

**CUMULATIVE TABLE OF CASES FOR VOLUME 34, ISSUES 1-32**

A.L. Prime Energy Consultant, Inc. v. MBTA . . . . .	164	Chau, Safeco Insurance Co. v. . . . .	496
ABCD Holdings, LLC v. Hannon . . . . .	112	Chelmsford v. Newport Materials, LLC . . . . .	471
ABM Industry Groups, LLC v. Palmarozzo . . . . .	217	Children's Hospital Corp., Murby v. . . . .	1
Accutrax, LLC v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP . . . . .	608	Christensen v. Cox . . . . .	561
Agenus, Inc. v. McCourt . . . . .	645	Civil Investigative Demand No. 2016-EPD-36, In re . . .	104
Aiguier v. Financial Industry Regulatory Auth., Inc. . . .	122	Clairmont v. Amer Sports Winter & Outdoor Co. . . .	449
Akebia Therapeutics, Inc., Fortunato v. . . . .	78	Clean Harbors Environmental Services, Inc. v. Klondex Gold & Silver Mining Co. . . . .	263
Alcoholic Beverage Control Commission, Massachusetts Fine Wines & Spirits, LLC v. . . . .	379	Clear Channel Outdoor, Inc., MBTA v. . . . .	603
Alnylam Pharmaceuticals, Inc. v. Dicerna Pharmaceuticals, Inc. . . . .	504	CMBG3 Law, LLC, Governo Law Firm, LLC v. . . . .	109
Amer Sports Winter & Outdoor Co., Clairmont v. . . .	449	Coleman, Commonwealth v. . . . .	215
American Catalog Mailers Ass'n v. Heffernan . . . .	419, 423	Collias, Noble v. . . . .	8
Amica Mutual Insurance Co. v. Olmo . . . . .	244	Commerce Insurance Co., Kantzelis v. . . . .	534
Amos v. Westford . . . . .	10, 503	Commonwealth v. Calzado . . . . .	480
Anaesthesia Associates, P.C. v. Plexus Anesthesia Services, P.C. . . . .	668	Commonwealth v. Coleman . . . . .	215
Andrews v. Cronin . . . . .	663	Commonwealth v. Douglas . . . . .	3
Applause App Quality, Inc., Cook v. . . . .	481	Commonwealth v. Feliz . . . . .	201
Araujo, Tremblay v. . . . .	454	Commonwealth v. Jones . . . . .	287
Artin Service Station, Inc. v. Mitri . . . . .	344	Commonwealth v. Langley . . . . .	643
Atwood, Marchetti v. . . . .	489	Commonwealth v. Laureus . . . . .	225
Bain Capital, LP, Schiefer v. . . . .	532	Commonwealth v. Morales-Alvarez . . . . .	461
Barenboim, Pacific Packaging Products, Inc. v. . . . .	358	Commonwealth v. Morrison . . . . .	634
Barton & Associates, Inc. v. Matarese . . . . .	671	Commonwealth v. Pennsylvania Higher Education Assistance Agency . . . . .	616
Bassett v. Triton Technologies, Inc. . . . .	174, 435, 670	Commonwealth v. Richardson . . . . .	405
Bay Colony Property Development Co. v. Headlands Realty Corp. . . . .	338	Commonwealth v. Robinson . . . . .	32
Belmont Savings Bank, Doucette v. . . . .	183	Commonwealth v. Sheppard . . . . .	294
Benchmark Senior Living, LLC, Gowen v. . . . .	334	Connor v. Norfolk District Attorney . . . . .	272, 351
Beninati v. Borghi . . . . .	390	Cook v. Applause App Quality, Inc. . . . .	481
Bennett v. R.J. Reynolds Tobacco Co. . . . .	547	Cox, Christensen v. . . . .	561
Berkeley Place Restaurant LP, Everest National Insurance Co. v. . . . .	24	Cronin, Andrews v. . . . .	663
Berube, Wesco Insurance Co. v. . . . .	632	Cross v. North Shore Medical Center, Inc. . . . .	321
Bitran, Ilex Investments, LP v. . . . .	67	Cruz v. Jump City Everett, LLC . . . . .	586
Blanchard v. Steward Carney Hospital, Inc. . . . .	550	Cumberland Farms, Inc., DeThomas v. . . . .	613
Board of Appeal on Motor Vehicle Liability Policies & Bonds, Scatto-Bobillier v. . . . .	331	Da Costa v. Vanguard Cleaning Systems, Inc. . . . .	483
Borghi, Beninati v. . . . .	390	Dammai, Patel v. . . . .	413
Boston & Maine Corp., MBTA v. . . . .	475	Darcy v. Khoury . . . . .	666
Boston Medical Center Corp., Walker v. . . . .	387	Davidson, O'Donnell v. . . . .	493
Boston Restoration Resources, Inc. v. Lorenzo Pitts, Inc. . . . .	646	DeMego v. Nisonson . . . . .	316
Boston Scientific Corp. v. Takahashi . . . . .	560	Dennis, Miramar Park Association v. . . . .	116
Botwinik, Harris Acquisition Trust v. . . . .	573	Desiano v. Envision Foods, Inc. . . . .	437
Bowden Hospitality Newton, LLC, Yarpah v. . . . .	249	Destafano v. Endicott College . . . . .	579
Braintree Board of Health, G6 Hospitality Property, LLC v. . . . .	325	DeThomas v. Cumberland Farms, Inc. . . . .	613
Brockton, Lopes v. . . . .	442	Deutsche Multi-Market Income Trust, Western Investment, LLC v. . . . .	95
Brower v. Burns . . . . .	516	DeVito v. Longwood Security Services, Inc. . . . .	65
Brown v. Woods Mullen Shelter . . . . .	416	Dicerna Pharmaceuticals, Inc., Alnylam Pharmaceuticals, Inc. v. . . . .	504
Buckley, Heywood v. . . . .	161	Diversified Business Communications, Mooney v. . . . .	352, 356, 429
Buffalo Water 1, LLC v. Fidelity Real Estate Co. . . .	357	Doe v. Hopkinton . . . . .	137
Burns v. Taylor . . . . .	89	Donarumo v. Phillips . . . . .	623
Burns, Brower v. . . . .	516	Donovan, Xu v. . . . .	312
Butts v. Freedman . . . . .	500	Dorrian v. LVNV Funding, LLC . . . . .	251
Calzado, Commonwealth v. . . . .	480	Doucette v. Belmont Savings Bank . . . . .	183
CareOne Management, LLC v. Navisite, Inc. . . . .	278	Douglas, Commonwealth v. . . . .	3
Cassella Waste Systems, Inc. v. Steadfast Ins. Co. . . .	498	Easy Access Distribution, Inc. v. Potter . . . . .	228
Cassavoy, ISO Claims Partners, Inc. v. . . . .	176	Editbar, LLC, Element Productions, Inc. v. . . . .	377
Cedar Hill Retreat Center, Inc., Wildlands Trust of Southeastern MA, Inc. v. . . . .	52, 514, 528	EF Education First, Inc., Goldberg v. . . . .	399
Centerline Holding Co., Roger v. . . . .	193	Element Productions, Inc. v. Editbar, LLC . . . . .	377
		Endicott College, Destafano v. . . . .	579
		Envision Foods, Inc., Desiano v. . . . .	437
		Esdaile, Petrucci v. . . . .	304, 569
		Everest National Insurance Co. v. Berkeley Place Restaurant LP . . . . .	24

*The Massachusetts Law Reporter*  
34 MASS. L. RPTER. NO. 32 (May 21, 2018)

Executive Office for Administration & Finance, Federal Concrete, Inc. v. . . . .	652	Jones v. Massachusetts Department of Children & Families . . . . .	509
Executive Office of Public Safety & Security, Hetherson v. . . . .	27	Jones, Commonwealth v. . . . .	287
Falmouth v. Falmouth ZBA . . . . .	408	Juliand v. Stanley Services, Inc. . . . .	612
Falmouth ZBA, Falmouth v. . . . .	408	Jump City Everett, LLC, Cruz v. . . . .	586
FBT Everett Realty, LLC v. Massachusetts Gaming Commission . . . . .	340, 556	Kantzelis v. Commerce Insurance Co. . . . .	534
Federal Concrete, Inc. v. Executive Office for Administration & Finance . . . . .	652	Khoury, Darcy v. . . . .	666
Feliz, Commonwealth v. . . . .	201	Kligler v. Healy . . . . .	239
Fiano v. J.E.S. Supply Depot, Inc. . . . .	606	Klondex Gold & Silver Mining Co., Clean Harbors Environmental Services, Inc. v. . . . .	263
Fidelity Real Estate Co., Buffalo Water 1, LLC v. . . . .	357	KPMG LLP, Merrimack College v. . . . .	221
Financial Industry Regulatory Auth., Inc., Aiguier v. . . . .	122	Kradin, United Salvage Corp. v. . . . .	7
Finklea v. Massachusetts Civil Service Comm'n . . . . .	657	Lancaster, MMA Lincoln Gardens, LLC v. . . . .	50
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Accutrax, LLC v. . . . .	608	Landing Group, Inc. v. Massachusetts Department of Environmental Protection . . . . .	73
FMR, LLC, Wesson v. . . . .	539	Langley, Commonwealth v. . . . .	643
Fortunato v. Akebia Therapeutics, Inc. . . . .	78	Laureus, Commonwealth v. . . . .	225
Four Seasons Roofing & Contracting, Inc., Ramirez v. . . . .	365	Liberty Mutual Insurance Co. v. Gonzalez . . . . .	290
Fratea v. Unitrends, Inc. . . . .	584	Liberty Mutual Insurance Co. v. Peoples Best Care Chiropractic & Rehabilitation, Inc. . . . .	198
Freedman, Butts v. . . . .	500	Longwood Security Services, Inc., DeVito v. . . . .	65
Frost v. Malden/Dockside, Inc. . . . .	549	Lopes v. Brockton . . . . .	442
G4S Technology, LLC v. Massachusetts Technology Park Corp. . . . .	142	Lorenzo Pitts, Inc., Boston Restoration Resources, Inc. v. . . . .	646
G6 Hospitality Property, LLC v. Braintree Board of Health . . . . .	325	Lubin & Meyer, P.C. v. Manning . . . . .	583
Gallardo v. Wendy's Old Fashioned Hamburgers . . . . .	385	LVNV Funding, LLC, Dorrian v. . . . .	251
Ginsberg v. Ginsberg . . . . .	589	M.C., LLC, Marks v. . . . .	333
Goldberg v. EF Education First, Inc. . . . .	399	MA-Center Plaza, LLC, Tanen v. . . . .	395
Gonzalez, Liberty Mutual Insurance Co. v. . . . .	290	Malden/Dockside, Inc., Frost v. . . . .	549
Governo Law Firm, LLC v. CMBG3 Law, LLC . . . . .	109	Manning, Lubin & Meyer, P.C. v. . . . .	583
Gowen v. Benchmark Senior Living, LLC . . . . .	334	Marchese, Minichiello Bros., Inc. v. . . . .	570
Graceffa v. Waller . . . . .	99	Marchetti v. Atwood . . . . .	489
Great Divide Insurance Co., Matckie v. . . . .	275	Market Strategies, Inc., Meunier v. . . . .	146, 360
Greene, Murray v. . . . .	451	Marks v. M.C., LLC . . . . .	333
Hanna v. Williams . . . . .	56, 230	Massachusetts Civil Service Commission, Finklea v. . . . .	657
Hannon, ABCD Holdings, LLC v. . . . .	112	Massachusetts Department of Children & Families, Jones v. . . . .	509
Hanover Ins. Group, Inc. v. Raw Seafoods, Inc. . . . .	629	Massachusetts Department of Environmental Protection, Landing Group, Inc. v. . . . .	73
Harris Acquisition Trust v. Botwinik . . . . .	573	Massachusetts Department of Public Health, Middlesex Integrative Medicine, Inc. v. . . . .	93
Hartman v. Stoughton . . . . .	325	Massachusetts Environmental Associates, Inc., Spinazola v. . . . .	424
Headlands Realty Corp., Bay Colony Property Development Co. v. . . . .	338	Massachusetts Fine Wines & Spirits, LLC v. Alcoholic Beverage Control Commission . . . . .	379
Healey, Hull Board of Selectmen v. . . . .	521	Massachusetts Gaming Commission, FBT Everett Realty, LLC v. . . . .	340, 556
Healy, Kligler v. . . . .	239	Massachusetts Technology Park Corp., G4S Technology, LLC v. . . . .	142
Heffernan, American Catalog Mailers Ass'n v. . . . .	419, 423	Matarese, Barton & Associates, Inc. v. . . . .	671
Hernandez, Oxford Global Resources, LLC v. . . . .	266	Matckie v. Great Divide Insurance Co. . . . .	275
Hetherson v. Executive Office of Public Safety & Security . . . . .	27	MBTA v. Boston & Maine Corp. . . . .	475
Heywood v. Buckley . . . . .	161	MBTA v. Clear Channel Outdoor, Inc. . . . .	603
Hillside FXF, LLC v. Premier Design + Build Group, LLC . . . . .	46	MBTA, A.L. Prime Energy Consultant, Inc. v. . . . .	164
Hohenstein, Netscout Systems, Inc. v. . . . .	148, 153	McCourt, Agenus, Inc. v. . . . .	645
Holyoke Mutual Ins. Co. v. Vibram USA, Inc. . . . .	185	McEvoy v. Savings Bank Life Insurance Co. . . . .	299
Homeowner's Rehab, Inc. v. Related Corporate V SLP, LP . . . . .	14	McLaughlin v. Meehan . . . . .	594
Hopkinton, Doe v. . . . .	137	McLaughlin v. Rubenstein . . . . .	511
Hull Board of Selectmen v. Healey . . . . .	521	Medical Source, Inc. v. PerkinElmer Health Sciences, Inc. . . . .	527
Ilex Investments, LP v. Bitran . . . . .	67	Meehan, McLaughlin v. . . . .	594
In re Civil Investigative Demand No. 2016-EPD-36 . . . . .	104	Merrimack College v. KPMG LLP . . . . .	221
In re J.G. Wentworth Originations, LLC . . . . .	311	Meunier v. Market Strategies, Inc. . . . .	146, 360
In re Ovascience, Inc. Stockholder Litigation . . . . .	49, 587, 610	Middlesex Integrative Medicine, Inc. v. Massachusetts Department of Public Health . . . . .	93
In re ReWalk Robotics, Ltd. Stockholder Litigation . . . . .	196	Minichiello Bros., Inc. v. Marchese . . . . .	570
Interstate Fire & Casualty Co., Williamson-Green v. . . . .	432	Miramar Park Association v. Dennis . . . . .	116
ISO Claims Partners, Inc. v. Cassavoy . . . . .	176	Mirra v. Mirra . . . . .	41, 247
J.E.S. Supply Depot, Inc., Fiano v. . . . .	606		
J.G. Wentworth Originations, LLC, In re . . . . .	311		

