DON'T PANIC!

You know more than you think you do.
UNDERSTAND YOUR ASSIGNMENT

- Facts
- Resources
- Time Frame
- Finished Product
MAKE FRIENDS WITH YOUR FIRM/COURT LIBRARIAN

- Make sure to attend the library orientation.
- Find out about in-house databases and newsletters or other practitioner-oriented materials on your topic.
- ASK QUESTIONS!!
ANALYZE THE FACTS
FRAME THE ISSUE

- **Analyze the facts** (who, what, when, where, why)
- **Preliminary Analysis**
  - Inter-relationship between the legal theory and the facts
  - Relief the client is seeking
  - Procedure
- **Make an Outline**
MAKE A RESEARCH PLAN

- How much time?
- Which resources?
- Terms of art?
- Search queries?
START WITH SECONDARY SOURCES

- law review articles
- encyclopedias
- treatises
- nutshells
- hornbooks
- ALR annotations
FIND PRIMARY MATERIALS

- Use two independent methods to find statutes, regulations and cases.

- **ALWAYS** update statutes, regulations and cases to make sure they are still good law!
Which source is best?

- **Secondary sources** give you a coherent picture of the law, but may not be comprehensive.

- **Keyword searches, digests, annotated codes**, are more exhaustive, but don’t evaluate the material.

- **West topic/key number searches** are more efficient for finding cases by issue than by fact pattern.

- **Keyword searches online** are good for finding cases by fact pattern, but it less efficient for finding cases on procedural issues, and they are not always accurate or complete.
I’m so glad I learned to search effectively

- Before you go online get some background knowledge of your topic and determine what your search will be.

- Search in the smallest database possible.

- If you’re having trouble formulating a search:
  - ask a librarian
  - call Wexis.
Three #@%! hours on Westlaw and nothing to show for it—now what do I do?

- Ask if there are other sources you should look at.
- Make sure you understand the question.
- "10-minute rule"
Am I done yet?

- deadline/budget
- review your assignment and research plan
- look in the really important places
  - secondary sources
  - use 2 methods to find statutes & check an annotated code
  - use 2 case finding methods
  - update primary materials
- analyze the most recent documents
- “closure”
DISCUSSION QUESTIONS

1. You’re scheduled to meet with your boss, Shari Partner, to talk about a new case she wants you to work on. Ms. Partner has told you that the case involves the circumstances under which a successor corporation can be held liable for products of its predecessor in a products liability case. You’re clueless, but you want to make a good impression when you talk with her. Where would you look to get some background about this issue?

2. You’ve been asked to write a memo on the question of whether corporal punishment in public schools violates students’ constitutional rights. You remember reading a Supreme Court case in law school called Ingraham v. Wright that’s right on point. How would you find the Ingraham case and other cases on the same subject?

3. Your boss has given you a brief he’s written and asks you to find a few cases that say that there has to be consideration for a contract to be valid. Where would you look for a citation?

4. You’re a research assistant, and you receive the following e-mail from your professor: “I’m updating my consumer protection law casebook. I need to know which states allow individuals to sue for damages for deceptive trade practices, in which this is a criminal offense, and where the state attorney general can bring a lawsuit. Please provide the cites and relevant texts.” How would you begin?

5. Since you started law school, your friends and family have been asking you for legal advice. This time it’s your grandparents, who have recently retired and moved to Asheville. They just bought a new Ferrari that’s turned out to be a real lemon. Where would you look to see if North Carolina law protects consumers whose new cars don’t live up to their warranties? (You’ve checked with your boss, and been told that you may use any of the firm’s resources to research this issue).
DISCUSSION
QUESTIONS

You’re scheduled to meet with your boss, Shari Partner, to talk about a new case she wants you to work on. Ms. Partner has told you that the case involves the circumstances under which a successor corporation can be held liable for products of its predecessor in a products liability case. You’re clueless, but you want to make a good impression when you talk with her. Where would you look to get some background about this issue?
1. Under what circumstances can a successor corporation be held liable for products of its predecessor in a products liability case?

When you’re not an expert, start with secondary sources to get an overview of the topic and cites to cases/statutes:

- encyclopedias (AmJur [Lexis & Westlaw], CJS [Westlaw])
- ALR annotations [Westlaw]
- books/articles
- Nutshells
Kimberly Castelaz, J.D., Paul Clemente, J.D., Laura Dietz, J.D., Marcelle Hansen, J.D., Tammy Hinshaw, J.D., Richard Kaye, J.D., Cheryl Laing, J.D., Theresa Leming, J.D., Robin Miller, J.D., Jeannie Philbin, J.D., Kimberly Simmons, J.D., Paula Sinozich, J.D., Lisa Zakolski, J.D., Michael Zimmerman, J.D. and Jeffrey L. Cole, J.D., Kerry Hogan Lassus, J.D., and Martha B. Peterson, J.D., of the National Legal Research Group, Inc.

