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Summary of Contents

Article		Page
1	Construction and Application of ''Legal Representative'' under Lanham Act §§ 32(1), 45, 15 U.S.C.A. §§ 1114(1), 1127	1
2	Construction and Application of 11 U.S.C.A. § 1328(f), Barring Discharge in Chapter 13 Bankruptcy Case Within Specified Period After Debtor Received Discharge Under Chapter 7, 11, 12, or 13	13
3	Construction and Application of 11 U.S.C.A. § 1129(a)(10), Requiring at Least One Impaired Class to Accept Plan for Confirmation	109
4	Protection of Debtor from Acts of Discrimination by Governmental Units Under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a))	147
5	First Amendment Protection for School Principals Subjected to Demotion, Transfer, or Reassignment Because of Speech	279
6	Construction and Application of 16 U.S.C.A. § 1604(f) and Implementing Regulations Providing for Specific Standards Applicable to Written Forest System Land and Resource Management Plans for Units of National Forest System	349
7	Identity of Commenter and Relationship of Remark to Employment Decision as Determinants of Relevance of Stray Remark or Comment in Title VII Action for Sex Discrimination	397
8	Stray Remark or Comment Involving Male Plaintiffs in Title VII Action for Sex Discrimination.	443
9	Construction and Application of Penal Law Rule, Prohibiting Enforcement of Foreign Penal Statutes	503
10	Employment Discrimination Against Obese Persons as Violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973	523

INDEX

4 A.L.R. Fed. 3d Art. 1

Construction and Application of ''Legal Representative'' under Lanham Act §§ 32(1), 45, 15 U.S.C.A. §§ 1114(1), 1127

Alexa L. Ashworth, J.D.

Under §§ 32(1) and 45 of the Lanham Act (15 U.S.C.A. §§ 1114(1), 1127), standing to bring a suit for trademark infringement is limited to the registrant of the trademark, which is defined as the owner or the owner's legal representatives, predecessors, successors, and assigns. The courts have interpreted under which circumstances a party may be considered a ''legal representative'' when deciding whether a party has the requisite constitutional standing to bring a suit for infringement of a trademark. This article will collect and discuss all of the court cases regarding construction and application of ''legal representative'' under the Lanham Act §§ 32(1) and 45.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary

II. GENERAL CONSIDERATIONS

§ 3 Licensee may be legal representative when expressly provided in agreement—Not sufficiently proven
§ 4 —Sufficiently proven
§ 5 Legal representative must have authority to appear on behalf of registrant and registrant is unable to represent self
§ 6 Legal representative interpreted same as registrant

Research References

Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

A party may demonstrate standing to bring a trademark infringement claim if that party is able to show that it is the registrant of the trademark in question, or that it is the owner or the owner's legal representative, predecessor, successor, or assignee. This article collects and analyzes all of the court cases interpreting the phrase ''legal representative'' when deciding whether a party has sufficiently established standing to bring a trademark infringement claim under the Lanham Act. This article is limited to those cases which expressly interpret the meaning of ''legal representative'' under §§ 32(1) and 45 of the Lanham Act (15 U.S.C.A. §§ 1114(1), 1127), so that cases which interpret the meaning of a trademark owner's predecessors, successors, or assigns are beyond the scope of this article.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within

Construction and Application of 11 U.S.C.A. § 1328(f), Barring Discharge in Chapter 13 Bankruptcy Case Within Specified Period After Debtor Received Discharge Under Chapter 7, 11, 12, or 13

James Lockhart, J.D.

Pursuant to 11 U.S.C.A. § 1328(f), a court may not grant discharge to a debtor in a case under Chapter 13 of the Federal Bankruptcy Code if the debtor has received a discharge in a case filed under Chapter 7, 11, or 12 of the Code during the four-year period preceding the date of the order for relief under Chapter 13 or in a case filed under Chapter 13 during the two-year period preceding the date of such order. This article collects and analyzes cases which have construed or applied 11 U.S.C.A. § 1328(f).

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. GENERAL PRINCIPLES

A. IN GENERAL

§ 4 Effect on debtor's ability to bring Chapter 13 case
§ 5 Effect on lifting or continuation of automatic stay
§ 6 Effect of preconversion discharge in case converted to Chapter 13
§ 7 Effect of postdischarge dismissal of case converted to Chapter 13
§ 8 Consolidation of cases of eligible and ineligible spouse

B. CALCULATION OF PERIOD OF INELIGIBILITY

§ 9 Dates determining lookback period
§ 10 Effect of conversion—View that Chapter under which discharge was granted determines lookback period
§ 11 —View that Chapter under which case was originally filed determines lookback period

C. WAIVER OR RESCISSION OF DISCHARGE

§ 12 Waiver of discharge in pending case to preserve future discharge rights
§ 13 Waiver of discharge as condition to postdischarge conversion of case
§ 14 Rescission of discharge in prior case

III. RELATIONSHIP TO LIEN STRIPPING

§ 15 Stripping of liens—View that stripping is effective to modify or extinguish lien
§ 16 —View that stripping is allowed but effective only during term of plan
§ 17 —View that stripping is impermissible

§ 18 Modification of partially secured liens against nonresidential property—View that modification is permitted
§ 19 —View that modification is not permitted
§ 20 Modification of statutorily nonstrippable automobile lien—View that modification is permitted
§ 21 —View that modification is not permitted
§ 22 Lien-stripping where one spouse is ineligible for discharge

IV. RELATIONSHIP TO DETERMINATIONS OF GOOD FAITH

A. IN GENERAL

§ 23 Relationship to ''good faith'' requirements
§ 24 Factors applicable in determining good faith in no-discharge cases

