

2026 Update

Highlights of the current edition include the following:

Arbitration

- The United States Supreme Court ruled that a judge rather than an arbitrator should decide the validity of a delegation clause in an arbitration agreement. § 1:539

Data Breach

- Plaintiffs in a number of cases were able to proceed on a theory of breach of implied contract to pursue a claim based on exposure of personal information resulting from a data breach. §§ 1:325.50, 1:1425.50, 1:1525.50, 1:3525.50, 1:4225.50
- A breach of implied contract claim arising from a data breach was rejected by some courts. §§ 1:3025.50, 1:3825.50
- Plaintiffs sufficiently stated a claim of negligence arising from exposure of personal information in connection with a data breach a few cases (§§ 2:504, 2:3204), but not in other cases (§§ 2:1404, 2:4304)
- Claims for invasion of privacy in connection a data breach resulting in alleged exposure of personal information failed to succeed in some cases. §§ 4:110, 1410

Defamation

- Florida Supreme Court modifies the state rules of appellate procedure to permit interlocutory review of orders denying an Anti-SLAPP motion. § 2:925

Election Fraud

- Michigan Supreme Court that the defendants' conduct in disseminating a recorded message to Detroit residents discouraging mail-in voting fell within the plain meaning of the state's election fraud statute. § 7:2212

Privacy

- A California Court of Appeals holds, as a matter of first impression, that whether a transgender person's gender identity conforms with the sex at birth is intimate personal information entitled to protection under the right to privacy. § 4:508
- Several states enacted statutes designed to protect the online privacy of minors. §§ 4:499, 4:699, 4:3299, 4:4699
- The Minnesota Supreme Court holds, as a matter of first impression, that a search warrant authorizing seizure of a computer and other electronic devices permits a search of the devices, but only for items listed in the warrant that may reasonably be found on the devices. § 7:2315

Social Media Companies

- The United States Supreme Court holds—as to First Amendment challenges to Florida and Texas statutes regulating large social media companies and other internet platforms and curtailing the platforms' capacity to engage in content moderation and include individualized explanation provisions requiring platforms to give reasons to users if posts are altered or removed – that the Eleventh and Fifth Circuits failed to properly resolve motions for injunctive relief filed by internet trade associations and provided guidance as to proper analysis on remand. §§ 4:999, 4:4399

Uniform Commercial Code for Funds Transfers

- The United States District Court for the Southern District of Florida held, as a matter of first impression, that a company which originated wire transfers that were intercepted by a fraudster had no cause of action under Article 4A of Florida's Uniform Commercial Code

against bank receiving the wire transfer and, under the statute could only seek to recover the funds from its own bank. § 6:913.50

The Publisher
August 2026