Products Liability
III. Parties Liable [§§ 73-203]
C. Liability of Successor for Injury Caused By Product of Predecessor [§§ 116-130]
1. General Rule of Successor Nonliability [§§ 116-120]

§ 116 Generally

The general rule of successor liability provides that a corporation which acquires all or part of the assets of another corporation does not acquire the liabilities and debts of the predecessor, unless: (1) there is an express or implied agreement to assume the liabilities; (2) the transaction amounts to a consolidation or merger; (3) the successor entity is a mere continuation or reincarnation of the predecessor entity; or (4) the transaction was fraudulent, not made in good faith, or made without sufficient consideration.39 Thus, the general rule is one of successor nonliability, subject to four "traditional" exceptions,40 although some courts have enumerated five exceptions, listing inadequate consideration for the sale or absence of good faith as exceptions distinct from fraud.41

The general rule of successor nonliability developed within the framework of corporate and tax law.42 The rule serves to protect a bona fide purchaser from the unassumed debt liability of its predecessor.43 The four traditional exceptions were developed principally to protect creditors and minority shareholders rather than tort victims.44 Nevertheless, the general rule has been applied to cases involving the liability of a corporation which acquires assets from another for the damages or injuries caused by the transferor's product, and courts applying the traditional corporate law approach have examined the nature and consequences of an asset acquisition in order to determine whether successor liability can be imposed upon the purchasing corporation under one or more of the exceptions to the general rule of nonliability.45
92 A.L.R.5th 227

Liability of Successor Corporation for Injury or Damage Caused by Product Issued by Predecessor, Based on Successor's Independent Duty to Warn Third Party of Danger or Defect

David J. Marchitelli, J.D.

Although it is a general rule that a corporation is not liable for damages caused by products issued by its predecessor, successor corporations have been charged with liability under certain circumstances. A distinct theory of successor liability, namely the successor's independent duty to warn of the defective or dangerous condition of products issued by its predecessor, is based largely on the relationship that the successor has established with the customers of the predecessor company, rather than on the relationship between successor and predecessor. For example, in the case of Foster v. Cone-Blanchard Mach. Co., 460 Mich. 696, 577 N.W.2d 506, Proc. Liab. Rep. (CCH) ¶115601, 92 A.L.R.5th 737 (1999),reh'd denied, 461 Mich. 1205, 602 N.W.2d 676 (1999), while finding no liability on the part of a successor corporation, the court recognized that a successor may be liable for failing to warn of dangers associated with use of products issued by its predecessor if the successor failed to warn of such dangers.
District of Columbia Circuit


California


Gee v. Tenneco, Inc., 515 F.2d 857 (9th Cir. 1979) (applying California law) — 3

Delaware


District of Columbia


Illinois


ike (products liability) And (ike (successor))
Full View of Record

Choose format: Full | Citation | MARC tags

Record 1 out of 7

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<thead>
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<th>Author</th>
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You’ve been asked to write a memo on the question of whether corporal punishment in public schools violates students’ constitutional rights. You remember reading a Supreme Court case in law school called *Ingraham v. Wright* that’s right on point. How would you find the *Ingraham case* and other cases on the same subject?
2. **HOW DO YOU FIND THE CITE FOR INGRAHAM v. WRIGHT?**

- **Use the features of Lexis & Westlaw**
  - **Westlaw**: FIND or “field” search
  - **Lexis**: GET A DOCUMENT or “segment” search

- “**Table of Cases**” in print digest

- **Google**
SEGMENT/FIELD SEARCH
## LexisNexis Research System

**Get by Party Name**

- **Case Law**
- **Briefs, Motions, Pleadings & Verdicts**

If you know one party, use the first box.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Options</th>
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<td><strong>State Courts</strong></td>
<td>All State Courts, Combined</td>
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<td><strong>Canadian Cases</strong></td>
<td>All Canadian Cases</td>
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**Optional: Restrict by Date**

- No Date Restrictions
- From [ ]  To [ ]
You’ve been asked to write a memo on the question of whether corporal punishment in public schools violates students’ constitutional rights. You remember reading a Supreme Court case in law school called *Ingraham v. Wright* that’s right on point. How would you other cases on the same subject?
2. HOW DO YOU FIND MORE CASES THAT DEAL WITH THE SAME ISSUE AS INGRAHAM v. WRIGHT?

Use the features of Lexis & Westlaw!!!