B. SPECIFIC APPLICATIONS

§ 25 Debtor proposing strip-off of lien—Good faith requirement met
§ 26 —Good faith requirement not met
§ 27 Chapter 13 debtor ineligible for Chapter 7 discharge—Good faith requirement met
§ 28 —Good faith requirement not met
§ 29 Plan primarily resulting in delayed or reduced payments to creditors—Good faith requirement met
§ 30 —Good faith requirement not met
§ 31 Debtor dismissing and refiling Chapter 13 case to become eligible for discharge—Good faith requirement met
§ 32 —Good faith requirement met

Research References

Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

Pursuant to 11 U.S.C.A. § 1328(f), a debtor who has received discharge in a prior Chapter 7, 11, 12, or 13 bankruptcy proceeding and who then brings a Chapter 13 proceeding within a stated period of time is ineligible to receive discharge in that proceeding but may otherwise seek Chapter 13 relief. This article collects court cases which have construed or applied this provision,

4 A.L.R. Fed. 3d Art. 3

Construction and Application of 11 U.S.C.A. § 1129(a)(10), Requiring at Least One Impaired Class to Accept Plan for Confirmation

Carson T. H. Emmons, J.D.

A party seeking chapter 11 plan confirmation must satisfy all the requirements of 11 U.S.C.A. § 1129(a). Section 1129(a)(8) requires all impaired classes to accept the plan. Under 11 U.S.C.A. § 1129(a)(10), if one or more classes of claims are impaired, at least one class of claims that is impaired must accept the plan, excluding the acceptance of any insiders, in order for the plan to be confirmed. The seemingly straightforward construction of § 1129(a)(10) belies the obstacle it can present in the confirmation of a plan of reorganization. Indeed, the generality of § 1129(a)(10) has caused bankruptcy courts and federal circuits alike to come to diametrically opposed conclusions about the ability of § 1129(a)(10) to scuttle plan confirmation. This article collects and analyzes those cases which have construed or applied 11 U.S.C.A. § 1129(a)(10).

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. ARTIFICIAL IMPAIRMENT PROHIBITED

A. ARTIFICIAL IMPAIRMENT GENERALLY PROHIBITED

§ 4 View that artificial impairment of class is prohibited
§ 5 Cases that find artificial impairment
§ 6 Cases that find class was not artificially impaired

B. ARTIFICIAL IMPAIRMENT ALLOWED FOR LEGITIMATE BUSINESS PURPOSE EVEN THOUGH OTHERWISE PROHIBITED

§ 7 Cases where legitimate business purpose is found
§ 8 Cases where legitimate business purpose is not found

III. ARTIFICIAL IMPAIRMENT NOT PROHIBITED

A. ARTIFICIAL IMPAIRMENT AS FACTOR TO BE CONSIDERED UNDER § 1129(a)(3) GOOD FAITH ANALYSIS

§ 9 View that artificial impairment is factor to consider in determining whether plan was proposed in good faith under § 1129(a)(3)
§ 10 Cases where artificial impairment violates good faith requirement
§ 11 Cases where artificial impairment does not violate good faith requirement

B. ARTIFICIAL IMPAIRMENT NOT PROHIBITED BY LANGUAGE OF § 1129(a)(10)

§ 12 View that artificial impairment is doctrine not supported by language of § 1129(a)(10)

IV. ARTIFICIAL IMPAIRMENT DOCTRINE NOT APPLICABLE

§ 13 View that 1994 amendments to Bankruptcy Code rendered artificial impairment doctrine moot
§ 14 View that 1994 amendments to Bankruptcy Code did not render artificial impairment doctrine moot

V. CASES THAT REFERENCE ARTIFICIAL IMPAIRMENT DOCTRINE WITHOUT ANALYSIS OR APPLICATION

§ 15 Cases that reference artificial impairment doctrine without analysis

Research References

Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

As a prerequisite to plan confirmation, § 1129(a)(10) of the Bankruptcy Code requires at least at least one noninsider impaired class, assuming any exist, to vote in favor of the plan. A main concern raised by objecting creditors that would otherwise succumb to a plan forced upon them is that of artificial impairment under 11 U.S.C.A. § 1129(a)(10), which this article discusses and analyzes. This article is limited to the discussion of § 1129(a)(10) only (except where courts have discussed artificial impairment as a factor to consider in determining whether a plan proponent filed the plan in good faith as required by § 1129(a)(3)).

The corollary to artificial impairment is artificial classification or ''gerrymandering,'' ''classify[ing] similar claims differently in order to gerrymander an affirmative vote on a reorganized plan.'' Though similar, gerrymandering involves placing a dissatisfied creditor in its own class so its dissenting vote will not prevent confirmation whereas artificial impairment involves a presumably legitimate class that receives artificially favorable treatment to curry that creditor's vote. In other words, gerrymandering deals with illegitimate classification rather than illegitimate treatment. Of course, the same plan can have both artificial impairment and gerrymandering issues.Also, while this article briefly touches on the definitions of impairment and the definition of insider, those discussions are limited to their application to 11 U.S.C.A. § 1129(a)(10).

Protection of Debtor from Acts of Discrimination by Governmental Units Under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a))

Rachel M. Kane, M.A., J.D.

11 U.S.C.A. § 525(a) provides protection, with some limited exceptions, to bankrupts or debtors from discriminatory treatment by a governmental unit with regard to denial, revocation, suspension, or refusal to renew a license or similar grant to, or with regard to conditioning such a grant to, discriminating with respect to such grant against, denial of employment to, termination of the employment of, or discrimination with respect to employment, solely because the bankrupt or debtor is or has been a debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under the Act, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable or was discharged under the Bankruptcy Act. The prohibition also applies to persons with whom the bankrupt or debtor has been associated. This article collects and analyzes those cases that have discussed or decided whether, or under what circumstances, a governmental unit has violated 11 U.S.C.A. § 525(a).

