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Summary of Contents

Invalidity of Zoning Ordinance, or Decision Made Thereunder, Regulating or Restricting Operation or Location of “Adult Entertainment,” “Sexually Oriented Business,” or the Like................................. 1

Validity Of Marriage........................................ 111

Propriety and Amount of Punitive Damages Award Against Employer in Title VII Employment Discrimination Case.................... 217

Proof of Statutory Unfair Business Practice under State Law ........................................ 303

Propriety and Amount, for Federal Tax Purposes, of Charitable Deduction Arising from Donation of Conservation Easement .............. 415

Prosecution and Defense of Special Education Litigation Brought by Parents of Child with Autism Spectrum Disorder............................ 495
INVALIDITY OF ZONING ORDINANCE, OR DECISION MADE THEREUNDER, REGULATING OR RESTRICTING OPERATION OR LOCATION OF “ADULT ENTERTAINMENT,” “SEXUALLY ORIENTED BUSINESS,” OR THE LIKE

Eric Larsson, J.D.*

TABLE OF CONTENTS

Scope
Research References
Index

ARTICLE OUTLINE

I. INTRODUCTION AND LEGAL THEORIES

§ 1 Scope and overview
§ 2 Definitions
§ 3 First Amendment
§ 4 Facial challenges
§ 5 As-applied challenges
§ 6 Vagueness
§ 7 Overbreadth
§ 8 Prior restraint
§ 9 Standards of review
§ 10 Content neutrality
§ 11 Secondary effects
§ 12 —Reed v. Gilbert
§ 13 Restrictions on time, place and manner

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§ 14 Regulation by zone
§ 15 Regulation of distance and separation
§ 16 Complete bans
§ 17 Effective preclusion
§ 18 Availability of alternative sites
§ 19 Bias
§ 20 Nonconforming uses
§ 21 Jurisdiction and standing
§ 22 Burden of proof
§ 23 Remedies

II. ELEMENTS OF PROOF
§ 24 Elements of proof checklist

III. MODEL PRACTICE MATERIALS
§ 25 Complaint
§ 26 Plaintiff’s interrogatories
§ 27 Plaintiff’s request for production

IV. PROOF OF INVALIDITY OF ZONING ORDINANCE, OR DECISION MADE THEREUNDER, REGULATING OR RESTRICTING OPERATION OR LOCATION OF “ADULT ENTERTAINMENT,” OR “SEXUALLY ORIENTED BUSINESS”

A. TESTIMONY OF PLAINTIFF; NONCONFORMING USE
§ 28 Introduction; plaintiff’s adult-oriented use
§ 29 Effect of zoning
§ 30 Established use

B. TESTIMONY OF PLAINTIFF; PROHIBITION OF NEW USE
§ 31 Denial of permit to establish business

C. EXPERT TESTIMONY OF PROFESSIONAL PLANNER
§ 32 Qualification as expert planner
§ 33 Background and research
SEXUALLY ORIENTED BUSINESS

§ 34 Zoning regulation of adult-oriented uses
§ 35 Vagueness and overbreadth of challenged ordinance
§ 36 Parcels unavailable for new adult-oriented uses
§ 37 Parcels unavailable for existing nonconforming adult-oriented uses

D. EXPERT TESTIMONY OF PSYCHOLOGIST CONCERNING SECONDARY EFFECTS

§ 38 Qualification of psychologist as expert
§ 39 Preparation for case
§ 40 Absence of secondary effects; serving alcohol at adult-oriented business

Scope
This article discusses the legal theories and means of proving the illegality of a zoning ordinance or decision thereunder which regulates the operation or location of “adult entertainment” or a “sexually oriented business.” The claim may be brought by an individual, corporate entity or other party with sufficient harm to establish standing. The most commonly pursued basis for such claims are found in the First Amendment of the United States Constitution, and corresponding provisions in a state constitution. Claims may also be available under state law through a process designated for the appeal of local land use decisions.