*The Massachusetts Law Reporter*  
34 MASS. L. RPTR. NO. 32 (May 21, 2018)

Mitchell, Moses v. . . . .	469	Santilli Enterprises, Inc., Santander Bank, N.A. v. . . . .	638
Mitri, Artin Service Station, Inc. v. . . . .	344	Savings Bank Life Insurance Co., McEvoy v. . . . .	299
MJ Flaherty Co., Turner Construction Co. v. . . . .	171	Scatto-Bobillier v. Board of Appeal on Motor Vehicle Liability Policies & Bonds . . . . .	331
MMA Lincoln Gardens, LLC v. Lancaster . . . . .	50	Schiefer v. Bain Capital, LP . . . . .	532
Mooney v. Diversified Business Communications . . . . .	352, 356, 429	Sex Offender Registry Board, Noe v. . . . .	127
Morales-Alvarez, Commonwealth v. . . . .	461	Sheppard, Commonwealth v. . . . .	294
Morrison, Commonwealth v. . . . .	634	Shulman v. Tosi . . . . .	270
Moses v. Mitchell . . . . .	469	Silva v. Todisco Services, Inc. . . . .	167, 647
Murby v. Children's Hospital Corp. . . . .	1	Smith v. Unidine Corp. . . . .	371
Murray v. Greene . . . . .	451	Smith, Newton Presbyterian Church v. . . . .	552
National Amusements, Inc., Smith-Berry v. . . . .	457, 460	Smith-Berry v. National Amusements, Inc. . . . .	457, 460
National Football League, New England Patriots Fans v. . . . .	436	Spinazola v. Massachusetts Environmental Associates, Inc. . . . .	424
National Union Fire Insurance Co., Philadelphia Indemnity Insurance Co. v. . . . .	367	Stanley Services, Inc., Juliard v. . . . .	612
Navisite, Inc., CareOne Management, LLC v. . . . .	278	Steadfast Insurance Co., Casella Waste Systems, Inc. v. . . . .	498
Nelson v. Wayland Board of Health . . . . .	567	Stemgent, Inc. v. Orion Equity Partners . . . . .	69
Netscout Systems, Inc. v. Hohenstein . . . . .	148, 153	Steward Carney Hospital, Inc., Blanchard v. . . . .	550
New England Patriots Fans v. National Football League . . . . .	436	Steward Health Care Network, Inc., Whittier IPA, Inc. v. . . . .	155
Newport Materials, LLC, Chelmsford v. . . . .	471	Stoughton, Hartman v. . . . .	325
Newton Presbyterian Church v. Smith . . . . .	552	Sudders, Patel v. . . . .	21
Nisonson, DeMego v. . . . .	316	Takahashi, Boston Scientific Corp. v. . . . .	560
Noble v. Collias . . . . .	8	Tanen v. MA-Center Plaza, LLC . . . . .	395
Noe v. Sex Offender Registry Board . . . . .	127	Taylor, Burns v. . . . .	89
Norfolk District Attorney, Connor v. . . . .	272, 351	Therapy Resources Management, LLC v. Whittier Health Network, Inc. . . . .	376
North Shore Medical Center, Inc., Cross v. . . . .	321	Todisco Services, Inc., Silva v. . . . .	167, 647
O'Donnell v. Davidson . . . . .	493	Tosi, Shulman v. . . . .	270
OBP Corp. v. Welch Allyn, Inc. . . . .	29	Tremblay v. Araujo . . . . .	454
Olmo, Amica Mutual Insurance Co. v. . . . .	244	Triton Technologies, Inc., Bassett v. . . . .	174, 435, 670
Orion Equity Partners, Stemgent, Inc. v. . . . .	69	Turner Construction Co. v. MJ Flaherty Co. . . . .	171
Ovascience, Inc. Stockholder Litigation, In re . . . . .	49, 587, 610	Unidine Corp., Smith v. . . . .	371
Oxford Global Resources, LLC v. Hernandez . . . . .	266	United Medical Waste Management, Inc. v. Webster Board of Health . . . . .	576
Pacific Packaging Products, Inc. v. Barenboim . . . . .	358	United Salvage Corp. v. Kradin . . . . .	7
Palmarozzo, ABM Industry Groups, LLC v. . . . .	217	Unitrends, Inc., Fratea v. . . . .	584
Patel v. Dammai . . . . .	413	Vanguard Cleaning Systems, Inc., Da Costa v. . . . .	483
Patel v. Sudders . . . . .	21	Vibram USA, Inc., Holyoke Mutual Ins. Co. v. . . . .	185
Pennsylvania Higher Education Assistance Agency, Commonwealth v. . . . .	616	Walker v. Boston Medical Center Corp. . . . .	387
Peoples Best Care Chiropractic & Rehabilitation, Inc., Liberty Mutual Insurance Co. v. . . . .	198	Waller, Graceffa v. . . . .	99
PerkinElmer Health Sciences, Inc., Medical Source, Inc. v. . . . .	527	Wayland Board of Health, Nelson v. . . . .	567
Petrucci v. Esdaile . . . . .	304, 569	Webster Board of Health, United Medical Waste Management, Inc. v. . . . .	576
Philadelphia Indemnity Insurance Co. v. National Union Fire Insurance Co. . . . .	367	Welch Allyn, Inc., OBP Corp. v. . . . .	29
Phillips, Donarumo v. . . . .	623	Wendy's Old Fashioned Hamburgers, Gallardo v. . . . .	385
Plexus Anesthesia Services, P.C., Anaesthesia Associates, P.C. v. . . . .	668	Wesco Insurance Co. v. Berube . . . . .	632
Potter, Easy Access Distribution, Inc. v. . . . .	228	Wesson v. FMR, LLC . . . . .	539
Premier Design + Build Group, LLC, Hillside FXF, LLC v. . . . .	46	Western Investment, LLC v. Deutsche Multi-Market Income Trust . . . . .	95
R.J. Reynolds Tobacco Co., Bennett v. . . . .	547	Westford, Amos v. . . . .	10, 503
Ramirez v. Four Seasons Roofing & Contracting, Inc. . . . .	365	Whittier Health Network, Inc., Therapy Resources Management, LLC v. . . . .	376
Raw Seafoods, Inc., Hanover Insurance Group, Inc. v. . . . .	629	Whittier IPA, Inc. v. Steward Health Care Network, Inc. . . . .	155
Related Corporate V SLP, LP, Homeowner's Rehab, Inc. v. . . . .	14	Wildlands Trust of Southeastern MA, Inc. v. Cedar Hill Retreat Center, Inc. . . . .	52, 514
ReWalk Robotics, Ltd. Stockholder Litigation, In re . . . . .	196	Wildlands Trust of Southeastern Massachusetts, Inc. v. Cedar Hill Retreat Center, Inc. . . . .	528
Richardson, Commonwealth v. . . . .	405	Williams, Hanna v. . . . .	56, 230
Robinson, Commonwealth v. . . . .	32	Williamson-Green v. Interstate Fire & Casualty Co. . . . .	432
Roger v. Centerline Holding Co. . . . .	193	Woods Mullen Shelter, Brown v. . . . .	416
Rubenstein, McLaughlin v. . . . .	511	Xu v. Donovan . . . . .	312
Safeco Insurance Co. v. Chau . . . . .	496	Yarpah v. Bowden Hospitality Newton, LLC . . . . .	249
Santander Bank, N.A. v. Santilli Enterprises, Inc. . . . .	638		

**CUMULATIVE TABLE OF MASSACHUSETTS STATUTES AND  
RULES OF PROCEDURE FOR VOLUME 34, ISSUES 1-32**

M.G.L.c. 7C, §1	652	M.G.L.c. 151B, §4	161, 539
M.G.L.c. 7C, §6	652	M.G.L.c. 151C, §2	137
M.G.L.c. 12, §11H	27, 416	M.G.L.c. 152, §15	632
M.G.L.c. 12, §11I	416	M.G.L.c. 156D, §7.14	41
M.G.L.c. 30A, §18	503	M.G.L.c. 175, §99	290
M.G.L.c. 30A, §24 1/2	331	M.G.L.c. 175, §112C	312
M.G.L.c. 40A, §11	471	M.G.L.c. 178L(3)	127
M.G.L.c. 41, §96A	657	M.G.L.c. 186, §15B	334
M.G.L.c. 62C, §20	419	M.G.L.c. 190A, §3-108(4)	547
M.G.L.c. 62C, §26(j)(1)	419	M.G.L.c. 190B, §803(a)	270
M.G.L.c. 79, §10	556	M.G.L.c. 211, §59H	550
M.G.L.c. 79, §14	556	M.G.L.c. 223A, §3(a)	104, 263
M.G.L.c. 79, §16	556	M.G.L.c. 229, §2	547
M.G.L.c. 90, §34M	244	M.G.L.c. 231, §6C	532
M.G.L.c. 93, §24	251	M.G.L.c. 231, §59H	504, 645
M.G.L.c. 93, §24H(b)	251	M.G.L.c. 231, §95H	511
M.G.L.c. 93A, §§ 8, 112, 251, 275, 304, 390, 432, 475, 569, 573, 612		M.G.L.c. 231B, §2	24
M.G.L.c. 93A, §6	104	M.G.L.c. 231C, §2	311
M.G.L.c. 93A, §9	56, 230	M.G.L.c. 258, §10(b)	509
M.G.L.c. 93A, §9(2)	647	M.G.L.c. 258, §10(c)	340
M.G.L.c. 93A, §9(6)	167	M.G.L.c. 260, §2	304
M.G.L.c. 93A, §11	142, 278	M.G.L.c. 260, §2A	272
M.G.L.c. 94C, §1-9	93	M.G.L.c. 260, §4	623
M.G.L.c. 106, §9-609	183	M.G.L.c. 260, §12	589
M.G.L.c. 108A	89	M.G.L.c. 265, §47	201
M.G.L.c. 111, §122	325	M.G.L.c. 266, §101	643
M.G.L.c. 111, §150A	576	M.G.L.c. 266, §102A	643
M.G.L.c. 111, §15B	1	M.G.L.c. 266, §120D	167
M.G.L.c. 136, §6	457, 460	M.G.L.c. 267A, §2	215
M.G.L.c. 136, §6(50)	174, 435, 670	M.G.L.c. 271, §49	413
M.G.L.c. 136, §13	457	M.G.L.c. 276, §3	272, 351
M.G.L.c. 149, §29C	46	M.G.L.c. 279, §25	225
M.G.L.c. 149, §148	65, 174, 316, 321, 371, 532, 584	Mass.R.Civ.P. §6(b)	436
M.G.L.c. 149, §149	481	Mass.R.Civ.P. §23(d)	481
M.G.L.c. 149, §150	371, 435, 549	Mass.R.Civ.P. §45(f)(3)	646
M.G.L.c. 149, §152A	249	Mass.R.Civ.P. §52(b)	436
M.G.L.c. 149, §190	99	Mass.R.Crim.P. §30(c)(2)	32
M.G.L.c. 151, §1A	99, 399, 549, 584	Mass.R.Crim.P. §36(b)(2)(B)	3

**CUMULATIVE INDEX FOR VOLUME 34, ISSUES 1-32**

**Accord and Satisfaction, Settlement Agreements**

Client Bears the Risk If an Attorney in a Collection Action Reaches a Settlement Without Authorization, Delivers a Release Bearing a Forged Signature and Absconds with the Funds Received from the Opponent, 344

Structured Settlement Agreements, Petition for Approval of Structured Settlement Agreement Is Denied Because the Effective Rate of Lost Interest Well Exceeds the Usury Rate, the Discount Rate Exceeds the Amount Normally Applicable to Such Transactions, and the Assignee Is Unrepresented, 311

**Actions**

**Class Actions**

Class Members, Class Action May Be Prosecuted in Massachusetts State Court on Behalf of Nonresidents Only If Each Nonresident Member Has Sufficient Contacts with This State to Meet the International Shoe Standard for Longarm Jurisdiction, 610

Defense Solicitation of Settlements with Individual Class Members, Court May Enjoin an Employer from Soliciting Releases of Claims Being Asserted in a Pending Wage Act Class Action, Sought as a Condition for Employee Participation in a Tendered Stock Option Buyout Program, 481

**In General**

Lack of Evidence of Interest by Other Class Members Does Not Provide Grounds for Denying Class Certification, 647

Opinion Recognizes an Additional Requirement of Class Certification: Ascertainability of Class Status, 534

Tender of the Maximum Damages That Could Be Recovered by the Plaintiff in a Putative Class Action Does Not Moot the Action, Whether the Tender Is Accepted or Not, 647

Misc. Cases, Final Judgment Entered in a Class Action Brought in an Illinois State Court Is Enforceable in Massachusetts, 198

Predominance of Common Issues, Class Certification Is Denied with Respect to Negligent and Intentional Misrepresentation Claims Because It Will Be Necessary to Make Individual Determinations as to Each Class Member on the Issues of Reliance on the Alleged Misrepresentations and the Reasonableness of that Reliance, 647

Procedural Matters, Motion to Strike May Be Used to Challenge the Feasibility of Class Certification Even Before Discovery, But Only Under Unusual Circumstances, 534

Remedies, Judgment Obtained in a Collection Action Against a Debtor by an Unlicensed Debt Collector Is Void Rather Than Voidable and Therefore May Be Challenged in a Subsequent Class Action Against the Debt Collector for Violations of the Mass. Fair Debt Collection Act, 251

Derivative Actions, Misc. Cases, Opinion Crafts a Remedy in an Attempt to Avoid the Inequity of Allowing Culpable Shareholders to Be Benefited by an Award of Damages to a Corporate Plaintiff, 390

Survival, Misc. Cases, Chapter 93A Claim Survives an Individual Claimant's Death, 275

#### **Administrative Agencies**

Appeal to Court, Procedural Matters, Challenge to an Agency's Implementation of Its Statutory Obligations Is Not Rendered Moot by the Agency's Voluntary Compliance with the Plaintiff's Demands, Unless There Has Been a Material Change in the Agency's Behavior and that Change Has Been Judicially Sanctioned, 652

#### **Open Meeting Law**

##### **Executive Sessions**

Public Board Going into Executive Session to Discuss Litigation Strategy Is Not Required in All Cases to Disclose the Identity of the Claimant, 521

Public Board Going into Executive Session to Discuss Union Negotiation Strategy Is Not Required in All Cases to Disclose the Identity of the Particular Union Involved in the Negotiations, 521