- Westlaw: Topic/key number search using headnotes from your case
- Lexis: “More like this” “Headnotes-Core Concepts” “Core Terms”

- Use terminology from a case to do key word searching

- Look at cases cited in the case

- Shepardize of KeyCite the case
Ingram v. Wright
430 U.S. 661, 97 S.Ct. 1401
April 15, 1977 (Approx. 29 pages)

[7] KeyCite Notes

* 92 Constitutional Law
  * 92XXVI Due Process
  * 92XXVI(G) Particular Issues and Applications
  * 92XXVI(G) Education
  * 92k4204 Students
  * 92k4210 k. Use of Force; Assault, Abuse, and Harassment. Most Cited Cases
    (Formerly 92k275.5(6))

* 345 Schools KeyCite Notes
  * 34511 Public Schools
    * 34511(L) Pupils
      * 345174 Punishment
      * 345176 k. Corporal Punishment. Most Cited Cases

Florida scheme for imposition of corporal punishment in public schools, whereby teacher and principal must exercise prudence and restraint when they decide that corporal punishment is necessary for disciplinary purposes and, if punishment is later found to be excessive, they may be held liable in damages or be subject to criminal penalties, considered in light of openness of school environment, afforded significant protection against unjustified corporal punishment of school children and comported with requirements of due process. U.S.C.A. Const. Amend. 14.
Custom Digest
345K176
90 Headnotes

Peterson v. Baker, 504 F.3d 1331

Corporal punishment.

Not all physical injuries to student caused by teacher amount to "corporal punishment"; range of teacher conduct exists that is neither corporal punishment nor so conscience-shocking as to trigger substantive due process violation. U.S.C.A. Const. Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

Peterson v. Baker, 504 F.3d 1331

Eighth-grade teacher's use of force on student she was attempting to block from leaving her classroom without permission was not obviously excessive, for purposes of student's § 1983 claim based on violation of substantive due process; justification for some corporal punishment was considerable, given that student repeatedly disobeyed teacher's command to be seated and given that student first touched teacher by forcing her hand from doorframe, and extent of student's bodily injury was not serious, notwithstanding slight bruising and red marks on his neck as well as his temporary
OVERVIEW: Petitioner students filed an action against respondent school administrators for violations of petitioners' constitutional rights. Petitioners argued that the use of corporal punishment was cruel and unusual punishment and violated the Eighth Amendment. However, the United States Supreme Court held that U.S. Const. amend. VIII was intended to apply to criminal procedures and was not applicable to corporal punishment in public schools. In so holding, the court noted that public school teachers and administrators were privileged at common law to inflict only such corporal punishment as was reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege could have resulted in both civil and criminal liability. As long as the schools were open to public scrutiny, the court saw no reason to believe that the common-law constraints would not effectively remedy and deter excess punishment. Furthermore, petitioners were not entitled to prior notice and an opportunity to be heard pursuant to the Due Process Clause of U.S. Const. amend. XIV.

OUTCOME: The United States Supreme Court, in affirming the lower court's decision, held that the Eighth Amendment was inapplicable to corporal punishment imposed by public school administrators. Furthermore, the Due Process Clause did not require notice and a hearing prior to the imposition of corporal punishment in public schools, as the practice was authorized and limited by the common law.

CORE TERMS: corporal punishment, teacher's, public schools, disciplinary, common-law, excessive, discipline, inflicted, cruel and unusual punishment, severe, pausing, deprivation, prisoner, procedural safeguards, schoolchildren, probable, arrest..., punished, cruel, safeguard, prison, school authorities, infliction, process of law, misconduct, inflict, common law, state law, school board, liberty interest
Corporal punishment in public schools implicates a constitutionally protected liberty interest, but the traditional common-law remedies are fully adequate to afford due process. More Like This Headnote | Shepardize: Restrict By Headnote

Due process is required only when a decision of the State implicates an interest within the protection of U.S. Const. amend. XIV and to determine whether due process requirements apply in the first place, the court must look not to the "weight" but to the nature of the interest at stake. More Like This Headnote | Shepardize: Restrict By Headnote

Where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, the court holds that Fourth Amendment liberty interests are implicated. More Like This Headnote | Shepardize: Restrict By Headnote
Corporal punishment in public schools implicates a constitutionally protected liberty interest, but the traditional common-law remedies are fully adequate to afford due process. More Like This Headnote | Shepardize: Restrict By Headnote

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Ingram v. Wright, 430 U.S. 651 (1977)

SHEPARD'S SUMMARY

Restricted Shepard's Summary: LexisNexis HN8

No subsequent appellate history. Prior history available.

Citing References:
- Distinguished (18)
- Positive Analyses: Followed (25)
- Neutral Analyses: Concurring Opinion (7), Dissenting Op. (22), Explained (14)

LexisNexis Headnotes: HN2 (20), HN4 (32), HN5 (107), HN6 (90), HN7 (62) HN9 (370), HN9 (66), HN10 (75), HN11 (26), HN12 (175)

Show full text of headnotes
DISCUSSION QUESTIONS

Your boss has given you a brief he’s written and asks you to find a few cases that say that there has to be consideration for a contract to be valid. Where would you look for a citation?
3. Where would you look for citations to cases that say there has to be consideration to make a binding contract?

