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Guide to Using ALR Federal 2d

The second series of American Law Reports Federal (ALR Fed 2d) continues the long ALR tradition of providing focused research on a wide variety of topics. Now, for the first time, ALR Fed 2d expands its coverage to include both Federal and international topics, recognizing that the practice of law has evolved to meet the changing needs of the global community.


The Best of the Old. . .

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Each annotation contains its own Index and jurisdictional Table of Cases, making it easy to find cases from your jurisdiction quickly. Each annotation also includes Research References to help you find additional material relevant to the topic, including analytical and forms references, West’s Topic and Key Numbers, and suggested WestlawNext® search queries.

. . . and the Best of the New

In addition to the same analytical, practice, and form references ALR Fed has always offered, ALR Fed 2d has been enhanced to provide expanded Research References for each annotation, including:

- references to West’s ALR Digest, which is classified to correspond to the West Key Number System
- references to Westlaw topical databases to assist with targeted electronic research
- references to important government and private websites relevant to the topic
- references to appellate briefs and pleadings associated with the reported case
- an expanded list of Related Annotations, now with references to the entire ALR family, including the first series of ALR through ALR6th, ALR Fed, ALR Fed 2d, and ALR International, is located in the Research References portion of the annotation
- annual Supreme Court Update, available to subscribers, highlighting recent decisions of the Court and their effect on the law presented in existing annotations
How to Use ALR Fed 2d

Finding an Annotation

There are many ways to find an annotation using various print and electronic methods:

- **ALR Index.** Just look up the legal term or fact-descriptive word that most closely exemplifies your issue.
- **West’s ALR Digest.** Classified according to the West Key Number System; just locate the appropriate digest topic and scan for the section or sections covering your issue.
- **Research References.** Research References in Am Jur2d, CJS, and most other West analytical publications extensively cite all series of ALR, including the first series of ALR through ALR6th, ALR Fed, ALR Fed 2d, and ALR International.
- **Direct Citations to ALR.** All series of ALR, including the first series of ALR through ALR6th, ALR Fed, ALR Fed 2d, and ALR International, are frequently cited as authority in court opinions, analytical texts, law reviews, and other legal publications.
- **WestlawNext®.** The options for finding annotations online warrant a separate discussion, outlined below.

Using an Annotation

Each annotation offers several valuable features designed to facilitate your research:

- **Detailed Case Analysis.** Summaries of every case on point for the topic, organized by point of law or factual variable and sorted by jurisdiction for quick and easy reference.
- **Summary and Comment.** A concise general overview of the topic, necessary background information, and cross-references to more detailed discussions within the body of the annotation.
- **Practice Pointers.** Practical information related to the topic, offering guidance on what to do and how to do it in the course of representing a client, tips on procedure, and potential pitfalls.
- **Scope Statement.** A concise statement of the subject matter included in the annotation, any exclusions, and any supersessions of earlier annotations.
- **Reported Case.** For each annotation, a full court opinion, including headnotes classified to the West Key Number System, illustrating the topic and providing a context for the discussion, is published in the Reported Cases part of each bound volume.
● **Jurisdictional Table of Cases.** A list of cases and statutes from each jurisdiction, with section references listing where they are discussed within the annotation.

● **Schematic Article Outline.** This article-level table of contents indicates where a particular legal concept or fact situation is treated.

● **Research References.** An on-topic list of references to West Key Numbers, the ALR Library, appropriate analytical and secondary law products, a suggested electronic search query, and references to West’s ALR Digest.

● **Article Index.** An alphabetical index of important legal and factual terms, with references to the specific sections where each term is discussed within the annotation.

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*Once you have identified the annotation for your issue, you can locate the most recent on-point authority for the topic:*

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● **Annual cumulative supplement.** Annual supplements, inserted into the back of each volume, contain:
  - relevant case headnotes from decisions issued after the annotation was written, allocated to the appropriate section of the annotation and sorted by jurisdiction;  
  - new sections that accommodate new and developing case law; and  
  - references to later annotations related to the topic.

● **Latest Case Service Hotline.** One toll-free phone call to 1-800-225-7488 or e-mail to west.ALRLCS-Rochester@thomson.com will provide you with the cites of the relevant cases decided since the last print supplement was issued.

