

Index

ADMIRALTY LAW

- Generally, **7.1 et seq.**
- Burden of proof
 - maintenance and cure claims, **7.11**
 - unseaworthiness claims, **7.5**
- Causation
 - Jones Act negligence claims, **7.4**
 - unseaworthiness claims, **7.7**
- Damages
 - generally, **7.8**
 - reduction of damages,
 - plaintiff's negligence, **7.9**
- Defendant's request or directions,
 - plaintiff's compliance with, **7.10**
- Definitions
 - negligence, **7.3**
 - unseaworthiness, **7.6**
- Elements of proof
 - Jones Act negligence claims, **7.2**
 - maintenance and cure claims, **7.11**
 - unseaworthiness claims, **7.5**
- Jones Act negligence claims
 - generally, **7.2 et seq.**
 - burden of proof, **7.2**
 - causation, **7.4**
 - elements of proof, **7.2**
 - negligence defined, **7.3**
- Jones Act negligence or unseaworthiness claims
 - generally, **7.8**
 - damages
 - generally, **7.8**
 - reduction of damages,
 - plaintiff's negligence, **7.9**

ADMIRALTY LAW—Cont'd

- Jones Act negligence or unseaworthiness claims
 - Cont'd
 - defendant's request or directions, plaintiff's compliance with, **7.10**
 - plaintiff's compliance with defendant's request or directions, **7.10**
 - plaintiff's negligence, reduction of damages, **7.9**
 - proof, **7.8**
- Maintenance and cure claims
 - elements and burden of proof, **7.11**
 - willful and arbitrary failure to pay, **7.12**
- Negligence, definition, **7.3**
- Plaintiff's compliance with defendant's request or directions, **7.10**
- Plaintiff's negligence, reduction of damages, **7.9**
- Proof, Jones Act negligence or unseaworthiness, **7.8**
- Seaman status, **7.1**
- Unseaworthiness claims
 - generally, **7.5 et seq.**
 - burden of proof, **7.5**
 - causation, **7.7**
 - definitions, **7.6**
 - elements of proof, **7.5**
- Willful and arbitrary failure to pay maintenance and cure claims, **7.12**

ADMISSIONS

- Evidentiary use, **2.12**

ADVERSE INTERESTS

- Agency law, adverse interest exception, **4.13**

AGE DISCRIMINATION

Generally, **11.1 et seq.**
 After-acquired evidence defense, **11.9**
 Back pay damages, **11.13**
 Bona fide employee benefit plan defense, **11.10**
 Bona fide occupational qualification defense, **11.7**
 Bona fide seniority system defense, **11.8**
 Burden of proof, disparate treatment, **11.1**
 Damages
 generally, **11.12 et seq**
 back pay, **11.13**
 liquidated damages, **11.14**
 mitigation, **11.13**
 willful discrimination, **11.14**
 Defenses
 generally, **11.6**
 after-acquired evidence, **11.9**
 bona fide employee benefit plan, **11.10**
 bona fide occupational qualification, **11.7**
 bona fide seniority system, **11.8**
 reasonable factor other than age, **11.11**
 Definitions, **11.5**
 Disparate impact, **11.4**
 Disparate treatment, **11.1**
 Elements and burden of proof, **11.1**
 Hostile work environment, **11.2**
 Liquidated damages, **11.14**
 Mitigation of damages, **11.13**
 Reasonable factor other than age defense, **11.11**
 Retaliation, **11.3**
 Willful discrimination damages, **11.14**

AGENCY LAW

Generally, **4.1 et seq.**
 Act of agent as act of principal, **4.8**

AGENCY LAW—Cont'd

Act of partner is act of all partners, **4.17**
 Adverse interest exception, **4.13**
 Agency or authority denied
 both principal and agent sued, **4.11**
 principal sued but not agent, **4.12**
 Agents
 definition, **4.4**
 scope of authority, **4.5**
 Apparent agency, **4.6**
 Authority
 agents, **4.5**
 apparent, **4.6**
 liability of corporations, **4.2**
 liability of partner, **4.18**
 liability of partnerships, **4.3**
 No issue as to agency or authority, below
 Scope of authority, below
 Both principal and agent sued
 agency or authority denied, **4.11**
 no issue as to agency or authority, **4.9**
 Corporations
 fair treatment, **4.1**
 liability of, scope of authority not in issue, **4.2**
 Definitions
 agent and principal, **4.4**
 general partnership, **4.15**
 independent contractor, **4.14**
 scope of partnership business, **4.16**
 Fair treatment of corporations and partnerships, **4.1**
 General partnerships
 act of partner as act of all partners, **4.17**
 definition, **4.15**
 liability of partner, no issue as to partnership, agency, or scope of authority, **4.18**

INDEX

AGENCY LAW—Cont'd

- General partnerships—Cont'd
 - scope of partnership business defined, **4.16**
- Independent contractor, definition, **4.14**
- Liability of corporations, scope of authority not in issue, **4.2**
- Liability of partnerships, scope of authority not in issue, **4.3**
- No issue as to agency or authority both principal and agent sued, **4.9**
 - principal sued but not agent, **4.10**
- Partnerships
 - existence admitted, **4.19**
 - existence in issue, **4.20**
 - fair treatment, **4.1**
 - General partnerships, above liability of, **4.3**
 - scope of authority not in issue, **4.3**
 - scope of partnership business in issue
 - existence admitted, **4.19**
 - existence in issue, **4.20**
- Principal, definition, **4.4**
- Principal sued but not agent
 - agency or authority denied, **4.12**
 - no issue as to agency or authority, **4.10**
- Ratification, **4.7**
- Scope of authority
 - generally, **4.5**
 - not in issue
 - act of agent is act of principal, **4.8**
 - liability of corporations, **4.2**
 - liability of partnerships, **4.3**
- Scope of partnership business
 - defined, **4.16**
 - in issue
 - existence admitted, **4.19**
 - existence in issue, **4.20**

