim—Federal habeas authority.*—In commanding Arizona courts to conduct a jury trial to resolve respondent’s claim that his mental retardation made him ineligible for death penalty, Ninth Circuit exceeded its habeas authority because State had no chance to apply its chosen procedures for adjudicating such claims. Schriro v. Smith, p. 6.

5. *Right to self-representation—Access to law library.*—Because *Faretta v. California*, 422 U.S. 806—which establishes a Sixth Amendment right to self-representation—does not imply a *pro se* defendant’s right to access a law library, Ninth Circuit erred in holding that violation of such an access right is a basis for federal habeas relief. Kane v. Garcia Espitia, p. 9.

6. *State prisoner—Prosecutorial misconduct—Presentation of federal claim.*—Petitioner’s federal prosecutorial misconduct claim was properly

HABEAS CORPUS—Continued.

raised in state court for purposes of federal habeas, and his federal petition presented that claim with more than sufficient particularity. *Dye v. Hofbauer*, p. 1.

HALLUCINOGENIC TEA. See **Religious Freedom Restoration Act of 1993.**

HIRING DECISIONS. See **Discrimination Based on Race.**

IMMUNITY FROM SUIT. See also **Federal Tort Claims Act.**

1. *Federal Tort Claims Act—Postal employee's actions.*—Because Dolan's claim against Postal Service for injuries she suffered when she tripped and fell over mail left on her porch is not barred by an exception for "negligent transmission of . . . postal matter" to FTCA's general waiver of federal sovereign immunity, her suit may proceed. *Dolan v. Postal Service*, p. 481.

2. *Private cause of action—Fourteenth Amendment violation—Abrogation of state sovereign immunity.*—Insofar as Title II of Americans with Disabilities Act of 1990 creates a private cause of action for damages against States for conduct that *actually* violates Fourteenth Amendment, Title II validly abrogates state sovereign immunity. *United States v. Georgia*, p. 151.

INDIAN SOVEREIGN IMMUNITY. See **Taxes.**

INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Individual education program—Administrative hearing—Burden of persuasion.—In an administrative hearing challenging a school district's "individualized education program" for a disabled child, burden of persuasion is properly placed upon party seeking relief, regardless of whether that is child or school district. *Schaffer v. Weast*, p. 49.

INEFFECTIVE ASSISTANCE OF COUNSEL. See **Habeas Corpus**, 1.

IRAN. See **Foreign Sovereign Immunities Act of 1976.**

JUDGMENT BAR. See **Appeals**, 1.

JURISDICTION.

1. *Diversity jurisdiction—Banks.*—Under 28 U. S. C. § 1348, which provides that "national banking associations" are "deemed citizens of the States in which they are respectively located" for diversity purposes, a national bank is a citizen of State where its main office, as set forth in its articles of association, is located. *Wachovia Bank, N. A. v. Schmidt*, p. 303.

2. *Federal District Courts—Rooker-Feldman doctrine.*—Doctrine—which prevents lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments

JURISDICTION—Continued.

rendered before district court proceedings commenced,” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284—does not bar actions by nonparties to earlier state-court judgment simply because, for preclusion law purposes, they could be considered in privity with a party to that judgment. *Lance v. Dennis*, p. 459.

3. *Removal—Diversity of citizenship.*—Defendants may remove an action from state to federal court based on diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants and no defendant is a citizen of forum State; it is not incumbent on named defendants to negate existence of a potential defendant whose presence in action would destroy diversity. *Lincoln Property Co. v. Roche*, p. 81.

KANSAS. See **Taxes.**

LABOR.

Fair Labor Standards Act of 1938—Compensation—Donning and doffing protective gear.—Periods employees spend walking between changing and production areas and waiting to doff their protective gear are compensable under FLSA, but § 4(a)(2) of Portal-to-Portal Act of 1947 excludes from FLSA’s scope time they spend waiting to don their first piece of gear. *IBP, Inc. v. Alvarez*, p. 21.

LAW LIBRARY ACCESS. See **Habeas Corpus**, 5.

LIMITATIONS PERIODS. See **Habeas Corpus**, 2.

MAIL DELIVERY. See **Immunity from Suit**, 1.

MENTAL RETARDATION. See **Habeas Corpus**, 4.

MOTOR FUEL TAXES. See **Taxes.**

MURDER. See **Constitutional Law**, I; **Habeas Corpus**, 1.

NEW TRIAL MOTIONS. See **Federal Rules of Criminal Procedure.**

OFFSET OF SOCIAL SECURITY BENEFITS. See **Social Security.**

OHIO. See **Habeas Corpus**, 1.

