Subject Index
### SUBJECT INDEX

#### A

**ADOPTION**
- See: *Parent and Child*

#### AGENCIES
- See: *Federal Communications Commission*
- See: *Federal Trade Commission*

#### ANTITRUST LAW

**Availability defense**
- Burden of proof: 820-22
  - Conceptual bases
    - Causal nexus theory: 814-16, 818-22
    - Non-discrimination theory: 813-14, 816-17, 818, 820-21

**Distributor incentive discount plans**
- Advantage over standard quantity discounts: 832-33
- Presumptively legal incentive discount plans
  - Plans based upon relationship between current and prior purchases: 834-38, 846
  - Plans based upon requirements purchases: 838-40, 846
  - Plans based upon sales displacing competitive products: 840-42, 846
  - Plans based upon sales quotas: 842-46
  - Generally: 810-12, 845-46

**Primary elements and applicability**: 812-13, 816-18

**Standard quantity discounts**
- Availability: 825-29
- Capability of use: 828-30
- Generally: 822-24
- Objective prerequisites and other requirements: 824-29, 830-31
- Quantitative standard of legality: 830

**Consumer standing to sue**: 717-26
- Clayton Act, section 4
- Generally: 717-19
- "Injury to business or property": 718-21, 722-23, 724
- Application to (retail) consumers: 720, 722, 723-24

**Definition of property**: 721-22, 723, 724

**Legislative history**: 724

**Limitation to commercial interests**: 719-20, 722-23, 723, 724

**Justification and policy issues for granting private right of action and deterrence**: 725-26

**Contribution among defendants in private treble damage actions**
- Generally: 975-77, 995-98
- "Carve out" or "claim reductions" theory: 977, 988, 1008-12
- Evolution of contribution doctrine: 977-81
- Recent developments: 982-92
- Underlying policies and factors: 992-95
- Arguments for contribution: 995-98, 998-1008

**Economic analysis**: 749-59, 776-78
- "Free rider" concept: 732, 739, 750-54
- Horizontal territorial allocations: 738-42, 760, 799-800

**Immunity: state action exemption**: 1026-40
- Application to home rule municipalities
  - Anticompetitive activity necessarily pursuant to state or municipality policy and supervision: 1027, 1031-32, 1034-35, 1038-39
  - Federalism concerns: 1029, 1039-40
  - Home rule municipalities generally: 1033-35, 1038-39
  - Home rule municipalities, immunity: 1034-40
  - Policy concerns: 1038
  - Application to municipalities generally: 1029, 1031-33, 1038
  - Compulsive nature of state's act as a requisite: 1030-31
  - Generally: 1027-31
  - Exemption as necessary to further state's regulatory policy: 1027

**Implications of application of neo-classical economic theory**: 770-74

**Legal methodology and analysis**: 770-75, 778-79, 781-90
- Policy goals: 785-87
- Qualitative market displacement: 786-89
- Per se illegality test: 748-49, 758
Presumptive illegality .... 730, 758, 783-90
Presumptive legality ............... 759, 789
Price/non-price differentiation ...... 763
Right to jury trial in complex
cases .................................. 1055-65
Robinson-Patman Act
Purpose ................................ 808
Section 2(a) .......................... 809, 811, 813-17, 820-24, 828, 839, 841, 845
Rule of reason test ............... 728, 730, 732, 745, 747, 758-59, 766
Sherman Act, per se and rule of
reason analysis .................... 1065-74
Application to professional
services (medical), maximum
fees ................................ 1065-66, 1070-74
Price-fixing, illegal per se ........ 1067-68, 1072, 1073
Purpose, in general ............... 1066
Vertical/Horizontal restraint differ-
etiation .............................. 745-49, 763-64, 765, 798
Vertical restraints ................. 788-91
Vertical non-price restraints ....... 730, 732, 734, 737, 743, 746
Vertical territorial restrictions ... 765, 797-98
Vertical price restraints .... 733-37, 742-45
Boycotts/concerted refusals to
deal .................................. 745-49, 761, 804-05
Maximum vertical price restric-
tions ................................ 742-45, 760-61, 791-92, 803-04
Resale price maintenance .... 733-38, 759-60, 799, 801-03