AMERICANS WITH DISABILITIES ACT

- Generally, **12.1 et seq.**
- Ability to perform essential functions, **12.6**
- Business necessity defense, **12.10**
- Damages, **12.12**
- Defenses, **12.10, 12.11**
- Elements, **12.1**
- Essential functions, ability to perform, **12.6**
- Interacting with others as major life activities, **12.4**
- Major life activities
 - interacting with others, **12.4**
 - work, **12.3**
- Physical or mental impairment, **12.2**
- Qualified individuals, **12.5**
- Reasonable accommodation, **12.7**
- Undue hardship, **12.8**
- Work as a major life activity, **12.3**

ANTITRUST LAW

- Generally, **14**

ARREST

- See Section 1983 Claims, this index

ASSIGNMENTS

- Copyright law, **17.12**
- Trademark law, **15.15**

AUTHORITY

- See Agency Law, this index

BENCH CONFERENCES

- Preliminary instructions, **1.20**

BURDEN OF PROOF

- See Evidence and Witnesses, this index

BUSINESS ENTITIES

- See Agency Law, this index

CAUSATION

- Admiralty law
 - Jones Act negligence claims, **7.4**

CAUSATION—Cont’d

- Admiralty law—Cont’d
 - unseaworthiness claims, **7.7**
- Coworker causation, hostile work environment, **10.7**
- Federal Employers’ Liability Act, **6.4**
- Hostile work environment
 - non-immediate supervisor causation, **10.7**
 - protected characteristics, **10.5**
 - Title VII, **10.7**
- Jones Act negligence claims, **7.4**
- Non-immediate supervisor causation, hostile work environment, **10.7**
- Protected characteristics causing hostile work environment, **10.5**
- Section 1983 claims, **9.2**
- Securities Exchange Act litigation, **18.8**

CHARTS

- Not received in evidence, **2.14**
- Received in evidence, **2.15**

CIVIL RICO CLAIMS

- Generally, **8**

CIVIL RIGHTS

- Affirmative defense, **10.6**
- Age Discrimination, this index
- Causation
 - harassment, hostile work environment, **10.5**
 - protected characteristics as cause, **10.5**
- Definitions, tangible employment action, **10.12**
- Disparate treatment, Title VII cases, **10.11**
- Harassment, **10.5**
- Hostile work environment. See Title VII, this index
- Protected characteristics as cause, **10.5**
- Section 1983 Claims, this index

CIVIL RIGHTS—Cont’d

- Supervisor’s acts, vicarious liability for, **10.6**
- Tangible employment action, **10.6**
- Title VII, this index
- Vicarious liability for supervisor’s acts, **10.6**

CLAIMS OF LITIGANTS

- Preliminary instruction, **1.5**

CONDUCT OF JURORS

- Preliminary instruction, **1.15**

CONSTITUTIONAL RIGHTS

- See Section 1983 Claims, this index

COPYRIGHT LAW

- Generally, **17.1 et seq.**
- Abandonment defense, **17.23**
- Access and substantial similarity, **17.17**
- Access defined, **17.18**
- Actual damages, **17.33**
- Assignments, **17.12**
- Authorship, **17.8**
- Authors of collective works, **17.10**
- Burden of proof, vicarious liability, **17.20**
- Collective works, **17.10**
- Compilations, **17.16**
- Contributory infringement, **17.21**
- Copying
 - generally, **17.17 et seq.**
 - access and substantial similarity, **17.17**
 - access defined, **17.18**
 - infringement, **17.5**
 - substantial similarity, **17.19**
- Damages
 - generally, **17.32 et seq.**
 - actual damages, **17.33**
 - defendant’s profits, **17.34**
 - innocent infringement, **17.36**
 - statutory damages, **17.35**
 - willful infringement, **17.37**
- Defendant’s profits, **17.34**

INDEX

COPYRIGHT LAW—Cont'd

Defenses

- generally, **17.22 et seq.**
- abandonment, **17.23**
- affirmative defense, **17.22 et seq.**
- fair use, **17.22**
- first sale, **17.26**
- implied license, **17.25**
- limitation on liability for information location tools, **17.31**
- limitation on liability for information residing on systems or networks at direction of users, **17.30**
- limitation on liability for system caching, **17.29**
- limitation on liability for transitory digital network communications (17 u.s.c. § 512(a)), **17.28**
- misuse, **17.24**
- service provider of network communications services, **17.27**

Definitions

- generally, **17.2**
- access, **17.18**
- validity, **17.6**

Derivative works, 17.15

Elements of proof, vicarious liability, 17.20

Expression vs ideas protected, 17.4

Fair use defense, 17.22

First sale defense, 17.26

Implied license defenses, 17.25

Infringement

- generally, **17.5 et seq.**
- contributory infringement, **17.21**
- copying, **17.5**
- innocent infringement, **17.36**
- originality, **17.14**
- ownership, **17.5**
- registration, **17.7**

COPYRIGHT LAW—Cont'd

Infringement—Cont'd

- secondary liability, **17.20, 17.21**
- validity of copyright, **17.6**
- vicarious infringement, **17.20**
- willful infringement damages, **17.37**

Innocent infringement damages, 17.36

Interests

- generally, **17.8 et seq.**
- assignees, **17.12**
- authorship, **17.8**
- authors of collective works, **17.10**
- collective works, **17.10**
- compilations, **17.16**
- derivative works, **17.15**
- exclusive licensees, **17.13**
- joint authors, **17.9**
- work made for hire, **17.11**

Internet service provider of network communications services defense, 17.27

Joint authors, 17.9

Licenses

- generally, **17.13**
- implied license defense to infringement, **17.25**

Limitation on liability for information location tools defense, 17.31

Limitation on liability for information residing on systems or networks at direction of users defense, 17.30

