

The International Society of Primerus Law Firms

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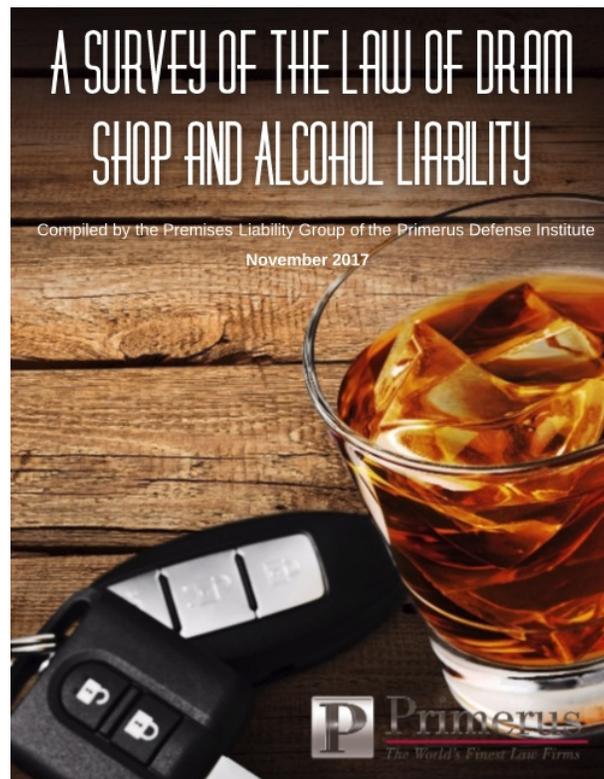
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Dram Shop



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Member lawyers of The International Society of Primerus Law Firms from around the country who routinely represent clients and their insurers in alcohol liability-related matters have contributed to *A Survey of the Law of Dram Shop and Alcohol Liability* to assist you, the client, to gain a rapid understanding of the law as it is applied around the country.

We hope that you find this compendium useful. The lawyers of the Primerus Defense Institute stand ready to assist you, whenever and however they are needed.

Business

AUSTRALIA

Book Fight

By [Selwyn Black, Esq.](#) and [Nicholas Huang, Esq.](#)

[Carroll & O'Dea Lawyers](#)

Sydney, Australia

The case of *Murray & Ors v Lesicar & Ors* [2016] SASC 71 illustrates some of the principles that can apply to the rights of a partner to inspect the books of a dissolved partnership.

[Full Article](#)

NETHERLANDS

Statutory Director or Nominal Director?

By [Jan Dop, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Job titles, such as managing director, CEO, director, and authorised director, are common. From a legal point of view there are just two different jobs. So what are the differences and who is authorised to do what?

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Hospitality

UNITED STATES

Franchisor Not Liable for Alleged Tips Act Violation by Franchisee

By [Robert P. Rudolph, Esq.](#)

[Rudolph Friedmann LLP](#)

Boston, Massachusetts

Where the plaintiff employee in *Yarph v. Bowden Hospitality Newton LLC, et al.* sought to add both the limited liability company that gave a hotel owner a license to do business and the LLC's parent company to a lawsuit claiming that the hotel violated the Massachusetts Tips Act, the Business Litigation Session of Suffolk Superior Court ruled that the motion to add the franchisor defendants should be dismissed. The Court's decision was based on the fact that neither entity had any control over or received any revenue from the alleged violation of the Massachusetts Tips Act.

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Insurance

UNITED STATES

Insurer Not Obligated to Play Two Ways

By [Rudolph Friedmann LLP](#)

Boston, Massachusetts

In a recent case of first impression, the Massachusetts Supreme Judicial Court (SJC) answered certified questions presented by the United States Court of Appeals for the First Circuit. The questions focused on whether an insurer's duty to defend (play defense) requires the insurer to pay for legal counsel to prosecute an affirmative counterclaim (play offense) on behalf of the insured. A divided SJC ruled that the insurer does not have to prosecute the insured's counterclaim. The case is *Mount Vernon Fire Insurance Company v. Visionaid*, No. SJC-12142 (June 22, 2017).

[Full Article](#)

UNITED STATES

Potential Barriers and Limitations to Successful Cyber Subrogation

By [Donato, Minx, Brown & Pool, P.C.](#)

Houston, Texas

In a previous blog, we discussed "[What is Cyber Subrogation?](#)" This blog will focus on potential barriers and limitations to successful cyber subrogation. While this list is non-exhaustive, it gives an overview to the various barriers and limitations to successful cyber subrogation. These barriers include (1) contractual waivers and limitations; (2) a lack of clear applicable standards; and (3) the first individuals to investigate the breach or attack are likely the later target defendants, i.e., the fox guarding the henhouse analogy.