OREGON. See **Controlled Substances Act.**

PHYSICIAN-ASSISTED SUICIDE. See **Controlled Substances Act.**

PORTAL-TO-PORTAL ACT OF 1947. See **Labor.**

POSTAL EMPLOYEES’ ACTIONS. See **Immunity from Suit**, 1.

PRECLUSION LAW. See **Jurisdiction**, 2.

PREFERENTIAL TRANSFERS. See **Bankruptcy.**

PRELIMINARY INJUNCTIONS. See **Religious Freedom Restoration Act of 1993.**

PRESCRIPTION REGULATION. See **Controlled Substances Act.**

PRETEXTUAL REASON FOR HIRING DECISIONS. See **Discrimination Based on Race.**

PRICE DISCRIMINATION. See **Antitrust Acts.**

PRISON LAW LIBRARY ACCESS. See **Habeas Corpus, 5.**

PROSECUTORIAL MISCONDUCT. See **Habeas Corpus, 6.**

PROTECTIVE GEAR DONNING AND DOFFING. See **Labor.**

RELIGIOUS FREEDOM RESTORATION ACT OF 1993.

Preliminary injunction—Compelling interest—Sacramental tea use.—Courts below did not err in determining that Federal Government failed to demonstrate, at preliminary injunction stage, compelling interest required by RFRA in order to bar respondent church's use of a sacramental tea containing a hallucinogen listed on Schedule I of Controlled Substances Act. *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, p. 418.

REMOVAL. See **Attorney's Fees; Jurisdiction, 3.**

RIGHT TO ABORTION. See **Constitutional Law, II.**

RIGHT TO SELF-REPRESENTATION. See **Habeas Corpus, 5.**

ROBINSON-PATMAN ACT. See **Antitrust Acts.**

ROOKER-FELDMAN DOCTRINE. See **Jurisdiction, 2.**

SACRAMENTAL TEA. See **Religious Freedom Restoration Act of 1993.**

SECONDARY-LINE PRICE DISCRIMINATION. See **Antitrust Acts.**

SECTION 1981. See **Civil Rights Act of 1866; Discrimination Based on Race.**

SELF-REPRESENTATION. See **Habeas Corpus, 5.**

SIXTH AMENDMENT. See **Habeas Corpus, 1, 5.**

SOCIAL SECURITY.

Student loan collection—Offset of benefits.—United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years. *Lockhart v. United States*, p. 142.

SOVEREIGN IMMUNITY. See **Bankruptcy; Federal Tort Claims Act; Foreign Sovereign Immunities Act of 1976; Immunity from Suit; Taxes.**

STATE TAXES. See **Taxes.**

STATUTES OF LIMITATIONS. See **Habeas Corpus, 2.**

STUDENT LOAN DEBT. See **Social Security.**

SUBJECT-MATTER JURISDICTION. See **Civil Rights Act of 1964.**

SUFFICIENCY OF EVIDENCE. See **Appeals, 2.**

SUPREME COURT.

1. Retirement of JUSTICE O'CONNOR, p. III.
2. Appointment of JUSTICE ALITO, p. VII.

TAXES.

State motor fuel tax—Imposition on distributors to Indian Nation.—Because Kansas' motor fuel tax is a nondiscriminatory tax imposed on off-reservation receipt of fuel by non-Indian distributors, tax is valid and poses no affront to respondent Nation's sovereignty, even though those distributors subsequently deliver fuel to reservation's gas station; interest-balancing test of *White Mountain Apache Tribe v. Bracker*, 448 U. S. 136, does not apply to a tax that results from an off-reservation transaction between non-Indians. *Wagnon v. Prairie Band Potawatomi Nation*, p. 95.

TITLE VII. See **Discrimination Based on Race.**

VEHICLE SALES. See **Antitrust Acts.**

WAIVER OF SOVEREIGN IMMUNITY. See **Federal Tort Claims Act.**

WALKING TIME. See **Labor.**

WORDS AND PHRASES.

1. “*Agency or instrumentality of foreign state [whose property is] not . . . immune from attachment.*” Foreign Sovereign Immunities Act of 1976, 28 U. S. C. § 1610(b). *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi*, p. 450.

2. “*National banking associations*” “*deemed citizens of the States in which they are respectively located.*” 28 U. S. C. § 1348. *Wachovia Bank, N. A. v. Schmidt*, p. 303.

3. “*Negligent transmission of . . . postal matter.*” Federal Tort Claims Act, 28 U. S. C. § 2680(b). *Dolan v. Postal Service*, p. 481.

WORDS AND PHRASES—Continued.

4. *“To make and enforce contracts.”* Rev. Stat. § 1977, 42 U. S. C. § 1981. Domino’s Pizza, Inc. v. McDonald, p. 470.

WORK TIME. See **Labor.**