C

CHILDREN
See: Education

CIVIL PROCEDURE
See: Pendent Party Jurisdiction

COMMERCIAL LAW: UCC
Contractual modification or limitation
of remedy, § 2-719 .............. 317
Exclusion of consequential damages,
§ 2-719(3) .................. 319-22
Fail of its essential purposes, inter-
pretation of, § 2-719(2) .......... 323-27
Oral modification of written sales
contracts, § 2-209 ............. 277-315
Generally .......................... 277-78, 282, 300-01, 310, 313-14
Proposed amendment .......... 309-15
Subsection (3)
And UCC § 2-201(3) enforce-
ability ......................... 302-08
Inapplicable present considera-
tion .............................. 308-09
Writing requirement, Statute of
Frauds .......................... 278-80, 282, 293-98, 302-03, 307-10, 314
Waiver and reliance, subsection
(4) and (5) ..................... 280, 282, 298-302, 304-08, 310
See: Damages
See: Statute of Frauds

COMMUNICATION
See: Judges

CONFLICT OF LAWS
See: Sovereign Immunity

CONSERVATION
See: Energy

CONSTITUTIONAL LAW
Commerce Clause
State taxation of energy resources 
........................................ 346, 348-54, 357, 360-61
Due Process
Detention of material witnesses as
violative of ....................... 13-15, 40
Mandatory maternity leave for
pregnant teachers ............. 608
Eleventh Amendment .... 481, 483-84, 488, 490-91, 493

Equal Protection
As a prima-facie violation ...... 613-14, 619, 621
Business necessity justification ... 622-23, 637-38
Denial of accumulated seniority to
employees returning from preg-
nancy leave .................. 619-22
EEOC guidelines on pregnancy
related employment .......... 612, 615-17, 624, 629-31, 634-38
Exclusion of pregnancy benefits in
disability insurance plans .... 608-20
Generally ..................... 691-92, 696-97
Establishment Clause
Free exercise clause ........ 175-76, 179, 186
Right to refuse medical treat-
ment ............................. 96-97
Fifth Amendment
Double jeopardy .......... 119-20, 123-24
Due process requirement of a fair
trial ..................... 1056, 1060, 1063-65
Pay provisions of federal material
witness laws ................. 14, 40
First Amendment
Access of press to criminal pro-
cedings .................... 950-52,
954-56, 958, 960, 962-63, 965-66,
967-71
Exceptions ................... 953-54
Protection against order imposing
a prior restraint on
speech ........................ 954-55
Requirement of a showing of
prejudice before closure .... 957-58,
963, 965, 966
Right to gather information .... 954-55
Fighting words doctrine
Defined ......... 536-37, 540-41, 552,
563-64, 580
Face-to-face utterance require-
ment ...................... 536, 558-59, 573-75
Immediate violent response re-
quirement .... 536, 549-50, 551-53,
572-73, 575-76
Objective v. subjective stan-
dard ..................... 553-58, 572-73
Personally abusive epithet re-
quirement .... 536-37, 540, 541, 542,
543-45, 548-49, 572-73
Racial and religious slurs .... 545-48
Origin .................... 531-33
Generally .......... 179-80, 184, 186-87
Fourth Amendment
Warrant requirement ...... 367, 381,
385, 388-90, 395
Full Faith and Credit Clause . 481, 486-88,
493-94, 495
Right to a jury trial
Balancing right to jury trial with
right to fair trial ........ 1063-64, 1065
Constitutional test .... 1056-57, 1058, 1059
Danger of erroneous or irrational
decisions .............. 1062, 1063-64
In complex cases ........ 1062, 1063, 1065
Violation of due process .... 1062, 1064
Right To Privacy
Generally ............... 449-56, 689-91, 695-96
In the home .......... 451, 453, 456
Marital relationship .... 451, 453, 456
Of individual decision ... 451-53, 458
Interference therewith, compelling
state interest ............. 450, 455-56,
458-60, 463, 467-70
Noncommercial, consensual sexual
activity .................... 443, 447,
449, 456-64, 470-71
Right to refuse medical treatment . 97-100
Right to receive information .. 689, 694-95
Seventh Amendment
Equitable and legal suits ......... 1056-60
Effect of complexity on charac-
terization of ............ 1056-585
Sixth Amendment
Public's right of access to criminal
proceedings ............ 946-50, 962-64, 965
Thirteenth Amendment
Detention of material witness .... 14, 40
See: Criminal Procedure
See: Energy
See: Occupational Regulation
See: Prostitution
CONSUMER PROTECTION
See: Antitrust Law
See: Occupational Regulation
CONTRACTS
Consideration ....................... 280-81
Reliance .......... 281, 288-89, 292-93, 297, 311-12
See: Commercial law: UCC
See: Statute of Frauds
CORPORATIONS
Going Private
Generally ............... 883-84, 913-14
Defined ................. 884-85
Purpose ................. 886-87
Majority shareholders' fiduciary duty to
minority shareholders
Generally ............... 887-88
State remedies ............ 889-97
Federal remedies ........ 897-904
COURTS
See: Judges
CRIMINAL LAW
Warrantless murder scene searches
Emergency doctrine ...... 369-71, 386-87,
392
Emergency-in-fact ...... 394-95, 400, 402
Initial entry cases .... 394-98
Generally ............... 367
Implicit murder scene exceptions . 368-80
Arizona's murder scene excep-
tion . .................. 367, 383, 384-87
State v. Mincey ........ 367, 387-93
Inferred consent ........ 372-73
Permissible scope of search ...... 373-80, 382-83, 386-87
“Right and Duty” doctrine ... 378-80, 406-07
Warrant requirement ............. 380-83
Other warrant requirement exceptions ............ 391-93