Research References
West's Key Number Digest
Constitutional Law ≈1132(46), 1176, 2210; Zoning and Planning ≈1112

Westlaw Search Query
(adult +1 entertainment or bookstore) or (sexually or adult +1 oriented) or “strip club” or (nude or erotic +1 dancing or entertainment) /p (zoning or “land use”)

A.L.R. Library
A.L.R. Index, Adult or X-Rated Businesses or Movies; Zoning
West's A.L.R. Digest, Constitutional Law ≈1132(46), 1176, 2210; Zoning and Planning ≈1112
Validity of Statutes and Ordinances Regulating the Operation of Sexually Oriented Businesses—Nature of Regulation, 23 A.L.R. 6th 573
Validity of Statutes and Ordinances Regulating Operation of Sexually Oriented Businesses—Types of Businesses Regulated, 21 A.L.R.6th 425
VALIDITY OF MARRIAGE*
Jay Zitter, J.D.*

TABLE OF CONTENTS
Scope
Research References
Index

ARTICLE OUTLINE

I. LEGAL BACKGROUND
   A. IN GENERAL
      § 1 Introduction; scope of article
      § 2 General principles—Presumptions, void or voidable marriages, and the like
      § 3 —Foreign state and country marriages
   B. REQUIREMENTS OF VALID CEREMONIAL MARRIAGE
      § 4 Capacity to marry, generally
      § 5 Consent to marriage
      § 6 Licenses, procedures, and forms of marriage ceremony
   C. REQUIREMENTS OF VALID COMMON-LAW MARRIAGE
      § 7 In general

*The present article supersedes the one at Validity of Marriage, 36 Am. Jur. Proof of Facts 2d 441.
§ 8 Particular requirements

D. OTHER MARRIAGES
§ 9 Foreign and native marriages
§ 10 Proxy marriages

E. ASSERTIONS OF INVALIDITY OF MARRIAGE
§ 11 Claims of invalidity—Generally
§ 12 —Common-law marriages
§ 13 Technical bars to validity challenge—Standing to raise challenge
§ 14 Technical bars—Estoppel as to challenge, unclean hands, and the like

II. ELEMENTS OF PROOF
§ 15 Factors and requirements showing validity of marriage

III. FORMS AND MOTIONS
A. BY HEIR OR OTHER PARTY CLAIMING THAT WIFE'S FOREIGN MARRIAGE TO DEFENDANT HUSBAND WAS VALID
   1. Interrogatories and Discovery to Husband
      § 16 General background
      § 17 Wedding customs and requirements
      § 18 Circumstances of parties’ meeting, engagement, and wedding
      § 19 Circumstances subsequent to wedding ceremony
   2. Other Types of Discovery
      § 20 Requests for admissions
      § 21 Requests for documents

B. BY DEFENDANT-HUSBAND AGAINST PLAINTIFF-WIFE WHO ASSERTS EXISTENCE OF COMMON-LAW MARRIAGE
   1. Interrogatories and Discovery Directed to Wife
      § 22 General background
IV. PROOFS

A. PROOF OF COMMON-LAW OR SIMILAR MARRIAGE WITHOUT LICENSE

1. Agreement to Be Married
   a. As Part of General or Secular Covenant
      § 31 Wife's testimony
      § 32 Testimony of friend
      § 33 Husband's contrary testimony
      § 34 Redirect testimony of wife
   b. As Part of Native American Ceremony
      § 35 Testimony of wife—General background
      § 36 —Marriage agreement and ceremony

2. Presenting to Others: Holding Out to Public
   § 37 Testimony of wife
   § 38 Testimony of wife's relative
   § 39 Contrary testimony of the husband
   § 40 Contrary testimony of couple's friend

B. PROOF OF VALIDITY OF RELIGIOUS CEREMONY ABSENT LICENSE

1. Wife’s Testimony
   § 41 Background
§ 42 Wedding ceremony
§ 43 Nature of continuing relationship
§ 44 Cross-examination of wife

2. Testimony of Officiating Rabbi
§ 45 Background
§ 46 Marriage ceremony
§ 47 Cross-examination

3. Husband's Counter-Testimony
§ 48 Ceremony
§ 49 Nature of continuing relationship

C. PROOF OF VALIDITY OF FOREIGN PROXY OR TELEPHONIC WEDDING

1. Testimony of Proponent Wife
§ 50 Background and facts of alleged wedding
§ 51 Validity in foreign country
§ 52 Subsequent ceremonies and registrations
§ 53 Documentary evidence of marriage
§ 54 Evidence of cohabitation