Limitation on liability for system caching defense, 17.29

Limitation on liability for transitory digital network communications defense, 17.28

Misuse defense, 17.24

Originality, infringement, 17.14

Ownership, infringement, 17.5

Preliminary instruction, 17.1

Registration, infringement, 17.7

COPYRIGHT LAW—Cont'd

- Secondary liability, infringement,
17.20, 17.21
- Service provider of network communications services defense,
17.27
- Statutory damages, **17.35**
- Subject matter protected
generally, **17.3**
expression vs ideas, **17.4**
- Substantial similarity, **17.19**
- Validity of copyright, **17.6**
- Willful infringement damages,
17.37
- Work made for hire, **17.11**

CORPORATIONS

- Fair treatment, **4.1**
- Liability of corporation, scope of
authority not in issue, **4.2**

COURTS

- Jury communication with judge,
3.3

CREDIBILITY

- Witnesses, credibility of, **1.14**

DAMAGES

- Generally, **5.1 et seq.**
- Actual damages, **17.33**
- Americans With Disabilities Act,
12.12
- Back pay damages, **11.13**
- Back pay damages, age
discrimination, **11.13**
- Defendant's profits measure
copyright law, **17.34**
trademark law, **15.29**
- Discount to present cash value of
future damages, **5.4**
- Fair representation duty breach,
13.1
- Federal Employers' Liability Act
generally, **6.1**
plaintiff's negligence, reduction
of damages, **6.7**

DAMAGES—Cont'd

- Future damages, discount to present cash value, **5.4**
- Innocent infringement, **17.36**
- Jones Act negligence or unseaworthiness
generally, **7.8**
reduction of damages,
plaintiff's negligence, **7.9**
- Labor Management Relations Act,
fair representation duty, **13.1**
- Liquidated damages, **11.14**
- Measures of damages, **5.2**
- Mitigation of damages
generally, **5.3**
age discrimination, **11.13**
- Nominal damages, **5.6**
- Plaintiff's negligence, reduction of
damages, **6.7, 7.9**
- Proof of, **5.1, 7.8**
- Punitive damages, **5.5**
- Reduction of, **7.9**
- Reduction of damages, plaintiff's
negligence, **7.9**
- Securities Exchange Act litigation,
18.9
- Statutory damages
copyright law, **17.35**
trademark law, **15.28**
- Types of damages, **5.2**
- Willful discrimination, **11.14**
- Willful infringement, **17.37**

DEADLOCKED JURY

- Generally, **3.7**

**DELIBERATION
INSTRUCTIONS**

- Generally, **3.1 et seq.**
- See also Preliminary Instructions,
this index
- Additional instructions of law, **3.6**
- Communication with court, **3.3**
- Conduct of jurors, **3.2**
- Consideration of evidence, **3.2**
- Continuing deliberations after
juror is discharged, **3.8**

INDEX

DELIBERATION

INSTRUCTIONS—Cont'd

- Court, communication with, **3.3**
- Deadlocked jury, **3.7**
- Discharge of juror, continuing deliberations after, **3.8**
- Duty to deliberate, **3.1**
- Evidence, consideration of, **3.2**
- Juror discharge, continuing deliberations after, **3.8**
- Law, additional instructions of, **3.6**
- Playbacks of evidence, **3.4**
- Readbacks of evidence, **3.4**
- Return of verdict, **3.5**

DETENTION

- See Section 1983 Claims, this index

DISCHARGE OF JUROR

- Continuing deliberations after, **3.8**

DISCRIMINATION

- Affirmative defense, **10.6**
- After-acquired evidence defense, **11.9**
- Age Discrimination, this index
- Burden of proof
 - disparate treatment, **11.1**
 - Title VII retaliation, **10.8**
- Causation of harassment, hostile work environment, **10.5**
- Defenses
 - after-acquired evidence, **11.9**
 - hostile work environment, **10.6**
- Disparate impact, **11.4**
- Disparate treatment
 - elements and burden of proof, **11.1**
 - motivating factor for, **10.1**
 - Title VII cases, **10.11**
- Elements of proof
 - disparate treatment, **11.1**
 - Title VII retaliation, **10.8**
- Harassment, hostile work environment
 - generally, **10.4**

DISCRIMINATION—Cont'd

- Harassment, hostile work environment—Cont'd
 - protected characteristics as cause, **10.5**
- Hostile work environment. See Title VII, this index
- Motivating factor for disparate treatment, **10.1**
- Protected characteristics as cause of harassment, **10.5**
- Retaliation
 - age discrimination, **11.3**
 - Americans With Disabilities Act, **12.9**
- Section 1983 Claims, this index
- Sole reason for disparate treatment, evidence supporting, **10.1**
- Supervisor's acts, vicarious liability for, hostile work environment, **10.6**
- Title VII, this index
- Vicarious liability for supervisor's acts, **10.6**

DISPARATE IMPACT

- Age discrimination, **11.4**

DISPARATE TREATMENT

- Adverse employment action, **10.11**
- Burden of proof, **11.1**
- Damages, **11.14**
- Elements and burden of proof, **10.2, 10.3**
- Motivating factors for, **10.1, 10.3**
- Sole reason for, evidence supporting, **10.1**
- Title VII, this index
- Willful discrimination, **11.14**

