
CAUSES

OF

ACTION[®]

Second

118 COA 2d[®]

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Preface

Each volume of Thomson Reuters' Causes of Action Second (COA 2d) contains articles discussing causes of action of current interest to practicing lawyers. Each article leads the practitioner through the steps necessary to determine whether particular facts give rise to a cause of action. The article analyzes the elements of the cause of action and then explains how these elements can be proved. COA 2d also guides the attorney in getting the case into court, and points out how to pursue the case through trial and to a successful conclusion. Each article is organized so that a practitioner can quickly turn to an appropriate section for information on a particular question of substantive or procedural law.

COA Action Guide. The COA Action Guide begins each COA 2d article. It presents the critical points the attorney must be familiar with in order to successfully bring a particular action in state or federal court. The COA Action Guide is a concise overview of the cause of action with cross-references to sections in the article where specific points are discussed in detail.

Article Index. Preceding the text of each COA 2d article is an alphabetical, descriptive-word Index. The Index is based on key words or phrases appearing in the article. Together with the Table of Contents, the Index makes for easy access to points discussed in the article.

Research References. Each COA 2d article contains a list of research references referring the attorney to valuable sources for additional research. Leading law reviews and major works by leading authorities are included.

Table of Cases. A Table of Cases, arranged by jurisdiction, is included in each COA 2d article.

Substantive Law Overview. Each COA 2d article includes a Substantive Law Overview describing the elements of the prima facie case, defenses to the action, persons who may bring the action, and persons against whom the action may be brought. This overview presents the relevant substantive law from a practical point of view. It provides the attorney with guidance as to what is likely to be successful under a given set of circumstances.

Practice and Procedure. A Practice and Procedure division is included in each COA 2d article. It covers such procedural matters as jurisdiction, venue, limitations, pleadings, remedies, and recovery. All procedural points discussed are focused on the distinct requirements of the cause of action that is the subject of the article.

Practice Tips. Appearing frequently throughout each COA 2d article are special Practice Tips. They provide the attorney with

specific practical guidance or advice that is directly related to the particular cause of action discussed in the article. Practice Tips are distinctively set off from the text so they are easily recognizable.

Authority Features. In some articles dealing with topics with extensive case law, an Authority feature is included in some sections as appropriate as a device for collecting numerous cases supporting legal propositions discussed in the article. Cases are arranged by jurisdiction to make it easy to find cases of interest. Authority features are set off from the text to make them easily identifiable.

Practice Checklists. As appropriate, each COA 2d article includes Practice Checklists intended to assist the attorney in gathering and evaluating information in the preparation of the action. Information Checklists for the plaintiff and the defendant identify information to obtain from the client to begin to prepare the case. Discovery Checklists for the plaintiff and the defendant include pertinent deposition questions and interrogatories, as well as requests for admissions and production of documents.

Primary Law. When a cause of action has its basis in a federal statute or a uniform state law, the text of the statute is reprinted in the Appendix to the COA 2d article. When an action is based on a type of statute that may vary from state to state, statutory references are provided.

Sample Case. The Appendix to each COA 2d article includes the text of a recent judicial opinion, usually from an appellate court, that illustrates application of basic principles of the cause of action that is the subject of the article to an interesting set of facts.

Sample Pleadings. Each COA 2d article includes a sample complaint that can be used or adapted for use by an attorney bringing the type of action that is the subject of the article.

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CAUSE OF ACTION FOR INJURY CAUSED BY GAS CAN
OR OTHER DEVICE LACKING FLAME ARRESTOR OR
MITIGATION DEVICE

*Theodore Z. Wyman, J.D.**

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PRIMA FACIE CASE

- In a cause of action for injury caused by a gas can or other device lacking a flame arrestor or other mitigation feature, a plaintiff may proceed under one or more different theories of liability, each with their own prima facie elements. As to strict liability, in order to demonstrate a prima facie case of manufacturing defect, a plaintiff must demonstrate:
 - (1) the device does not conform to the design standards of the manufacturer [§ 5]; and
 - (2) the manufacturing defect caused the plaintiff's injuries [§ 6].
- In order to demonstrate a prima facie case of design defect, a plaintiff must demonstrate:
 - (1) the device as designed is dangerous [§ 8];

CAUSE OF ACTION ALLEGING AGREEMENT AMONG
EMPLOYERS TO FIX WAGES AS CONSPIRACY IN
RESTRAINT OF TRADE IN VIOLATION OF SHERMAN ACT
§ 1, 15 U.S.C.A. § 1

*James L. Buchwalter, J.D.**

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COA ACTION GUIDE

PRIMA FACIE CASE

- To state a prima facie case alleging agreement among employers to fix wages as a conspiracy in restraint of trade in violation of section 1 of the Sherman Act, the plaintiff generally is required to establish:
 - (1) a violation of section 1 of the Sherman Act, meaning (a) an agreement, conspiracy, or combination between two or more entities to restrain wages (b) that unreasonably restrained trade under either a per se or rule-of-reason analysis, and (c) that affected interstate commerce [§§ 4 to 7];
 - (2) harm suffered as a result of the violation [§ 8]; and
 - (3) an estimated measure of damages [§ 27].