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. GENERAL PRINCIPLES REGARDING CONSTRUCTION OF 11 U.S.C.A. § 525(a)

§ 4 Jurisdiction under statute
§ 5 —Continuation of jurisdiction
§ 6 Burden of proof—Generally
§ 7 —Governmental unit's defense
§ 8 Circumstances where statute does not apply—Generally
§ 9 —Private parties
§ 10 —Termination of employment to prospective debtor
§ 11 —Sovereign immunity
§ 12 Public housing leasehold within purview of statute
§ 13 Discrimination must be solely because of bankruptcy—Generally
§ 14 —Definition of ''solely because''
§ 15 No requirement that debtor be employed by governmental unit
§ 16 Refusal of employment to debtor within purview of statute
§ 17 Express action by governmental unit not required
§ 18 View that purchaser of debtor's assets is protected under statute
§ 19 View that purchaser of debtor's assets is unprotected under statute
§ 20 Governmental unit's right to terminate contractual relationship with debtor
§ 21 Power of court to grant relief
§ 22 Relief under statute—Generally
§ 23 —Available relief—Generally
§ 24 — —Award of attorney's fees
§ 25 Review

III. APPLICATION OF 11 U.S.C.A. § 525(a) TO PARTICULAR FACTS

A. IN GENERAL

§ 26 Jurisdiction under statute—Jurisdiction found
§ 27 —No jurisdiction found
§ 28 —Equal and competent jurisdiction in state court
§ 29 Cause of action adequately pleaded
§ 30 Cause of action inadequately pleaded
§ 31 Discrimination as solely because of bankruptcy—''Solely because'' found
§ 32 —''Solely because'' not found
§ 33 Action by governmental unit as within statutory exemption

B. SUSPENSION OR DENIAL OF LICENSES

1. Driver's Licenses or Registrations

§ 34 Denial or suspension of driver's license or registration of debtor—Violation of statute
§ 35 —No violation of statute
§ 36 —No duty of judgment creditor to initiate license reinstatement proceedings

2. Real Estate Licenses

§ 37 Suspension or denial of real estate license of debtor—Violation of statute
§ 38 —No violation of statute

3. Licenses to Practice Law

§ 39 Suspension or denial of debtor's license to practice law—Violation of statute
§ 40 —No violation of statute

4. Contractors' Licenses

§ 41 Denial of contractor's license or opportunity to bid to debtor—Violation of statute
§ 42 —No violation of statute

5. Communications Licenses

§ 43 Denial of communications licenses to debtor—Violation of statute

§ 44 —No violation of statute

6. Other Types of Licenses

§ 45 Liquor license
§ 46 Casino license
§ 47 State racing board license
§ 48 Other licenses—Violation of statute
§ 49 —No violation of statute
§ 50 —Summary judgment denied

C. DENIAL OF LOANS, MORTGAGES, CREDIT, OR OTHER FINANCIAL SERVICES

§ 51 Denial of student loan based upon debtor's nonpayment of prior student loan—Violation of statute
§ 52 —No violation of statute
§ 53 Denial of loans by housing authorities against debtors—Violation of statute
§ 54 —No violation of statute
§ 55 Denial of mortgage or mortgage assistance against debtor
§ 56 Denial of other loan or credit to debtor—Violation of statute
§ 57 —No violation of statute
§ 58 Refusal of service to debtor by governmental credit union

D. ACTIONS BY SCHOOLS TOWARD DEBTORS

§ 59 Withholding of school transcript due to debtor's unpaid tuition or student loans—Violation of statute
§ 60 —No violation of statute

E. ACTIONS BY PUBLIC HOUSING AUTHORITIES OR OWNERS AGAINST DEBTORS

§ 61 Actions by public housing authorities against debtors—Violation of statute
§ 62 —No violation of statute
§ 63 Actions by owners of subsidized housing—Violation of statute
§ 64 —No violation of statute

F. ACTIONS BY PUBLIC UTILITY COMMISSIONS

§ 65 Action against debtor by public utility commission—Violation of statute
§ 66 —No violation of statute

G. ACTIONS BY INTERNAL REVENUE SERVICE

§ 67 Action by Internal Revenue Service against debtor—Violation of statute
§ 68 —No violation of statute

H. ACTIONS RELATING TO WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE

§ 69 Calculation of workers' compensation premiums against debtor
§ 70 Enforcement of debarment provision of workers' compensation law against debtors
§ 71 Adjustment of unemployment security tax against debtor

I. ACTIONS RELATING TO MEDICAID OR MEDICARE PARTICIPATION BY DEBTOR HEALTH CARE PROVIDERS

§ 72 Suspension of debtor health care provider from participation in Medicaid or Medicare—Violation of statute
§ 73 —No violation of statute
§ 74 Actions by governmental unit relating to Medicare reimbursements—Violation of statute
§ 75 —No violation of statute

J. ACTIONS BY GOVERNMENTAL UNITS RELATING TO EMPLOYMENT

§ 76 Termination or nonrenewal of employment of debtor, or refusal to hire or promote debtor by governmental unit—Violation of statute
§ 77 —No violation of statute

K. MISCELLANEOUS ACTIONS AGAINST DEBTORS

§ 78 Action against debtor school by governmental unit—Violation of statute
§ 79 —No violation of statute
§ 80 Actions of transit authorities against employees or contract bidders based on their bankruptcy
§ 81 Refusal of platting and replatting action of debtor
§ 82 Removal of debtor's name from bail bondsman registry
§ 83 Refusal to lease to debtor by a port authority
§ 84 Refusal to revive debtor's corporate privileges
§ 85 Imposition of insurance surcharge as a result of debtor's conviction
§ 86 In rem claim against debtor for reimbursement of public benefits