**To find cases that define terms:**

*Words & Phrases* [Westlaw]

- **If you can’t find a case:**
  - *Restatement of Contracts* [Lexis & Westlaw]
  - Law Dictionary (*Black’s*) [Westlaw]
  - Major treatise (e.g., *Corbin on Contracts*) [Lexis & Westlaw both contain selected treatises]
Consideration /s contract

Recent Searches & Locates

Dates: Unrestricted

Fields: Select an Option

Add Connectors or Expanders

& AND
space OR
" " Phrase
% But not
! Root expander
Universal character

In same sentence
Following within sentence
In same paragraph
Preceding within paragraph
Within n terms of
Preceding within n terms of

Search Westlaw
Thesaurus
Term Frequency

...protection; (3) city's failure to raise in answer two-year statute of limitations as affirmative defense did not preclude consideration of defense on summary judgment; (4) officer's breach of contract claim was governed by two-year limitations period; (5) denial of officer's retirement benefits did not constitute material breach of contract; and (6) city did not have contractual obligation to provide officer with retirement benefits upon her termination. Affirmed West...

...failure to raise in answer two-year statute of limitations as affirmative defense to disabled former police officer's breach of contract claim did not preclude consideration of defense on summary judgment, absent showing of prejudice to officer. West's N.C.G.S.A. § 1-53(1) [9] 268 Municipal...

2. McIntyre v. McIntyre
654 S.E.2d 790, N.C.App., January 15, 2003 (NO. COA07-235)

...be equitable and the agreement shall be binding on the parties.” Likewise, under N.C. Gen.Stat. § 52-10(a) (2005) Contracts between husband and wife not inconsistent with public policy are valid, and any persons of full age about to be married and married persons may, with or without a valuable consideration, release and oustclaim such rights which they might respectively acquire or may have accrued by marriage in the property of...
wp = **Words & Phrases**
281 N.C. 191, 188 S.E.2d 312, N.C., May 10, 1972 (No. 54)

...95 Contracts 951 Requisites and Validity 951(D) Consideration 95k 49 Nature and Elements 95k 50 k. In General. Generally, “consideration” consists of some benefit or advantage to the promisor or some loss or detriment to the promisee. [5] 95 Contracts...

13. Albemarle Educational Foundation, Inc. v. Basnight
4 N.C.App. 652, 157 S.E.2d 495, N.C.App., May 26, 1969 (NO. 891DC202)

...951(D) Consideration 95k 49 Nature and Elements 95k 52 k. Detriment to Promisee. As affecting enforceability of simple contracts, “consideration” consists of some benefit or advantage to promisor, or some loss or detriment to promisee. [3] 95 Contracts 951 Requisites...

14. L & M Gas Co. v. Leggett
273 N.C. 547, 161 S.E.2d 22, N.C., May 01, 1968 (NO. 851)

...Transfers and Transactions Invalid 1861(G) Consideration 186k 76 Nature and Adequacy 186k 76(2) k. Valuable Consideration. A “good consideration” means valuable consideration. [4] 308 Pleading 3021 Form and Allegations in General 302k 34 Construction in General 302k 34(7)...

294 N.C. 12, 140 S.E.2d 744, N.C., March 17, 1965 (No. 522)

Service, and Service Requires Texas 2744(G) Transactions Turable in General 274k 26(2) k. Consideration or
§ 71 Requirement of Exchange; Types of Exchange

(1) To constitute consideration, a performance or a return promise must be bargained for.
(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.
(3) The performance may consist of

(a) an act other than a promise, or

(b) a forbearance, or

(c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

COMMENTS & ILLUSTRATIONS: Comment:
COMMENTS & ILLUSTRATIONS:

Comment:

a. Other meanings of "consideration." The word "consideration" has often been used with meanings different from that given here. It is used merely to express the legal conclusion that a promise is enforceable. Historically, its primary meaning may have been that the conditions were met under which an action of assumpsit would lie. It was also used as the equivalent of the quid pro quo required in an action of debt. A seal, it has been said, "imports a consideration," although the law was clear that no element of bargain was necessary to enforcement of a promise under seal. On the other hand, consideration has sometimes been used to refer to almost any reason asserted for enforcing a promise, even though the reason was insufficient. In this sense we find references to promises "in consideration of love and affection," to "illegal consideration," to "past consideration," and to consideration furnished by reliance on a gratuitous promise.