Misc. Cases, Neither Participation by a Single Member of a Zoning Board in a Mediation to Resolve a Pending Zoning Appeal, without Public Notification of the Mediation, Nor the Board's Subsequent Adoption of a Proposed Settlement in Executive Session Violates the Open Meeting Law, 503

Public Notice, Single Member of a Public Board Who Attends a Mediation Session as a Representative of the Board But Without Decision-making Authority Is Not a "Subcommittee" and Therefore Public Notice of the Mediation Session Is Not Required, 10

#### **Procedure Before Agency**

Failure to Timely Act on a Permit Application, Municipal Board of Health's Failure to Timely Act on an Application for Approval of a Proposed Site for a Waste Disposal Facility Is an Implied Denial Entitling the Applicant to Judicial Review and, If There Is No Evidence in the Record that the Proposed Site Poses a Danger to Public Health or the Environment, to Judicially-ordered Approval, 576

#### **Misc. Cases**

Provider of Medical Services Under the MassHealth Plan Does Not Have a Constitutionally-protected Property Interest in Continued Participation in the Plan, 21

Suspension of a Healthcare Provider's Participation in the MassHealth Care Plan Pending Resolution of Criminal Charges for Sexual Assaults of Female Patients Does Not Violate the Provider's Contract with the Plan, 21

Unsuccessful Applicant for Registration as an Operator of a Medical Marijuana Dispensary Is Not Entitled to Offset Fees Paid on a Denied Application Against Future Fees Incurred in a New Application Under Revised Department Regulations, 93

#### **Regulations, Adoption Procedures**

Complaint Is Withdrawn as Moot in an Action in Which the Department of Revenue's Attempt to Impose on Out-of-state Internet Vendors an Obligation to Collect the Massachusetts Sales and Use Tax Owed by In-state Customers Was Declared Invalid, 423

Department of Revenue Is Not Exempt from the APA Requirement that Rules of General Application Be Adopted Through the Act's Formal Adoption Procedure for Regulations, 419

Department of Revenue's Attempt to Impose on Out-of-state Internet Vendors an Obligation to Collect the Massachusetts Sales and Use Tax Owed by In-state Customers, Without Following APA Procedures for the Adoption of a Regulation, Is Invalid, 419

#### **Agency, Liability of Principal to Third Parties**

Independent Contractors, UCC Imposes Vicarious Liability on a Secured Creditor for Any Breach of Peace by an Independent Contractor Hired to Repossess an Automobile from a Debtor, 183

Misc. Cases, In Pari Delicto Rule of Equity Prohibits a Principal from Recovering from a Third Party for Loss Incurred as a Result of an Agent's Fraud If the Fraud Benefited the Employer in Any Way, 221

#### **Arbitration**

Application to Compel or Stay, Misc. Cases, Party Seeking to Enforce an Electronically-signed Arbitration Clause Contained in a Recreational Facility Waiver Form Has the Burden of Establishing that the Waiver Was Reasonably Communicated to a Patron Suing for Injuries, 586

Appraisals, Misc. Cases, Opponent's Failure to Disclose a Prior Contractual Relationship with the Business Selected to Conduct an Appraisal Does Not Justify a Judicial Invalidation, in the Absence of Any Evidence of Influence on the Particular Individual that Conducted the Appraisal, 357

Arbitrability, Waiver, Court Is Presumed to Have Exclusive Jurisdiction Over the Preliminary Procedural Issue of Whether a Party Has Waived a Contractual Right to Arbitration by Engaging in Substantial Litigation Before Moving to Compel Arbitration, 377

Right to, Waiver, Defendant Waives the Right to Arbitrate by Engaging in Substantial Litigation for Over a Year Before Moving for Arbitration, 377

#### **Attachments, Reach and Apply, Misc. Cases**

Creditor May Prosecute a Reach and Apply Action Without First Exhausting Other Legal Remedies, 437

Third-party Interests in a Debtor's Assets Have No Bearing on a Creditor's Reach and Apply Action, 437

#### **Attorneys**

##### **Attorney/client Privilege**

##### **Corporate Communications with Counsel**

Massachusetts Follows the Majority Rule that the Attorney/client Privilege May Be Asserted by a Corporation in Litigation with a Former Officer, Concerning Communications to Which the Officer Was a Party While in the Corporation's Employment, 352

Massachusetts Follows the Majority Rule that the Attorney/client Privilege May Be Asserted by a Corporation in Litigation with a Former Officer, Concerning Communications to Which the Officer Was a Party While in the Corporation's Employment, 356

- Procedural Matters, Choice of Law Concerning the Availability of the Attorney/client Privilege for Communications Between Counsel and the Agents of a Corporation Are Governed by the Law of the State in which the Corporation's Principal Office Is Located, Rather than the State of Incorporation, 352
- Waiver, Assertion of a Counterclaim for Breach of Fiduciary Duty Against a Former Corporate Officer Waives a Corporate Defendant's Attorney/client Privilege With Respect to Communications Needed for the Preparation of the Officer's Defense, 613
- Attorney/client Relationship, Engagement Letter, Engagement Letter Between a Law Firm and an as Yet Unformed Limited Liability Company Establishes an Attorney/client Relationship Between the Attorney and Whatever LLC Is Eventually Formed, Even If the Name of the LLC Is Different from the Name Stated in the Engagement Letter, 608
- Authority, In General, Client Bears the Risk If an Attorney in a Collection Action Reaches a Settlement Without Authorization, Delivers a Release Bearing a Forged Signature and Absconds with the Funds Received from the Opponent, 344
- Code of Ethics, Conflict of Interest, Estate Planning Representation of an Officer of a Corporate Client Terminates Upon the Conclusion of Each Round of Planning; Therefore the Firm Is Not Barred from Representing the Corporation in a Later Action Brought by the "Former" Client Against the Corporation, 429
- Code of Professional Responsibility, Client Records, Opinion Denies a Law Firm's Request for a Preliminary Injunction Ordering the Return of Specialized Databases Removed by a Group of Former Employees Who Have Established a New Firm, Because the Data May Be Required with Respect to the New Firm's Representation of Clients of the Old Firm Who Have Retained the New Firm, 109
- Ethics, Misc. Cases, Assignment of a Judgment to an Attorney Who Formerly Represented the Judgment Creditor During Postjudgment Negotiations to Compromise the Judgment Is Neither Against Public Policy Nor Violates the Rules of Professional Conduct, 424
- Automobiles**, Towing, Regulation
- Federal Preemption of Local Regulation of Motor Carriers Does Not Apply to the Involuntary Towing of Motor Vehicles, 167
- Primary Jurisdiction Doctrine Does Not Apply to an Action Seeking Relief Under Chapter 93A, Including a Chapter 93A Action Based on Violations of the State Towing Laws, 167
- Statutory Penalty for Violations of the State Towing Laws Is Not an Exclusive Remedy and Therefore Does Not Bar Recovery of Compensatory Damages, 167
- Banks and Banking**, Secured Commercial Loans, Misc. Cases, No Relief Is Available from a Lending Bank's Unreasonable Declaration of Default on a Secured Lending Transaction Based on a Relatively Modest and Unintended Breach That Was Promptly Cured; While the Bank's Conduct May Have Been Unreasonable, It Was Consistent with the Terms of the Loan and Therefore Not Actionable, 638
- Charities**, Gifts, Enforcement of Restrictions, Grantor of Land to a Charitable Organization Subject to a Conservation Restriction Has Standing to Enforce the Restriction Against a Subsequent Grantee, 52
- Choice of Law**, Contracts, Misc. Cases, Choice of Law Provision in an Agreement Being Contested on Grounds that the Agreement Had Been Procured Through Fraud Is Not Enforceable Until After the Validity of the Agreement Is Resolved, 561
- Church and Ecclesiastical Societies**, Church Organization, Ownership of Property, Presbyterian Church (USA) Is a Hierarchical Church and Therefore Judicial Jurisdiction Over Property Disputes Between Local Churches and the Parent Church Is Limited to Enforcement of Church Decisions, 552
- Civil Rights**, Massachusetts Civil Rights Act
- Misc. Cases, Refusal by a Public Homeless Shelter to Admit Any Person Who Legally Possesses Marijuana Pursuant to a Doctor-issued Prescription Violates the Mass. Civil Rights Act, 416
- Threats, Intimidation or Coercion
- Allegations that a State Official Refused to Allow an Employee to Leave the Official's Office Until the Employee Complied with an Unjustified Demand for Resignation Satisfies the "Threats, Intimidation or Coercion" Element of a Claim under the Mass. Civil Rights Act, 27
- "Threats, Intimidation or Coercion" Element of a Claim Under the Mass. Civil Rights Act Is Not Defeated by Evidence that the Plaintiff Rebuffed the Alleged Threatening, Intimidating or Coercive Conduct, 27
- Civil Service**, Hiring, Misc. Cases, Resolution of Criminal Charges Through the Entry of a "Continuation Without a Finding" on Felony Charges Does Not Constitute a "Conviction" Within the Meaning of the Statute Prohibiting the Appointment of a Felon as a Police Officer, 657
- Colleges and Universities**, Liabilities, Injury to Students, College Does Not Have a Duty to Protect a Student from Being Criminally Convicted for Committing an Assault After Becoming Intoxicated on School Premises, 579
- Computer Law**, System Security, Hacking, Claim Against a Medical Provider for Negligently Failing to Prevent the Hacking of Confidential Patient Records Requires an Allegation of an Actual Unauthorized Access of the Plaintiff's Records, or a High Risk Access by the General Public, 387
- Conflict of Laws**
- Contracts, Choice of Law Clauses, Contractual Choice of Law Clause Applies Only to Substantive and Not Procedural Issues, 304
- Limitations of Actions, Misc. Cases, Massachusetts Rather Than Delaware Statute of Limitations Applies to a Dispute Between Members of a Delaware LLC that Primarily Operates in Massachusetts, 304
- Misc. Matters, Attorney/client Privilege, Choice of Law Concerning the Availability of the Attorney/client Privilege for Communications Between Counsel and the Agents of a Corporation Are Governed by the Law of the State in which the Corporation's Principal Office Is Located, Rather than the State of Incorporation, 352
- Constitutional Law**
- Comity, Misc. Cases, Massachusetts Need Not Recognize the Sovereign Immunity of a Pennsylvania State Agency that Services Student Loans in this State, Because a Comparable Agency of this State Would Not Be Accorded Immunity Under Massachusetts Law, 616
- Constitutionally Protected Interests, Misc. Cases, Contract Purchaser of Real Estate Who Is Prosecuting a Zoning Application on Behalf of the Property Owner Lacks Standing to Raise Constitutional Issues on Appeal, 567
- Double Jeopardy Clause, In General, Dismissal on Double Jeopardy Grounds Following a Mistrial May Be Based Only on Misconduct by the Presiding Judge or the Prosecution; Conduct by Other Government Officials Unrelated to the Trial Cannot Be the Basis for a Double Jeopardy Dismissal, 405
- Due Process Clause, Constitutionally-protected Interests, Provider of Medical Services Under the MassHealth Plan Does Not Have a Constitutionally-protected Property Interest in Continued Participation in the Plan, 21

Equal Protection, Misc. Cases, Improper Peremptory Dismissal of a Juror on Racial Grounds Violates the Potential Juror's Constitutional Rights as well as Those of Any Affected Party, 395

**First Amendment, Anti-SLAPP Suit Act**

Abuse of Process Counterclaim Asserted in a Legal Malpractice Action, Based on a Claim that the Malpractice Claim Is Part of a Scheme to Avoid Payment of Fees, Is Not Barred by the Anti-SLAPP Suit Statute, 511

Act Does Not Apply to an Action Brought by an Employer Against a Former Employee for an Unauthorized Removal of Confidential Information Upon Termination, Even Though the Information Was Taken for Use in the Employee's Prosecution of an Employment Discrimination Claim, 645

Counterclaims in a Misappropriation of Trade Secrets Action for Tortious Interference with Business Relationships, Abuse of Process and Violation of Chapter 93A Are Not Barred by the Anti-SLAPP Suit Statute, 504

Opinion Applies the SJC's Recently Announced Exception to the Anti-SLAPP Suit Act for Claims Which Are Primarily Brought for the Legitimate Purpose of Obtaining Judicial Relief, 550

Privilege Against Self-incrimination, Misc. Cases, Defendant Cannot Be Compelled to Produce a PIN Number Restricting Access to Information on a Cell Phone Found in the Defendant's Possession at Arrest, If the Fact of Ownership Would Be Incriminating, 287

Right to a Fair Trial, Open Courtroom, Criminal Defendant Convicted at a Trial at Which Spectators Were Excluded from the Courtroom During Voir Dire Is Entitled to a New Trial Without the Need to Prove Prejudice, Unless Counsel Was Aware of and Failed to Object to the Exclusion of Some Spectators, 32

Right to Privacy, Misc. Cases, Opinion Holds that a Court May Exercise Jurisdiction Over an Action Seeking a Declaration that Physician-assisted Suicide Is Legal in Massachusetts, 239

Search and Seizure Clause, Misc. Cases, Statute Requiring that All Sex Offender Parolees Wear a GPS Device as a Condition of Parole Does Not Violate the Search or Seizure Clause of Either the Federal or State Constitution, 201

**Contracts**

Actions, Limitations of Actions, Statute of Limitations for a Contractor's Claim Against a Property Owner for Past Services Does Not Commence Until the Property Owner Has Made a "Clear and Unequivocal Repudiation" of Any Obligation to Pay, 338

**Construction**

**Choice of Law Clause**

Choice of Law Clause Requiring that Massachusetts Law Govern a Noncompete Agreement Between a Massachusetts Employer and a California Employee Is Unenforceable as Against Public Policy, 266

Choice of Law Provision in an Agreement Being Contested on Grounds that the Agreement Had Been Procured Through Fraud Is Not Enforceable Until After the Validity of the Agreement Is Resolved, 561

Contractual Choice of Law Clause Applies Only to Substantive and Not Procedural Issues, 304

**Forum Selection Clauses**

Forum Selection Clause Requiring that Any Dispute Over a Noncompete Agreement Between a Massachusetts Employer and a California Employee Be Litigated in Massachusetts Is Unenforceable, 266

Forum Selection Clause Stated in a Submitted Quotation But Not Otherwise Discussed During Negotiations Leading to an Oral Agreement Is Not Enforceable, 263

Limitation of Liability Clauses, Clause of a Guaranty Agreement Limiting Liability to a Fixed Amount Does Not Apply to Damages on a Related Chapter 93A Claim Based on Conduct of a Tortious Rather than Contractual Nature, 112