§ 87 Enforcement of motor vehicle financial responsibility statute
§ 88 Action against debtor relating to real estate recovery fund
§ 89 Other actions by governmental units—Violation of statute
§ 90 —No violation of statute

Graphical Analysis
Research References
Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

The Bankruptcy Code, at 11 U.S.C.A. § 525(a), provides that, with some exceptions, a governmental unit may not discriminate against a debtor with respect to licenses, permits, or similar grants, and employment, solely because the debtor is or was a debtor under the Bankruptcy Act, was insolvent before commencement or during the pendency of a bankruptcy case, or did not pay a dischargeable debt, or is another person with whom the debtor has been associated. This article[1] collects and analyzes those cases that have discussed or decided whether, or under what circumstances, a governmental unit has violated 11 U.S.C.A. § 525(a), which protects debtors from discriminatory treatment by such entities.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2 Background and summary

According to the Reports of the House and Senate Judiciary Committees accompanying the Bankruptcy Code of 1978, to which the courts have frequently referred in rendering their decisions on the subject of this article,

1. This article supersedes Protection of debtor from acts of discrimination by governmental units under sec. 525 of Bankruptcy Code of 1978 (11 U.S.C.A. sec. 525), 68 A.L.R. Fed. 137.

4 A.L.R. Fed. 3d Art. 5

First Amendment Protection for School Principals Subjected to Demotion, Transfer, or Reassignment Because of Speech

Eric C. Surette, J.D.

The Supreme Court has established that a state government employer violates the Constitution if it deprives an employee of a valuable employment benefit in retaliation for the employee's exercise of constitutionally protected speech. In order to establish a violation of the First Amendment, however, a public employee must satisfy three elements: (1) the public employee spoke as a citizen, not as an employee, on a matter of public concern; (2) the employee's interest in the expression at issue outweighed the employer's interest in providing effective and efficient services to the public; and (3) there was a sufficient causal nexus between the protected speech and the retaliatory employment action. A specific application of these principles involves school principals who have alleged that their First Amendment rights were violated when they were subjected to a demotion, transfer, or reassignment because of their speech. This article collects and analyzes all the cases that have discussed whether a school principal's speech is protected by the First Amendment where the principal has been demoted, transferred, or reassigned as a result of such speech.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. APPLICATION OF FIRST AMENDMENT IN PARTICULAR CASES

A. CLAIM UPHELD OR ELEMENT OF CLAIM ESTABLISHED

§ 4 Adverse employment action
§ 5 Principal's actions constituted speech under First Amendment
§ 6 Principal's speech involved matter of public concern—Generally
§ 7 —Speech made in capacity of citizen
§ 8 Free speech interest outweighed interest of school officials in efficient operation of school system
§ 9 Causal connection

B. CLAIM DENIED OR ELEMENT OF CLAIM NOT ESTABLISHED

1. Claim Denied

§ 10 Conduct did not constitute speech
§ 11 Liability not imputed to municipal entity

2. Element of Claim Not Established

§ 12 Speech matter of private rather than public concern
§ 13 Speech unknown to defendants
§ 14 Free speech interest did not outweigh interest of school officials in efficient operation of school system
§ 15 Failure to prove causation

C. ISSUES NOT SETTLED ON PRELIMINARY MOTION

1. Summary Judgment

§ 16 Genuine issue of material fact as to whether speech was matter of public concern
§ 17 Genuine issue of material fact as to whether free speech interest outweighed interest in efficient operation of school system
§ 18 Genuine issue of material fact as to whether adverse employment action would likely chill exercise of First Amendment rights
§ 19 Genuine issue of material fact as to causation
§ 20 Genuine issue of material fact as to defendant's rebuttal evidence

2. Motion to Dismiss

§ 21 Allegations sufficient to state that speech was matter of public concern
§ 22 Allegations sufficient to state claim of adverse employment action
§ 23 Allegations sufficient to state causal connection between speech and adverse employment action

D. QUALIFIED IMMUNITY OF SCHOOL OFFICIALS

1. Official Entitled to Qualified Immunity

§ 24 Generally

2. Official Not Entitled to Qualified Immunity

§ 25 Right to speak out regarding discrimination clearly established
§ 26 Knowledge that actions violated known right

3. Issues Not Settled on Preliminary Motion

§ 27 Question as to whether First Amendment right was clearly established

Graphical Analysis

Research References

Table of Cases

4 A.L.R. Fed. 3d Art. 6

Construction and Application of 16 U.S.C.A. § 1604(f) and Implementing Regulations Providing for Specific Standards Applicable to Written Forest System Land and Resource Management Plans for Units of National Forest System

James Lockhart, J.D.

The National Forest Management Act (NFMA), 16 U.S.C.A. §§ 1600 et seq., contains a provision, 16 U.S.C.A. § 1604(f), which specifies the provisions required in a National Forest land and resource management plan and describes the manner in which such a plan is to be amended or revised. This article collects and analyzes cases applying 16 U.S.C.A. § 1604(f) to determine the procedural sufficiency of Forest Plans, amendments, and revisions.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. GENERAL CONSIDERATIONS

§ 4 Process for making ''significant'' versus ''non-significant'' amendments
§ 5 Revision at 15-year interval

III. SPECIFIC APPLICATIONS

A. PREPARATION OF FOREST PLANS

§ 6 Integrated plan—Requirement satisfied
§ 7 —Requirement not satisfied
§ 8 Appropriate written materials
§ 9 Inventory of resources—Requirement satisfied
§ 10 —Requirement not satisfied
§ 11 Description of planned timber sale program

B. UPDATING OF FOREST PLANS

§ 12 Circumstances as requiring amendment or revision—Plan change required
§ 13 —Plan change not required
§ 14 Circumstances as constituting significant amendment—Held to be significant
§ 15 —Held not to be significant
§ 16 Effect of failure to meet plan revision deadline

Research References

Table of Cases

4 A.L.R. Fed. 3d Art. 7

Identity of Commenter and Relationship of Remark to Employment Decision as Determinants of Relevance of Stray Remark or Comment in Title VII Action for Sex Discrimination

Daniel L. Kresh, J.D.