Consideration has also been used to refer to the element of exchange without regard to legal consequences. Consistent with that usage has been the use of the phrase "sufficient consideration" to express the legal conclusion that one requirement for an enforceable bargain is met. Here § 17 states the element of exchange required for a contract enforceable as a bargain as "a consideration." Thus "consideration" refers to an element of exchange which is sufficient to satisfy the legal requirement; the word "sufficient" would be redundant and is not used.

b. "Bargain for." In the typical bargain, the consideration and the promise bear a reciprocal relation of motive or inducement: the consideration induces the making of the promise and the promise induces the furnishing of the consideration. Here, as in the matter of mutual assent, the law is concerned with the external manifestation rather than the undisclosed mental state: it is enough that one party manifests an
Illustrations:

1. A offers to buy a book owned by B and to pay B $10 in exchange therefor. B accepts the offer and delivers the book to A. The transfer and delivery of the book constitute a performance and are consideration for A's promise. See Uniform Commercial Code §§ 2-106, 2-301. This is so even though A at the time he makes the offer secretly intends to pay B $10 whether or not he gets the book, or even though B at the time he accepts secretly intends not to collect the $10.

2. A receives a gift from B of a book worth $10. Subsequently A promises to pay B the value of the book. There is no consideration for A's promise. This is so even though B at the time he makes the gift secretly hopes that A will pay him for it. As to the enforcement of such promises, see § 86.

3. A promises to make a gift of $10 to B. In reliance on the promise B buys a book from C and promises to pay C $10 for it. There is no consideration for A's promise. As to the enforcement of such promises, see § 90.

4. A desires to make a binding promise to give $1000 to his son B. Being advised that a gratuitous promise is not binding, A writes out and signs a false recital that B has sold him a car for $1000 and a promise to pay that amount. There is no consideration for A's promise.

5. A desires to make a binding promise to give $1000 to his son B. Being advised that a gratuitous promise is not binding, A offers to buy from B for $1000 a book worth less than $1. B accepts the offer knowing that the purchase of the book is a mere pretense. There is no consideration for A's promise to pay $1000.
FOR EDUCATIONAL USE ONLY

Black's Law Dictionary (8th ed. 2004), bargain theory of consideration

BARGAIN THEORY OF CONSIDERATION

bargain theory of consideration. The theory that a promise or performance that is bargained for in exchange for a promise is consideration for the promise. • This theory underlies all bilateral contracts. See bilateral contract under CONTRACT. [Cases: Contracts 50, C.J.S. Contracts 87.]

"[C]lassical contract theory tended to associate the doctrine of consideration with the concept of bargain. The emphasis of classical law shifted away from actual benefits and detriments to the mutual promises which constitute a wholly executory contract. American lawyers developed from this trend a 'bargain theory of consideration' and similarly in English law a more modern basis for the doctrine of consideration was found by some lawyers in the notion that a contract is a bargain in which the consideration is the price of the bargain. Allied to this is the supposed rule that nothing can be treated as a consideration unless it is seen by the parties as the 'price' of the bargain." P.S. Atiyah, An Introduction to the Law of Contract 119 (3d ed. 1981).

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Bryan A. Garner, Editor in Chief

END OF DOCUMENT
§ 5.1 Meanings of the Terms "Consideration" and "Nudum Pactum"

The term "consideration" has been used in a number of different ways. In a broad sense, it has been used to cover all the reasons deemed sufficient to render a promise enforceable, in other words, "to express the legal conclusion that a promise is enforceable." In a narrow sense, it has been used to denote one reason deemed sufficient for enforcement of promises: the bargained-for exchange.

For many years those uses coexisted with resulting confusion and potential for injustice. There was a danger of a court's concluding, without considering whether there may have been another reason for enforceability, that because there was no consideration in the narrow sense (bargained-for exchange) there was no consideration in the broad sense (basis for enforcement). The prior edition of this treatise, in § 109, warned against this danger: "In making use of [the term "consideration"], it is necessary to consider the purpose for which it is used and to make sure that justice is not being defeated by using it in accordance with some narrow and limited definition."

Furthermore, the use of a single word "consideration" in the broad sense to express the conclusion that a promise was enforceable may have fostered the misconception that there is a single doctrine by which enforceability of an informal promise can be deductively determined. Immense effort has been expended in a futile attempt to discover a specific and definite origin of such a doctrine.

Some of our most able and learned scholars have searched the past, looking for "origins" of the doctrine of consideration. In the early history of English law, informal promises may not have been enforced at all. But one cannot dogmatically assert that they were not enforced. Records
You’re a research assistant, and you receive the following e-mail from your professor:

“I’m updating my consumer protection law casebook. I need to know which states allow individuals to sue for damages for deceptive trade practices, in which this is a criminal offense, and where the state attorney general can bring a lawsuit. Please provide the cites and relevant texts.”