CRIMINAL PROCEDURE
Detention of material witnesses
Common law ...................... 1-20
Alien detention ................. 17-19
As a subterfuge ................ 9-10
Bail procedures ................. 8-9
Constitutional attacks ......... 13-14, 40
Court’s discretion ............. 7-9, 11-12, 18
Fees ............................ 15-16, 40
History ........................ 5-7
Suits for money damages ...... 20
Federal law ..................... 29-39
Bail Reform Act of 1966 ...... 6
Detention for inability to post bail ................. 33, 35-38
Fees ............................ 16, 30, 35-38
Generally ...................... 29-30, 39
Increasing frequency of use of material witness laws by federal authorities ............. 31
Material witnesses represented by private counsel ............. 32-34
Rule 46(b) F.R.C.P. ............. 6
Model statute .................. 52-53
State laws ...................... 21-29
Antiquated state laws ...... 27-29
Arrest .......................... 11-12, 21
Burden of proof ............... 12
Court’s discretion ............ 22
Deposition requirement ...... 23
Fees ............................ 24-25
Minimum safety and comfort requirements ............. 24
Necessity for a preliminary hearing .................. 22
Notice requirements .......... 14
Progressive statutes ........... 25-27
Release ......................... 22-23
Search .......................... 22
State material witness statutes .. 43-51
Double jeopardy
Government’s right to appeal ...... 118
Constitutional limits ........... 119-20, 123-24
Statutory limits ................ 118-19, 123-24
Purposes ........................ 120-36
Preservation of final judgment .................................. 131-32, 135-36
Preservation of integrity ....... 120-23, 128-29
Prevention of harassment ...... 121-23, 128, 131-32, 136
Prevention of multiple prosecutions .................. 125, 128, 134
Termination of Trials
Acquittals .................... 119, 123
Dismissals ..................... 122-25
Dismissal and mistrial compared and contrasted ............. 127-28, 130, 137-38
Mistrial ......................... 125-26, 132
Non-convictability .......... 129, 133, 139-40
Resolution of factual elements .................. 125-26, 130-34, 135, 139-40
See: Constitutional Law