Limitations of Remedies, Clause of a Contract for Supplying and Maintaining a Complex Computer System that Limits Remedies for Breach of Contract to a Demand to Cure, an Offset of Damages Against Future Monthly Service Fees, and Termination, Bars Recovery of Any Damages Following Termination, Even Following a Termination for Failure to Cure, 278

**Misc. Cases**

Clause of an Agreement Between a Physician's Group and a Medical Provider Network, Granting the Network the Exclusive Right to Represent the Group with Respect to Negotiations with Group Insurers, Does Not Preclude the Group from Negotiating with Other Networks While the Agreement Remains in Effect, 155

Contractual Obligation to Mediate Disputes Before Commencing Suit Does Not Require Continuing Demands for Mediation with Respect to a Dispute Involving Continuing Discrete Occurrences of Similar Alleged Acts of Misconduct, 514

**Noncompete Agreements**

Choice of Law Clause Requiring that Massachusetts Law Govern a Noncompete Agreement Between a Massachusetts Employer and a California Employee Is Unenforceable as Against Public Policy, 266

Employer's Nine-month Delay in Enforcing a Claimed Noncompete Agreement Against a Former Employee Provides Evidence of a Lack of Irreparable Harm for Purposes of Determining Whether to Grant the Employer's Application for a Temporary Injunction, and, Conversely, Evidence of the Existence of Irreparable Harm for the Employee If the Application Were Granted, 228

Forum Selection Clause Requiring that Any Dispute Over a Noncompete Agreement Between a Massachusetts Employer and a California Employee Be Litigated in Massachusetts Is Unenforceable, 266

Noncompete Agreement Between an Employer and an Attorney Is Unenforceable to the Extent It Violates the Rule of Professional Conduct that Restricts Noncompete Agreements with Attorneys, 176

Noncompete Covenant with an Employee Is Justified on the Basis of Customer Goodwill Only to the Extent the Covenant Seeks to Protect the Employer's Goodwill and Not to the Extent It Seeks to Prevent an Employee from Exploiting the Employee's Own Goodwill, 176

One-year Noncompete Covenant with an Employer Engaged in a Rapidly Changing Industry May Be Unreasonable Because Information Held by a Departing Employee May Quickly Become Commonly Known in the Relevant Market, 176

"Termination for Convenience" Clauses, "Termination for Convenience" Clause Does Not Authorize Termination Solely to Take Advantage of a Lower Price, 164

**Construction Contracts**

In General, Massachusetts Has Adopted the “Cardinal Change” Theory of Recovery for Disputes Over Private Construction Contracts, But the Theory Does Not Authorize the Recovery of Consequential Damages, 171

Indemnification Clauses, Statute Voiding Clauses of Construction Contracts that Impose Indemnification Obligations on Subcontractors Regardless of Fault Does Not Apply to “Duty to Defend” Clauses, 46

Misc. Cases, State Agency Sponsoring an Economic Stimulus Project to Provide Expanded Internet Service to Rural Areas Is Engaged in a Governmental Rather than Private Pursuit and Therefore May Not Recover on a Chapter 93A Claim Based on Fraud by the Contractor, 142

**Damages**

Consequential Damages, Massachusetts Has Adopted the “Cardinal Change” Theory of Recovery for Disputes Over Private Construction Contracts, But the Theory Does Not Authorize the Recovery of Consequential Damages, 171

Economic Loss Rule, Rule Does Not Apply to Claims for Negligent Misrepresentation, or to Negligence Claims Against a Fiduciary, 573

Effect and Legality, Liability Waivers, Party Seeking to Enforce an Electronically-signed Arbitration Clause Contained in a Recreational Facility Waiver Form Has the Burden of Establishing that the Waiver Was Reasonably Communicated to a Patron Suing for Injuries, 586

Formation, Acceptance, Forum Selection Clause Stated in a Submitted Quotation But Not Otherwise Discussed During Negotiations Leading to an Oral Agreement Is Not Enforceable, 263

Noncompete Agreements, Misc. Cases, Noncompete Clause Executed in Connection with the Acquisition of a Business that Prohibits the Selling Owner from Competing with the Buyer for Five Years After Termination of Employment Is Enforceable, Even Following a Termination Without Cause, 7

**Public Works Contracts**

Minority-Business Programs, Opinion Partially Enjoins the Commonwealth’s Office of Supplier Diversity from Expanding the Minority-owned Business Program to Include Portuguese-owned Businesses, 652

Misc. Cases, Reliance on a Government Contract Signed Without Statutory Authority Is Unreasonable as a Matter of Law, Thereby Precluding Any Recovery Under Theories of Either Equitable Estoppel or Misrepresentation, 475

“Termination for Convenience” Clauses, “Termination for Convenience” Clause Does Not Authorize Termination Solely to Take Advantage of a Lower Price, 164

Quasi Contracts, Unjust Enrichment, Unjust Enrichment Claim Is Subject to the Six-year Statute of Limitations for Breach of Contract Claims, 304

Rescission, Mistake, Under Delaware Law, Rescission on Grounds of Unilateral Mistake Is Not Available If the Mistake Could Have Been Avoided by Using Reasonable Care, Even with Respect to a Claim that an Agreement Had Been Fraudulently Induced, 561

**Third-party Beneficiaries**

In General, Third-party Beneficiary Claim Requires “Clear and Direct” Evidence that the Primary Parties Intended to Confer a Benefit on the Third-party Claimant, 528

Misc. Cases, Shareholders of a Closely Held Corporation that Sell the Corporation’s Assets Pursuant to an Agreement Requiring that Installment Payments Be Made to the Selling Corporation Lack Standing to Prosecute a Collection Action Either as a Direct Party to or Third-party Beneficiary of the Agreement, 360

Uniform Commercial Code, Misc. Cases, Contract for the Installation and Maintenance of a Computer System Constitutes a Service Contract Rather than a Sale of Goods and Therefore Is Not Subject to the UCC, 278

**Corporations**

**Actions**

Class Actions, Removal of Jurisdiction Over Large Class Actions Imposed by the 1998 Amendments to the Federal Securities Act of 1933 Applies Only to Class Actions Brought in Federal Court and Not to Class Actions Brought in State Courts, 78

**Derivative Actions**

“Continuing Wrong” Exception to the General Rule that a Derivative Action May Be Brought Only by Shareholders Who Owned Shares at the Time of the Alleged Misconduct Does Not Apply to a Claim that a Corporate Officer Failed to Enforce a Debt Still Owed by the Officer to the Corporation, 41

“Fraudulent Concealment” Doctrine Does Not Avoid Application of the General Rule that a Derivative Action May Be Brought Only by Shareholders Who Owned Shares at the Time of the Alleged Misconduct, 41

Majority Shareholder’s Tender of a Buyout Offer to a Minority Shareholder, Coupled with a Withdrawal of the Offer When Faced with a Request for Corporate Records that Might Reveal that the Offered Price Was Depressed by the Majority Owner’s Long-term Diversion of Corporate Profits, Presents a Claim of Direct Harm to the Minority Shareholder and Therefore May Be Prosecuted as a Direct Rather Than Derivative Action, 493

Massachusetts Recognizes the “Continuing Wrong” Exception to the General Rule that a Derivative Action May Be Brought Only by a Shareholder Who Owned Shares at the Time of the Alleged Misconduct, 41

Procedural Matters, Massachusetts Rather Than Delaware Statute of Limitations Applies to a Dispute Between Members of a Delaware LLC that Primarily Operates in Massachusetts, 304

Directors, Election, Opinion Discusses the Impact on Dissenting Shareholder Rights of a Bylaw Requiring that Incumbent Directors Remain in Office Until a Replacement Is Elected by a Majority of All Outstanding Shares (Not Just a Majority of Voting Shares), Because of the Difficulty in Obtaining Sufficient Proxies in Contested Elections, 95

**Limited Liability Companies**

Member Obligations, LLC Agreement May Limit and Even Eliminate the Fiduciary Duties Owed Between LLC Members, But Only If the Limitation Is Clearly and Expressly Stated in the Agreement, 500

**Membership Agreements**

Clause Granting Each LLC Member the “Full, Exclusive and Complete” Authority to Control the Affairs of the Company Does Not Permit Each Member to Unilaterally Manage the LLC’s Affairs Independent of Other Members, But Rather Is Intended to Permit Third Parties to Rely on the Authority of Individual Members to Act on the LLC’s Behalf, 193

Clause of a Membership Agreement Allowing Any Member to Engage in Activities in Competition with the LLC Is Valid and Enforceable, 304



- Pre-incorporation Transactions, Engagement Letter Between a Law Firm and an as Yet Unformed Limited Liability Company Establishes an Attorney/client Relationship Between the Attorney and Whatever LLC Is Eventually Formed, Even If the Name of the LLC Is Different from the Name Stated in the Engagement Letter, 608
- Reorganization
- Merger, Noncompete Period Under a Contract Acquired Through the Merger of Two Businesses Does Not Commence Until the Employee Separates from Service with the Buyer, 153
- Sale of Assets, Noncompete Period Under a Contract Assigned to a Buyer in a Corporate Acquisition that Was Accomplished Through an Asset Sale Commences Immediately Upon the Sale, Because the Employee/Obligor's Service with the Obligee Terminated at that Time, 148
- Sale of Assets, Misc. Cases, Shareholders of a Closely Held Corporation that Sell the Corporation's Assets Pursuant to an Agreement Requiring that Installment Payments Be Made to the Selling Corporation Lack Standing to Prosecute a Collection Action Either as a Direct Party to or Third-party Beneficiary of the Agreement, 360
- Securities, Securities Fraud Actions
- Allegations that a Single-product Pharmaceutical Manufacturer Failed to Release Negative Indications from a Double-blind Clinical Trial that Was Ongoing When a Public Offering Occurred Fail to State a Securities Fraud Claim Because Such Early Results Are Available Only to a Special Independent Committee and Therefore Could Not Have Been Known by the Corporation or Its Insiders, 78
- Opinion Denies a Motion to Stay Two Consolidated Class Actions Pending in State Court in Favor of a Similar But Later-filed Class Action Pending in the Massachusetts Federal District Court, 196
- Removal of Jurisdiction Over Large Class Actions Imposed by the 1998 Amendments to the Federal Securities Act of 1933 Applies Only to Class Actions Brought in Federal Court and Not to Class Actions Brought in State Courts, 78
- Securities Fraud
- Procedural Matters, Standing Is Established in a Securities Fraud Case Arising Out of a Secondary Stock Offering by an Allegation that the Plaintiff's Stock Was Purchased on the Day of the Offering at the Offering Price, 49
- Reliance, Summary Judgment Is Rarely Warranted on a Claim by an Investor for False Representations by an Investment Management Firm, Because Generally There Is an Issue of Fact as to Whether the Investor Reasonably Relied on the Alleged Misrepresentations, 67
- Securities Regulation
- Broker Regulation, Massachusetts Superior Court Has No Jurisdiction to Adjudicate an Application for Expungement of Information Contained in FINRA's Depository of Complaints Against Securities Brokers and Agents, in Spite of a FINRA Rule Inviting Such an Adjudication, 122
- Secondary Offerings, Opinion Dismisses Plaintiffs from a Class Action Arising Out of a Secondary Stock Offering Based on the Inability of the Plaintiffs to Directly Trace Their Market Purchase of Securities Directly to the Secondary Offering, 587
- Shareholders
- Fiduciary Duties
- Claim Against an LLC Member for Fraudulently Diverting LLC Assets to a Competing Business Does Not Arise in "Trade or Commerce" and Therefore Does Not Give Rise to Liability Under Chapter 93A, 304
- Delaware Law Does Not Impose a Fiduciary Duty on Majority Owners of a Corporate Entity, 304
- Piercing the Corporate Veil, Buyer of Assets from a Closely Held Corporation Cannot Rely on a Covenant Not to Sue Executed only by the Selling Corporate Entity and Not Its Shareholders, to Bar an Action Brought by the Shareholders Individually, 146
- Stock Restriction Agreements, Agreement Among All Shareholders of a Closely Held Corporation Prohibiting Any Inter Vivos Sale of Shares, and Requiring that All Shares Be Sold to the Corporation at a Shareholder's Death, Applies to Shares Issued in the Future as Well as Those Outstanding When the Agreement Was Formed, 41
- Correctional Institutions**, Disciplinary Hearings, Misc. Cases, Failure at an Inmate Disciplinary Hearing to Comply with the Inmate's Request to Make Available the Only Direct Witness to the Alleged Misconduct Requires Dismissal of a Guilty Finding, 469
- Costs**, In General, Misc. Items, Costs for Photocopying, Legal Research Expense and Transcripts Are Normally Included in the Allowed Hourly Rate as an Overhead Charge But May Be Individually Itemized in an Award Imposed as a Sanction, 358
- Courts**, Small Claims Court, Judgments, Res Judicata Effect of a Small Claims Judgment Bars the Plaintiff from Asserting Any Other Claim Arising Out of the Same Transaction as a Counterclaim in a Later Action Brought by the Defendant in the Small Claims Matter, 666
- Criminal Law and Procedure**
- Evidence
- Disposition of Assets Held for Evidence, Limitations Period for an Action for the Return of Property Seized During the Execution of a Search Warrant Does Not Commence Until the Commonwealth Initiates an Attempt to Make a Return, 272, 351
- Eye Witness Identifications, Opinion Presents a Useful Application of the SJC's Recently Adopted Rule that Field Eye Witness Identifications Which Are Somewhat Suspect But Not So Suspect as to Create a Substantial Risk of Misidentification, Must Now Be Subjected to a Pre-trial Balancing Test to Determine Whether the Probative Value of a "Suspect" Identification "Substantially Outweighs" the Danger of Unfair Prejudice to the Defendant, 461
- Extradition, Procedural Matters, Extradited Individual Lacks Standing to Challenge the Commonwealth's Attempt to Obtain Permission from a Sending State to Prosecute Additional Crimes Not Identified in an Original Extradition Request, 480
- Guilty Plea, Resolution of Criminal Charges Through the Entry of a "Continuation Without a Finding" on Felony Charges Does Not Constitute a "Conviction" Within the Meaning of the Statute Prohibiting the Appointment of a Felon as a Police Officer, 657
- Money Laundering, In General, Conviction Under the Mass. Money Laundering Statute Based on a Defendant's Possession of a Substantial Sum of Money Accompanied by a Large Quantity of Drugs Requires Proof of an Intent to Use the Money to Further a Criminal Activity; Possession Alone Is Insufficient to Prove the Crime of Money Laundering, 215