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Labor and Employment

NETHERLANDS

Does Requirement for Reassignment Apply to Expats Too?

By [Jan Dop, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Employers in the Netherlands have to try and reassign employees within the company before dismissing them. Does this apply to expats too who often work for widespread international groups?

Reassignment

To dismiss an employee the employer requires a reasonable ground for dismissal. With the introduction of the Work and Security Act, the employer is required by law to try and reassign an employee within a reasonable period in a suitable job, whether or not by means of training. Two important exceptions apply to this requirement:

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UNITED STATES

New Year, New Poster: Prepare to Prominently Post the "Transgender Rights in the Workplace" Poster

By [Karina B. Sterman, Esq.](#)

[Greenburg Glusker](#)

Los Angeles, California

Earlier this year, California employers became subject to new workplace regulations pertaining to protections for transgender applicants and employees. These regulations expanded existing protections under the Fair Employment and Housing Act (FEHA) by, among other things, revising the FEHA to use gender-neutral language, requiring employers to honor an employee's request to be identified by a preferred gender or pronoun, and prohibiting employers from seeking proof of an applicant's or employee's sex, gender or gender identity.

[Full Article](#)

UNITED STATES

Alert -- Employer's Procedural Modifications to Arbitration Process Renders Arbitration Provision Unenforceable

By [Horace Green, Esq.](#)

[Buchman Provine Brothers Smith LLP](#)

Walnut Creek, California

As we have noted previously, the United States Supreme Court has repeatedly reaffirmed the validity of provisions in employment contracts requiring the employer and the employee to arbitrate disputes arising out of the employment relationship^[1]. Arbitration provisions in employment contracts are generally attacked on either one of two grounds: (1) the employee never agreed to the provision; or (2) the arbitration provision itself is unconscionable^[2]. A recent opinion issued by California's First Appellate District is an example of how an employer's modifications to standard pre-arbitration procedures with respect to filing deadlines and discovery can limit the employee's rights to the point where the arbitration provision itself becomes unenforceable. The case is *Baxter v. Genworth North American Corp.*, 2017 WL 4837702 (Cal.Ct. App. A144744, October 26, 2017).

[Full Article](#)

UNITED STATES

Employers Beware: Common Misconceptions of Arbitration Clauses

By [Lauren X. Topelsohn, Esq.](#) and [Steve I. Adler](#)

[Mandelbaum Salsburg](#)

Roseland, New Jersey

Arbitration is generally touted as a more cost effective alternative to litigation (but that isn't always the case). It is certainly a more private process intended to avoid the risk of a runaway

jury. As a result, arbitration clauses have become de rigeur in employment agreements.

But not all arbitration clauses are created equal. Employers need to choose their terms thoughtfully, with an eye to case law, changes to the Commercial Rules of the American Arbitration Association (the "Rules"), and potential, unintended consequences.

[Full Article](#)

UNITED STATES

Employers are Required to Compensate Employees for All Rest Breaks of Twenty Minutes or Less

By [Thomas Paschos & Associates, P.C.](#)
Haddonfield, New Jersey

In *Secretary, United States Department of Labor v. American Future System*, No. 16-2685 (3d Cir. October 13, 2017), American Future Systems d/b/a Progressive Business Publications (Progressive), used sales representatives who are paid an hourly wage plus bonuses based on the number of sales per hour while they are logged onto their work computers. Progressive previously gave employees two 15-minute paid breaks per day. In 2009, Progressive instituted a "flex time" policy in which employees were entitled to log off of their computers throughout the work day at will and for any reason. There was no limit set on the duration; however, once the employee was logged off for more than ninety seconds, he was considered on "flex time." Furthermore, employees were only compensated for time that they were logged in to the system; they were not compensated for "flex time." Progressive did not consider its employees' "flex time" as a "break" requiring compensation.

[Full Article](#)

UNITED STATES

New Overtime Regulations Fade Away

By [Todd Masuda, Esq.](#)

[Schneider Smeltz Spieth Bell, LLP](#)

Cleveland, Ohio

In spring 2016, the Department of Labor (DOL), under the Obama administration, announced a regulatory change that contained two particularly jarring changes in overtime law: 1. It raised the minimum weekly salary for exempt employees from \$455 to \$913. 2. It established a formula ensuring that the minimum weekly salary would increase every three years. The change would have removed a significant number of lower-paid white-collar employees from overtime exemption. Companies in certain industries such as the nonprofit sector, which often have tight budgets and a strong reliance on dedicated executive staff, were particularly concerned about the impending law, which would have taken effect December 1, 2016.