DAMAGES
Consequential Damages
Exclusion of Consequential Damages, UCC § 2-719 .......... 317-19
Elaboration of limited remedy’s exclusiveness .......... 328-30
Enforceable as a conscionable and intended allocation of risk .................. 337-42
Void if the limited remedy fails of its essential purpose .......... 331-33
Void if seller wilfully causes the limited remedy to fail of its essential purpose .......... 333-37

DISCOVERY
See: Privileged Communication

DUE PROCESS
See: Constitutional Law
See: Occupational Regulation

EDUCATION
Education for all Handicapped Children
Act of 1975
History ......................... 220
Major provisions ............. 221, 222, 242-44, 254-63, 268-71
Problems and criticisms ..... 263-71
Special aspects of deaf education .................. 229-38
Special problems created by deafness .................. 238-40,
<table>
<thead>
<tr>
<th>See:</th>
<th>Labor Law</th>
</tr>
</thead>
</table>

### ENERGY

- State taxation of energy resources ........................................ 345
- Commerce Clause ......................................................... 346, 348-54, 357, 360-61
- Generally ......................................................... 345-46, 364-65
- Louisiana first use on gas tax ......................................... 359, 360-62
- New Mexico electricity generation tax .................................. 347-48, 348-53
- Oklahoma natural gas production tax .................................. 348, 353-54, 356
- Supremacy Clause ..................................................... 346, 354-57, 361-62

### ENVIRONMENT

- See: Energy

### EQUAL PROTECTION

- See: Constitutional Law

### ESTATE PLANNING

- See: Inheritance, Estate and Gift Tax

### F

<table>
<thead>
<tr>
<th>See:</th>
<th>Constitutional Law</th>
</tr>
</thead>
</table>

### FEDERAL COMMUNICATIONS COMMISSION

- Communications Act of 1934 ........................................... 409
- License renewal expectancies ......................................... 409

### FEDERAL TRADE COMMISSION

- Generally ......................................................... 847-48, 858-59
- Provisions ......................................................... 848-49, 849-58

### FREEDOM OF RELIGION

- See: Constitutional Law
- See: Labor Law

### FREEDOM OF SPEECH

- See: Constitutional Law

### GOVERNMENTAL IMMUNITY AND LIABILITY

- See: Antitrust Law

---

INHERITANCE, ESTATE AND GIFT TAX

- Estate Tax
  - Disclaimer ..................................................... 880-81
  - Marital deduction
  - Equalization clauses ......................................... 861-82
  - Statutory framework ......................................... 862-66

INSURANCE

- ERISA Improvements Act of 1979 ..................................... 167, 170
- Employee Retirement Income Security Act of 1974
  - General provisions ............................................ 143-45
  - Meaning of "relate to" in § 514 ................................ 145, 151-53, 170-71
  - Preemption of state laws ..................................... 145, 147
- State laws affected
  - Civil rights ................................................... 161-64
  - Domestic relations ............................................. 157-61, 169-70
  - Garnishment ...................................................... 167
  - Insurance ......................................................... 154-57, 169
  - Professional licensing ......................................... 166
  - Restitution ....................................................... 166
  - Taxation ............................................................ 165-66

No Fault

- Assignability of claims .............................................. 61-81
- Accomplished through subrogation .................................. 67-76
- Analogy to survival statutes ...................................... 64-65, 68
- Collateral source rule ............................................. 71, 72
- Common law prohibitions .......................................... 65-67, 75
- History ................................................................. 61-64
- Policy prohibiting maintenance and champerty .................. 62-63, 67-68, 79-81
- Statute-case law dichotomy ....................................... 75
- Statutory prohibitions .............................................. 64-68, 82-83
- Trust receipt ........................................................ 74-75
- Comparative negligence ............................................. 78-79
- Objections to ........................................................ 58-61
- Proposal for .......................................................... 55-58