2. Testimony of Opponent Alleged Husband
§ 55 Direct examination as to alleged husband's claims
§ 56 Cross-examination as to alleged husband's speech and actions confirming the marriage

3. Expert Witness
§ 57 Qualifications
§ 58 Testimony as to propriety of particular aspects of ceremony
§ 59 Cross-examination of expert as to qualifications

D. CLAIM BY ASSERTED HEIR THAT MARRIAGE SHORTLY BEFORE DEATH OF HEIR'S DECEDEENT WAS VOID FOR LACK OF MENTAL CAPACITY

1. Testimony by Particular Individuals
   Supporting Wife's Claim That Heir's Decedent Had Mental Capacity to Marry
§ 60 Relative
VALIDITY OF MARRIAGE

§ 61 Decedent’s attorney
§ 62 Pastor
§ 63 Friend and business associate
§ 64 Medical testimony of decedent’s oncologist
§ 65 Nurse’s testimony as to records of patient’s condition

2. Testimony of Particular Individuals
Supporting Alleged Heir’s Claim That
Decedent Lacked Mental Capacity to Marry

§ 66 Decedent’s son
§ 67 Business partner
§ 68 Expert pharmacology witness

Scope
In practically all cases, no one challenges the validity of a marriage because the requirements are simple and easily fulfilled, and because there usually is no reason to challenge the efficacy of a wedding procedure. Thus, the vast majority of weddings result in the couple being considered properly married. However, in some cases of ordinary ceremonial marriages the validity thereof is not clear, usually because the parties did not fulfill all of the legal requirements for marriage, such as licensing or proper solemnization. In other cases, in which one spouse in American-born and the other is a native of a foreign country in which the wedding takes place, the foreign wedding often involves ceremonies and traditions that are completely unfamiliar to the average American-born spouse. Furthermore, some states allow common-law marriages, but proving such a marriage involves many factors and requirements which frequently are disputed between the parties.

In all these circumstances, there may be challenges to the validity of a marriage, although, of course, no one is going to challenge a marriage unless there is a good financial or legal reason to do so. There are a great number of financial reasons why someone might seek to challenge or support the validity of a marriage. For instance, some challenges involve arguments as to whether a spouse had been married properly to a decedent, so as to affect the amount of recovery from the decedent’s estate to other heirs and the putative spouse. In addition, other claims involve a putative spouse claiming various government or insurance benefits, such as survival benefits, that apply only if the spouse had in fact been married as claimed. Moreover, in many jurisdictions a spouse may be eligible for many financial benefits
from the other spouse upon the termination of a marriage, but not if there was no marriage in the first place. Finally, the continuing existence of a valid marriage is a way in which a claim of a subsequent marriage can be defeated.

Research References

West's Key Number Digest
Marriage and Cohabitation ⊕153, 201, 206, 207, 213, 215(2), 218, 365 to 367, 369, 382, 383, 386, 387

Westlaw Search Query
(evidence or proof /s (valid*** /3 marriage)) % (sham /s marriage) % (“bona fide” /s marriage)

A.L.R. Library
A.L.R. Index, Annulment of Marriage; Bigamy; Clandestine Marriage; Common-Law Marriage; Marriage; Proxy Marriages; Same Sex Partners; Solemnization of Marriage
West's A.L.R. Digest, Marriage and Cohabitation ⊕153, 365 to 367, 369
Validity of Laws and Regulations Concerning Sexual Orientation Change Efforts (SOCE), 4 A.L.R.7th Art. 8
Issues Arising in Same Sex Divorce and Dissolution of Same-Sex Civil Unions, 76 A.L.R.6th 257
Validity of Bigamy and Polygamy Statutes and Constitutional Provisions, 22 A.L.R.6th 1
Validity of marriage as affected by lack of legal authority of person solemnizing it, 13 A.L.R.4th 1323
Mental capacity to marry, 82 A.L.R.2d 1040
Validity of solemnized marriage as affected by absence of license required by statute, 61 A.L.R.2d 847
Presumption as to validity of second marriage, 14 A.L.R.2d 7
Cohabitation of persons ceremonially married after learning of facts negativing dissolution of previous marriage of one, as affecting right to annulment, 4 A.L.R.2d 542
Proxy marriages, 170 A.L.R. 947
Public policy of forum against recognition of marriage valid (or voidable only) by the law of the place where it was celebrated, as affected by fact that neither of the parties was domiciled at the forum at the time of the marriage, 127 A.L.R. 437
Recognition of foreign marriage as affected by policy in respect of incestuous marriages, 117 A.L.R. 186
Marriage recognized as valid because valid by law of another state where it was celebrated, as subject to annulment under law of forum for reasons which would have subjected it thereto if celebrated at forum, 104 A.L.R. 1294
Inference or presumption of marriage from continued cohabitation following removal of impediment, 104 A.L.R. 6
PROPRIETY AND AMOUNT OF PUNITIVE DAMAGES AWARD AGAINST EMPLOYER IN TITLE VII EMPLOYMENT DISCRIMINATION CASE