How would you begin?
4. Where do you look to find the statutes on deceptive trade practices in all 50 states?

If your first reaction to a research assignment is: “Yikes, I don’t know where to begin!”

Your first step should be to talk to a librarian.
4. Where do you look to find the statutes on deceptive trade practices in all 50 states?

LEXIS OR WESTLAW

- **Westlaw:** SURVEYS database
  [National Survey of State Laws]
- **Lexis:** States Legal - U.S. > Combined States > Find Statutes & Legislative Materials > LexisNexis 50 State Surveys, Legislation & Regulations >> [topic]

- **Martindale-Hubbell Digest of State Laws**
  [Lexis: MARHUB;MHDIG]

- **Other Secondary Source:**
  - Subject Compilations of State Laws
  - Law Review Articles
  - Encyclopedias, ALR, and treatises
CONSUMER PROTECTION

- Advertising of Attorney Services
- Antitrust
- Child Care Licensing Requirements: Facilities
- Child Care Licensing Requirements: Providers
- Deceptive Trade Practices
- Do Not Call Lists and Telemarketing
- Interest Rates
- Lemon Laws
- Licensing and Inspection of Funeral Homes
- Licensing Requirements for Funeral Home Directors
- Uniform Electronic Transactions Act

CORPORATIONS

MARKETING AND RETAIL

PROFESSIONS

CIVIL LAWS

CRIMINAL LAWS

EDUCATION

ELECTION LAW

EMPLOYMENT

ENVIRONMENTAL LAWS

FAMILY LAW

FINANCIAL SERVICES

Selection(s): Retrieve & Print | Search | Expand Selection(s) | Collapse All | Clear
Deceptive Trade Practices

A deceptive trade practice is an activity in which an individual or business engages that is calculated to mislead or lure the public into purchasing a product or service. False advertising and odometer tampering are two of the most blatant examples of this commercial lying. Such activities are given special status as offenses against the citizenry in general and are therefore accorded by law special enforcement status.

**Deceptive trade practices** result in criminal prosecution in some states; in others, statutes provide for private enforcement, whereby a citizen is entitled to sue a business for violating deceptive trade practice laws and may be able to recover punitive damages and/or statutory fines. The attorney general of the state may also bring a lawsuit against an offending business enterprise.

Because a deceptive trade practice may affect individuals or businesses from more than one state, a number of states have adopted the standardized Uniform **Deceptive Trade Practices** Act (UDTPA). The Uniform Act does not add or detract from the law of any one state; rather, it is inclusive and tends to cover, in general terms, all the prohibitions and issues addressed in state law in this area.
Deceptive Trade Practices

Approx. 2 pages

Alabama, AL ST s 8-19-1, AL ST s 13A-9-42, AL ST s 8-19-8, AL ST s 8-19-10, AL ST s 8-19-12, AL ST s 8-19-11, AL ST s 8-19-6(15)

Alaska, AK ST s 45.50.471(b), AK ST s 45.50.501, AK ST s 45.50.531, AK ST s 45.50.531, AK ST s 45.50.471(b)(15)

Arizona, AZ ST s 44-1522, AZ ST s 13-2203, AZ ST s 44-1524, AZ ST s 44-1526-1528, AZ ST s 44-1531, AZ ST s 44-1532, AZ ST s 44-1523

Arkansas, AR ST 4-88-107, AR ST 4-88-111, AR ST 4-88-113, AR ST 4-88-103, AR ST 23-112-308 (21)

California, CA ST Bus. & Prof. s 17500, CA ST Bus. & Prof. s 17535, CA ST Bus. & Prof. s 17203, CA ST Bus. & Prof. s 17500, CA ST Bus. & Prof. s 28050, Veh.§ 40000.15

Colorado, CO ST s 6-1-101, CO ST s 6-1-105, CO ST s 6-1-113, CO ST s 42-5-202

Connecticut, CT ST s 42-110a, CT ST s 42-110g, CT ST s 42-144 to CT ST s 42-149, CT ST s 42-110b, CT ST s 42-110a(4), CT ST s 42-110d, CT ST s 42-110g, CT ST s 14-106b

Injunctions or restraining orders forbidding the continued deceptive trade practice and (2) punishment via fines, damages, and imprisonment. But because businesses are generally in violation of deceptive trade practice laws, and because it is difficult to determine whom to punish in the violating business, fines are generally the most effective method of extracting restitution.