**Using ALR Fed 2d on WestlawNext®**

WestlawNext® provides access to the entire ALR library, including ALR, ALR2d, ALR3d, ALR4th, ALR5th, ALR6th, ALR Fed, ALR Fed 2d and ALR International. There are a number of ways to find annotation of interest on WestlawNext®.

You may choose to begin your research in West’s ALR Digest to locate relevant key numbers and refer to the annotations and reported cases listed for each key number. To navigate to the Digest, type “ALR” into the WestlawNext® search box and choose “American Law Reports Digest” from the dropdown list.
You may choose to search across all of ALR or in ALR International. To search across ALR, type ‘‘ALR’’ into the WestlawNext® search box and choose ‘‘American Law Reports’’ from the dropdown list. To search ALR International, type ‘‘ALR’’ into the WestlawNext® search box and choose ‘‘American Law Reports - International’’ from the dropdown list.

You may view ALR results from any WestlawNext® search by filtering your results: choose ‘‘Secondary Sources’’ in the left View pane of the Search Results screen then scroll down to Publication Type and choose ALR.

For each of these search locations, you can search using either a Terms & Connectors search or a Natural Language search. To narrow your results, you may find it helpful to use a title restriction in your search, which will look for the search terms only in the titles of the annotations.

To find an annotation on point for your issue or topic, you may also begin by searching the ALR data, using either a Natural Language or Terms and Connectors search. To narrow your results, you may find it helpful to use a title restriction in your Terms and Connectors search, which will look for your search terms only in the titles of annotations. For example, if you need to find an annotation discussing a federal statute that permits naturalization through military service under certain conditions, you might try one of the following searches in the ALR data:

NATURALIZ! /S MILITARY
(brings up any annotation that has some form of the word ‘‘naturalize’’ in the same sentence as the word ‘‘military’’)

TI(NATURALIZ! & MILITARY)
(brings up only those annotations that contain some form of the word ‘‘naturalize’’ and the word ‘‘military’’ in the title)

If you know which federal statute governs the issue, you might try searching for the U.S.C.A. title and section number in the format illustrated below:

8 /3 1440
(looks for the number 8 within 3 words of the number 1440 anywhere in an annotation)

A combination of the above search techniques might also be useful, such as:

TI(8 /3 1440)
(looks for the number 8 within 3 words of the number 1440 only in the titles of annotations)


If you know of a case that discusses your issue and wish to find out if the case has been discussed in an annotation, you may use the KeyCite feature
or Citing References tab to check for any annotations that have cited that particular case. In addition, you may use KeyCite or Citing References tab to check for later history concerning any annotation—to find out if the annotation has been superceded in whole or part, or whether the annotation has been cited in case opinions.

**KeyCite**: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

**Finding additional information on your topic**

Once you find a relevant annotation for your issue or topic, WestlawNext® offers other tools to help you with your research. You may use links from the Research References portion of the annotation to take you to related material in analytical or forms products, you may use the suggested WestlawNext® query, or one of your own, to conduct further searches, or you may conduct a Key Number search using the Key Numbers identified as relevant to the annotation. The list of Related Annotations will point you to other helpful annotations, and the cited Law Review articles may provide additional insight on the topic. In addition, links from the reported case will take you to pertinent briefs, pleadings, and motions. References to select websites may lead you to important information, such as changes in agency policies or new official forms available from government web pages.

If you have any further questions about ALR, please email us at west.ALRLCS-Rochester@thomson.com
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Weapons and Firearms

by

Mark T. Roohk, J.D.

In 1996, Congress passed the Welfare Reform Act (or Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 8 U.S.C.A. §§ 1601 et seq.), which significantly altered alien-eligibility requirements for federal public benefits, including the state-administered federal food assistance program, the Supplemental Nutrition Assistance Program (SNAP (7 U.S.C.A. §§ 2011 et seq.)). PRWORA classifies aliens into two general categories: “qualified aliens” and “non-qualified aliens.” The great majority of aliens are deemed nonqualified under PRWORA and are, with some exceptions, ineligible for federal food stamps. A year after enactment, Congress extended the states’ discretionary authority to cover any legal aliens rendered ineligible for federal food stamps by PRWORA’s restrictions (7 U.S.C.A. § 2016(i)). In Pimentel v. Dreyfus, 670 F.3d 1096, 89 A.L.R. Fed. 2d 603 (9th Cir. 2012), the court held that a state had no constitutional duty to provide federally ineligible aliens with state benefits and rejected an equal protection challenge to the State of Washington’s termination of its own state-funded food assistance program which it had created following the enactment of PWORA. This annotation collects and discusses those cases addressing the eligibility of aliens for food assistance benefits under federal constitutional or statutory provisions.