DUTIES OF JURORS

- Preliminary instruction, **1.2 to 1.4**

DUTY OF JURY

- Preliminary instruction, **1.2 to 1.4**

ELECTRONIC FORMAT

- Evidence in, **2.16**

EMPLOYMENT LAW

- Adverse employment action
 - retaliation cases, **10.10**
 - Title VII, this index
- Affirmative defense, **10.6**
- After-acquired evidence defense
 - generally, **11.9**
 - Title VII, **10.16**
- Age Discrimination, this index
- Back pay damages, age discrimination, **11.13**
- Bona fide employee benefit plan, age discrimination defense, **11.10**
- Bona fide occupational qualification, age discrimination defense, **11.7**
- Burden of proof, Title VII retaliation, **10.8**
- Business necessity defense, Americans With Disabilities Act, **12.10**
- Causation of harassment, hostile work environment, **10.5**
- Constructive discharge, definition, **10.13**
- Copyright, work made for hire, **17.11**
- Definitions
 - adverse employment action, **10.9**
 - constructive discharge, **10.13**
 - tangible employment action, **10.12**
- Disparate impact, **11.4**
- Disparate treatment
 - motivating factor, **10.1**
 - Title VII cases, **10.11**
- Evidence and Witnesses, this index
- Fair representation duty
 - generally, **13.1**
 - damages, **13.2**
- Harassment, **10.4, 10.5**
- Hostile work environment
 - generally, **10.4**

EMPLOYMENT LAW—Cont'd

- Hostile work environment
 - Cont'd
 - See also Title VII, this index
 - affirmative defense, **10.6**
 - age discrimination, **11.2**
 - protected characteristics as cause, **10.5**
 - supervisor's acts, vicarious liability, **10.6**
 - tangible employment action, **10.6**
- Mitigation of damages, age discrimination, **11.13**
- Reasonable factor other than age defense, **11.11**
- Retaliation
 - adverse employment action, **10.10**
 - age discrimination, **11.3**
 - Americans With Disabilities Act, **12.9**
 - elements and burden of proof, **10.8**
- Supervisor's acts, vicarious liability for, **10.6**
- Tangible employment action
 - generally, **10.6**
 - See also Title VII, this index
- Vicarious liability for supervisor's acts, **10.6**

EVIDENCE AND WITNESSES

- Generally, **2.1 et seq.**
- Admissions, use as evidence, **2.12**
- After-acquired evidence defense
 - age discrimination, **11.9**
 - Title VII, **10.16**
- Burden of proof
 - clear and convincing evidence, **1.7**
 - disparate treatment, **11.1**
- Elements of proof, below
- Federal Employers' Liability Act, **6.2**
- Jones Act negligence claims, **7.2**

INDEX

EVIDENCE AND WITNESSES

—Cont'd

Burden of proof—Cont'd
local governing body
defendants
act of final policy maker, **9.6**
policy of failure to train, **9.8**
policy that fails to prevent
violations of law, **9.8**
ratification, **9.7**
unlawful official policy,
practice, or custom, **9.5**
maintenance and cure claims,
7.11
motivating factor for disparate
treatment, **10.3**
preliminary instruction, **1.7**
preponderance of the evidence,
1.6
Section 1983 claims
defendant sued in individual
capacity, **9.3**
supervisory defendant sued in
individual capacity, **9.4**
sole reason for disparate treat-
ment, **10.2**
trademark infringement defen-
ses, **15.22**
unseaworthiness claims, **7.5**
Charts not received in evidence,
2.14
Charts received in evidence, **2.15**
Circumstantial and direct evi-
dence, **1.12**
Clear and convincing evidence,
burden of proof, **1.7**
Damages
proof of, **5.1, 7.8**
reduction of, **7.9**
Deliberate fabrication of evidence,
due process claims, **9.33**
Deposition in lieu of live
testimony, **2.4**
Direct and circumstantial evi-
dence, preliminary instruc-
tion, **1.12**

EVIDENCE AND WITNESSES

—Cont'd

Disparate treatment, elements and
burden of proof, **11.1**
Disputed transcript in foreign
language, **2.7**
Due process claim, deliberate fab-
rication of evidence, **9.33**
Elements of proof
act of final policy maker, **9.6**
Burden of proof, above
disparate treatment, **11.1**
Federal Employers' Liability
Act, **6.2**
Jones Act negligence claims,
7.2
maintenance and cure claims,
7.11
motivating factor for disparate
treatment, **10.3**
policy of failure to train, **9.8**
policy that fails to prevent
violations of law, **9.8**
ratification, **9.7**
Section 1983 claims
defendant sued in individual
capacity, **9.3**
supervisory defendant sued in
individual capacity, **9.4**
sole reason for disparate treat-
ment, **10.2**
unlawful official policy,
practice, or custom, **9.5**
unseaworthiness claims, **7.5**
English transcript of recording, **2.5**
Evidence in electronic format,
2.16
Experiments, **2.10**
Expert opinion, **2.13**
Fact, stipulations of, **2.2**
Foreign language testimony, **2.8**
Foreign language transcripts of
recordings
generally, **2.6**
disputed transcript, **2.7**
Impeachment evidence, **2.9**
Interpretation of testimony, **2.8**

EVIDENCE AND WITNESSES

—Cont'd

- Interrogatories as evidence, **2.11**
- Jones Act negligence claims, burden of proof, **7.2**
- Judicial notice, **2.3**
- Jurors' questions to witnesses, preliminary instruction, **1.19**
- Limited purpose evidence, preliminary instruction, **1.11**
- Motivating factor for disparate treatment, evidence supporting, **10.1**
- Objections, rulings on, **1.13**
- Playback of evidence during deliberations, **3.4**
- Preponderance of the evidence, burden of proof, **1.6**
- Proof
 - Burden of proof, above damages, **5.1, 7.8**
 - Elements of proof, above Jones Act negligence or unseaworthiness, **7.8**
- Questions to witnesses by jurors, preliminary instruction, **1.19**
- Readbacks of evidence during deliberations, **3.4**
- Recordings
 - English transcript, **2.5**
 - foreign language transcripts generally, **2.6**
 - disputed transcript, **2.7**
- Ruling on objections, **1.13**
- Sole reason for disparate treatment, evidence supporting, **10.1**
- Stipulated testimony, **2.1**
- Stipulations of fact, **2.2**
- Summaries not received in evidence, **2.14**
- Summaries received in evidence, **2.15**
- Testimony
 - deposition in lieu of, **2.4**
 - foreign language, **2.8**
 - stipulated, **2.1**