JUDGES

- Contacts through court personnel other than judges ............ 592-93
- Communication between law clerks .................................. 592-93
- Communication occurring through other court personnel ....... 593
- Contacts with other judges ........................................ 595-602
- District judges ...................................................... 595-600
- Out-of-circuit judges .............................................. 600-01
Senior circuit judges ............ 600
Visiting judges .................. 601-02
Direct contact with other circuit
judges .......................... 586-92
Communication concerning "off-
panel" cases .................. 589-90
Communication patterns ...... 590-91
Non-judicial contact among
judges .......................... 591-92
Oral argument and conference .. 587-88
Post-conference communication .. 588
Pre-argument communication ... 586-87
Judges' satisfaction with communi-
cation .......................... 594-95
Preferred methods of communica-
tion .......................... 589, 593-94
Specific problems ................ 602-05
Geographical dispersion of
judges ......................... 583-86, 602-05
Small number of judges ........ 602

JUDICIAL EFFICIENCY
See: Jurisdiction

JURISDICTION
Pendent Party Jurisdiction
Application in cases of exclusive
federal subject-matter jurisdic-
tion .......................... 507-09, 510, 513, 514
Constitutional and statutory provi-
sions as a requisite ............ 505-09,
510, 512-15

History .......................... 503-09
Judicial efficiency and federalism . 510-12
Pendent jurisdiction
Cause of action test ............ 501-02, 503
Common nucleus of operative facts
test
United Mine Workers v.
Gibbs ......................... 502-03, 505, 514
Generally ..................... 498
History, generally ............. 498-503
Pendent parties ................. 498, 503-04
Requisite jurisdictional amount,
necessity of meeting .......... 497-98,
509, 512-13

JURY TRIAL
See: Constitutional Law

LABOR LAW
"All reasonable means" doctrine ... 708,
711-12
National Labor Relations Act
Legislative history ................ 180-81,
182-84, 185, 186
Statutory construction .......... 174,
179-80, 181-86

National Labor Relations Board
Jurisdiction, generally ........ 176-77,
180-81, 182-84, 185-86
Jurisdiction over education, gener-
ally .......................... 176-78
Jurisdiction over parochial
schools ....................... 172-74, 176-78, 179-81,
185, 186

Taft-Hartley Act
Section 301(a) ................. 707
Section 301(b) ................. 708
Section 301(c) ................. 708

Unauthorized local union strikes ... 705-06
Alternative measures available to
parties .......................... 713-16
Disciplinary .................. 713
Injunctive relief .............. 715-16
Sound labor relations .......... 716

Liability of parent union for dam-
gages for ..................... 706, 708-09, 711, 713
Collective bargaining agreement
terms .......................... 710-11, 712
Common law agency .......... 708, 709-10

MEDICAL TREATMENT
Right to refuse .............. 87-90, 95-101, 114-16
Balancing factors .............. 111-14, 115
Life expectancy .............. 113
Pain and indignity ............. 101, 111
Prognosis ..................... 85-86, 90-91
Quality of Life ................ 86, 90-92,
111-12, 113-14

Common law right of bodily in-
tegrity ......................... 100-01
Constitutional bases .......... 96-100
Free exercise of religion ....... 96-97
Right of privacy ............... 97-100
Incompetent patient .......... 93-95, 100, 110
Substituted judgment ........ 91, 95, 1077

State interests ................. 101-110, 114-116
Preservation of life .......... 86-87, 103-110
Line drawing .................. 106-07
Morality ..................... 104-06
Population and productivity ... 108-09
Protection from hasty or ill-
formed decisions .......... 109-10

Third party interests ........ 88, 101-03
Medical ethics ................. 89, 102-03

https://openscholarship.wustl.edu/law_lawreview/vol58/iss1/4
Support of dependents ....... 88, 101-02