Title VII of the Civil Rights Act of 1964 (''Title VII'') provides, at 42 U.S.C.A. § 2000e-2(a), that it is unlawful for an employer to ''fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex. . . .'' In a concurrence in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 49 Fair Empl. Prac. Cas. (BNA) 954, 49 Empl. Prac. Dec. (CCH) ¶ 38936 (1989), Justice O'Connor indicated that ''stray remarks in the workplace. . . cannot justify requiring the employer to prove that its hiring or promotion decisions were based on legitimate criteria. Nor can statements by non-decisionmakers, or statements by decisionmakers unrelated to the decisional process itself, suffice to satisfy the plaintiff's burden in this regard.'' This article collects and analyzes the cases that have determined the evidential value of a stray or allegedly stray remark or comment in Title VII actions for sex discrimination as determined by the identity of the commenter and the relationship of the remark to an employment decision.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary
§ 3 Practice pointers

II. ALLEGEDLY STRAY COMMENTS BY DECISION-MAKERS RELATING TO ADVERSE EMPLOYMENT DECISION

§ 4 Allegedly stray comments by decision-makers relating to adverse employment decision are evidence of discrimination

III. ALLEGEDLY STRAY COMMENTS BY DECISION-MAKERS THAT DO NOT RELATE TO ADVERSE EMPLOYMENT DECISION

§ 5 Allegedly stray comments by decision-makers that do not relate to adverse employment decision generally do not provide evidence of discrimination
§ 6 Allegedly stray comments by decision-makers that do not relate to adverse employment decision occasionally do provide evidence of discrimination

IV. STRAY COMMENTS BY NON-DECISION-MAKERS

§ 7 Stray comments by non-decision-makers do not support finding of discrimination

Graphical Analysis
Research References
Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

In an influential concurring opinion in a Title VII case, Justice O'Connor

Stray Remark or Comment Involving Male Plaintiffs in Title VII Action for Sex Discrimination

Daniel L. Kresh, J.D.

Title VII of the Civil Rights Act of 1964 provides, at 42 U.S.C.A. § 2000e-2(a), that it is unlawful for an employer to ''fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . .'' In a concurrence in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 49 Fair Empl. Prac. Cas. (BNA) 954, 49 Empl. Prac. Dec. (CCH) ¶ 38936 (1989) (O'Connor, J., concurring), Justice O'Connor indicated that ''stray remarks in the workplace . . . . cannot justify requiring the employer to prove that its hiring or promotion decisions were based on legitimate criteria. Nor can statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself, suffice to satisfy the plaintiff's burden in this regard.'' This article collects all federal cases exploring the applicability of the stray remarks doctrine to Title VII gender discrimination litigation with male plaintiffs.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary

II. ESSENTIAL EMPLOYMENT DISCRIMINATION

§ 3 Rejection of men in employment setting—Supports finding of discrimination
§ 4 —Does not support finding of discrimination

III. MALE STEREOTYPES

§ 5 Violent predators or aggressors—Supports finding of discrimination
§ 6 —Does not support finding of discrimination
§ 7 ''Macho,'' tough
§ 8 Too assertive, dominant
§ 9 Suck
§ 10 Good old boys
§ 11 Needing to be warned against sexual temptation
§ 12 Childish or irresponsible—Supports finding of discrimination
§ 13 —Does not support finding of discrimination
§ 14 Not wanting to be told what to do
§ 15 Pompous/arrogant/privileged/power-hungry—Supports finding of discrimination
§ 16 —Does not support finding of discrimination
§ 17 ''Getting away with''
§ 18 Threatened by empowerment of women
§ 19 Men as less able, not as smart as women—Supports finding of discrimination
§ 20 —Does not support finding of discrimination
§ 21 ''Breadwinner'' (family issues)
§ 22 Donuts and coffee
§ 23 Androgynous men—Supports finding of discrimination
§ 24 —Does not support finding of discrimination

IV. SPECIAL CIRCUMSTANCES

§ 25 Simple gender reference

§ 26 Two men working together
§ 27 Men's appearance
§ 28 Comments specific to African American men
§ 29 Support for affirmative action/diversity—Supports finding of discrimination
§ 30 —Does not support finding of discrimination
§ 31 Animal references

V. OVERTLY SEXUAL COMMENTS

§ 32 References to private anatomy—Supports finding of discrimination
§ 33 —Does not support finding of discrimination
§ 34 References to rape or sex acts
§ 35 Sex workers

VI. HEARSAY

§ 36 Hearsay—Inadmissible
§ 37 —Admissible

VII. COMMENTS NOT SUGGESTIVE OF GENDER ANIMUS

§ 38 Comment held to be stray remark

Graphical Analysis
Research References
Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

In an influential concurring opinion in a Title VII case, Justice O'Connor indicated that ''stray remarks in the workplace . . . cannot justify requiring the employer to prove that its hiring or promotion decisions were based on legitimate criteria. Nor can statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself, suffice to satisfy the plaintiff's burden in this regard.'' This article contains all federal cases exploring the applicability of the stray remarks doctrine to Title VII gender discrimination litigation with male plaintiffs. The content of the remarks, not the circumstances in which they were spoken, is the principal focus. In

4 A.L.R. Fed. 3d Art. 9

Construction and Application of Penal Law Rule, Prohibiting Enforcement of Foreign Penal Statutes

Maurine J. Berens, J.D.