EVIDENCE AND WITNESSES

—Cont'd

- Tests, **2.10**
- Transcripts
 - access of jurors to, **1.17**
 - disputed transcripts, **2.7**
 - English, **2.5**
 - foreign language, **2.6, 2.7**
 - jurors to access to, **1.17**
 - Recordings, above
- Translation of testimony, **2:8**
- Unseaworthiness. See Admiralty Law, this index
- Use of interrogatories, **2.11**
- Use of requests for admission, **2.12**
- What is evidence, preliminary instruction, **1.9**
- What is not evidence, preliminary instruction, **1.10**
- Witnesses
 - impeachment evidence, **2.9**
 - juror's questions to, **1.19**

EXPERIMENTS

- Evidence of, **2.10**

EXPERT OPINIONS

- Generally, **2.13**

FEDERAL EMPLOYERS' LIABILITY ACT

- Generally, **6.1 et seq.**
- Burden of proof, **6.2**
- Causation, **6.4**
- Damages
 - generally, **6.6**
 - plaintiff's negligence, reduction of damages, **6.7**
- Defendant's request or directions, plaintiff's compliance with, **6.5**
- Definitions, **6.3**
- Elements of proof, **6.2**
- Negligence defined, **6.3**
- Plaintiff's compliance with defendant's request or directions, **6.5**

INDEX

FEDERAL EMPLOYERS'

LIABILITY ACT—Cont'd

Plaintiff's negligence, reduction of damages, **6.7**

Preliminary instruction, **6.1**

HOSTILE WORK

ENVIRONMENT

See Title VII, this index

IMMUNITY

Qualified immunity, **9.34**

IMPEACHMENT

Witness impeachment evidence, **2.9**

INDEPENDENT

CONTRACTORS

Definition, **4.14**

INTELLECTUAL PROPERTY

Abandonment defense, **17.23**

Actual damages, **15.27**

Assignments

copyright law, **17.12**

trademark law, **15.15**

Contributory infringement, **15.21**

Copyright Law, this index

Damages

copyright law, **17.32 et seq.**

trademark law, **15.26 et seq.**

Defendant's profits as damages

copyright law, **17.34**

trademark law, **15.29**

Defenses to infringement

copyright law, **17.22 et seq.**

trademark law, **15.22 et seq.**

Derivative liability. Vicarious liability, below

Fair use

copyright law, **17.22**

trademark law, **15.24, 15.25**

Infringement

copyright law, **17.5 et seq.**

trademark law, **15.6 et seq.**

Innocent infringement damages, **17.36**

INTELLECTUAL PROPERTY

—Cont'd

Interests, copyright law, **17.8 et seq.**

Liability theories and policies, trademark law, **15.5**

Licenses

copyright law, **17.13**

trademark law, **15.16**

Likelihood of confusion, **15.18, 15.19**

Ownership

copyright law, **17.5, 17.6**

trademark law, **15.13, 15.14**

Patent law, **16**

Preliminary instructions

copyright law, **17.1**

trademark law, **15.1**

Registration

copyright law, **17.7**

trademark law, **15.8**

Statutory damages

copyright law, **17.35**

trademark law, **15.28**

Subject matter protected

copyright law, **17.3, 17.4**

Trademark Law, this index

Vicarious liability

copyright law, **17.20**

trademark law, **15.20, 15.21**

Willful infringement damages, **17.37**

INTERNET

Anti-cybersquatting statute, **15.31**

Copyright law defenses, **17.27 et seq.**

Limitation on liability for information location tools defense, **17.31**

Limitation on liability for information residing on systems or networks at direction of users defense, **17.30**

Limitation on liability for system caching defense, **17.29**

INTERNET—Cont'd

Limitation on liability for transitory digital network communications defense, **17.28**

INTERROGATORIES

Evidentiary use, **2.11**

JONES ACT

See Admiralty Law, this index

JUDGES

Jury communication with, **3.3**

JUDICIAL NOTICE

Generally, **2.3**

**LABOR MANAGEMENT
RELATIONS ACT**

Fair representation duty
generally, **13.1**
damages, **13.2**

LAW

Additional instructions of during
deliberation, **3.6**

LICENSEES

Copyright Law, this index
Trademark law, **15.16**

MAINTENANCE AND CURE

See Admiralty Law, this index

MITIGATION OF DAMAGES

Generally, **5.3**

NEGLIGENCE

Admiralty Law, this index
Defendant's request or directions,
plaintiff's compliance with,
6.5
Definition, **6.3**
Federal Employers' Liability Act
defendant's request or direc-
tions, plaintiff's compli-
ance with, **6.5**
plaintiff's compliance with
defendant's request or
directions, **6.5**
Jones Act claims, **7.3**

NEGLIGENCE—Cont'd

Plaintiff's compliance with
defendant's request or direc-
tions, **6.5**
Title VII hostile work environ-
ment, caused by non-immedi-
ate supervisor or by
coworker, **10.7**