- Parole, Conditions, Statute Requiring that All Sex Offender Parolees Wear a GPS Device as a Condition of Parole Does Not Violate the Search or Seizure Clause of Either the Federal or State Constitution, 201
- Particular Crimes, Possession of an Incendiary Device, Misc. Cases, Charge of Possession of an Incendiary Device Requires Proof that the Device Was Capable of Being Ignited, 643
- Probation, Revocation, Evidence Unlawfully Obtained During a Valid Stop Must Be Suppressed at a Subsequent Probation Revocation Hearing, If the Officers Were Aware of the Detainee's Probation Status at the Time of the Search, 294
- Sentence, Enhanced Penalty for "Habitual Criminals", Prior Convictions Relied on to Support the Imposition of a Heightened Sentence Under the Habitual Criminal Statute Must Involve Separate Events and Not Be Part of a Single Criminal "Spree" or "Episode," 225
- Trial
- Open Courtroom, Criminal Defendant Convicted at a Trial at Which Spectators Were Excluded from the Courtroom During Voir Dire Is Entitled to a New Trial Without the Need to Prove Prejudice, Unless Counsel Was Aware of and Failed to Object to the Exclusion of Some Spectators, 32
  - Speedy Trial Rule, Expert Witness's Intention to Attend a Non-mandatory Professional Training Program on a Scheduled Criminal Trial Date Does Not Render the Expert "Unavailable" Within the Meaning of the Speedy Trial Rule, 3
  - Trial Generally, Mistrial, Dismissal on Double Jeopardy Grounds Following a Mistrial May Be Based Only on Misconduct by the Presiding Judge or the Prosecution; Conduct by Other Government Officials Unrelated to the Trial Cannot Be the Basis for a Double Jeopardy Dismissal, 405
- Death, By Suicide, In General, Opinion Holds that a Court May Exercise Jurisdiction Over an Action Seeking a Declaration that Physician-assisted Suicide Is Legal in Massachusetts, 239**
- Discovery**
- In General, From Third Parties, Opinion Enters a Protective Order Requiring a Party to Pay Up to 50% of Anticipated Outside Costs for a Nonparty, a Software Development Company, to Comply with a Substantial Document Production Request, Imposing All Further Costs on the Third Party, 527
  - Particular Matters, Independent Physical Examination, PIP Claimant Required to Submit to a Physical Examination by an Insurer-selected Physician Is Entitled to Have Counsel in Attendance or Alternatively to Have the Examination Video Recorded, 244
  - Privileges, Attorney/client Privilege
    - Assertion of a Counterclaim for Breach of Fiduciary Duty Against a Former Corporate Officer Waives a Corporate Defendant's Attorney/client Privilege With Respect to Communications Needed for the Preparation of the Officer's Defense, 613
    - Participation in Communications with Counsel Representing Some Family Members by a Sibling Not Represented by that Counsel Will Waive the Attorney/client Privilege with Respect to the Communications, 247  - Subpoena Duces Tecum, Procedural Matters, Party to an Action Lacks Standing to Challenge a Subpoena Duces Tecum Issued to a Nonparty, 646
- Docket, Small Claims Court, Judgments, Res Judicata Effect of a Small Claims Judgment Bars the Defendant from Later Litigating, in Any Other Court, Any Claim Arising Out of the Same Transaction, Even Though Counterclaims Are Not Compulsory in Small Claims Court, 666**
- Driving Under the Influence, Second and Subsequent Violations, Use of Ignition Interlock Devices, Statute Requiring that a Person Convicted of a DUI Violation After a "Previous Suspension" Must Use an Ignition Interlock Device for Two Years Does Not Apply to a First Offender Who Receives Two Simultaneously-entered Convictions, 331**
- Eminent Domain, Reverse Condemnation, Limitations of Actions, Reverse Condemnation Claims Are Subject to a Three-year Limitations Period, 556**
- Employment Law, Mass. Wage Act, Sunday Premium Pay**
- Movie Theater Is Not Required to Pay Time-and-a-half for Sunday Work But Is Required to Pay the Premium for Work on Three Specific Holidays, New Year's Day, Columbus Day and Veteran's Day, 457
  - Movie theaters Are Not Required to Pay Time-and-a-half for Sunday Work and, Contrary to the Court's Earlier Holding, Are Also Not Required to Pay Premium Wages for Any Holiday Work, 460
  - Provision of the Mass. Blue Laws Requiring that Retail Stores Pay Employees Time and Half for Sunday Work Does Not Apply to a Call-in Center that Processes Telephone Orders for Retail Sellers, 670
- Environmental Law**
- Enforcement Actions, In General, Grant of License for the Construction of a Public Jetty Does Not Immunize a Municipality from Liability for Interfering with the Natural Flow of Sand to Privately-owned Down-drift Beaches, 116
  - Solid Waste, Siting of Waste Disposal Facilities, Failure to Timely Act on a Permit Application, Municipal Board of Health's Failure to Timely Act on an Application for Approval of a Proposed Site for a Waste Disposal Facility Is an Implied Denial Entitling the Applicant to Judicial Review and, If There Is No Evidence in the Record that the Proposed Site Poses a Danger to Public Health or the Environment, to Judicially-ordered Approval, 576
  - Tidal Land, In General, Opinion Discusses the Continuing Viability of the "Wharfing" Statutes that Granted Corporate Charters During the Early 1800s for the Commercial Use of Tidal Lands, While Preserving Public Rights and Controls that Remain Viable Today, 73
- Equity**
- In Pari Delicto Doctrine, In General, In Pari Delicto Rule of Equity Prohibits a Principal from Recovering from a Third Party for Loss Incurred as a Result of an Agent's Fraud If the Fraud Benefited the Employer in Any Way, 221
  - Promissory Estoppel, Misc. Cases, Landlord Is Estopped from Claiming that an Oral Agreement to Extend an Existing Lease of One Parcel, to Include an Adjoining Parcel, Is Unenforceable Under the Statute of Frauds, 570
- Estates of Deceased Persons, Claims and Debts, Limitations of Actions, One-year Limitation Period for a Claim Against a Decedent's Estate Brought by a "Creditor of the Deceased" Applies to a Debt That Arose During the Decedent's Life But Became Payable Only After Death; Such a Claim is a Debt Owed by the Decedent and Not a Debt Owed by the Estate, 270**
- Evidence, Relevance, Misc. Cases, Plaintiff's Immigration Status as an Undocumented Foreign Worker Is Irrelevant to the Issue of Diminished Earning Capacity Allegedly Caused by a Workplace Injury, 365**
- Executors and Administrators, Powers and Duties, Person Appointed as a "Late and Limited" Personal Representative of a Decedent's Estate Lacks Standing to Prosecute a Wrongful Death Action on Behalf of the Estate or the Estate Beneficiaries, 547**

**Guaranty**, Guaranty Agreement, Liability Limitation, Clause of a Guaranty Agreement Limiting Liability to a Fixed Amount Does Not Apply to Damages on a Related Chapter 93A Claim Based on Conduct of a Tortious Rather than Contractual Nature, 112

### **Hospitals**

Long-term Care Facilities, Regulation, Mass. Residential Real Property Act Applies to Assisted Living Facilities, Including the Act's Restrictions on Advance Payments of Rent and Damage Deposits, 334

Regulation, Determination of Need for Capital Expenditures, Department of Health's Authority Under the Determination of Need Statute to Approve Substantial Healthcare Construction Projects Includes the Implied Authority to Grant Approval for Preliminary Site Work While a DoN Application Is Pending, 1

### **Injunctions**

Permanent Injunctions, In General, Opinion Discusses Under What Circumstances a Permanent Consensual Injunction May Be Modified by a Court in the Future to Accommodate Changing Circumstances, 671

Preliminary Injunctions, Misc. Cases, Preliminary Injunction May Not Be Granted in Favor of a Creditor to Enjoin the Debtor from Exercising Control Over Its Assets, Because Such an Injunction Is in Effect a Request for a "Creditor's Bill," a Common-law Remedy That Is Only Available Postjudgment, 668

### **Insurance**

Automobile Insurance, PIP Benefits, PIP Claimant Required to Submit to a Physical Examination by an Insurer-selected Physician Is Entitled to Have Counsel in Attendance or Alternatively to Have the Examination Video Recorded, 244

Commercial Liability Coverage, "Garage Operations" Policies, Coverage Under a "Garage Operations" Policy for "Injuries from Garage Operations Other than Ownership, Maintenance, and Use of Owned Vehicles," Extends to Injuries from an Accident Involving a Customer's Vehicle Allegedly Caused by Negligence in Inspecting the Vehicle, 496

#### **Coverage**

In General, General Rule of Construction that an Ambiguity as to Coverage Under an Insurance Policy Should Be Construed in Favor of Coverage Applies Only to Disputes Between an Insurer and an Insured and Not to Disputes Between Insurers, 367

Misc. Cases, Employee's Complaint Against an Employer on a Claim Barred by the Exclusive Remedy Clause of the Workers' Compensation Act Must Be Defended by the Employer's General Commercial Liability Insurer Rather than the Employer's Workers' Compensation Insurer, 367

Environmental Contamination Coverage, Under an Environmental Contamination Policy that Triggers Coverage Upon Receipt of a Notice of Responsibility, Which Notice Was Caused by Contamination Occurring During the Policy Year, Whether a Current Notice Was Caused Solely by Current Contamination or Partially by Pre-policy Contamination Presents an Issue of Fact which Cannot Be Resolved on the Insurer's Motion for Summary Judgment, 498

Fire Insurance Policies, Exclusion for Intentionally-caused Damage, Exclusion of Coverage for Fire Damage Intentionally Caused by a Co-insured Is Unenforceable Against an Innocent Co-insured, 290

General Commercial Liability Coverage, Exclusions, Exception to an Exclusion of a General Commercial Liability Policy for Damage to Personal Property in the Insured's Possession, for Damage to Customer-owned Property, Eliminates the Exclusion and Therefore Allows Coverage of Damage to a Customer's Goods by a Food Processor that Inspects, Packs and Freezes Fresh Products Owned and Marketed by a Food Distributor, 629

Health Insurance, Misc. Cases, Clause of an Agreement Between a Physician's Group and a Medical Provider Network, Granting the Network the Exclusive Right to Represent the Group with Respect to Negotiations with Group Insurers, Does Not Preclude the Group from Negotiating with Other Networks While the Agreement Remains in Effect, 155

#### **Liability Coverage**

Duty to Defend, Liability Insurer May Not Recoup Defense Costs Paid to an Insured Pursuant to a Reservation of Rights, Following a Judicial Determination of No Coverage; However, the Insurer Need Not Honor Payment Requests Pending When the Ruling Was Entered, 185

In General, Massachusetts Limits the Sale of Liability Coverage Based on the Magnitude of an Insured's Misconduct, Only with Respect to Liability for Conduct Committed with a Specific Intent to Cause Harm, and, Even then, Only with Respect to Property Damage Claims, 432

Policy Limits, Insured Defendant's Statutory Duty to Disclose the Limits of Available "Liability Coverage" Does Not Require the Disclosure of Excess or Other Secondary Liability Coverage, 312

Motor Vehicle Insurance, Misc. Cases, Final Judgment Entered in a Class Action Brought in an Illinois State Court Is Enforceable in Massachusetts, 198

Regulation, Mutual Insurance Companies, Opinion Denies a Motion for a Preliminary Injunction to Enjoin a Vote on a Proposal to Convert a Life Insurance Company Owned by Both Private Shareholders, All of Which Are Institutional Banks, and the Company's Policy Holders, into a Mutual Life Insurance Company Only, by Buying Out the Shareholders, 299

### **Interest**

Prejudgment Interest, Contract Actions for Pecuniary Damages, Interest on an Award for Unpaid Overtime Wages May Be Paid on Each Individual Underpayment Commencing on the Date It Occurred, Rather than on the Total Aggregate Damages Commencing on the Date the Action Was Commenced, Even If the Award Is for a Compromised Lump Sum Payment, 532

Usury Statutes, Remedies, Opinion Enforces a Usurious Promissory Note After Reforming the Rate to the Maximum Allowed by Law, Because Neither Party Was Aware that the Stated Rate Was Illegal, the Note Had a Very Short Maturity Date, and Both Parties Clearly Intended a High Rate, 413

**Intoxicating Liquor**, Regulation, Price Controls, Alcoholic Beverage Control Commission's Position that Its Regulation Requiring that Current Retail Prices Reflect Current Wholesale Invoice Prices Has Been Violated by a Retailer's Practice of Reducing Current Prices in Anticipation of Receiving a Rebate at the End of a Wholesaler-sponsored Promotional Period, Is Inconsistent with Legislative Intent and Therefore May Not Be Enforced Against the Retailer, 379

## Judgments

- Assignment, Misc. Cases, Assignment of a Judgment to an Attorney Who Formerly Represented the Judgment Creditor During Postjudgment Negotiations to Compromise the Judgment Is Neither Against Public Policy Nor Violates the Rules of Professional Conduct, 424
- Enforcement, Creditor's Bill, Preliminary Injunction May Not Be Granted in Favor of a Creditor to Enjoin the Debtor from Exercising Control Over Its Assets, Because Such an Injunction Is in Effect a Request for a "Creditor's Bill," a Common-law Remedy That Is Only Available Postjudgment, 668
- Foreign Judgments, Misc. Cases, Final Judgment Entered in a Class Action Brought in an Illinois State Court Is Enforceable in Massachusetts, 198
- Modification, In General, Opinion Discusses Under What Circumstances a Permanent Consensual Injunction May Be Modified by a Court in the Future to Accommodate Changing Circumstances, 671
- Res Judicata, In General
- Res Judicata Effect of a Small Claims Judgment Bars the Defendant from Later Litigating, in Any Other Court, Any Claim Arising Out of the Same Transaction, Even Though Counterclaims Are Not Compulsory in Small Claims Court, 666
  - Res Judicata Effect of a Small Claims Judgment Bars the Plaintiff from Asserting Any Other Claim Arising Out of the Same Transaction as a Counterclaim in a Later Action Brought by the Defendant in the Small Claims Matter, 666

## Jurisdiction

- Forum Non Conveniens, Misc. Cases
- California's Strong Public Policy Against the Enforcement of Nonsolicitation Clauses in Employment Agreements Does Not Justify Dismissal under the Forum Non Conveniens Doctrine of an Action Brought in Massachusetts to Enforce Such an Agreement and to Enjoin Alleged Misappropriations of Confidential Information by Former Employees Who Worked in and Remain Citizens of California, 560
  - Suit Involving a Dispute Over a Noncompete Agreement Between a Massachusetts Employer and a California Employee Should Be Litigated in California Rather than Massachusetts, 266
- In Rem Jurisdiction, Quasi in Rem Action May Be Brought to Collect on a Foreign Judgment Against a Nonresident Without Satisfying the International Shoe Minimum Contacts Standard, 437
- Longarm Jurisdiction
- In General, Quasi in Rem Action May Be Brought to Collect on a Foreign Judgment Against a Nonresident Without Satisfying the International Shoe Minimum Contacts Standard, 437
  - Transacting Business, Massachusetts Longarm Statute Does Not Authorize Jurisdiction Between a Massachusetts Service Provider and a Nevada Customer Where All Contacts Between the Parties Occurred in Nevada, Except for Sending Invoices and Receiving Payments, 263
- Primary Jurisdiction, Misc. Cases, Primary Jurisdiction Doctrine Does Not Apply to an Action Seeking Relief Under Chapter 93A, Including a Chapter 93A Action Based on Violations of the State Towing Laws, 167
- Standing, Misc. Cases, Claim Against a Medical Provider for Negligently Failing to Prevent the Hacking of Confidential Patient Records Requires an Allegation of an Actual Unauthorized Access of the Plaintiff's Records, or a High Risk Access by the General Public, 387

