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# Lexis.com資料庫介紹

- 專業法律資料庫
  - 專門為法律專業研究人員和律師提供權威的、內容豐富的全球性法律資訊
- 強大的搜索引擎
  - 按照法律分類系統，瞬間將判例、專題論文、法律評論和相關的法律新聞檢索出來

# 專業法律資料庫(一)

- 美國 – 國會法案、法律、裁判、行政命令、公共紀錄、專利資料、法學論著、法學期刊以及法律新聞
- 歐盟與其他國際組織 – 條約與協定、裁判、法律與命令、專利資料、評論與專門著作、新聞、國際仲裁決定以及各國遵行歐盟決議的政策與立法資訊
- 其他國家 – 如加拿大、英國、法國、義大利等20多個國家的法令、法案、案例、國際公約等法律相關資料

# 專業法律資料庫(二)

- 法律原始文獻資料
  - 美國聯邦和各州法院判例
  - 美國聯邦立法
  - 美國聯邦規章法典
  - 美國各州立法
  - 英美立法和政治制度



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# 進行法律檢索三步驟

- 第一步：確認目的
- 第二步：定義檢索範圍
- 第三步：適合的檢索技巧

## 法律檢索步驟第一步：確認目的

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# 法律檢索步驟第一步：確認目的

- 法律分析
  - 案件分析-Shepard' s
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  - 特定議題的檢索-Terms & Connectors

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  - 新聞
    - 例如：找王建民相關新聞
  - 期刊
    - 例如：找教授 Elena Kagan的文章
  - 法律主題
    - 例如：強制執行仲裁結果

# 法律檢索步驟第一步：確認目的

- 進行特定研究
  - 準據法之約定(Choice-of-law)條款在一個國際商業合約中是否可由法院執行？( Reference: Batchelder v. Nobuhiko Kawamoto, 147 F.3d 915 )
  - 美國總統是否有權利命令軍隊拘留一個疑似恐怖份子的人？嫌疑犯是否可以向法庭申請人身保護命令反對這項命令？ (Reference: Rumsfeld v. Padilla, 124 S. Ct. 2711 )

## 法律檢索第二步：定義檢索範圍

- 廣度 - 管轄範圍
  - 例如：比較研究美國加州和紐約兩者間的法律原理
- 深度 - 時間與內容
  - 例如：查詢10年來所有聯邦判例法和州法規



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












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
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**LENGTH:** 3629 words

BOOK COMMENT: Romanticizing Guilt: Romantics at War: Glory and Guilt in the Age of Terrorism. By George P. Fletcher.\*

Princeton: Princeton University Press, 2002. Pp. 251. \$ 24.95.

\* Cardozo Professor of Jurisprudence, Columbia Law School.

**SUMMARY:**

... George P. Fletcher's *Romantics at War* begins by describing an ironic blindness. ... An "easy transition in Romantic thinking from the individual self to the nation" (p. 36) seems to tie together Fletcher's reflections on the impulse to wage war for national honor with his development of the notion of collective guilt. ... While this contrast may shed light on collective guilt by highlighting aspects of national identity that a traditional liberal account excludes, it cannot supply an independent basis for making a normative assessment of those questions. ... This Comment suggests that a different understanding of Romanticism may provide a basis to critique the ideological underpinnings of national identity without ignoring the importance of such identity to Fletcher's questions of war and guilt. At the same time, Romantic imagination suggests a way of understanding collectivity that neither reproduces the universalism of liberals nor reinforces the exclusionary boundaries of an organic conception of the nation. ...