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Premises Liability

UNITED STATES

***United Scaffolding, Inc. v. Levine*: Expanding Control for the Purpose of Premises Liability**

By [Donato, Minx, Brown & Pool, P.C.](#)

Houston, Texas

When a plaintiff is injured on property owned by another two possible claims may arise—general negligence and premises liability. A crucial component of premises liability claims, absent in general negligence claims, is control. Owners of industrial workplaces often contract with multiple contractors to perform various operations on the premises. When an employee of the owner of the property is injured by a defective condition created by a contractor, courts must determine whether the contractor was in control of the premises. For a defendant to owe a duty to a plaintiff under a premises liability claim, the defendant must have been in control of the premises.^[1] If the defendant was not in control of the premises, there is consequently no responsibility for dangerous conditions existing on the property.^[2]

[Full Article](#)

Real Estate & Leasing

NETHERLANDS

No Lease Agreement - But Still Security of Tenure!?

By [Ynze Kliphuis, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Lessees of residential and retail property enjoy security of tenure. Security of tenure is also regularly invoked by parties that have not entered into a lease agreement. Is that possible?

Lease Agreement or Not

Lessees enjoy security of tenure either on the basis of tenancy law or on the basis of a lease agreement. Sometimes companies or private individuals enter into agreements that entitle them to also use someone else's property but provide, or appear to provide, more options for termination than lease agreements. Think, for instance, of loan agreements, contracts for use, or operating agreements. Also, mixed agreements may be entered into that refer to both, a lease and another type of agreement. The issue, then, is whether security of tenure is applicable or the termination arrangements of the other agreement.

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Sports Law

UNITED STATES

Hockey Parents' Unsportsmanlike Conduct

By [Brendan Richard, Esq.](#)

[Norchi Forbes LLC](#)

Cleveland, Ohio

If you are frustrated by your child's youth sports experience, here is a spectacularly unproductive way to resolve your feelings: bring "illusory" claims of sexual harassment against the child's youth hockey non-profit organization and the community-owned ice rink (the Tam O'Shanter Hockey Facility in Sylvania, Ohio). [1] Take 35 depositions. Force yourself and the non-profit sports organization to ring up legal costs well into six figures. And then watch the trial and appellate courts throw the claims out after years of litigation.

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Succession/Estate Planning

AUSTRALIA

Digital Assets and What Happens After You Die

By [HHG Legal Group](#)

West Perth, Australia

There is no doubt that in the internet era we all engage and devote significant time to our online presence for personal use, study and in the workplace. In doing so, most people gradually acquire a broad range of digital assets and may not recognize the significance of

Paradigm Magazine



The [2017 Fall Paradigm Magazine](#) delivers articles regarding developments and trends in legal issues relevant to corporate clients around the world, while showcasing Primerus members as leaders with the expertise to assist clients with any legal needs they may have. It is published twice a year and mailed to Primerus members as well as clients around the world.

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The Primerus Client Resource Institute

The Primerus Client Resource Institute (PCRI) is the client section of the Primerus membership intended for in-house counsel, risk managers, claims managers, and corporate executives who are responsible for the legal affairs of their companies. Given the challenges of doing business in today's fast-paced, global economy, it has never been more important for companies around the world to develop trusted relationships with law firms that offer high quality legal services at reasonable fees. Primerus seeks out, screens and audits our firms to make sure we have only the finest, so companies in need of legal services can call upon any Primerus lawyer with complete confidence that he or she is reasonably priced, highly competent, and worthy of your trust.



The PCRI was created with the help of some long-standing Primerus corporate clients, and offers in-house counsel and corporate executives an opportunity to connect with not only great law firms and lawyers, but also with other similarly situated in-house and corporate professionals.

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Click below to complete a brief online application. Once submitted, membership applications are reviewed and approved by the Primerus Client Resource Institute Executive Committee. Apply today, and you will hear from us soon.

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Resources

Legal Articles

Compendiums:

- [A Survey of the Law of Dram Shop and Alcohol Liability](#)
- [A Survey of the Law of Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015](#)
- [A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015](#)
- [Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition](#)
- [A State by State Update of Tort Reform - 2013 Edition](#)
- [Principles of Law Regarding Establishment and Operation of a Business in Various Countries Compendium - International Transactional Services Practice Group - March 2012](#)
- [Doing Business in the Asia Pacific Region](#)

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