Table 1: Deceptive Trade Practices—Continued

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<tr>
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<td>Private parties, attorney general, district attorney (§8-19-8)</td>
<td>Restraining orders (§8-19-8); actual damages or $100, whichever is greater, or in court’s discretion up to three times actual damages (§8-19-10); continuous willful violation is Class A misdemeanor (§8-19-12); civil penalty up to $25,000 per violation</td>
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Deceptive Trade Practices (September 2007)

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Martindale-Hubbell Law Digest
1. BUSINESS REGULATION AND COMMERCE, CONSUMER PROTECTION, Copyright 2007 by Reed Elsevier Inc., Martindale-Hubbell Law Digest, ALABAMA LAW DIGEST
   Deceptive Trade Practices Act (8-19-...) ... 15) similar to Uniform Deceptive Trade Practices Act. In addition to ...

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   Uniform Deceptive Trade Practices Act not adopted. ...

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   ... et seq.). Uniform Deceptive Trade Practices Act not adopted. ...

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   ... Attorney General under Deceptive Trade Practices Act are available under ...
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   ... constitute violations of Arkansas' Deceptive Trade Practices Act. (4-88-...)
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ALABAMA LAW DIGEST

CATEGORY: BUSINESS REGULATION AND COMMERCE

TOPIC: CONSUMER PROTECTION

TEXT: Deceptive Trade Practices Act (8-19-1 to 15) similar to Uniform Deceptive Trade Practices Act. In addition to activities proscribed by Uniform Act, Act proscribes following: Falsely representing going out of business; altering motor vehicle odometer with intent to deceive; failing to ship purchased goods within time advertised, or if no time advertised, within 30 days; using chain referral sales plan; selling or offering to sell right to participation in pyramid sales structure; misrepresenting either amount of earnings or extent of market of goods in connection with seller-assisted marketing plan; intentionally misrepresenting warranty rights; failing to disclose material damage to motor vehicles; affix Alabama revenue stamp to cigarettes for deceptive purposes; engaging in scheme or artifice to defraud by telephone communications; contacting party by telephone to offer gift, award or prize, where communicating party had knowledge at that time that statements were materially false and intended to deprive other of property. (8-19-5).

Act does not apply to acts by publisher or employee of newspaper, radio station, television station, or telephone company in dissemination of advertisement that such person did not know to be false or misleading; or to any seller who: (1) Disseminates advertisements from manufacturer or other seller without knowledge that advertisements are false or misleading; (2) provides name and address of such manufacturer or other seller upon request of Attorney General or District Attorney; and (3) on request of Attorney General or District Attorney, agrees in writing to discontinue such dissemination. (8-19-7).

Enforcement. - Restraining orders may be sought by Attorney General or District Attorney to prevent violations. (8-19-8). When consumer monetarily damaged, he may sue under Act to recover actual damages or $100, whichever greater, or in court's discretion up to three times actual damages. (8-19-10). Willful violation of Act Class A misdemeanor (8-19-12).
OTHER SOURCES

- Subject Compilations of State Laws
- Law review articles
- Encyclopedias / ALR
DISCUSSION
QUESTIONS

Since you started law school, your friends and family have been asking you for legal advice. This time it’s your grandparents, who have recently retired and moved to Asheville. They just bought a new Prius that’s turned out to be a real lemon. Where would you look to see if North Carolina law protects consumers whose new cars don’t live up to their warranties?

(You’ve checked with your boss, and been told that you may use any of the firm’s resources to research this issue).
5. How do you determine if North Carolina law protects new car buyers?

Start with a secondary source! (e.g., a state legal encyclopedia)
Statutes:

The New Motor Vehicles Warranties Act[FN1] provides state and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.[FN2]

Express warranties for a new motor vehicle must remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties during the applicable period, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not those repairs are made after the expiration of the applicable warranty period.[FN3]

Cases:

In order to recover a refund under the New Motor Vehicles Warranties Act, a lessee or purchaser must establish [FN4]

1. the terms of the manufacturer's express warranty;
2. that the vehicle failed to conform to those terms in the warranty;
3. that after a reasonable number of attempts to remedy that breach of the warranty; and
4. the vehicle still failed to conform.

The plaintiff produced sufficient evidence that a new vehicle leased by the plaintiff was expressly warranted against defects which would cause a clicking sound in a wheel or the front end to vibrate, although the written warranty was not introduced into evidence, where the plaintiff presented the testimony of the defendant's regional sales manager, who was the defendant's former parts and


Forms


A.L.R. Library

Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws), 88 A.L.R. 5th 301.

Construction and effect of new motor vehicle warranty limiting manufacturer's liability to repair or replacement of defective parts. 2 A.L.R. 4th 576.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 A.L.R. 3d 1217.
Annotated codes include research aids and summaries of cases decided under the statutes:

- Lexis
- Westlaw
- print
FOR EDUCATIONAL USE ONLY

N.C.G.S.A. § 20-351

West's North Carolina General Statutes Annotated Currentness
Chapter 20. Motor Vehicles
  Article 15A. New Motor Vehicles Warranties Act (Refs & Annos)
  § 20-351. Purpose

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

Added by Laws 1987, c. 385.