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*346 U.S. App. D.C. 330; 253 F.3d 34, \*;*  
*2001 U.S. App. LEXIS 14324, \*\*; 2001-1 Trade Cas. (CCH) P73,321*

UNITED STATES OF AMERICA, APPELLEE v. MICROSOFT CORPORATION, APPELLANT

No. 00-5212, Consolidated with 00-5213

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

346 U.S. App. D.C. 330; 253 F.3d 34; 2001 U.S. App. LEXIS 14324; 2001-1 Trade Cas. (CCH) P73,321

February 27, 2001, Argued

June 28, 2001, Decided

**SUBSEQUENT HISTORY:** **[\*\*1]** Rehearing Denied August 2, 2001, Reported at: [2001 U.S. App. LEXIS 17137](#). Certiorari Denied October 9, 2001, Reported at: [2001 U.S. LEXIS 9509](#).

Rehearing denied by [United States v. Microsoft Corp., 2001 U.S. App. LEXIS 17137 \(D.C. Cir., Aug. 2, 2001\)](#)Motion denied by [United States v. Microsoft Corp., 2001 U.S. App. LEXIS 18715 \(D.C. Cir., Aug. 17, 2001\)](#)Writ of certiorari denied [Microsoft Corp. v. United States, 534 U.S. 952, 122 S. Ct. 350, 151 L. Ed. 2d 264, 2001 U.S. LEXIS 9509 \(2001\)](#)Related proceeding at [Charles I. Friedman, P.C. v. Microsoft Corp., 2006 Ariz. App. LEXIS 101 \(Ariz. Ct. App., Aug. 24, 2006\)](#)

**PRIOR HISTORY:** Appeals from the United States District Court for the District of Columbia. (No. 98cv01232). (No. 98cv01233).

[United States v. Microsoft Corp., 97 F. Supp. 2d 59, 2000 U.S. Dist. LEXIS 7583 \(D.D.C., 2000\)](#)[United States v. Microsoft Corp., 97 F. Supp. 2d 59, 2000 U.S. Dist. LEXIS 7582 \(D.D.C., 2000\)](#)[United States v. Microsoft Corp., 87 F. Supp. 2d 30, 2000 U.S. Dist. LEXIS 4014 \(D.D.C., 2000\)](#)

**DISPOSITION:** Judgment of the District Court affirmed in part, reversed in part, and remanded in part. Vacated in full the Final Judgment embodying the remedial order, and remanded the case to the District Court for reassignment to a different trial judge for further proceedings



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- 1. [Apple Computer v. Microsoft Corp.](#), ?4-1121, UPREME COURT OF THE UNITED STATES, ?13 U.S. 1184; 115 S. Ct. 1176; 130 L. Ed. 2d 1129; 1995 U.S. LEXIS 1535; 63 U.S.L.W. 3628, ebruary 21, 1995, Decided
- 2. [Innovad, Inc. v. Microsoft Corp.](#), ?0-1459, NITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, ?60 F.3d 1326; 2001 U.S. App. LEXIS 17421; 59 U.S.P.Q.2D (BNA) 1676, ugust 6, 2001, Decided

**OVERVIEW:** The court affirmed summary judgment in favor of alleged infringers even though the district court misconstrued two terms in the relevant patent claim. The district court's proper construction of a third term mandated findings of noninfringement.

**CORE TERMS:** dialer, programming, keypad, switch, specification, memory, signal, telephone numbers, reprogrammable, telephone ...

- 3. [Apple Computer v. Microsoft Corp.](#), o. 93-16867, No. 93-16869, No. 93-16883, NITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, ?5 F.3d 1435; 1994 U.S. App. LEXIS 25646; 32 U.S.P.Q.2D (BNA) 1086; Copy. L. Rep. (CCH) P27,301; 94 Cal. Daily Op. Service 7160; 94 Daily Journal DAR 13168, uly 11, 1994, Argued, Submitted, San Francisco, California, eptember 19, 1994, Filed, ?Certiorari Denied February 21, 1995, Reported at: 1995 U.S. LEXIS 1535.

**OVERVIEW:** When all similarities between the graphic user interfaces of competing computer companies sprung from licenses or from basic ideas and their obvious expression, no illicit copying existed when the works as a whole were not virtually identical.