The penal law rule bars courts from adjudicating claims or enforcing judgments in cases involving foreign penal laws. It is an exception to the general rule of comity between nations. The rule has been developed and refined mainly through civil cases as courts have wrestled with the definition of the term ''penal.'' However, it is raised sometimes in criminal cases as well. This article will collect and discuss all the cases that have considered the construction and application the penal law rule with respect to statutes or judgments of foreign countries.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary

II. APPLICABILITY OF PENAL LAW RULE TO PARTICULAR CASES

§ 3 Enforcement of foreign antislave trade laws
§ 4 Enforcement of foreign money trafficking laws
§ 5 Detention of foreigners in United States for crimes committed in their own countries
§ 6 Detention or imprisonment of United States citizens in United States for crimes committed in foreign countries
§ 7 Application of foreign law to deny convict U.S. governmental benefits
§ 8 Application of foreign law to overturn U.S. conviction
§ 9 Recognition of foreign judgment imposing private contractual liability
§ 10 Foreign government's damage claims arising from governmental activity
§ 11 Foreign government's damage claims arising from commercial injury
§ 12 Foreign government's suit to prevent misuse of its funds
§ 13 Forfeiture, expropriation, or return of property to foreign government—Penal law rule held applicable
§ 14 —Penal law rule held not applicable
§ 15 Financial penalties payable to foreign government
§ 16 Foreign monetary judgment—Remedial damages
§ 17 —Punitive damages
§ 18 —Award of costs or fees

Research References

Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

The penal law rule bars courts from adjudicating foreign penal statutes or

4 A.L.R. Fed. 3d Art. 10

Employment Discrimination Against Obese Persons as Violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973

Aaron L. Weisman, J.D.

Obese persons claiming to have been discriminated against in the workplace due to their weight have sought to remedy such discrimination through a challenge under the Rehabilitation Act of 1973 (RHA), 29 U.S.C.A. §§ 701 et seq., and/or the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C.A. §§ 12101 et seq. The types of obesity discrimination alleged by employees asserting claims under the RHA and ADA run the spectrum, from refusals to promote, demotions, and other employment actions, up to and including firings, solely on the basis of weight. This article collects and discusses all of the cases in which an employee, suing under either the RHA or ADA, has alleged obesity-predicated workplace employment discrimination.

TABLE OF CONTENTS

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

§ 1 Scope
§ 2 Background and summary

II. OBESITY AS PHYSICAL IMPAIRMENT

§ 3 Under Rehabilitation Act

III. OBESITY AS PHYSICAL IMPAIRMENT UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

§ 4 Under Americans with Disabilities Act—Impairment whether or not caused by underlying physiological disorder
§ 5 —Impairment only if caused by underlying physiological disorder

IV. OBESITY-PREDICATED EMPLOYMENT TERMINATION

A. REHABILITATION ACT CLAIMS

§ 6 Termination—Actual discrimination—Sufficient evidence to establish or support claim
§ 7 — —Insufficient evidence to support claim
§ 8 —Perceived (''as regarded'') discrimination—Sufficient evidence to establish or support claim
§ 9 — —Insufficient evidence to support claim

B. AMERICANS WITH DISABILITIES ACT CLAIMS

§ 10 Termination—Actual discrimination—Sufficient evidence to establish or support claim
§ 11 — —Insufficient evidence to support claim
§ 12 —Perceived (''as regarded'') discrimination—Sufficient evidence to establish or support claim
§ 13 — —Insufficient evidence to support claim
§ 14 —''Record of'' discrimination

V. OBESITY-PREDICATED FAILURE TO HIRE

A. REHABILITATION ACT CLAIMS

§ 15 Failure to hire—Actual discrimination
§ 16 —Perceived (''as regarded'') discrimination

B. AMERICANS WITH DISABILITIES ACT CLAIMS

§ 17 Failure to hire—Actual discrimination
§ 18 —Perceived (''as regarded'') discrimination—Sufficient evidence to establish or support claim
§ 19 — —Insufficient evidence to support claim

VI. OBESITY-PREDICATED DEMOTION, FAILURE TO PROMOTE, OR DISCIPLINE

A. REHABILITATION ACT CLAIMS

§ 20 Demotion/failure to promote/discipline—Actual discrimination
§ 21 —Perceived (''as regarded'') discrimination

B. AMERICANS WITH DISABILITIES ACT CLAIMS

§ 22 Demotion/failure to promote/discipline—Actual discrimination
§ 23 —Perceived perceived (''as regarded'') discrimination

VII. OBESITY-PREDICATED HOSTILE WORK ENVIRONMENT/HARRASSMENT

A. REHABILITATION ACT CLAIMS

§ 24 Hostile environment/harassment—Actual discrimination—Sufficient evidence to establish or support claim
§ 25 — —Insufficient evidence to support claim
§ 26 —Perceived (''as regarded'') discrimination—Sufficient evidence to establish or support claim
§ 27 — —Insufficient evidence to support claim

B. AMERICANS WITH DISABILITIES ACT CLAIMS

§ 28 Hostile environment/harassment—Actual discrimination—Sufficient evidence to establish or support claim
§ 29 — —Insufficient evidence to support claim

§ 30 —Perceived (''as regarded'') discrimination—Sufficient evidence to establish or support claim
§ 31 — —Insufficient evidence to support claim