Cecily Fuhr, J.D.*

TABLE OF CONTENTS

Scope
Research References
Index

ARTICLE OUTLINE

I. LEGAL BACKGROUND
   A. INTRODUCTION
      § 1 Introduction; scope of article
   B. DAMAGES UNDER TITLE VII
      § 2 Damages under Title VII, generally

C. CONSIDERATIONS IN DETERMINATION OF PUNITIVE DAMAGES AWARDS

§ 3 Malice or reckless indifference
§ 4 Discrimination imputable to employer
§ 5 Prerequisite of compensatory damages
§ 6 Effect of statutory cap on total damages

D. DEFENSES TO AVAILABILITY OF PUNITIVE DAMAGES UNDER TITLE VII

§ 7 Disparate treatment vs. disparate impact
§ 8 Mixed motive defense
§ 9 Governments and governmental officials acting in official capacities
§ 10 Individual supervisors or other employees
§ 11 Discrimination contrary to employer’s good faith compliance efforts
§ 12 Equal Employment Opportunity Commission (EEOC) guidance on Title VII punitive damages

E. PROCEDURAL ISSUES

§ 13 Jurisdiction over Title VII actions
§ 14 Burdens of proof
§ 15 Discovery as to defendant’s financial records

II. REMEDIES

§ 16 Checklist—Elements of remedies available in Title VII actions

III. ELEMENTS OF PROOF

§ 17 Checklist—Elements of proof of eligibility for punitive damages under Title VII

IV. MODEL DOCUMENTS

A. GENERALLY

§ 18 Model documents—Generally

B. PLEADINGS

§ 19 Sample complaint—Individual plaintiff
§ 20 —Class action

218
§ 21 Sample notice of removal

C. DISCOVERY REQUESTS
§ 22 Plaintiff's interrogatories to defendant
§ 23 Plaintiff's requests for production to defendant
§ 24 Defendant's interrogatories to plaintiff
§ 25 Defendant’s requests for production to plaintiff
§ 26 Sample notice of deposition

D. TRIAL DOCUMENTS
§ 27 Defendant’s motion in limine to exclude evidence supporting punitive damages
§ 28 Plaintiff's proposed jury instructions on punitive damages
§ 29 Proposed defendant’s jury instructions on punitive damages

V. PROOF OF PLAINTIFF’S ENTITLEMENT TO PUNITIVE DAMAGES IN TITLE VII ACTION

A. INTRODUCTION
§ 30 Introduction and hypothetical scenario

B. EMPLOYER’S LIABILITY FOR PUNITIVE DAMAGES
   1. Testimony of Plaintiff
      § 31 Plaintiff's employment history
      § 32 Plaintiff's responses to harassment
      § 33 Employer's investigations
      § 34 Results of employer’s investigations
   2. Testimony of Human Resources Manager
      § 35 Manager’s employment history
      § 36 Employer’s antidiscrimination policies and practices
      § 37 Submission of plaintiff's complaint
      § 38 Investigation of plaintiff’s complaint
      § 39 Outcome of investigation
   3. Testimony of Plaintiff's Coworker
      § 40 Witnessing harassment
      § 41 Involvement in investigation
PROOF OF STATUTORY UNFAIR BUSINESS PRACTICE UNDER STATE LAW