**CORE TERMS:** apple, window, similarity, interface, license, display, visual, infringement, derivative, user ...

- 4. [Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.](#), ASE NO. 6:06 CV 549, PATENT CASE, CASE NO. 6:06 CV 550, PATENT CASE, NITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION, ?007 U.S. Dist. LEXIS 91550, eceMBER 13, 2007, Decided, eceMBER 13, 2007, Filed

**CORE TERMS:** customer, disqualification, disqualify, patent, indemnity agreement, manufacturer, infringement, chip, confidential information, intervene ...

- 5. [Apple Computer v. Microsoft Corp.](#), o. C-88-20149-VRW, NITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF

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- [A](#) 1. [Valdivia-Perez v. United States](#), o. 06-8452., UPREME COURT OF THE UNITED STATES,?27 S. Ct. 1165; 166 L. Ed. 2d 1007; 2007 U.S. LEXIS 1282; 75 U.S.L.W. 3385, anuary 22, 2007, Decided
- 2. [Johnson v. United States](#), o. 05-8452., UPREME COURT OF THE UNITED STATES,?46 U.S. 1210; 126 S. Ct. 1422; 164 L. Ed. 2d 118; 2006 U.S. LEXIS 1711; 74 U.S.L.W. 3474, ebruary 21, 2006, Decided
- 3. [Blackshear v. United States](#), o. 04-8452., UPREME COURT OF THE UNITED STATES,?44 U.S. 912; 125 S. Ct. 1617; 161 L. Ed. 2d 290; 2005 U.S. LEXIS 2351; 73 U.S.L.W. 3530, arch 7, 2005, Decided
- [A](#) 4. [Soto v. Phillips](#), o. 03-8452., UPREME COURT OF THE UNITED STATES,?41 U.S. 945; 124 S. Ct. 1675; 158 L. Ed. 2d 372; 2004 U.S. LEXIS 2172; 72 U.S.L.W. 3598, arch 22, 2004, Decided
- [A](#) 5. [DiFrisco v. New Jersey](#),?2-8452 , UPREME COURT OF THE UNITED STATES,?37 U.S. 1220; 123 S. Ct. 1323; 154 L. Ed. 2d 1076; 2003 U.S. LEXIS 1435; 71 U.S.L.W. 3550, ebruary 24, 2003, Decided
- 6. [Atkins v. Virginia](#), o. 00-8452 , UPREME COURT OF THE UNITED STATES,?36 U.S. 304; 122 S. Ct. 2242; 153 L. Ed. 2d 335; 2002 U.S. LEXIS 4648; 70 U.S.L.W. 4585; 2002 Cal. Daily Op. Service 5439; 2002 Daily Journal DAR 6937; 15 Fla. L. Weekly Fed. S 397, ebruary 20, 2002, Argued , une 20, 2002, Decided , ? On remand at, Remanded by Atkins v. Commonwealth, 266 Va. 73, 581 S.E.2d 514, 2003 Va. LEXIS 71 (2003)

**OVERVIEW:** Noting a national consensus against imposing the death penalty on mentally retarded offenders, the Court concluded such punishment was excessive and held that the Eighth Amendment restricts a state's power to take the life of a such an offender.

**CORE TERMS:** death penalty, mentally retarded, mental retardation, mentally retarded, offender, retarded, murder, convicted, sentencing, oppose ...

- 7. [Johnson v. United States](#),?1-8452, UPREME COURT OF THE UNITED STATES,?35 U.S. 962; 122 S. Ct. 1376; 152 L. Ed. 2d 368; 2002 U.S. LEXIS 2068; 70 U.S.L.W. 3596, arch 25, 2002, Decided
- [A](#) 8. [Atkins v. Va.](#),?0-8452 , UPREME COURT OF THE UNITED STATES,?34 U.S. 1122; 122 S. Ct. 982; 151 L. Ed. 2d 963; 2002 U.S. LEXIS