N

NEGLIGENCE
See: Insurance

NEWSPAPERS
See: Constitutional Law

O

OCCUPATIONAL REGULATION
State Regulation of Psychologists
Missouri Psychologist Licensing Act of 1977
Grandfather licensure .......... 647-50, 669-70
Nondelegation doctrine .......... 663, 665-67
Organization .................... 643-47
Regulation of conduct .......... 653-54, 656
Requirements for licensure .... 650-51, 653
Rulemaking authority ........... 665-67
Scope of application ............ 657-59
State laws, generally
Grandfather licensure .......... 669-75
Nondelegation doctrine .......... 662-69, 675
Police power, as basis for .... 639, 663-64
Policy ......................... 639-40, 674-76
Requirements for licensure .... 650-53
Rulemaking authority .......... 665-69, 675
Scope of application ............ 657-62, 675

P

PARENT AND CHILD
Adoption
Demand for access to sealed records by adult adoptees ........... 678-79, 693-94
Constitutional arguments ....... 688-93
Judicial recognition of right to an evidentiary hearing .... 698-703
State closure laws ............... 677-85
Emotional harm from neglect of parental care
Parental immunity .............. 192-93
Statute .......................... 189, 193-97
Tort .............................. 190-96

PREGNANCY DISCRIMINATION ACT
See: Statutes

PRIVILEGED COMMUNICATION
Attorney-corporate client

Attorney-client privilege, generally ................................ 1041-1054
Control group test ......... 1041-46, 1048-54
Diversified test ............... 1048
Harper & Row (subject matter) test ........... 1046-48, 1050-51, 1054

PROSTITUTION
Commercialization of private, consensual sexual activity as affecting right .................... 464, 467, 470
Generally ...................... 464-70
Not a fundamental right protected by right to privacy ........ 466-67, 470
Prostitution Statutes
Application to customers .......... 446-47
Constitutional challenges, generally .............. 439-41
Constitutional challenges, right to privacy .......... 439, 447-49, 464-67, 470
Enforcement problems ........... 444-45
Generally ...................... 443-47, 467-70
Group opposition thereto .......... 441-42
Prostitution "promotion" .......... 445-46
Solicitation ............. 445, 447, 464-66, 468-69
Standing to assert right, solicitation .................. 464-66
Statutes, generally ....... 439-41, 449, 464-71
See: Constitution Law

S

SCHOOLS
See: Education

SEARCH AND SEIZURE
See: Criminal Procedure

SECURITIES REGULATION
Duty to Disclose
At common law .................... 1014-17
Rule 14e-3 ......................... 1025
Section 10(b); rule 10b-5 ...... 1013-25
Regulation of insider trading
At common law .................... 916-18
Corporate right of action against inside trader .......... 918-24, 939-40, 941, 942-43
Federal regulation ............... 924-38
Proposals for reform .............. 939-43
Rule 13e-3 .................. 883-84, 901, 904-14
Section 10(b); rule 10b-5 ...... 889, 897-903, 905, 925-36, 943, 1013-25
Section 16(b) .................... 922, 937-38, 941-43
See: Corporations
SOVEREIGN IMMUNITY
Amenability of state to suit in courts of sister state ........ 481, 486, 487, 488, 491-92, 493
Comity
  Analogous to international law ... 492-93
Conflict of Laws ................. 481-82, 487-88, 494
History ...................... 482-85, 488, 490
Interpretations .............. 627-29, 631-38
Purpose ..................... 623-25, 637
See: Constitutional Law

TAXATION
See: Energy
See: Inheritance, Estate and Gift Tax

STANDING
See: Antitrust Law

STATES
See: Energy

STATUTE OF FRAUDS
Generally, non-UCC ............... 283-88
UCC § 2-201, generally .......... 289-93, 301, 309
See: Commercial Law: UCC

STATUTES
1978 Pregnancy Discrimination Act
  Criticism ...................... 625
  History ............. 607-10, 612, 624-26, 636-38

WITNESSES
See: Constitutional Law
See: Criminal Procedure

https://openscholarship.wustl.edu/law_lawreview/vol58/iss1/4