Graphical Analysis
Research References
Table of Cases

I. PRELIMINARY MATTERS

§ 1 Scope

Employees or job applicants alleging discrimination on account of their obesity have brought claims, pursuant to the Rehabilitation Act of 1973 (RHA) or the Americans with Disabilities Act of 1990 (ADA), for wrongful termination, failure to hire, promotion or failure to promote, or hostile work environment. This article collects court cases addressing claims, under the RHA 29 U.S.C.A. §§ 701 et seq., or the ADA, 42 U.S.C.A. §§ 12101 et seq., of alleged workplace discrimination based on obesity. Not included in the scope of this article are cases in which obesity discrimination was alleged to have occurred, in violation of the RHA or ADA, outside of the workplace context as for instance in the treatment of a retail customer or an incarcerated inmate.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2 Background and summary

While it has been stated that obese persons are frequent targets of weight-based discrimination in the workplace,[1] because, under federal law, weight

1. See, e.g., Pomeranz & Puhl, New Developments in the Law for Obesity Discrimination Protection, 21 Obesity J. 469 (2013)

Index

AGRICULTURE
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 33, 47, 56, 57, 90**

AMENDMENTS
National Forests, construction and application of 16 U.S.C.A. § 1604(f) and implementing regulations providing for specific standards applicable to written forest system land and resource management plans for units of the National Forest System, **4 A.L.R. Fed. 3d Art. 6**

AMERICANS WITH DISABILITIES ACT
Discharge from employment or office
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 10 to 14**
Labor and employment
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 4, 5, 10 to 14, 17 to 19, 22, 23, 28 to 31**
Obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 4, 5, 10 to 14, 17 to 19, 22, 23, 28 to 31**

ATTORNEYS
Licenses and permits
bankruptcy, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 39, 40**

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005
Discharge, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**

BANKRUPTCY AND INSOLVENCY
Attorneys
license to practice law, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 39, 40**
Collections
discrimination, protection of debtor form acts of

BANKRUPTCY AND INSOLVENCY—Cont'd
Collections—Cont'd
discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Confirmation
acceptance by at least one impaired class, construction and application of 11 U.S.C.A. § 1129(a)(10), requiring at least one impaired class to accept plan for confirmation, **4 A.L.R. Fed. 3d Art. 3**
Discharge
time and date, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**
Discrimination
governmental units, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Drivers' licenses, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 23, 26, 34 to 36**
Federal government
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Good faith
discharge, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**
Housing, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Internal Revenue Service
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 67, 68**
Labor and employment
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Licenses and permits, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 34 to 50**
Medical care
discrimination, protection of debtor form acts of

BANKRUPTCY AND INSOLVENCY—Cont'd
Medical care—Cont'd
discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 32, 72 to 75**
Public utilities
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 65, 66**
Public works and contracts, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Reorganization plan
acceptance by at least one impaired class, construction and application of 11 U.S.C.A. § 1129(a)(10), requiring at least one impaired class to accept plan for confirmation, **4 A.L.R. Fed. 3d Art. 3**
States
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Student loans
discrimination
governmental units, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 26, 51 to 53, 59, 60, 73**
Time and date
discharge, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**

CHANGE OR MODIFICATION
National Forests, construction and application of 16 U.S.C.A. § 1604(f) and implementing regulations providing for specific standards applicable to written forest system land and resource management plans for units of the National Forest System, **4 A.L.R. Fed. 3d Art. 6**

CIVIL RIGHTS AND DISCRIMINATION
Demotion
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 20 to 23**
Freedom of speech and press
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Labor and employment
obesity, employment discrimina-

CIVIL RIGHTS AND DISCRIMINATION—Cont'd
Labor and employment—Cont'd
tion against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**
Stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

COLLECTIONS
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

COMITY
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9 § 3, 7, 17**

COMMENTS
Sex discrimination, stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**

COMMENTS—Cont'd
Sex discrimination, stray remark or comment—Cont'd
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

CONFIRMATION
Bankruptcy
acceptance by at least one impaired class, construction and application of 11 U.S.C.A. § 1129(a)(10), requiring at least one impaired class to accept plan for confirmation, **4 A.L.R. Fed. 3d Art. 3**

CRIMINAL LAW
Foreign countries
penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**

DEMOTIONS
Disabled persons
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 20 to 23**
School principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

DISABLED PERSONS
Civil rights and discrimination
obesity, employment discrimination against obese persons as

DISABLED PERSONS—Cont'd
Civil rights and discrimination —Cont'd
violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**
Labor and employment
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**

DISCHARGE FROM EMPLOYMENT OR OFFICE
Obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 6 to 14**
Sex discrimination
stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

DRIVERS' LICENSES
Bankruptcy and insolvency, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 23, 26, 34 to 36**

ENVIRONMENTAL LAW
National Forests, construction and application of 16 U.S.C.A. § 1604(f) and implementing regulations providing for specific standards applicable to written forest system land and resource management plans for units of the National Forest System, **4 A.L.R. Fed. 3d Art. 6**

EQUAL EMPLOYMENT OPPORTUNITY
Stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

EXTRADITION
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9 § 5, 6, 17**

FEDERAL GOVERNMENT
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Discrimination
bankruptcy and insolvency, protection of debtor form acts of discrimination by governmental units under

FEDERAL GOVERNMENT —Cont'd
Discrimination—Cont'd
§ 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

FIDUCIARIES AND PERSONAL REPRESENTATIVES
Trademark infringement, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**

FINES, PENALTIES, AND FORFEITURES
Foreign countries, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**

FIRST AMENDMENT
Labor and employment
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Public officers and employees
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

FOREIGN COUNTRIES
Criminal law
penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**

FOREIGN COUNTRIES—Cont'd
Criminal law—Cont'd
Fines, penalties, and forfeitures, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9**

FREEDOM OF SPEECH AND PRESS
Civil rights and discrimination
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Labor and employment
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Public officers and employees
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Schools and education
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Transfer of employees
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment

FREEDOM OF SPEECH AND PRESS—Cont'd
Transfer of employees—Cont'd
because of speech, **4 A.L.R. Fed. 3d Art. 5**

GOOD FAITH
Bankruptcy and insolvency
discharge, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**

GOVERNMENT
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

GOVERNMENTAL IMMUNITY OR PRIVILEGE
Schools and education
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

HOUSING AND SLUM CLEARANCE
Bankruptcy, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

INTERNAL REVENUE SERVICE
Bankruptcy and insolvency
discrimination, protection of debtor form acts of

INTERNAL REVENUE SERVICE—Cont'd
Bankruptcy and insolvency—Cont'd
discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 67, 68**

INTOXICATING LIQUORS
Licenses and permits
bankruptcy, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 45**

LABOR AND EMPLOYMENT
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**
Freedom of speech and press
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**
Schools and education
civil rights and discrimination
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of

LABOR AND EMPLOYMENT —Cont'd
Schools and education—Cont'd
civil rights and discrimination —Cont'd
speech, **4 A.L.R. Fed. 3d Art. 5**

LEGAL REPRESENTATIVE
Trademark infringement, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**

LICENSES AND PERMITS
Bankruptcy
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 34 to 50**
Intoxicating liquors
bankruptcy, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 45**
Trademark
legal representative, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1 § 3, 4**

MEDICAL CARE
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A.

MEDICAL CARE—Cont'd
Bankruptcy and insolvency—Cont'd
§ 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 32, 72 to 75**

NATIONAL FORESTS
Land and resource management plans, construction and application of 16 U.S.C.A. § 1604(f) and implementing regulations providing for specific standards applicable to written forest system land and resource management plans for units of the National Forest System, **4 A.L.R. Fed. 3d Art. 6**

OBESITY
Disability
employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**
Job discrimination
Americans with Disabilities Act and Rehabilitation Act, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**

PARTIES
Trademarks
standing to bring suit for trademark infringement, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**

PENIS
Sex discrimination, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R.**

PENIS—Cont'd
Fed. 3d Art. 8 § 32, 33

PRINCIPAL OF SCHOOL
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

PROMOTION OF EMPLOYEES
Discrimination
obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 20 to 23**
Obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabilitation Act of 1973, **4 A.L.R. Fed. 3d Art. 10**
Sex discrimination
stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

PUBLIC OFFICERS AND EMPLOYEES
Civil rights and discrimination
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

PUBLIC OFFICERS AND EMPLOYEES—Cont'd
First Amendment
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Freedom of speech and press
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

PUBLIC UTILITIES
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 65, 66**

PUBLIC WORKS AND CONTRACTS
Bankruptcy and insolvency, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

PUNITIVE DAMAGES
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R. Fed. 3d Art. 9 § 17**

REHABILITATION ACT
Obesity, employment discrimination against obese persons as violation of Americans with Disabilities Act of 1990 or Rehabil-

REHABILITATION ACT—Cont'd
itation Act of 1973, **4 A.L.R. Fed. 3d Art. 10 § 3, 6 to 9, 15, 16, 20, 21, 24 to 27**

SCHOOLS AND EDUCATION
Bankruptcy and insolvency
discrimination
protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 18, 19, 23, 26, 32, 39, 51 to 53, 59, 60, 73, 78, 79**
Civil rights and discrimination
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Privileges and immunities
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**
Public officers and employees
First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

SEX DISCRIMINATION
Labor and employment
stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male

SEX DISCRIMINATION—Cont'd
Labor and employment—Cont'd
stray remark or comment—Cont'd
plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**
Promotion of employees
stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**
Stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

SEXUAL HARASSMENT
Labor and employment
stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action

SEXUAL HARASSMENT—Cont'd
Labor and employment—Cont'd
stray remark or comment—Cont'd
for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**
Stray remark or comment
identity of commenter and relationship of remark to employment decision as determinants of relevance of stray remark or comment in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 7**
male plaintiffs, stray remark or comment involving male plaintiffs in Title VII action for sex discrimination, **4 A.L.R. Fed. 3d Art. 8**

STATES
Bankruptcy and insolvency
discrimination, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4**

STUDENT LOANS
Bankruptcy and insolvency
discrimination
governmental units, protection of debtor form acts of discrimination by governmental units under § 525(a) of Bankruptcy Code of 1978 (11 U.S.C.A. § 525(a)), **4 A.L.R. Fed. 3d Art. 4 § 26, 51 to 53, 59, 60, 73**

TIME AND DATE
Bankruptcy and insolvency
discharge, construction and application of 11 U.S.C.A. § 1328(f), barring discharge in Chapter 13 bankruptcy case within specified period after

TIME AND DATE—Cont'd
Bankruptcy and insolvency—Cont'd
debtor received discharge under Chapter 7, 11, 12, or 13, **4 A.L.R. Fed. 3d Art. 2**

TRADEMARKS, TRADE NAMES, AND UNFAIR TRADE PRACTICES
Infringement
legal representative, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**
Legal representative, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**
Licenses and permits, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1 § 3, 4**
Standing to bring suit for trademark infringement, construction and application of ''legal representative'' under Lanham Act § 32(1), 45, 15 U.S.C.A. § 1114(1), 1127, **4 A.L.R. Fed. 3d Art. 1**

TRANSFER OF EMPLOYEES
Freedom of speech
school principals, First Amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, **4 A.L.R. Fed. 3d Art. 5**

TREATIES
Penal law rule, construction and application of penal law rule, prohibiting enforcement of foreign penal statutes, **4 A.L.R.**

TREATIES—Cont'd
Fed. 3d Art. 9 § 5, 6, 13