## Jury and Jurors

- Challenges
- Procedural Matters
    - Attorney Need Not Formally Preserve the Right to Appeal a Rejected Challenge to the Racial Makeup of a Jury, 395
    - Challenge on Racial Grounds to the Peremptory Striking of a Juror Requires the Immediate Application of a Formal Burden-shifting Analysis to Determine Whether There Is a Race-neutral Reason for the Juror's Dismissal, 395
- Racial Bias
- Challenge on Racial Grounds to the Peremptory Striking of a Juror Requires the Immediate Application of a Formal Burden-shifting Analysis to Determine Whether There Is a Race-neutral Reason for the Juror's Dismissal, 395
  - Improper Peremptory Dismissal of a Juror on Racial Grounds Violates the Potential Juror's Constitutional Rights as well as Those of Any Affected Party, 395
- Misconduct, Racial Bias, Attorney Need Not Formally Preserve the Right to Appeal a Rejected Challenge to the Racial Makeup of a Jury, 395
- Voir Dire, Misc. Cases, Criminal Defendant Convicted at a Trial at Which Spectators Were Excluded from the Courtroom During Voir Dire Is Entitled to a New Trial Without the Need to Prove Prejudice, Unless Counsel Was Aware of and Failed to Object to the Exclusion of Some Spectators, 32

## Landlord and Tenant

- Lease Agreements
- Misc. Cases, Landlord Is Estopped from Claiming that an Oral Agreement to Extend an Existing Lease of One Parcel, to Include an Adjoining Parcel, Is Unenforceable Under the Statute of Frauds, 570
  - Option of First Refusal, Lessee's Option to Meet Competing Bids When the Property Is Relet at the Expiration of the Lease Does Not Require that Bid Request Specify the Same Lease Term, 603
  - Mass. Residential Real Property Act, In General, Mass. Residential Real Property Act Applies to Assisted Living Facilities, Including the Act's Restrictions on Advance Payments of Rent and Damage Deposits, 334
- Legal Malpractice.** Negotiations on Behalf of a Client, Misc. Cases, Plaintiff Suing for an Attorney's Alleged Negligence in Recommending Acceptance of an Unfavorable Settlement Agreement Must Prove that the Opponent Would Have Agreed to More Favorable Terms, 451

## Licenses, Innkeepers, Maintenance of a Nuisance

- Innkeepers License May Be Revoked for Public Health and Safety Violations Even Though the Violations Are Not Established by Express Board of Health Regulations, 325
- Opinion Upholds a Municipal Board of Health's Decision to Revoke a Motel's License Due to a High Frequency of Calls for Police and Emergency Assistance, a High Crime Rate and a Failure to Take Remedial Steps, 325

## Limitations of Actions

- Computation of Period, Fraudulent Concealment, Fraudulent Concealment Act Extends the Limitations Period for a Breach of Fiduciary Duty Claim Until the Claimant Has Actual Rather than Just Constructive Knowledge of the Claim, 589
- Particular Matters
- Contracts, Contractual Choice of Law Clause Applies Only to Substantive and Not Procedural Issues, 304
  - Eminent Domain, Reverse Condemnation Claims Are Subject to a Three-year Limitations Period, 556
  - Unjust Enrichment, Unjust Enrichment Claim Is Subject to the Six-year Statute of Limitations for Breach of Contract Claims, 304
- Procedural Matters, Choice of Law, Massachusetts Rather Than Delaware Statute of Limitations Applies to a Dispute Between Members of a Delaware LLC that Primarily Operates in Massachusetts, 304

**Master and Servant**

Compensation

Domestic Workers Bill of Rights Act, Manager of a Non-commercial Horse Stable Located on the Defendant's Residential Premises Who Is Paid a Fixed Salary Is Not a "Domestic Worker" and Therefore Not Entitled to Payment at an Hourly Rate for All Hours Worked at the Premises, 99

Mass. Minimum Fair Wage Act, Whether the "Administrative Employee" Exception to an Employer's Duty to Pay Overtime Applies to Entry Level Sales Employees of a Marketer of Student Educational Tours Presents an Issue Fact Which Cannot Be Resolved on the Employer's MSJ, 399

Mass. Wage Act

Employer Is Relieved of the Obligation to Pay Hourly Employees During Meal Breaks Only for Periods During Which an Employee Is Relieved of All Work-related Duties, 65

Manager of a Non-commercial Horse Stable Is an Exempt "Executive" or "Administrative" Employee and Therefore Not Entitled to Overtime Pay, 99

Undocumented Foreign Workers, U.S. Supreme Court's 2002 Holding that the NLRB Cannot Award Back Wages to an Undocumented Foreign Worker Because Such Award Would Violate Federal Immigration Law Does Not Apply to a Claim Against a Tortfeasor for Lost Wages and Earning Capacity Caused by a Workplace Injury, 365

Employment Agreements

Misc. Cases, Contract Between a Town and Its Town Manager Authorizing Termination Without Cause by Two Means, (a) Nonrenewal with Six Months Notice Prior to the Expiration Date or (b) Termination by a Super-majority Vote of the Board with Six Months of Severance Pay, Creates Two Alternate Termination Procedures; the Board Need Not Hold a Hearing or Pay Severance Pay for a Termination Made Under the Nonrenewal Clause, 323

Noncompete Agreements

California's Strong Public Policy Against the Enforcement of Nonsolicitation Clauses in Employment Agreements Does Not Justify Dismissal under the Forum Non Conveniens Doctrine of an Action Brought in Massachusetts to Enforce Such an Agreement and to Enjoin Alleged Misappropriations of Confidential Information by Former Employees Who Worked in and Remain Citizens of California, 560

Choice of Law Clause Requiring that Massachusetts Law Govern a Noncompete Agreement Between a Massachusetts Employer and a California Employee Is Unenforceable as Against Public Policy, 266

Employer's Nine-month Delay in Enforcing a Claimed Noncompete Agreement Against a Former Employee Provides Evidence of a Lack of Irreparable Harm for Purposes of Determining Whether to Grant the Employer's Application for a Temporary Injunction, and, Conversely, Evidence of the Existence of Irreparable Harm for the Employee If the Application Were Granted, 228

Forum Selection Clause Requiring that Any Dispute Over a Noncompete Agreement Between a Massachusetts Employer and a California Employee Be Litigated in Massachusetts Is Unenforceable, 266

Noncompete Agreement Between an Employer and an Attorney Is Unenforceable to the Extent It Violates the Rule of Professional Conduct that Restricts Noncompete Agreements with Attorneys, 176

Noncompete Agreement that a Long-term Employee Was Forced to Sign as a Condition of Continued Employment Is Not Voidable on Grounds of Economic Duress, 217

Noncompete Covenant with an Employee Is Justified on the Basis of Customer Goodwill Only to the Extent the Covenant Seeks to Protect the Employer's Goodwill and Not to the Extent It Seeks to Prevent an Employee from Exploiting the Employee's Own Goodwill, 176

One-year Noncompete Covenant with an Employer Engaged in a Rapidly Changing Industry May Be Unreasonable Because Information Held by a Departing Employee May Quickly Become Commonly Known in the Relevant Market, 176

Separation Agreements, Requirement that a Waiver of Wage Act Claims Contained in an Employee Separation Agreement Contain Explicit References to the Wage Acts Is Satisfied by a Release that Explicitly Refers to at Least One Wage Act and Clearly States that the Agreement Contains a General Statement that Executing the Agreement Will Waive Some Rights, 584

Employment Contracts, Noncompete Agreements

Noncompete Period Under a Contract Acquired Through the Merger of Two Businesses Does Not Commence Until the Employee Separates from Service with the Buyer, 153

Noncompete Period Under a Contract Assigned to a Buyer in a Corporate Acquisition that Was Accomplished Through an Asset Sale Commences Immediately Upon the Sale, Because the Employee/Obligor's Service with the Obligee Terminated at that Time, 148

Employment Discrimination

Damages

Award of Punitive Damages in an Employment Discrimination Action Against a City Should Not Be Reduced to Reflect the Fact the Burden Will Be Primarily Borne by Taxpayers Who Played No Role in the Misconduct, 442

Opinion Upholds a Jury Verdict Against a City for Racial Discrimination Against an Employment Applicant, 442

Fair Employment Practices Act, Claim for Retaliation May Be Based on Allegations of Disparaging Remarks Made to Prospective Employers Even Though the Remarks Were Made After the Employee's Termination, 539

Sexual Harassment, Anchoring Conduct Relied on to Support a Plaintiff's Reliance on the "Continuing Violation" Doctrine May Be Based on Retaliatory Conduct That Is Not Sexually-oriented, 161

Employment Termination Claims, Exercise of First Amendment Rights, Opinion Denies a Motion to Dismiss a Complaint Filed by Two School Security Officers Employed by the University of Massachusetts-Lowell, Allegedly in Retaliation for Opposing and Publicly Revealing a Recently Adopted Policy to Exclusively Hire and Give Preferential Treatment to Retired New Hampshire Police Officers with Close Personal Ties to the Department's New Police Chief, 594

Mass. Wage Act, Damages, Interest on an Award for Unpaid Overtime Wages May Be Paid on Each Individual Underpayment Commencing on the Date It Occurred, Rather than on the Total Aggregate Damages Commencing on the Date the Action Was Commenced, Even If the Award Is for a Compromised Lump Sum Payment, 532

#### Noncompete Agreements

In General, Opinion Discusses the Issue of Under What Circumstances a Consensual Judgment Permanently Enjoining One Employer from Hiring Any Employees that Ever Worked for Another Employer May Be Modified in the Future to Accommodate Changing Circumstances, 671

Misc. Cases, Noncompete Clause Executed in Connection with the Acquisition of a Business that Prohibits the Selling Owner from Competing with the Buyer for Five Years After Termination of Employment Is Enforceable, Even Following a Termination Without Cause, 7

#### Wage and Hour Laws

Action to Recover Wages, Mass. Wage Act May Be Used to Recover for Violations of Federal as well as State Wage and Hour Laws, 549

Wages, Requirement that a Waiver of Wage Act Claims Contained in an Employee Separation Agreement Contain Explicit References to the Wage Acts Is Satisfied by a Release that Explicitly Refers to at Least One Wage Act and Clearly States that the Agreement Contains a General Statement that Executing the Agreement Will Waive Some Rights, 584

#### Wages

##### Action to Recover Wages

Corporate Director's Participation on a Committee with Delegated Temporary Authority to Manage Cash Flow Imposes Personal Liability on the Director for Unpaid Wages, 316

Corporate Financial Officer's Personal Liability for Unpaid Accrued Vacation Pay Ends If the Officer Is Terminated Before the Claimants Were Terminated, Because the Pay Did Not Become Due Until the Employees Were Terminated, 316

Corporate Financial Officer's Personal Liability for Unpaid Wages Under the Mass. Wage Act Does Not Apply to Wages Accrued Before the Officer Was Hired, 316

Corporate Financial Officers Can Not Recover from Each Other for Personal Liability Incurred Under the Mass. Wage Act on Theories of Either Contractual Indemnification or Indemnification in Tort, 316

Corporate Financial Officers' Personal Liability Under the Mass. Wage Act for Payments Due Under a Commission Agreement Is Not Defeated by the Fact that the Agreement Was Formed Before the Officer Was Hired, 316

Three-tier Franchise Structure with a Top Franchisor, "Regional" Franchisees Each with Local "Unit" Franchisees, Does Not Protect the Top Franchisor from Wage and Hour Liabilities Owed to Employees of the Unit Franchisees, 483

Mass. Tip-sharing Statute, Hotel Franchisor Is Not Liable for a Franchisee's Improper Failure to Distribute Administrative Charges Paid by Banquet Customers Among Its Service Employees, Even Though the Franchisor Receives a Franchise Fee Based on a Percentage of the Franchisee's Total Revenues, 249

Mass. Wage Act, Court May Enjoin an Employer from Soliciting Releases of Claims Being Asserted in a Pending Wage Act Class Action, Sought as a Condition for Employee Participation in a Tendered Stock Option Buyout Program, 481

Sales Commissions, Sales Commissions Prorated on a Monthly Basis and Intended as Compensation for Continuing Service to the Customer as well as for the Original Sale, and Which Terminate If the Customer Is Lost or the Sales Person Leaves the Business, Become "Wages" Only at the End of Each Month After They Have Been Earned and Are Due Under the Terms of the Plan, 371

#### Sunday Premium Pay

Actions Brought to Enforce an Employer's Obligation to Pay Time-and-a-half for Sunday Work Are Subject to the Three-year Limitations Period of the Mass. Wage Act, Not the Six-month Period of the Sunday Pay Act, 435

Sunday Pay Statute Does Not Create a Private Cause of Action, But Premium Pay Due Under the Act May Be Recovered Through an Action Under the Mass. Wage Act, 174

Wage Act, Act Applies Only to Wages Earned by the Claimant and Therefore Not to a Claim Based on an Employer's Refusal to Honor a Claim for Accrued Vacation Time Donated by Co-workers, 321

#### Municipal Corporations

##### Health Code, Misc. Cases

Innkeepers License May Be Revoked for Public Health and Safety Violations Even Though the Violations Are Not Established by Express Board of Health Regulations, 325

Opinion Upholds a Municipal Board of Health's Revocation of a Motel License Based on a High Rate of Police and Emergency Calls, a High Crime Rate and a Failure to Take Remedial Steps, 325

Mutual Aid Associations, Misc. Cases, City's Participation in a Fire Chief's Mutual Aid Association Does Not Create Standing to Intervene in Zoning Proceedings Concerning Major Industrial Developments in Other Member Cities, 471

**Murder**, Felony Murder, In General, SJC's 2017 Ruling Eliminating the Presumption that an Intent by One Co-conspirator to Kill During the Commission of a Felony Is Imputed to All Co-conspirators Does Not Invalidate Grand Jury Indictments Issued Prior to the Release of the Ruling; Defendants Indicted Before the Release Are Entitled to the Benefit of the Ruling at Trial But Are Not Entitled to New Grand Jury Proceedings, 634