NOMINAL DAMAGES

Generally, **5.6**

NOTETAKING

Preliminary instructions, **1.18**

OBJECTIONS

Rulings on, preliminary instruc-
tion, **1.13**

OUTLINE OF TRIAL

Preliminary instruction, **1.21**

**PARENT/CHILD
RELATIONSHIP**

Section 1983 claim of interference
with, **9.32**

PARTNERSHIPS

Act of partner as act of all
partners, **4.17**
Authority liability of partner, **4.18**
Definitions
general partnership, **4.15**
scope of partnership business,
4.16
Existence of admitted, **4.19**
Existence of in issue, **4.20**
Fair treatment, **4.1**
General partnerships
act of partner is act of all
partners, **4.17**
definition, **4.15**
liability of partner, **4.18**
scope of partnership business
defined, **4.16**
Liability of partnership, **4.3**
Scope of authority not in issue, **4.3**
Scope of business in issue
definition, **4.16**

INDEX

PARTNERSHIPS—Cont'd

- Scope of business in issue
 - Cont'd
 - existence admitted, **4.19**
 - existence in issue, **4.20**

PATENT LAW

- Generally, **16**

PRELIMINARY

INSTRUCTIONS

- Generally, **1.1 et seq.**
- Access of jurors to transcripts, **1.17**
- Bench conferences, **1.20**
- Burden of proof
 - clear and convincing evidence, **1.7**
 - preponderance of the evidence, **1.6**
- Circumstantial and direct evidence, **1.12**
- Claims, **1.5**
- Clear and convincing evidence, burden of proof, **1.7**
- Conduct of jurors, **1.15**
- Copyright law, **17.1**
- Cover sheet, **1.1**
- Credibility of witnesses, **1.14**
- Defenses, **1.5**
- Deliberation Instructions, this index
- Direct and circumstantial evidence, **1.12**
- Duty of jury, **1.2 to 1.4**
- Evidence for limited purpose, **1.11**
- Federal Employers' Liability Act, **6.1**
- Jurors access to transcripts, **1.17**
- Juror's duties, **1.2 to 1.4**
- Juror's questions to witnesses, **1.19**
- Multiple parties, different legal rights, **1.8**
- Notetaking, **1.18**
- Objections, rulings on, **1.13**
- Outline of trial, **1.21**

PRELIMINARY

INSTRUCTIONS—Cont'd

- Preponderance of the evidence, burden of proof, **1.6**
- Publicity during trial, **1.16**
- Questions to witnesses by jurors, **1.19**
- Recesses, **1.20**
- Ruling on objections, **1.13**
- Section 1983 claims, introductory instruction, **9.1**
- Trademark law, **15.1**
- Transcripts, access of jurors to, **1.17**
- What is evidence, **1.9**
- What is not evidence, **1.10**
- Witnesses
 - credibility, **1.14**
 - jurors' questions to, **1.19**

PRESENT VALUE

- Discount to present cash value of future damages, **5.4**

PRISONERS

- See Section 1983 Claims, this index

PROOF

- See Evidence and Witnesses, this index

PUBLICITY DURING TRIAL

- Preliminary instructions, **1.16**

PUNITIVE DAMAGES

- Generally, **5.5**

QUALIFIED IMMUNITY

- Generally, **9.34**

RECESSES

- Preliminary instructions, **1.20**

RECORDINGS AS EVIDENCE

- See Evidence and Witnesses, this index

REQUESTS FOR ADMISSIONS

- Evidentiary use, **2.12**

RETALIATION

Age discrimination, **11.3**
 Americans With Disabilities Act,
12.9
 Employment law, this index

RETURN OF VERDICT

Generally, **3.5**

RICO

Civil claims, **8**

SEAMEN

See Admiralty Law, this index

SEARCH AND SEIZURE

See Section 1983 Claims, this
 index

SECTION 1983 CLAIMS

Generally, **9.1 et seq.**

Arrest

exception to warrant require-
 ment, **9.13**
 probable cause, **9.23**
 search incident to arrest, **9.13**
 search of vehicle incident to
 arrest of a recent occupant,
9.14

Burden of proof

defendant sued in individual
 capacity, **9.3**
 Local governing body
 defendants, below
 supervisory defendant sued in
 individual capacity, **9.4**

Causation, 9.2

Citizen plaintiffs, First Amend-
 ment rights, **9.11**

Conditions of confinement, prison-
 ers' claims, **9.27**

Consent to search, exception to
 warrant requirement, **9.15**

Deadly force, 9.25

Defendant sued in individual capa-
 city, elements and burden of
 proof, **9.3**

Deliberate fabrication of evidence,
9.33

SECTION 1983 CLAIMS—Cont'd

Detention

Pretrial detainees' claims, below
 search warrant, detention during
 execution of, **9.24**