Malla Pollack, J.D.*

TABLE OF CONTENTS

Scope
Research References
Index

ARTICLE OUTLINE

I. INTRODUCTION

§ 1 Introduction; scope of article
§ 2 Statutory models
§ 3 Allowable plaintiffs
§ 4 —Definitions of “consumer”
§ 5 Remedies
§ 6 Transactions within statute
§ 7 —Need for public or consumer impact
§ 8 —Exceptions
§ 9 —Causation
§ 10 —Other statutory limits


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§ 11 General prohibitions—Deceptive, untrue, or misleading
§ 12 —Fraudulent
§ 13 —Unfair
§ 14 —Unlawful
§ 15 Specific prohibitions
§ 16 Nexus to enacting state
§ 17 Other variations
§ 18 Arbitration

II. RELIEF
§ 19 Checklist of possible types of relief

III. ELEMENTS
§ 20 Elements—California’s Unfair Competition Law
§ 21 —Illinois Consumer Fraud and Deceptive Business Practices Act

IV. MODEL DOCUMENTS
A. MODEL COMPLAINT
§ 22 Hypothetical A—State statute
§ 23 —Complaint filed in a trial-level court of Now State

B. MODEL DEFENSE MOTION FOR SUMMARY JUDGMENT
§ 24 Hypothetical B—Nexus requirement
§ 25 Defendant’s motion for summary judgment—Defendant’s statement of undisputed facts
§ 26 Hypothetical B—Excerpts from defendant’s memorandum of law in support of motion for summary judgment
§ 27 Defendant’s motion for summary judgment—Plaintiff’s counterstatement regarding facts
§ 28 Excerpts from plaintiff’s memorandum of law in opposition to defendant’s motion for summary judgment

V. PROOF OF VIOLATION OF STATE UNFAIR TRADE PRACTICES STATUTE
§ 29 Elements of cause of action
Unfair Business Practice

§ 30 Hypothetical

A. TESTIMONY OF PURCHASER

§ 31 Testimony of Plaintiff Charles C.—Reason for purchase
§ 32 —Purchase

B. TESTIMONY OF SALESPERSON

§ 33 Testimony of Richard A.

C. TESTIMONY OF PLAINTIFF'S EXPERT

§ 34 Testimony of Tom F.—Witness's background
§ 35 —Plaintiff's roof
§ 36 —Opinion testimony

D. TESTIMONY OF DEFENDANT'S REPRESENTATIVE AS A HOSTILE WITNESS

§ 37 Testimony of Horace R.

Scope
This article discusses and illustrates a civil suit against an offending business pursuant to a state statute banning unfair or deceptive business practices. Such civil suits may be brought by a state official, a consumer, a class of consumers, or another business. Each state of the United States has at least one such statute. However, the scope of such statutes varies considerably.

Research References

West's Key Number Digest
Antitrust and Trade Regulation ⇔133, 135, 139, 287, 290, 350, 355, 369, 387, 972

Westlaw Search Query
unfair or deceptive or fraud or fraudulent) /5 (consumer or competition or practice or business or trade)

A.L.R. Library
A.L.R. Index, Trademarks, Trade Names, and Unfair Trade Practices
West's A.L.R. Digest, Antitrust and Trade Regulation ⇔133, 139, 350, 355, 387
Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with
PROPRIETY AND AMOUNT, FOR FEDERAL TAX PURPOSES, OF CHARITABLE DEDUCTION ARISING FROM DONATION OF CONSERVATION EASEMENT

James L. Buchwalter, J.D.*

TABLE OF CONTENTS

Scope
Research References
Index

ARTICLE OUTLINE

I. LEGAL BACKGROUND
   A. IN GENERAL

§ 1 Introduction; scope of article
§ 2 General principles governing deduction for conservation easement
§ 3 What constitutes a “qualified real property interest”
§ 4 What constitutes a “qualified organization”