**Notices**, By Mail, Mail Box Rule, "Mail Box Rule" of the Rules of Civil Procedure Applies only to Time Limits Which Commence Upon "Service of a Notice or Other Papers" and Not to Time Limits Which Commence on an Event Other than "Service," 436

#### Partnership

##### Creation, De Facto Partnership

Rights and Duties of Partners Operating Without a Formal Partnership Agreement Are Presumed to Be Governed by the Terms of the Uniform Partnership Act, 89

Whether Three Individuals Who Commenced a New Investment Advisory Firm Without Formalizing Their Mutual Rights and Duties Are Engaged in a De Facto Partnership, and Therefore Whether They Owe Fiduciary Duties to Each Other, Presents an Issue of Fact Which Cannot Be Resolved on a Motion for Summary Judgment, 89

**Mutual Rights and Duties**

**Fiduciary Duties, Whether Three Individuals Who Commenced a New Investment Advisory Firm Without Formalizing Their Mutual Rights and Duties Are Engaged in a De Facto Partnership, and Therefore Whether They Owe Fiduciary Duties to Each Other, Presents an Issue of Fact Which Cannot Be Resolved on a Motion for Summary Judgment, 89**

**In General, Rights and Duties of Partners Operating Without a Formal Partnership Agreement Are Presumed to Be Governed by the Terms of the Uniform Partnership Act, 89**

**Pleadings**

**Counterclaims, Compulsory Counterclaims, Improper Commencement of an Action on a Cause Which Should Have Been Asserted as a Compulsory Counterclaim in a Pending Action Need Not Be Dismissed, Even If the Time Limit for a Compulsory Counterclaim Has Lapsed, 50**

**Time Limits, Mail Box Rule, "Mail Box Rule" of the Rules of Civil Procedure Applies only to Time Limits Which Commence Upon "Service of a Notice or Other Papers" and Not to Time Limits Which Commence on an Event Other than "Service," 436**

**Probate Court, Jurisdiction, Misc. Cases, Probate Court's Exclusive Jurisdiction Over Will Challenges Does Not Deprive the Superior Court of Jurisdiction Over a Claim for the Tort of Interference with an Inheritance, Even Though the Action Will Require an Examination of the Validity of a Death Bed Will, 56, 230**

**Public Officials, Police Officers, Misc. Cases, Resolution of Criminal Charges Through the Entry of a "Continuation Without a Finding" on Felony Charges Does Not Constitute a "Conviction" Within the Meaning of the Statute Prohibiting the Appointment of a Felon as a Police Officer, 657**

**Real Property, Condominiums, Condominium Associations, Provision of a Declaration of Trust Reciting that a Condominium Board of Trustees "Shall Request" Individual Unit Owners to Make Repairs Needed to Avoid Adverse Impacts on Other Unit Owners, and "Shall Be Entitled" to Make Repairs on Behalf of a Recalcitrant Unit Owner Does Not Impose Liability for the Board's Failure to Exercise Its Authority to Force Repairs, 516**

**Schools and School Districts, Unfair Educational Practices Act, Sexual Harassment, School and Supervisory Employees Are Vicariously Liable for the Sexual Harassment of a Student by a Teacher, 137**

**Search and Seizure**

**Return of Seized Property, Limitations of Actions**

**Limitations Period for an Action for the Return of Property Seized During the Execution of a Search Warrant Does Not Commence Until the Commonwealth Initiates an Attempt to Make a Return, 272**

**Limitations Period for an Action for the Return of Property Seized During the Execution of a Search Warrant Does Not Commence Until the Commonwealth Initiates an Attempt to Make a Return, 351**

**With a Warrant, Misc. Cases, Defendant Cannot Be Compelled to Produce a PIN Number Restricting Access to Information on a Cell Phone Found in the Defendant's Possession at Arrest, If the Fact of Ownership Would Be Incriminating, 287**

**Without a Warrant, Misc. Cases, Evidence Unlawfully Obtained During a Valid Stop Must Be Suppressed at a Subsequent Probation Revocation Hearing, If the Officers Were Aware of the Detainee's Probation Status at the Time of the Search, 294**

**Secured Transactions, Collateral, Repossession, UCC Imposes Vicarious Liability on a Secured Creditor for Any Breach of Peace by an Independent Contractor Hired to Repossess an Automobile from a Debtor, 183**

**Sex Offenses, Sex Offender Registration Statute, Classification**

**Indigent Sex Offender Has a Statutory Right to Appointed Counsel for Reclassification as well as Original Classification Hearings, and at Hearings Initiated by the Petitioner as well as by SORB, 127**

**Sex Offenders Have a Constitutional Right to Periodic Reclassification Hearings at Which the State Has the Burden of Proof by Clear and Convincing Evidence, 127**

**Social Services**

**Department of Social Services, Misc. Cases, Discretionary Function Exception to the Mass. Tort Claims Act Bars a Claim Against DCF for Negligently and Unnecessarily Taking Emergency Custody of a Three-year-old Child Left Sleeping Alone for Brief Periods in a Marriott Hotel Room, 509**

**Low Income Housing, Low-income Housing Tax Credit Program, Nonprofit Sponsor of a Low-income Housing Project Owned by a Limited Partnership Which Has Exhausted the Available Tax Credits May Force Activation of an Option of First Refusal by Soliciting a Third-party Offer from Another Low-income Organization as a Means of Assuring that the Property Will Remain in the Low-income Housing Market, 14**

**Statute of Frauds, Agreement Respecting Real Estate, In General, Landlord Is Estopped from Claiming that an Oral Agreement to Extend an Existing Lease of One Parcel, to Include an Adjoining Parcel, Is Unenforceable Under the Statute of Frauds, 570**

**Taxes, Sales and Use Tax, Internet Sales**

**Complaint Is Withdrawn as Moot in an Action in Which the Department of Revenue's Attempt to Impose on Out-of-state Internet Vendors an Obligation to Collect the Massachusetts Sales and Use Tax Owed by In-state Customers Was Declared Invalid, 423**

**Department of Revenue's Attempt to Impose on Out-of-state Internet Vendors an Obligation to Collect the Massachusetts Sales and Use Tax Owed by In-state Customers, Without Following APA Procedures for the Adoption of a Regulation, Is Invalid, 419**

**Torts**

**Breach of Fiduciary Duty**

**Damages, Economic Loss Rule Does Not Apply to Negligence Claims Against Fiduciaries, 573**

**Limitations of Actions, Fraudulent Concealment Act Extends the Limitations Period for a Breach of Fiduciary Duty Claim Until the Claimant Has Actual Rather than Just Constructive Knowledge of the Claim, 589**

**Misc. Cases, Diocese Bishop Does Not Have a Fiduciary Relationship with a Sexually Abused Minor Parishioner Based Solely on the Bishop's Position, 663**

**Damages**

**Contribution**

**Tortfeasors Seeking the Benefit of Grouping for Purposes of Equally Allocating Liability Among All Tortfeasors Pursuant to the Contribution Statute Have the Burden of Proving that Grouping Is Appropriate, 24**

**Vicariously Liable Defendants May Be "Grouped" for Purposes of Equally Allocating Liability Among All Tortfeasors Pursuant to the Contribution Statute, 24**

**Economic Loss Rule, Rule Does Not Apply to Claims for Negligent Misrepresentation, or to Negligence Claims Against a Fiduciary, 573**

**Evidence, Plaintiff's Immigration Status as an Undocumented Foreign Worker Is Irrelevant to the Issue of Diminished Earning Capacity Allegedly Caused by a Workplace Injury, 365**

- Lost Wages, U.S. Supreme Court's 2002 Holding that the NLRB Cannot Award Back Wages to an Undocumented Foreign Worker Because Such Award Would Violate Federal Immigration Law Does Not Apply to a Claim Against a Tortfeasor for Lost Wages and Earning Capacity Caused by a Workplace Injury, 365
- Defenses
- Litigation Privilege, Counterclaims for Defamation, Invasion of Privacy and Infliction of Emotional Distress Based on a Law Firm's Prosecution of a Breach of Contract Claim Against a Former Associate Are Barred by the Absolute Privilege for Statements Made During Judicial Proceedings; However, a Counterclaim for Abuse of Process Is Not Barred by the Privilege, 583
- Waiver, Party Seeking to Enforce an Electronically-Signed Arbitration Clause Contained in a Recreational Facility Waiver Form Has the Burden of Establishing that the Waiver Was Reasonably Communicated to a Patron Suing for Injuries, 586
- Fraud and Misrepresentation
- Federal False Claims Act, Rule that a Party Found Liable Under the Federal False Claims Act Cannot Seek Indemnification from a Putative Accomplice Does Not Apply to a Defendant Who Settles a Claim Under the Act Without Admitting Culpability, 376
- Reliance, Reliance on a Government Contract Signed Without Statutory Authority Is Unreasonable as a Matter of Law, Thereby Precluding Any Recovery Under Theories of Either Equitable Estoppel or Misrepresentation, 475
- Infliction of Emotional Distress, Misc. Cases, Pending Chapter 93A Complaint May Not Be Amended to Add an Infliction of Emotional Distress Claim Not Expressly Included in the Claimant's Pre-suit Demand Letter, 275
- Interference with Advantageous Business Relationship
- Improper Means, Bidder's Continued Submission of Offers for a Business After Learning that the Seller Had Agreed to Refrain from Considering Further Offers While a Tentatively-accepted Bid Was Finalized Does Not Constitute the Tort of Interference with an Advantageous Business Relationship, 69
- In General, Claim for Interference with an Advantageous Business Relationship Does Not Require Proof that the Defendant Was Aware of the Relationship, 504
- Interference with an Inheritance, Procedural Matters, Probate Court's Exclusive Jurisdiction Over Will Challenges Does Not Deprive the Superior Court of Jurisdiction Over a Claim for the Tort of Interference with an Inheritance, Even Though the Action Will Require an Examination of the Validity of a Death Bed Will, 56, 230
- Invasion of Privacy
- Computer Hacking, Claim Against a Medical Provider for Negligently Failing to Prevent the Hacking of Confidential Patient Records Requires an Allegation of an Actual Unauthorized Access of the Plaintiff's Records, or a High Risk Access by the General Public, 387
- Massachusetts Wire Tap Statute, Wire Tap Statute Does Not Apply to Calls Recorded at an Out-of-state Location Even for Calls Initiated from Within the State, 561
- Legal Malpractice
- Limitations of Actions
- Limitations Period for a Legal Malpractice Complaint Based on Overbilling Does Not Accrue Until the Client Is Aware Both that the Fees Were Unfairly High and that the Unfairness Was the Result of Malpractice, 623
- Rule that a Limitations Period Accrues When a Claimant Either Has Actual Knowledge or Should Have Knowledge that Malpractice Has Occurred, Is Modified During a Continuing Course of Representation so That Accrual Occurs Only When the Client Has Actual Knowledge of the Malpractice, 623
- Misc. Cases
- Abuse of Process Counterclaim Asserted in a Legal Malpractice Action, Based on a Claim that the Malpractice Claim Is Part of a Scheme to Avoid Payment of Fees, Is Not Barred by the Anti-Slapp Suit Statute, 511
- Rule Barring a Convicted Criminal Defendant from Recovering in Malpractice from Defense Counsel Unless Actual Innocence Is Proved, Extends Even to Claims Arising Out of Alleged Negligence During Sentencing Proceedings, 489
- Mass. Tort Claims Act
- Discretionary Function Exception to the Mass. Tort Claims Act Bars a Claim Against DCF for Negligently and Unnecessarily Taking Emergency Custody of a Three-year-old Child Left Sleeping Alone for Brief Periods in a Marriott Hotel Room, 509
- Public Employer, Mass. Gaming Commission Is a "Public Employer" and Not an "Independent Body Politic and Corporate," as Those Terms Are Used in the Mass. Tort Claims; Therefore the Commission Is Protected by the Immunity Provided by the Act for Intentional Torts Committed by Its Employees, 340
- Misappropriation of Confidential Business Information, In General, Competitor Who Obtains Confidential Information from a Third Party with Knowledge that the Third Party Owed a Duty of Confidentiality to the Plaintiff May Be Liable to Plaintiff for Misappropriation, Even Though There Is No Direct Relationship Between the Plaintiff and the Defendant, 29
- Negligence
- Misc. Cases
- In Pari Delicto Rule of Equity Prohibits a Principal from Recovering from a Third Party for Loss Incurred as a Result of an Agent's Fraud If the Fraud Benefited the Employer in Any Way, 221
- Mere Fact that a Plaintiff Became Ill Three Hours After Dining at a Restaurant and Was Later Diagnosed with a Bacterial Infection Is Not Sufficient, Alone, to Prove that Food from the Restaurant Was the Cause of the Illness, 385
- Negligent Design
- Claim for Injuries from a Fall Caused by Defectively Designed "Speed Lacing Hooks" on Boots Requires Expert Testimony Concerning the Existence of a Safer Design and the Defendant Manufacturer's Awareness that Its Lacing Hooks Presented a Hazard, 449
- Expert's Claim of Having Observed an Increase in Injuries to Firearm Users Since the Introduction of a Particular Pistol Design Is Inadmissible in the Absence of Supporting Evidence, 606
- Vicarious Liability, Vicariously Liable Defendants May Be "Grouped" for Purposes of Equally Allocating Liability Among All Tortfeasors Pursuant to the Contribution Statute, 24