Pimentel v. Dreyfus is fully reported at page 603, infra.
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7 U.S.C.A. § 2016(i)
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A.L.R. Index, Agriculture Department; Aliens; Food Stamps
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Selection and suspension or disqualification of participating stores under Food Stamp Act of 1964 (7 U.S.C.A. secs. 2011 et seq.), 121 A.L.R. Fed. 653
Validity, Construction, and Application of 20 C.F.R. § 656.30 (2007), Providing for Validity of and Invalidation of Labor Certifications of Aliens

by George L. Blum, J.D.

Under the labor certification statute, any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that: (1) there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and (2) the employment of such aliens will not adversely affect the wages and working conditions of workers in the United States similarly employed. The courts in a number of cases have addressed the validity, construction, and application of 20 C.F.R. § 656.30, as promulgated in 2007. In Elim Church of God v. Harris, 722 F.3d 1137, 89 A.L.R. Fed. 2d 625 (9th Cir. 2013), for example, the court held that a regulation to provide that labor certifications previously issued in connection with applications for employment-based immigrant visas, where the text of the statute did not foreclose the establishment of the expiration date for labor certifications provided sufficient notice to the employer where the amendment was announced in two public notices that focused extensively on the establishment of a new expiration date, and where the regulation was promulgated before the litigation. This annotation collects and discusses the cases that have addressed the validity, construction, and application of 20 C.F.R. § 656.30 as promulgated in 2007.

Elim Church of God v. Harris is fully reported at page 625, infra.
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§ 8 Expiration of labor certification
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§ 10 Timeliness of filing—Held labor certification valid
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The following references may be of related or collateral interest to a
user of this annotation.

WEST’S KEY NUMBER DIGEST
Aliens, Immigration, and Citizenship 154, 178(5)

WESTLAW DATABASES
Federal Immigration—Affirmative Asylum Procedures Manual (FIM-
What Constitutes “Possession” of Firearm for Purposes of 18 U.S.C.A. § 924(c)(1), Providing Penalty for Possession of Firearm in Furtherance of Drug Trafficking Crime or Crime of Violence

by
Darian B. Taylor, LL.M.

Any person who possesses a firearm in furtherance of a federal crime of violence or drug trafficking offense shall, in addition to the sentence imposed for the underlying offense, be sentenced to a term of imprisonment of not less than five years, pursuant to 18 U.S.C.A. § 924(c)(1). This increases to 10 years if the firearm is a short-barreled rifle or shotgun, or if it is a semi-automatic assault weapon and rises to 30 years if the weapon is a machine gun or destructive device, or if it is equipped with a silencer or muffler. The sentence may not run concurrently with sentences for other crimes and repeat offenders receive a minimum of 25 years. As a result, the question of what constitutes “possession” under this statute is frequently presented. In U.S. v. Howard, 687 F.3d 13, 89 A.L.R. Fed. 2d 635 (1st Cir. 2012), for example, the court held that there was sufficient notice given to the employer under a regulation covering labor certifications previously issued in connection with applications for employment-based immigrant visas, where the text of the statute did not foreclose the establishment of the expiration date for labor certifications, where the amendment was announced in two public notices that focused extensively on the establishment of a new expiration date, and where the regulation was promulgated before the litigation. This article collects and analyzes those federal cases in which courts determined what constitutes “possession” of a firearm under section 924(c)(1).

U.S. v. Howard is fully reported at page 635, infra.
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The following references may be of related or collateral interest to a user of this annotation.

West’s Key Number Digest
Weapons 166, 167, 189, 190, 191, 192, 289, 291(1), 291(2), 293(3), 294(3), 294(6), 296, 308, 328

Westlaw Databases
Criminal Justice—Law Reviews, Texts & Bar Journals (CJ-TP)
Criminal Law—Wharton (CRIMLAW)
Criminal Law News (CRIMLWNEWS)
Criminal Practice Guides (CRPGUIDE)
Criminal Practice Report (CRPREPORT)
Entrapment to Commit Federal Crimes of Terrorism

by
Sarah L. Harrington, J.D.

A valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in criminal conduct. A defendant raising the entrapment defense has the burden of showing inducement, and, if inducement is shown, the prosecution has the burden of proving predisposition beyond a reasonable doubt. Predisposition, the principal element in the defense of entrapment, focuses upon whether the defendant was an unwary innocent or, instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime. In U.S. v. Cromitie, 727 F.3d 194, 89 A.L.R. Fed. 2d 647 (2d Cir. 2013), petition for certiorari filed, 2014 WL 1458188 (U.S. 2014) and petition for certiorari filed, 2014 WL 1484922 (U.S. 2014) and petition for certiorari filed, 2014 WL 1485159 (U.S. 2014) and petition for certiorari filed, 2014 WL 1515124 (U.S. 2014), the court held that, although the confidential informant’s efforts to persuade the defendant to commit domestic terrorism offenses constituted inducement for purposes of entrapment defense, the defendant’s initial statements to the confidential informant revealed a preexisting design to commit terrorist acts against the interests of the United States sufficient to establish predisposition to commit charged acts of terrorism, thereby defeating the entrapment defense, even though government officers afforded him the opportunity and the pseudo weapons for striking at specific targets. This annotation collects and analyzes those cases which have discussed the defense of entrapment in a federal prosecution for a crime of terrorism.

U.S. v. Cromitie is fully reported at page 647, infra.
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West’s Key Number Digest
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Westlaw Databases
Criminal Procedure (CRIMPROC)
Criminal Practice Manual (CRPMAN)
Trial Motions (MOTIONS)
Trial Pleadings (PLEADINGS)

Primary Authority
18 U.S.C.A. §§ 2331 to 2339B

A.L.R. Library
A.L.R. Index, Due Process; Entrapment; Terrorism
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Entrapment to commit crime with view to prosecution therefor, 18 A.L.R. 146
Application of Transfer of Offenders Treaty
Between the United States of America and Canada
on Execution of Penal Sentences, U.S.-Can., Mar. 2,
1977, 30 U.S.T. 6263

by
Mark T. Roohk, J.D.

The Transfer of Offenders Treaty Between the United
States of America and Canada on Execution of Penal Sen-
U.S.T. 6263, also known as the Prisoner Transfer Treaty,
outlines the process of transferring prisoners between the
two countries. The preamble of the Treaty states that its
purpose is to enable offenders, with their consent, to serve
sentences of imprisonment or parole or supervision in the
country of which they are citizens, thereby facilitating their
successful reintegration into society. The Treaty outlines
certain requirements which must be met by the offenders
to be eligible for transfer, as well as procedures to be fol-
lowed by both countries. In Gandy v. Colorado Dept. of
2d 695 (Colo. App. 2012), a Colorado state court discussed
several of these requirements and procedures in a case in
which a Canadian offender was denied a transfer request
based on application of a Colorado regulation. The court
held that application of the regulation both abrogated the
Treaty and violated the Supremacy Clause. This annota-
tion collects and discusses all the cases in which courts
have considered the Transfer of Offenders Treaty.

Gandy v. Colorado Dept. of Corrections is fully reported
at page 695, infra.
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Issues Arising in Chapter 20 Bankruptcy Proceedings

by
James L. Buchwalter, J.D.

Bankruptcy debtors who have recently filed a Chapter 7 petition often also file for relief under Chapter 13, with the hope of skirting the restrictions that Chapter 7 imposes on avoiding certain liens and discharging certain types of unsecured debts. Thus, these so-called “Chapter 20” cases may allow for “stripping off” junior mortgage liens under certain circumstances, an issue that has recently become prominent with many homeowners currently “underwater” on their residential loans. In In re Waterman, 469 B.R. 334, 89 A.L.R. Fed. 2d 707 (D. Colo. 2012), the court ruled that although a “Chapter 20” debtor’s ineligibility for discharge in his latest Chapter 13 case did not render him per se ineligible to strip a creditor’s lien, the bankruptcy court still had an independent duty to determine whether the debtor’s plan, which provided for “stripping off” of a junior deed-of-trust lender’s wholly unsecured lien upon his residence, satisfied all the requirements for plan confirmation, including the Bankruptcy Code’s “good faith” requirement.

