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PROSECUTION AND DEFENSE OF CLAIMS
BROUGHT UNDER 42 U.S.C.A. § 1983
ALLEGING EXCESSIVE FORCE BY LAW
ENFORCEMENT OFFICERS

*Ralph Gerstein, J.D.**

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Scope

This article is designed to assist a practitioner who is prosecuting or defending a federal civil rights action in which the plaintiff alleges that law enforcement personnel used excessive force. 42 U.S.C.A. § 1983 is a statutory mechanism for bringing a civil rights case, but the substantive basis of the action must be a constitutional right, such as the Fourth, Eighth or Fourteenth Amendments to the U.S. Constitution.

Research References

West's Key Number Digest

Civil Rights ⇨1088(2), 1348, 1358, 1369

A.L.R. Library

A.L.R. Index, Arrest, Assault and Battery, Civil Rights, Force or Violence

West's A.L.R. Digest, Civil Rights ⇨1088(2), 1348, 1358, 1369

Requirement for, and Admissibility of, Expert Testimony to Determine Whether Use of Particular Amount of Force in Course of Making Arrest Was Unreasonable, 95 A.L.R.6th 641

When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights, 65 A.L.R.6th 93

Liability of Police Officer for Assault and Battery Arising from Use of Stun Gun or Taser Device, 52 A.L.R.6th 623

When Does Use of Taser Constitute Violation of Constitutional Rights, 45 A.L.R.6th 1

PROOF OF FACTS IN MOTION REQUESTING
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*Malla Pollack, J.D.**

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Scope

This article discusses and illustrates litigating a motion to dismiss or transfer an action filed in federal court on grounds based on venue or forum non conveniens.

Research References

West's Key Number Digest

Federal Courts ⇌2902, 2941, 2942, 2943, 2944, 2945

Primary Authority

28 U.S.C.A. §§ 1404(a), 1406(a)

A.L.R. Library

A.L.R. Index, Change of Venue; Forum Non Conveniens

West's A.L.R. Digest, Federal Courts ⇌2902, 2941, 2942, 2943, 2944, 2945

Doctrine of forum non conveniens: assumption or denial of jurisdiction of action involving matrimonial dispute, 55 A.L.R.5th 647

Forum non conveniens in products liability cases, 76 A.L.R.4th 22

Doctrine of forum non conveniens: assumption or denial of jurisdiction in action between nonresident individuals based upon tort occurring within forum state, 92 A.L.R.3d 797

PROOF OF PHYSICIAN'S FAILURE TO OBTAIN INFORMED CONSENT TO EXPERIMENTAL TREATMENT*

*Monique C.M. Leahy, J.D.***

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*This article supersedes *Physician's Failure to Obtain Informed Consent to Innovative Practice or Medical Research*, 15 Am. Jur. Proof of Facts 2d 711.

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Scope

The focus of this article is a claim of malpractice for the failure to obtain informed consent to experimental treatment. federal regulation, state statutes, and case law is presented on whether a physician advised a patient that proposed treatment was experimental, and not standard practice, and that there are material risks associated with the experimental treatment.

Research References

West's Key Number Digest

Health ⇌905 to 908

A.L.R. Library

A.L.R. Index, Informed Consent; Physicians and Surgeons

West's A.L.R. Digest, Health ⇌905 to 908

Recovery for Nonconsensual Human Medical Experimentation, 42 A.L.R.6th 301

Physician's use of patient's tissue, cells, or bodily substances for medical research or economic purposes, 16 A.L.R.5th 143

Medical malpractice: liability for failure of physician to inform patient of alternative modes of diagnosis or treatment, 38 A.L.R. 4th 900

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment, 88 A.L.R.3d 1008

Necessity and sufficiency of expert evidence to establish existence and extent of physician's duty to inform patient of risks of proposed treatment, 52 A.L.R.3d 1084

Malpractice: physician's duty to inform patient of nature and hazards of disease or treatment, 79 A.L.R.2d 1028

PROOF OF MEDICAL MALPRACTICE
INVOLVING ORGAN OR TISSUE TRANSPLANT

*Jay M. Zitter, J.D.**

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Scope

Organ and tissue transplants can work miracles, so that a patient who is at death's door gets a new lease on life. A patient on total dialysis can get a kidney and have a normal life, a functionally blind patient can have restored vision with a corneal transplant and, most dramatically, a heart transplant patient who has no chance of living even a few months can have many more years of life. As transplants have moved from the experimental stage to ordinary treatment, it would appear that the main problem with transplants today is that not enough of them are taking place, as a number of potential recipients die each day, while waiting for a transplant, due to the lack of suitable donors. Nevertheless, as in other areas of medical treatment, an additional problem is that a physician may be negligent in performing the transplant, leading to injuries or death. Transplants are likely sources of malpractice litigation since many of them are complex, they often involve an operation on a live donor as well as on the recipient, the chances of failure of certain transplants are relatively high compared to many other medical procedures, and a failed transplant in many cases is a cause of death.

Typical cases involve failure to secure informed consent from a live donor or the relatives of a deceased donor, transplanting diseased organs in the recipients, or improper procedures leading to infections or the like.

Research References

West's Key Number Digest

Evidence ◊555.10; Health ◊667, 669, 670, 804, 818, 821(5), 823(11), 826, 835, 906, 923, 926

Westlaw Search Query

(malpractice or negligence) /s transplant /p (kidney heart liver pancrea! intest! lung tissue organ unos) & DA(AFT 9/1/2017)

PROOF OF FACTS SUPPORTING ADMISSION
OR PERSUASIVENESS OF RECORDS
PERTAINING TO INSPECTION,
MAINTENANCE, OR CALIBRATION OF BLOOD
ALCOHOL TESTING DEVICE AS EVIDENCE IN
CRIMINAL TRIAL WITHOUT PRODUCING
PERSONS WHO CREATED RECORDS

*Eric J. Handelman, J.D.**

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Scope

To understand the jurisprudence governing the admissibility in court of an out-of-court record addressing whether a blood alcohol testing device was working properly at the time of its use to measure a criminal defendant's blood alcohol level. To examine the business record hearsay exception to the hearsay rule of evidence and the purpose for the creation of those records. To specifically examine whether a prosecutor must produce the author or creator of the record if it intends to offer the record as evidence in his or her case. To examine the Confrontation Clause of the Sixth Amendment to the United States Constitution which grants a criminal defendant the right to confront his or her accusers in a court proceeding, and the U.S. Supreme Court's examination of the Confrontation Clause's applicability as to hearsay records offered into evidence by the prosecution in criminal matters. To examine judicial interpretations of the testimonial character of blood alcohol testing device inspection, maintenance, or calibration records for purposes of admission.

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West's Key Number Digest

Automobiles ☞332; Constitutional Law ☞4591, 4658(1), 4678, 4679, 4680; Controlled Substances ☞69, 70; Criminal Law ☞339.8(2.1), 662.1, 662.3, 662.4, 662.7, 662.8, 662.9, 662.30, 662.40, 662.50, 662.65, 1035(10), 1043(1), 1168(2); Evidence ☞148, 210, 247, 314(1), 318(3), 318(4), 333(1), 577, 582(1); Trial ☞38; Witnesses ☞37(1), 266, 330(1)

Primary Authority

U.S. Const. Amend. VI

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West's A.L.R. Digest, Criminal Law ☞662.8, 1168(2)

Application of Crawford Confrontation Clause Rule to DNA Analysis and Related Documents, 17 A.L.R.7th Art. 3

Application of Crawford Confrontation Clause Rule to Alcohol and Drug Forensic Analysis and Related Documents, 3 A.L.R.7th Art. 4