- Negligent Supervision, Misc. Cases, College Does Not Have a Duty to Protect a Student from Being Criminally Convicted for Committing an Assault After Becoming Intoxicated on School Premises, 579
- Nuisance, Misc. Cases, Local ZBA Decision that the Noise Emitted by a Wind Generator Constitutes a Nuisance Is Reasonable and Therefore Enforceable, 408
- Providing Alcohol, Misc. Cases, College Does Not Have a Duty to Protect a Student from Being Criminally Convicted for Committing an Assault After Becoming Intoxicated on School Premises, 579
- Sexual Abuse of a Minor, Misc. Cases
- Diocese Bishop Does Not Have a Fiduciary Relationship with a Sexually Abused Minor Parishioner Based Solely on the Bishop's Position, 663
  - Opinion Denies a Diocese Bishop's Motion for Summary Judgment on a Negligent Supervision Count in an Action for the Sexual Abuse of a Minor by a Parish Priest, Based on the Existence of Evidence that the Bishop Was Aware that the Priest Had Violated Diocese Rules by Taking Overnight Trips with Young Boys, 663
- Tortious Interference with Contractual Relations, In General, Tort Authorizes Relief Only for the Actual Termination of a Contractual Relationship and Not Merely for Costs Imposed Because a Contract Has Become More Burdensome, 278
- Vicarious Liability
- Misc. Cases, UCC Imposes Vicarious Liability on a Secured Creditor for Any Breach of Peace by an Independent Contractor Hired to Repossess an Automobile from a Debtor, 183
  - Procedural Matters, Plaintiff Asserting a Claim Against a Franchisor Based on Vicarious Liability for the Conduct of a Franchisee Should Be Given an Opportunity to Conduct Discovery Before Being Required to Present Nonconclusory Allegations of Control Over the Franchisee, 333
- Trade Regulation**
- Franchises, Misc. Cases, Three-tier Franchise Structure with a Top Franchisor, "Regional" Franchisees Each with Local "Unit" Franchisees, Does Not Protect the Top Franchisor from Wage and Hour Liabilities Owed to Employees of the Unit Franchisees, 483
- Massachusetts Fair Debt Collection Act
- Definitions, Company that Buys Defaulted Consumer Debts for the Purpose of Collection Is a "Debt Collector" Within the Meaning of the Mass. Fair Debt Collection Act and Therefore Must Be Licensed, Even If All Collection Efforts Are Carried Out by a Licensed Third Party, 251
  - In General, Although Debt Collection Without a License Is Defined by the Fair Debt Collection Act as a Per Se Chapter 93A Violation, Relief from 93A Liability Is Available for an "Indirect" Debt Collector Who Relied in Good Faith on Erroneous Banking Division Rulings that Indirect Collection Through a Licensed Third Party Would Not Require a License, 251
  - Procedural Matters, Small Claims Judgment in Favor of the Debtor in a Collection Action Brought by a Debt Collector Does Not Render Moot the Debtor's Claim in a Class Action Against the Debt Collector for Violations of the Mass. Fair Debt Collection Act, 251
  - Remedies, Judgment Obtained in a Collection Action Against a Debtor by an Unlicensed Debt Collector Is Void Rather Than Voidable and Therefore May Be Challenged in a Subsequent Class Action Against the Debt Collector for Violations of the Mass. Fair Debt Collection Act, 251
- Trade Secrets, Misc. Cases, Counterclaims in a Misappropriation of Trade Secrets Action for Tortious Interference with Business Relationships, Abuse of Process and Violation of Chapter 93A Are Not Barred by the Anti-SLAPP Suit Statute, 504
- Unfair Business Practices Act, Damages, Clause of a Guaranty Agreement Limiting Liability to a Fixed Amount Does Not Apply to Damages on a Related Chapter 93A Claim Based on Conduct of a Tortious Rather than Contractual Nature, 112
- Unfair Trade Practices Act
- Although Debt Collection Without a License Is Defined by the Fair Debt Collection Act as a Per Se Chapter 93A Violation, Relief from 93A Liability Is Available for an "Indirect" Debt Collector Who Relied in Good Faith on Erroneous Banking Division Rulings that Indirect Collection Through a Licensed Third Party Would Not Require a License, 251
- Attorney General Enforcement, Massachusetts Courts May Exercise Longarm Jurisdiction Over ExxonMobil Corp. with Respect to the Enforcement of a Civil Investigative Demand Issued by the Attorney General Seeking Information with Respect to an Investigation into Possible Violations of Consumer Statutes Resulting from Misrepresentations to Customers and Investors Concerning the Long-term Impact on Climate Warming of the Company's Products and Business, 104
- Class Actions
- Lack of Evidence of Interest by Other Class Members Does Not Provide Grounds for Denying Class Certification, 647
  - Tender of the Maximum Damages That Could Be Recovered by the Plaintiff in a Putative Class Action Does Not Moot the Action, Whether the Tender Is Accepted or Not, 647
- Damages
- Disgorgement of Wrongful Profits May Be Awarded as a Remedy in a Chapter 93A Action, If the Prevailing Plaintiff's Actual Damages Are Difficult to Measure, 390
  - Opinion Crafts a Remedy in an Attempt to Avoid the Inequity of Allowing Culpable Shareholders to Be Benefited by an Award of Damages to a Corporate Plaintiff, 390
  - Tender to the Class Representative in a Chapter 93A Class Action of an Amount Exceeding the Monetary Damages that the Plaintiff Could Recover on a Personal Basis Does Not Moot the Action, If Injunctive and Declaratory Relief Are Also Being Sought, 612
- Demand, Pending Chapter 93A Complaint May Not Be Amended to Add an Infliction of Emotional Distress Claim Not Expressly Included in the Claimant's Pre-suit Demand Letter, 275
- Demand Letter, Defendant's Failure to Make a Reasonable Settlement Offer in Response to a Chapter 93A Demand Letter Does Not Itself Constitute a Chapter 93A Violation, 8
- In General
- Chapter 93A Claim Survives an Individual Claimant's Death, 275
  - Consequential Costs for Labor Expended to Unsuccessfully Remove and Replace an Inadequate Computer System Is Not a Cost that Is Recoverable Under Chapter 93A, 278
- Jurisdiction, Primary Jurisdiction Doctrine Does Not Apply to an Action Seeking Relief Under Chapter 93A, Including a Chapter 93A Action Based on Violations of the State Towing Laws, 167

Misc. Cases

Allegations that the Defendant Attorneys and Financial Advisers Improperly Induced an Elderly Client to Place All Estate Assets in a Trust, with the Intention of Generating Future Legal and Financial Fees for the Defendants, Are Sufficient to State a Chapter 93A Claim, 56, 230

Massachusetts Need Not Recognize the Sovereign Immunity of a Pennsylvania State Agency that Services Student Loans in this State, Because a Comparable Agency of this State Would Not Be Accorded Immunity Under Massachusetts Law, 616

Trade or Commerce

Allegations that Two Shareholders of a Closely-held Corporation Fraudulently Diverted Corporate Assets to a Newly Formed Corporation Do Not Allege Conduct Occurring in "Trade or Commerce" and Therefore Do Not Support a Chapter 93A Violation, Even with Respect to a Claim Against the Defendant's Newly Formed Corporation, 569

Chapter 93A Claim Against the MBTA Cannot Be Based on Alleged Misrepresentations Occurring During Negotiations for the Installation of a Federally-required "Positive Train Control" System, Because the Alleged Misconduct Occurred in the Performance of Statutory Duties and Therefore Not in "Trade or Commerce," 475

Claim Against an LLC Member for Fraudulently Diverting LLC Assets to a Competing Business Does Not Arise in "Trade or Commerce" and Therefore Does Not Give Rise to Liability Under Chapter 93A, 304

Evaluation of Whether a Public Entity Was Engaged in "Trade or Commerce" with Respect to Activities Giving Rise to a Chapter 93A Claim Is the Same Regardless of Whether the Public Entity Is Defending or Prosecuting the Claim, 142

Rule that Chapter 93A Does Not Apply to Claims Arising out of a Joint Venture Extends to Claims Arising Out of Negotiations Preceding the Creation of a Joint Venture, 573

State Agency Sponsoring an Economic Stimulus Project to Provide Expanded Internet Service to Rural Areas Is Engaged in a Governmental Rather than Private Pursuit and Therefore May Not Recover on a Chapter 93A Claim Based on Fraud by the Contractor, 142

**Trial.** Conduct of Parties and Attorneys, Costs for Photocopying, Legal Research Expense and Transcripts Are Normally Included in the Allowed Hourly Rate as an Overhead Charge But May Be Individually Itemized in an Award Imposed as a Sanction, 358

**Trusts.** Construction, Operation and Effect, "No Contest" Clauses  
"No Contest" Clause Does Not Operate Automatically But Rather Causes a Forfeiture Only If a Donee Fails to Successfully Prosecute a Challenge, 589  
"No Contest" Clauses Are Permitted Under Massachusetts Law in Both Wills and Trusts, 589

**Usury.** Loan of Money, Remedies, Opinion Enforces a Usurious Promissory Note After Reforming the Rate to the Maximum Allowed by Law, Because Neither Party Was Aware that the Stated Rate Was Illegal, the Note Had a Very Short Maturity Date, and Both Parties Clearly Intended a High Rate, 413

**Waters.** Littoral Rights, Sand Drift, Grant of License for the Construction of a Public Jetty Does Not Immunize a Municipality from Liability for Interfering with the Natural Flow of Sand to Privately-owned Down-drift Beaches, 116

**Weapons and Firearms.** Liability for, Misc. Cases, Expert's Claim of Having Observed an Increase in Injuries to Firearm Users Since the Introduction of a Particular Pistol Design Is Inadmissible in the Absence of Supporting Evidence, 606

Wills

Construction, "No Contest" Clauses

"No Contest" Clause Does Not Operate Automatically But Rather Causes a Forfeiture Only If a Donee Fails to Successfully Prosecute a Challenge, 589

"No Contest" Clauses Are Permitted Under Massachusetts Law in Both Wills and Trusts, 589

Contests, Misc. Cases, Allegations that the Defendant Attorneys and Financial Advisers Improperly Induced an Elderly Client to Place All Estate Assets in a Trust, with the Intention of Generating Future Legal and Financial Fees for the Defendants, Are Sufficient to State a Chapter 93A Claim, 56, 230

Workers' Compensation

Insurance Coverage, Misc. Cases, Employee's Complaint Against an Employer on a Claim Barred by the Exclusive Remedy Clause of the Workers' Compensation Act Must Be Defended by the Employer's General Commercial Liability Insurer Rather than the Employer's Workers' Compensation Insurer, 367

Recovery from Third Parties, Employer's Lien, Recent SJC Ruling Has Altered the Rule that the Workers' Compensation Lien Against an Employee's Recovery from a Third-party Tortfeasor Must Be Fully Satisfied Before Any Distribution Is Available to the Employee; Under the SJC Ruling the Lien No Longer Applies to the "Pain and Suffering" Portion of an Employee's Recovery from a Tortfeasor, 632

**Wrongful Death.** Actions, Procedural Matters, Person Appointed as a "Late and Limited" Personal Representative of a Decedent's Estate Lacks Standing to Prosecute a Wrongful Death Action on Behalf of the Estate or the Estate Beneficiaries, 547

Zoning

Appeal to Court

Aggrievement

City's Participation in a Fire Chief's Mutual Aid Association Does Not Create Standing to Intervene in Zoning Proceedings Concerning Major Industrial Developments in Other Member Cities, 471

Sending Notices of a Variance Application to Property Owners "Deemed" by the Boston Zoning Board of Appeals to Be "Affected" by the Application Does Not Preclude the Board from Later Challenging a Notified Owner's Status as an "Aggrieved" Person Entitled to Appeal a Decision to Grant the Variance, 454

Standing, Contract Purchaser of Real Estate Who Is Prosecuting a Zoning Application on Behalf of the Property Owner Lacks Standing to Raise Constitutional Issues on Appeal, 567

In General, Spot Zoning, Approved Variance Cannot Be Challenged on Grounds of "Spot Zoning," 454

Ordinances

Procedural Matters, Court Should Defer to a ZBA's Decision as to Whether a Zoning By-law Should Be Applied Retroactively, 408

Wind Generators

Court Should Defer to a ZBA's Decision as to Whether a New Zoning By-law Establishing Maximum Sound Levels for Wind Generators Should Be Applied Retroactively to Existing Generators, 408

Local ZBA Decision that the Noise Emitted by a Wind Generator Constitutes a Nuisance Is Reasonable and Therefore Enforceable, 408

Procedure Before Agency, Aggrievement, Statute Granting Abutting Property Owners Presumptive Aggrievement Does Not Apply to Neighboring Towns, 471

Variations, Misc. Cases, Approved Variance Cannot Be Challenged on Grounds of "Spot Zoning," 454

**CUMULATIVE TABLE OF JUDGES FOR VOLUME 34, ISSUES 1-32**

AMES, MARY K., J., 239, 451, 539  
BARRETT, WILLIAM C., J., 516  
BARRY-SMITH, CHRISTOPHER K., J., 344  
BRIEGER, HEIDI E., J., 104  
CAMPO, ANTHONY M., J., 365  
COSGROVE, ROBERT C., J., 331  
DAVIS, BRIAN A., J., 127, 666  
DUPUIS, RENEE, J., 606  
FAHEY, ELIZABETH M., J., 657  
FEELEY, TIMOTHY Q., J., 632  
FISHMAN, KENNETH J., J., 483  
FORD, DANIEL A., J., 99  
FRISON, SHANNON, J., 244  
GORDON, ROBERT B., J., 201, 311, 379, 416,  
437, 509, 623, 638, 646  
HENRY, BRUCE R., J., 358  
INGE, GARRY V., J., 385, 567  
KAPLAN, MITCHELL H., J., 89, 122, 164, 171, 185,  
193, 228, 299, 333, 340, 367, 387, 419, 423,  
424, 534, 547, 671  
KAZANJIAN, HELENE, J., 137  
KIRPALANI, MAYNARD M., J., 663  
KRUPP, PETER B., J., 225, 287, 399, 405, 643  
LANG, JAMES F., J., 183, 290  
LEIBENSPERGER, EDWARD P., J., 24, 29, 50, 56, 65,  
93, 95, 161, 230, 371, 376, 377, 413, 457, 460,  
475, 493, 498, 504, 511, 527, 549, 556, 561,  
570, 573, 589, 608, 613  
LEIGHTON, JOSEPH F., J., 442, 550, 586  
LU, JOHN T., J., 10, 503  
MORIARTY, CORNELIUS J., J., 116, 408  
PASQUALE, GREGG J., J., 395  
REARDON, J. GAVIN, JR., J., 480  
RICCIUTI, MICHAEL D., J., 263, 270, 272, 323, 325,  
351, 449, 469, 489, 521  
SALINGER, KENNETH W., J., 1, 3, 32, 41, 78, 109, 146,  
148, 153, 155, 167, 174, J., 196, 198, 217, 221,  
247, 249, 266, 278, 304, 312, 316, 334, 338,  
360, 432, 435, 436, 461, 603, 616, 645, 647, 668  
SANDERS, JANET L., J., 7, 8, 14, 46, 49, 52, 67, 69,  
112, 142, 251, 352, 356, 357, 390, 429, 481,  
496, 500, 514, 528, 532, 552, 560, 569, 583,  
584, 587, 610, 612, 629, 670  
TABIT, SALIM RODRIGUEZ, J., 579  
TUTTMAN, KATHE M., J., 471, 594  
ULLMANN, ROBERT L., J., 275  
WALL, JOSHUA I., J., 321  
WILKINS, DOUGLAS H., J., 176, 652  
WILSON, PAUL D., J., 21, 27, 73, 215, 294, 454, 634  
WRENN, DANIEL M., J., 576

**LAST PAGE OF VOLUME 34**