In re Waterman is fully reported at page 707, infra.
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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST’S KEY NUMBER DIGEST
Bankruptcy ⇆3718(4)

WESTLAW DATABASES
2005 Bankruptcy Reform Legislation with Analysis (BAPCPA)
Chapter 13 Practice and Procedure (CHAP13PP)
Consumer Bankruptcy Manual (CONSBKRML)
In 1934, the Federal Credit Union Act (FCUA) (15 U.S.C.A. §§ 1751 to 1795k) was enacted to establish a system of credit unions to facilitate the stabilization of the nation’s credit structure and to achieve an increased availability of loans. Courts have construed and applied the FCUA to ensure that the credit union system is fair to the banking public. Thus, in In re Perez, 440 B.R. 634, 73 U.C.C. Rep. Serv. 2d 257, 89 A.L.R. Fed. 2d 717 (Bankr. D. N.J. 2010), the court held that because a federal credit union’s power to make loans as granted under the Federal Credit Union Act of 1934 (FCUA) (12 U.S.C.A. § 1757(5)), preempts state law, including any state Uniform Commercial Code (U.C.C.) provision that conflicts with the Act, the deposit account held by the debtor at the credit union qualified as “member account” as defined by the FCUA (12 U.S.C.A. § 1752(5)), allowing the credit union, pursuant to (12 U.S.C.A. § 1757(11)), to automatically perfect a statutory lien on the account the moment that the credit union’s loan to the debtor originated. This annotation collects and analyzes cases construing and applying the Federal Credit Union Act (FCUA) of 1934 (15 U.S.C.A. §§ 1751 to 1795k).

In re Perez is fully reported at page 717, infra.
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Research References

The following references may be of related or collateral interest to a user of this annotation.

West’s Key Number Digest
Bankruptcy ⇐2580.1, 2704; Building and Loan Associations ⇐1, 2, 3.1, 5(1), 6(2), 7.1, 15, 23(1), 24, 26, 27(2), 28, 33(1), 40, 41(2), 42(6), 43, 45(1), 48; Consumer Credit ⇐1, 2, 16; Deposits and Escrows ⇐31; Federal Courts ⇐232; Labor and Employment ⇐1307; States ⇐18, 19; Taxation ⇐2218; United States ⇐33, 41, 53, 57; Usury ⇐1, 2(1), 5, 42

Westlaw Databases
Regulatory Guidance—All Consumer Banking Summaries (BANK-CON-

by Erin Forst, J.D.

Fed. R. Civ. P. 4(f) sets forth the methods for serving process on individuals in a foreign country. Fed. R. Civ. P. 4(f)(2)(C)(i) provides for service by delivering a copy of the summons and complaint to the individual personally. Fed. R. Civ. P. 4(f)(2)(C)(ii) provides for service by having the clerk of court send service to the individual using any form of mail requiring a signed receipt. Both methods are only permitted where they are not prohibited by the foreign country’s law. Courts have been divided over the interpretations of certain words in these provisions, such as what constitutes “mail” and what “prohibit” means. For example, in SignalQuest, Inc. v. Tien-Ming Chou, 284 F.R.D. 45, 82 Fed. R. Serv. 3d 1023, 2012 DNH 90, 89 A.L.R. Fed. 2d 729 (D.N.H. 2012), the court rejected an interpretation of “unless prohibited by the foreign country’s law” that would allow service only where the foreign country’s law expressly provided for the method used by the plaintiff and said that a method of service was permitted unless the foreign country’s law expressly barred that method. This annotation collects and analyzes those federal cases which have construed or applied Fed. R. Civ. P. 4(f)(2)(C) authorizing foreign service on an individual by a method calculated to give notice unless prohibited by the foreign country’s law.

SignalQuest, Inc. v. Tien-Ming Chou is fully reported at page 729, infra.
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FRCP FOREIGN SERVICE  
89 A.L.R. Fed. 2d

89 A.L.R. Fed. 2d 475
§ 17 Foreign country’s law did not prohibit service—Fed. R. Civ. P. 4(f)(2)(C)(i)

Research References
The following references may be of related or collateral interest to a user of this annotation.