Terry frisk, **9.22**

Terry stops, **9.21**

Due process, deliberate fabrication
 of evidence, **9.33**

Eighth Amendment. Prisoners'
 claims, below

Elements of proof

defendant sued in individual
 capacity, **9.3**

Local governing body
 defendants, below

supervisory defendant sued in
 individual capacity, **9.4**

Emergency aid exception to war-
 rant requirement, **9.17**

Evidence, deliberate fabrication
 of, **9.33**

Exceptions to warrant requirement
 consent to search, **9.15**

emergency aid, **9.17**

exigent circumstances, **9.16**
 persons, unreasonable seizure,
9.21

property, unreasonable seizure,
9.19

search incident to arrest, **9.13**

search of vehicle incident to
 arrest of a recent occupant,
9.14

Terry frisks, **9.22**

Terry stops, **9.21**

Excessive force

deadly force, **9.25**

pretrial detainees' claims, **9.29**

prisoners' claims, **9.26**

unreasonable seizure of person,
9.25

Exigent circumstances exception
 to warrant requirement, **9.16**

Failure to protect

pretrial detainees' claims, **9.31**

prisoners' claims, **9.28**

INDEX

SECTION 1983 CLAIMS—Cont'd

- First Amendment
 - citizen plaintiff, **9.11**
 - Public employees free speech rights, below
- Fourteenth Amendment. Pretrial detainees' claims, below
- Fourth Amendment
 - Unreasonable search, below
 - Unreasonable seizure, below
- Interference with parent/child relationship, substantive due process, **9.32**
- Introductory instruction, **9.1**
- Local governing body defendants
 - generally, **9.5 et seq.**
 - act of final policy maker, **9.6**
 - policy of failure to train, **9.8**
 - policy that fails to prevent violations of law, **9.8**
 - ratification, **9.7**
 - unlawful official policy, practice, or custom, **9.5**
- Medical care, prisoners' claims, **9.27**
- Parent/child relationship, interference with, **9.32**
- Persons, unreasonable seizure
 - generally, **9.20**
 - exception to warrant requirement, **9.21**
 - probable cause arrest, **9.23**
- Pretrial detainees' claims
 - generally, **9.29 et seq.**
 - conditions of confinement/medical care, **9.30**
 - excessive force, **9.29**
 - failure to protect, **9.31**
- Prisoners' claims
 - generally, **9.26 et seq.**
 - conditions of confinement, **9.27**
 - excessive force, **9.26**
 - failure to protect, **9.28**
 - medical care, **9.27**
- Probable cause arrest, **9.23**

SECTION 1983 CLAIMS—Cont'd

- Property
 - exceptions to warrant requirement, **9.19**
 - unreasonable seizure, **9.18, 9.19**
- Protection
 - pretrial detainees' claims of failure to protect, **9.31**
 - prisoners' claims of failure to protect, **9.28**
- Public employees free speech rights
 - generally, **9.9**
 - speaking as private citizen, **9.10**
- Qualified immunity, **9.34**
- Recent arrestee, search of vehicle incident to arrest, **9.14**
- Searches
 - detention during execution of search warrant, **9.24**
 - Unreasonable search, below
- Seizures. Unreasonable seizure, below
- Substantive due process, interference with parent/child relationship, **9.32**
- Supervisory defendant sued in individual capacity, elements and burden of proof, **9.4**
- Terry frisks, **9.22**
- Terry stops, **9.21**
- Unreasonable search
 - generally, **9.12 et seq.**
 - consent exception to warrant requirement, **9.15**
 - emergency aid exception to warrant requirement, **9.17**
- Exceptions to warrant requirement, above
- persons, detention during execution of search warrant, **9.24**
- search incident to arrest, **9.13**
- Terry frisk, **9.22**
- Unreasonable seizure
 - generally, **9.18**
 - deadly force, **9.25**

SECTION 1983 CLAIMS—Cont’d

Unreasonable seizure—Cont’d
detention of person during execution of search warrant, **9.24**
exceptions to warrant requirement
persons, **9.21**
property, **9.19**
excessive force, **9.25**
persons
generally, **9.20**
deadly force, **9.25**
detention during execution of search warrant, **9.24**
exception to warrant requirement, **9.21**
excessive force, **9.25**
probable cause arrest, **9.23**
property
generally, **9.18**
exceptions to warrant requirement, **9.19**
Terry stops, **9.21**
Vehicles search of vehicle incident to arrest of a recent occupant, **9.14**
Warrants
detention during execution of search warrant, **9.24**
Exceptions to warrant requirement, above
search incident to arrest, **9.13**

SECURITIES EXCHANGE ACT

Generally, **18.1 et seq.**
Causation, **18.8**
Controlling person liability
generally, **18.10**
good faith defense to controlling person liability, **18.11**
Damages, **18.9**
Defenses, controlling person liability, **18.11**
Definitions, **18.1**
Forward-looking statements, **18.4**

SECURITIES EXCHANGE ACT—Cont’d

Fraud-on-the-market cases, justifiable reliance, **18.7**
Good faith defense to controlling person liability, **18.11**
Justifiable reliance
generally, **18.6**
fraud-on-the-market cases, **18.7**
Knowingly, **18.5**
Materiality, **18.3**
Misrepresentations or omissions, **18.3**
Rule 10b-5 claims, **18.2**

STIPULATIONS

Fact, stipulation of, **2.2**
Testimony, stipulated, **2.1**

SUMMARIES

Not received in evidence, **2.14**
Received in evidence, **2.15**

TESTIMONY

See Evidence and Witnesses, this index

TESTS

Evidence of, **2.10**

TITLE VII

Generally, **10.1 et seq.**
Adverse employment actions
generally, **10.9 et seq.**
definition, **10.9**
disparate treatment, **10.11**
retaliation cases, **10.10**
Affirmative defense, **10.6**
After-acquired evidence defense, **10.16**
Bona fide occupational qualification defense, **10.14**
Bona fide seniority system defenses, **10.15**
Burden of proof
motivating factor for disparate treatment, **10.3**
retaliation, **10.8**

INDEX

TITLE VII—Cont'd

- Burden of proof—Cont'd
 - sole reason for disparate treatment, **10.2**
- Causation of hostile work environment
 - generally, **10.5**
 - negligence, **10.7**
 - non-immediate supervisor or by coworker, **10.7**
 - supervisor caused, **10.6**
- Constructive discharge, **10.13**
- Coworker causation, hostile work environment, **10.7**
- Defenses
 - generally, **10.14 et seq.**
 - after-acquired evidence, **10.16**
 - bona fide occupational qualification, **10.14**
 - bona fide seniority system, **10.15**
- Definitions
 - adverse employment action, **10.9**
 - constructive discharge, **10.13**
 - tangible employment action, **10.12**
- Disparate treatment
 - adverse employment action, **10.11**
 - elements and burden of proof, **10.2, 10.3**
 - motivating factor, **10.1, 10.3**
 - sole reason, **10.1, 10.2**
 - when evidence supporting sole reason or motivating factor, **10.1**
- Elements of proof
 - motivating factor for disparate treatment, **10.3**
 - retaliation, **10.8**
 - sole reason for disparate treatment, **10.2**
- Harassment
 - generally, **10.4**
 - protected characteristics as cause, **10.5**