*Mr. Buchwalter contributes to several legal reference publications, including Corpus Juris Secundum, American Law Reports, Causes of Action 2d, and American Jurisprudence Proof of Facts 2d. He served as a judicial law clerk to United States Bankruptcy Judge John J. Hargrove, Southern District of California. As a law student, Mr. Buchwalter interned as a judicial law clerk to United States District Judge Charles S. Haight, Jr., Southern District of New York, and with the Staff Attorney’s Office in that district, handling (among other matters) prisoners’ pro se civil rights claims. Mr. Buchwalter holds a J.D. from Hofstra University School of Law, as well as an M.A. in Philosophy from the City University of New York Graduate Center, with an emphasis in the philosophy of law. He is admitted to practice law in the State of New York.
B. REQUISITE “CONSERVATION PURPOSE”

1. In General

§ 5 What constitutes a “conservation purpose,” generally
§ 6 Perpetuity requirement
§ 7 —Necessity of subordinating mortgages on property
§ 8 —Retention of mining interests
§ 9 Baseline documentation requirement
§ 10 Substantiation requirements

2. Illustrative Types of Conservation Purposes

§ 11 Natural habitat easements
§ 12 Recreation easements
§ 13 Historic preservation

C. PROCEDURAL MATTERS

§ 14 Procedural issues, generally
§ 15 Governing law
§ 16 Judicial estoppel
§ 17 Expert testimony
§ 18 Judicial review

D. REMEDIES

§ 19 Remedies, generally
§ 20 Taxpayer’s action seeking refund
§ 21 Statutory penalty for gross valuation misstatement
§ 22 —Managerial approval requirement

II. PROVING FAIR MARKET VALUE OF CONSERVATION EASEMENT

§ 23 Illustrative scenario
§ 24 Appraisal of fair market value, generally
§ 25 “Before-and-after” method of valuation
§ 26 “Highest and best use” of property

III. CHECKLIST OF EVIDENCE ON QUALIFICATION FOR, AND AMOUNT OF, DEDUCTION

§ 27 Proof checklist on qualification for deduction
§ 28 Proof checklist on amount of deduction

IV. SAMPLE COURT DOCUMENTS


§ 30 —Asserting IRS errors regarding donative intent, qualified appraisal, conservation purposes, fair market value of property contributed, and adjustment of § 1231 gain

§ 31 Sample complaint seeking refund of taxes collected upon denial of deduction for conservation easement contribution

§ 32 Sample verdict form and final judgment after trial on valuation of conservation easement

Scope
This article addresses the proof of facts that bear on the propriety and amount, for federal tax purposes, of a charitable deduction arising from the donation of a conservation easement.

Research References

West’s Key Number Digest
Internal Revenue ⇝3513.10, 3513.20, 3515

Westlaw Search Query
(“fair market value” or deduction) /s (conservation /3 easement or contribution)

Primary Authority
26 U.S.C.A. § 170(h)
26 C.F.R. § 1.170A-14
IRS CCA 201334039, 2013 WL 4495998
IRS Info 2016-0037, 2016 WL 6664848 (June 24, 2016)
Priv. Ltr. Rul. 201514009
I.R.S. Pub. 526

A.L.R. Library
A.L.R. Index, Easements; Internal Revenue Service; Taxes
West’s A.L.R. Digest, Internal Revenue ⇝3513.10, 3513.20, 3515
Federal income tax charitable deductions: property fair-market-value determinations, 90 A.L.R. Fed. 402
Taxpayer’s conveyance or dedication of land to or for use of governmental entity as charitable contribution qualifying for tax deduction under 26 U.S.C.A. sec. 170, 30 A.L.R. Fed. 796

417
PROSECUTION AND DEFENSE OF SPECIAL EDUCATION LITIGATION BROUGHT BY PARENTS OF CHILD WITH AUTISM SPECTRUM DISORDER

Ralph Gerstein, J.D.∗

TABLE OF CONTENTS

Scope
Research References
Index

ARTICLE OUTLINE

I. BACKGROUND
   A. OVERVIEW
      § 1 Introduction
      § 2 Overview of autism spectrum disorders
      § 3 Overview of Individuals with Disabilities Education Act (IDEA)
      § 4 Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act
      § 5 Definition of Disability under IDEA

   B. ACCESSING THE SPECIAL EDUCATION SYSTEM
      § 6 “Child find” obligation

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§ 7 Evaluation procedures
§ 8 Independent educational evaluations