WEST’S KEY NUMBER DIGEST
Patents ☑=291; Process ☑=62, 76, 83

WESTLAW DATABASES
Federal International Law—Rules (FINT-RULES)
Federal Rules of Civil Procedure, Rules and Commentary (FRCP-RC)
Federal Rules Decisions Multibase (FRD)
Federal Rules Decisions Articles (FRD-ART)
Federal Rules Decisions Cases (FRD-CS)
Federal Rules Decisions Rules (FRD-RULES)
Litigation of International Disputes in U.S. Courts (LOID)
Federal Rules (US-RULES)
WestlawNext® Search Query: 4(f)(2)(C) & DA(AFT 09/04/2014)

PRIMARY AUTHORITY

A.L.R. LIBRARY
A.L.R. Index, Constructive or Substituted Service; Process and Service of Process
West’s A.L.R. Digest, Process ☑=62, 76, 83
Service of Process Via Computer or Fax, 30 A.L.R.6th 413
Comment Note.—Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state, 6 A.L.R.3d 1103
Manner of service of process upon foreign corporation which has withdrawn from state, 86 A.L.R.2d 1000
Rule 4(d)(5), Federal Rules of Civil Procedure, relating to service upon an officer or agency of the United States, 73 A.L.R.2d 1008

477
Preemptive Effect of Civil Service Reform Act

by

Deborah F. Buckman, J.D.

The Civil Service Reform Act (CSRA) was enacted in 1978 to comprehensively overhaul the outdated and disorganized civil service system by creating a new framework for evaluating adverse employment actions against federal employees and presenting an integrated scheme of both administrative and judicial review of challenged personnel practices. It forbids “prohibited personnel practices,” defined as any “personnel action” taken for an improper motive by someone who has authority to take personnel actions. Because it is comprehensive and intended to provide the exclusive procedure for challenging federal civil service personnel decisions, the CSRA generally will preclude and preempt any actions brought outside its parameters in the federal courts. There are, however, some decisions which hold that civil service employees’ actions were not preempted. In Murphree v. American Federation of Government Employees, AFL-CIO, 850 F. Supp. 2d 1256, 89 A.L.R. Fed. 2d 739 (N.D. Ala. 2012), for example, the court held that the CSRA did not preempt claims of defamation, invasion of privacy, and intentional infliction of emotional distress. This annotation collects and discusses all the cases which address the question of the CSRA’s preemptive effect.

Murphree v. American Federation of Government Employees is fully reported at page 739, infra.
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Who Constitutes “Owner” for Purposes of Limitation of Liability Act, 46 U.S.C.A. § 30505(a)

by
Sarah L. Harrington, J.D.

Under the Limitation of Liability Act, 46 U.S.C.A. § 30505 (formerly codified at 46 App. U.S.C.A. § 183), a vessel owner’s liability for certain claims is limited to the value of the vessel and pending freight, in the absence of the owner having privity or knowledge. The owner of a vessel can petition under the Limitation of Liability Act to be exonerated from liability, or have liability limited, for any damages arising from accidents involving the owner’s vessels. In determining who is an “owner” within the meaning of the Limitation of Liability Act, courts have considered who pays for storage of the vessel and who skippers the vessel, as well as who has possession and control of the vessel. In In re Aloha Jetski, LLC, 920 F. Supp. 2d 1143, 2013 A.M.C. 53, 89 A.L.R. Fed. 2d 757 (D. Haw. 2013), the court found that the sole member of the limited liability company (LLC) in question, which was the title-holder of the vessels, was the “owner” within the meaning of the Limitation of Liability Act. He was the person ultimately responsible for the vessels’ maintenance and operation, and the only person with the authority to act on behalf of the LLC. As such, the owner and LLC were entitled to invoke the protection of the Act. This annotation collects and discusses all the cases in which the courts determined who is an “owner” within the meaning of 46 U.S.C.A. § 30505(a).

In re Aloha Jetski is fully reported at page 757, infra.
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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST’S KEY NUMBER DIGEST

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WESTLAW DATABASES

Admiralty and Maritime Law (ADMMARL)
American Maritime Cases (AMC)
Trial Motions (MOTIONS)
National Admiralty and Maritime Briefs (MRT-BRIEF)
Admiralty and Maritime Civil Trial Filings (MRT-FILING)
Admiralty and Maritime Specialist Multibase (MRT-SPECIALIST)
Trial Pleadings (PLEADINGS)
West’s Legal Forms—Admiralty and Maritime (WESTLF-MRT)
WestlawNext® Search Query: (46 /5 30501 30505) “LIMITATION OF LIABILITY ACT” /P (OWNER /S QUALIF! ENTITLE! CONSTITUTION OF VESSEL)