TITLE VII—Cont'd

- Hostile work environment
 - generally, **10.4 et seq.**
 - affirmative defense, **10.6**
 - caused by non-immediate supervisor or by coworker, **10.7**
 - coworker causation, **10.7**
 - harassment
 - generally, **10.4**
 - protected characteristics as cause, **10.5**
 - negligence, **10.7**
 - non-immediate supervisor causation, **10.7**
 - protected characteristics as cause of harassment, **10.5**
 - supervisor's acts, vicarious liability for, **10.6**
 - tangible employment action, **10.6**
 - vicarious liability for supervisor's acts, **10.6**
- Motivating factor for disparate treatment
 - burden of proof, **10.3**
 - elements of proof, **10.3**
 - evidence supporting, **10.1**
- Non-immediate supervisor causation, hostile work environment, **10.7**
- Retaliation
 - adverse employment action, **10.10**
 - elements and burden of proof, **10.8**
- Sole reason for disparate treatment
 - burden of proof, **10.2**
 - elements of proof, **10.2**
 - evidence supporting, **10.1**
- Supervisor's acts, vicarious liability for, **10.6**
- Tangible employment action
 - definition, **10.12**
 - hostile work environment, **10.6**
- Vicarious liability for supervisor's acts, **10.6**

TRADEMARK LAW

Generally, **15.1 et seq.**
 Actual damages, **15.27**
 Actual or statutory notice, damages, **15.26**
 Affirmative defenses to infringement, **15.22, 15.23**
 Anti-cybersquatting statute, **15.31**
 Assignees, ownership element, **15.15**
 Burden of proof
 defenses to infringement, **15.22**
 trade dress infringement, **15.7**
 trademark infringement, **15.6**
 Classic fair use defense to infringement, **15.24**
 Commercial name, definition, **15.4**
 Continuous prior use within remote geographic area defense to infringement, **15.23**
 Contributory infringement, **15.21**
 Damages
 generally, **15.26**
 actual damages, **15.27**
 actual or statutory notice, **15.26**
 defendant's profits, **15.29**
 defendant's profits as, **15.29**
 statutory damages, **15.28**
 Defenses to infringement
 generally, **15.22 et seq.**
 burden of proof, **15.22**
 classic fair use, **15.24**
 continuous prior use within remote geographic area, **15.23**
 nominative fair use, **15.25**
 Definitions
 commercial name, **15.4**
 trade dress, **15.3**
 trademark, **15.2**
 trade name, **15.4**
 Derivative liability, **15.20**
 Distinctiveness and validity, secondary meaning, **15.11**

TRADEMARK LAW—Cont'd

Distributors, ownership element, **15.17**
 Elements of proof
 trade dress infringement, **15.7**
 trademark infringement, **15.6**
 Infringement
 contributory infringement, **15.21**
 derivative liability, **15.20**
 inducing infringement, **15.20**
 likelihood of confusion
 Sleekcraft test, **15.18**
 strength of mark, **15.19**
 ownership element
 generally, **15.13**
 priority through tacking, **15.14**
 priority through tacking, **15.14**
 registered trademark, presumed validity and ownership, **15.8**
 Internet domain names, anti-cybersquatting statute, **15.31**
 Liability theories and policies, **15.5**
 Licensees, ownership element, **15.16**
 Likelihood of confusion
 Sleekcraft test, **15.18**
 strength of mark, **15.19**
 Merchants, ownership element, **15.17**
 Nominative fair use defense to infringement, **15.25**
 Notice, actual or statutory, damages, **15.26**
 Ownership element
 assignees, **15.15**
 distributor, **15.17**
 infringement
 generally, **15.13**
 priority through tacking, **15.14**
 licensees, **15.16**
 merchant, **15.17**

INDEX

TRADEMARK LAW—Cont'd

- Preliminary instruction, **15.1**
- Priority through tacking, **15.14**
- Proof, elements and burden, trade dress infringement, **15.7**
- Proof, elements and burden, trademark infringement, **15.6**
- Registered trademark, presumed validity and ownership, **15.8**
- Secondary meaning, **15.11**
- Statutory damages, **15.28**
- Trade dress
 - definition, **15.3**
 - infringement, elements and burden of proof, **15.7**
 - non-functionality, **15.12**
 - validity, **15.12**
- Trademarks
 - definition, **15.2**
 - dilution, **15.30**
 - distinctiveness, **15.10, 15.11**
 - distinctiveness and validity, **15.10**
 - infringement, elements and burden of proof, **15.6**
 - ownership, registered marks presumptions, **15.8**
 - registered marks presumptions, **15.8**
 - secondary meaning, **15.11**
 - unregistered marks, **15.9**
- Trade names, **15.4**
- Validity
 - registered marks presumptions, **15.8**

TRADEMARK LAW—Cont'd

- Validity—Cont'd
 - secondary meaning, **15.11**
 - trade dress, non-functionality, **15.12**
 - trademark distinctiveness
 - generally, **15.10**
 - secondary meaning, **15.11**
 - unregistered marks, **15.9**
- ### **TRANSCRIPTS AS EVIDENCE**
- See Evidence and Witnesses, this index

TRIAL

- Outline of trial, preliminary instruction, **1.21**

UNSEAWORTHINESS

- See Admiralty Law, this index

VERDICT

- Return of, **3.5**

VICARIOUS LIABILITY

- Copyright infringement, **17.20**
- Supervisor's acts, hostile work environment, **10.6**
- Trademark law, **15.20, 15.21**

WILLFULNESS

- Age discrimination damages, **11.14**
- Copyright infringement damages, **17.37**
- Disparate treatment damages, **11.14**
- Seaman's maintenance and cure claim, willful and arbitrary failure to pay, **7.12**