C. DEVELOPMENT OF EDUCATIONAL PLAN FOR STUDENT

§ 9 Development of Individualized Educational Program (IEP)
§ 10 Right to free appropriate public education (FAPE)
§ 11 Least restrictive environment
§ 12 Transition planning
§ 13 Parents’ right to participate in special education process
§ 14 Extended school year
§ 15 Unique challenges relating to Asperger's Syndrome
§ 16 Notices to parents and proposed changes of placement

D. PLACEMENTS OUTSIDE SCHOOL DISTRICT

§ 17 School district’s placement of child in out-of-district program
§ 18 Parent’s unilateral placement of child in private day school
§ 19 Residential placements

E. ADMINISTRATIVE DUE PROCESS PROCEEDINGS RESOLUTION OF DISPUTES AT ADMINISTRATIVE LEVEL

§ 20 Commencement of due process proceeding
§ 21 Statute of limitations
§ 22 Complaint resolution process, mediation, and prehearing discovery
§ 23 Due process hearings
§ 24 “Stay put” rule (also known as “pendency”)

F. SPECIAL EDUCATION LITIGATION

§ 25 Review of administrative decision
§ 26 Exhaustion of administrative remedies
§ 27 Compensatory education and other remedies
§ 28 Attorney’s fees

496
II. ELEMENTS OF PROOF

§ 29 Parent attorney’s checklist  
§ 30 School attorney’s checklist

III. SAMPLE DOCUMENTS

§ 31 Due process complaint—Autistic child  
§ 32 Complaint under Section 504—Child with Asperger’s Syndrome  
§ 33 Application for pendency order  
§ 34 Appellate brief on behalf of appellee school district—in support of ALJ determination denying parents’ due process complaint

IV. SAMPLE PROOF OF DUE PROCESS CLAIM FOR PRIVATE SCHOOL TUITION REIMBURSEMENT

§ 35 Hypothetical fact scenario  
§ 36 Direct examination of parent  
§ 37 Direct examination of parent’s psychologist

Scope

This article is designed to enable the practitioner to prosecute or defend litigation relating to education of students with autism spectrum disorders. We begin with a description of the various autism spectrum disorders and an overview of the statutory protections available for children with disabilities. Where a child has or is suspected of having a disability, the school district conducts an evaluation, and the parents frequently obtain their own evaluations. We then discuss the procedures for the creation of an Individualized Educational Program (IEP). The IEP must provide a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). With this background in mind, we then discuss the specific alternative services to be considered for children with autism, including but not limited to social skills training, techniques for modifying negative behavior and out-of-district placements in day schools or residential settings. We then discuss the administrative procedures for resolution of special education disputes, and litigation of disputes. Finally, the article discusses remedies, including compensatory education, and award of attorney’s fees and other costs. The article offers a comprehensive discussion of the Individuals with Disabilities Education Act and those portions of the Americans with Disabilities Act (ADA) and Section 504 that relate to autism.
spectrum disorders. For broader coverage of the Americans With Disabilities Act, see, e.g., When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, 42 U.S.C.A. § 12132, 160 A.L.R. Fed. 637.

Research References

West's Key Number Digest
Civil Rights ☐1059; Education ☐860 to 909

Westlaw Search Query
(autism or autistic or asperger’s) /25 (“individual education plan” or IEP or “free and appropriate public education or FAPE) /25 (adequate or inadequate or adequacy or inadequacy or deficiency or inappropriate or appropriate)

A.L.R. Library
A.L.R. Index, Autism; Individualized Education Plan; Individuals with Disabilities Education Act (IDEA)
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What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. secs. 1400 et seq.), 161 A.L.R. Fed. 1
Who is prevailing party for purposes of obtaining attorney's fees under sec. 615(i)(3)(B) of Individuals with Disabilities Act (20 U.S.C.A. sec. 1415(i)(3)(B)) (IDEA), 153 A.L.R. Fed. 1
Obligation of public educational agencies, under Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400 et seq.), to pay tuition costs for students unilaterally placed in private schools—post-Burlington cases, 152 A.L.R. Fed. 485

Legal Encyclopedias
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C.J.S., Schools and School Districts

Law Reviews and Other Periodicals