LAW REVIEW COMMENTARIES


This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

Added by Laws 1987, c. 385.

LAW REVIEW COMMENTARIES


RESEARCH REFERENCES

ALR Library


Treatises and Practice Aids

NOTES OF DECISIONS

Construction and application

1. Construction and application

When consumer receives refund under lemon law, whether by request to manufacturer or through judicial action, consumer may not retain defective vehicle. *Buford v. General Motors Corp.*, 1994, 339 N.C. 366, 451 S.E.2d 293. *Antitrust And Trade Regulation* *§ 284*


Application of "Lemon Law," New Motor Vehicles Warranties Act, to lease executed prior to effective date of statute would be retroactive and improper, even if no defects existed prior to enactment of statute; nothing indicated express or implied intent of Legislature for retroactive application. *Estridge v. Ford Motor Co.*, 1991, 401 S.E.2d 85, 101 N.C.App. 716, review denied 404 S.E.2d 867, 329 N.C. 667, *Antitrust And Trade Regulation* *§ 130*

N.C.G.S.A. § 20-351, NC ST § 20-351

Current through S.L. 2007-552 (End) of the 2007 Regular and Extra Sessions.

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Terms and Connectors

l e m o n  l a w  w/p warranty w/p car or automobile or motor vehicle"

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View Search Tutorial
§ 20-351. Purpose

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

HISTORY: 1987, c. 385, s. 1.

NOTES:

CASE NOTES

LEGISLATIVE INTENT -- EFFECTIVE DATE. -- The legislature did not express the intent that G.S. 20-351 to 351.10 be applied retroactively; nor is there any clear implication from the statute that the legislature intended to apply the statute retroactively. Instead, the legislature passed the statute in June of 1987 and made its intention clear that the statute become effective in October of 1987. Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991), cert. denied, 329 N.C. 267, 404 S.E.2d 667 (1991).

ACT IS INAPPLICABLE TO LEASES EXECUTED PRIOR TO EFFECTIVE DATE. -- Plaintiff's claim based on the New Motor Vehicles Warranties Act was properly dismissed even though no defects existed prior to the enactment of statute. Application of "Lemon Law" to lease executed prior to effective date of statute is retroactive and improper, without legislative intent for retroactive application. Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991).
ALWAYS UPDATE STATUTES!

- Search the public law and bill databases by key word or using the cite as a search query.

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Article 15A
New Motor Vehicles Warranties Act.

§ 20-351. Purpose.
This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties. (1987, c. 385, s. 1.)
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The charges for retrieving a document via the Find service or via the Previous Section/Next Section links are the same as the database charge.

### Charges for Previewing Documents in the Link Viewer
When you click a hypertext link to view a document in the Link Viewer, you are charged the applicable database rate for the document displayed in the Link Viewer. When you close the Link Viewer and return to your original document, you are charged the applicable database rate for the original document.

### Per Minute Billing Classifications
The following prices are for per minute price classifications. The prices include database charges, plus connect time and communications charges:
- **Combination databases**: $1.76/min.
- **Highlights databases**: $4.20/min.
- **Basic databases**: $4.46/min.
- **Standard databases**: $7.58/min.
- **Standard-Codes databases**: $8.90/min.
- **Deluxe databases**: $10.11/min.
- **Specialty databases**: $10.50/min.
- **Premium databases**: $11.56/min.
- **Allfile databases**: $14.71/min.
- **Super Allfile databases**: $17.66/min.
- **Select databases**: $20.10/min.
- **User-defined, multiple-database searches billed as Multi-Search databases**: $15.05/min.
- **Documents retrieved from ResultPlus are billed as follows:**
  - **ResultPlus Premium**: $14.91/min.
  - **ResultPlus Allfiles**: $19.03/min.
  - **ResultPlus Super Allfiles**: $22.71/min.
  - **ResultPlus Select**: $25.88/min.

Complete, database-specific pricing information is available in the SUBSCRIBER database.

### Offline Transmission Charges
(printing and downloading)

#### Per-Line Pricing (default)
- Most databases on Westlaw: $0.035
- Most news and business databases: $0.035

Charges to print and download documents range from $0.035 to $0.15 per line. See the SUBSCRIBER database for database-specific pricing information.

#### Per-Document Pricing (flat rate per document)
- Most databases on Westlaw: $7.50
- Most news and business databases: $7.50
- **Dialog® on Westlaw databases**: $7.50
- **Briefs databases**: $17.50
- **50 State Surveys**: $25.00
- **Westlaw public records**: $1.00

Charges to print and download documents range from $1.00 to $50.00 per document. See the SUBSCRIBER database for database-specific pricing information.