DEFENSES

- A defense to a claim alleging an agreement among employers to fix wages as a conspiracy in restraint of trade in violation of section 1 of the Sherman Act may be established by:
 - (1) rebutting the elements of the prima facie case [§§ 5 to 9]; or
 - (2) raising an affirmative defense, such as the statute of limitations [§ 10].

PARTIES

- The plaintiff seeking relief in a case alleging an agreement among employers to fix wages as a conspiracy in restraint of trade in violation of section 1 of the Sherman Act is an employee; often the plaintiff seeks appointment as a class representative [§ 11].
- The defendants are the employers [§ 12].

PRACTICE AND PROCEDURE

- A claim alleging an agreement among employers to fix wages as a conspiracy in restraint of trade in violation of

CAUSE OF ACTION BY LESSEE OF REAL PROPERTY TO
ENFORCE PURCHASE OPTION OR RIGHT OF FIRST
REFUSAL

*Lisa A. Zakolski, J.D., M.A.**

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- The lessee must also show that they exercised the option to purchase [§ 8]. The lessee must specifically show the timeliness of exercise of the option [§ 9] as well as the manner of exercise [§ 10]. Notification of the exercise of the option must also be shown [§ 11]. As well, the lessee must show the tender of the purchase price and proof of their ability to pay [§ 12]. If the lessee is claiming any repudiation, waiver, or modification of terms of the

CAUSE OF ACTION FOR BREACH OF IMPLIED
WARRANTY OF HABITABILITY IN RESIDENTIAL LEASE

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- The elements of the tenant's prima facie case for breach of the implied warranty of habitability requires proof of:
 - (1) the existence of a substantial defect affecting habitability [§ 5]; and
 - (2) notice to the landlord of the defect [§ 6].
- In determining whether there has been a material breach of implied warranty, courts are frequently called on to evaluate particular types of conditions, including insect and rodent infestation; water leakage through roofs, ceilings, and walls; faulty plumbing; lead-based paint hazards; renovation and construction activities undertaken by the landlord; and noise by other tenants [§§ 7 to 13].

DEFENSES

- A landlord may assert the following primary defenses in response to the tenant's claim of breach of the implied warranty of habitability:
 - (1) the alleged defect is not substantial enough to affect habitability [§ 14];
 - (2) the landlord lacked knowledge of the alleged defective condition [§ 15];
 - (3) the condition was caused by the actions of the tenant [§ 16]; and
 - (4) the tenant did not incur any damages [§ 17].

PARTIES

- The landlord and tenant are, in virtually all cases, the only parties to an action involving a claim of breach of the implied warranty of habitability [§ 18].

INITIATION OF ACTION

- A tenant may bring an action for breach of the implied warranty of habitability either directly as a first-party plaintiff or as a counterclaim to the landlord's action for rent or possession [§ 19].

PROOF

- Each case must turn on its own peculiar facts and thus a

CAUSE OF ACTION UNDER FAIR HOUSING ACT FOR
DISCRIMINATION ON BASIS OF SEX, SEXUAL
ORIENTATION, OR TRANSGENDER STATUS

*Theodore Z. Wyman, J.D.**

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PRIMA FACIE CASE

- Plaintiffs alleging housing discrimination on the basis of sex, sexual orientation, or transgender status have several possible avenues under the Fair Housing Act. Plaintiffs typically bring suit under 42 U.S.C.A. § 3604(a), 42 U.S.C.A. § 3604(b), and/or 42 U.S.C.A. § 3604(c) [§ 5].
- Under 42 U.S.C.A. § 3604(a), which prohibits a refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying a dwelling to any person because of sex, a plaintiff must demonstrate that:
 - (1) the plaintiff is a member of a protected class;
 - (2) the plaintiff sought and was qualified for the dwelling at issue;
 - (3) the plaintiff was denied the right to procure the dwelling; and
 - (4) the dwelling remained available after being denied to the plaintiff [§§ 6, 7].
- Under 42 U.S.C.A. § 3604(b), which makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex, a plaintiff establishes a prima facie case of such discrimination on the basis of a rule or policy either through a showing of disparate treatment [§ 9], or disparate impact [§ 10].
- Under 42 U.S.C.A. § 3604(c), which unlawful to make, print, or publish any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sex, a plaintiff must demonstrate that the defendant made a statement with respect to the rental of