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536 U.S. 304, \*; 122 S. Ct. 2242, \*\*;  
153 L. Ed. 2d 335, \*\*\*; 2002 U.S. LEXIS 4648

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DARYL RENARD ATKINS, PETITIONER v. VIRGINIA

No. 00-8452

SUPREME COURT OF THE UNITED STATES

536 U.S. 304; 122 S. Ct. 2242; 153 L. Ed. 2d 335; 2002 U.S. LEXIS 4648; 70 U.S.L.W. 4585; 2002 Cal. Daily Op. Service 5439; 2002 Daily Journal  
DAR 6937; 15 Fla. L. Weekly Fed. S 397

February 20, 2002, Argued  
June 20, 2002, Decided

**SUBSEQUENT HISTORY:**On remand at, [Remanded by Atkins v. Commonwealth, 266 Va. 73, 581 S.E.2d 514, 2003 Va. LEXIS 71 \(2003\)](#)**PRIOR HISTORY:** ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA.[Atkins v. Commonwealth, 260 Va. 375, 534 S.E.2d 312, 2000 Va. LEXIS 111 \(2000\)](#)

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Terms & Connectors

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  - (land trust AND Ohio )
- OR
  - Synonyms : (lawyer OR counsel OR attorney)
  - Antonyms : (regulated OR deregulated)
  - Alternatives : (takeover or take over)
  - Abbreviations : (international business machines  
OR i.b.m. OR ibm)
- AND NOT
  - (trust and not charitable )

# Connectors and Commands

- W/n
  - (market w/5 share)
- W/p
  - (rule 11 w/p sanction)
- W/s
  - (sanction w/s frivolous )
- W/seg
  - (opec w/seg gasoline)
- PRE/n
  - (pay pre/3 television)

# Connectors and Commands

- ! 多個字母
  - (child!)
- \* 單個字母
  - (wom\*n)
- ALLCAPS 所有都是大寫字母
  - allcaps (aids)
- NOCAPS 沒有大寫字母
  - nocaps (aid)
- CAPS 至少有一個大寫字母
  - caps (aid)

# Connectors and Commands

- PLURAL
  - steven w/3 plural (job)
- SINGULAR
  - singular (job) w/5 discrimination
- ATLEAST
  - atleast10 (CERCLA)



# Connector Order and Priority

1. OR
2. W/n, PRE/n, NOT W/n
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4. W/para
5. W/SEG
6. NOT W/SEG
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... costs of prosecuting a **patent infringement** claim or makes obtaining ...
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43 Am. Crim. L. Rev. 663

**LENGTH:** 24892 words**ARTICLE:** Intellectual Property Crimes**NAME:** BREANA C. SMITH, DONLY and MARY SCHMIEDEL**SUMMARY:**

... While owners of intellectual property can protect their rights by pursuing civil remedies, the threat of civil sanctions is often insufficient to deter theft of trade secrets or infringement of patents, trademarks, or copyrights. ... Section II examines the theft of trade secrets; Section III discusses trademark counterfeiting; Section IV addresses copyright infringement; Section V examines the problems raised by online servers; and Section VI looks at patent violations. ... Finally, Part F describes state attempts to combat trade secret theft. ... Parts B through E describe the application of the NSPA, mail and wire fraud statutes, RICO, and the money laundering statute to criminal copyright infringement. ... Copyright infringement can be proven by either direct or indirect evidence showing that the defendant had access to the copyrighted work and that the alleged copy is "substantially similar" in idea and in expression of idea. ... Any subsequent offense increases the penalty to up to ten years of imprisonment. ... As with theft of trade secrets and trademark counterfeiting, RICO claims can be brought for copyright infringement if the infringing acts continue over a period of time and relate to each other in a common plan created by the violators with the intent to defraud. ... Because **patent infringement**, like copyright infringement, does not involve a physical taking, the Supreme Court took a literal view of the Act's requirement that the goods in dispute be "stolen, converted or taken by fraud." ...

**TEXT:**

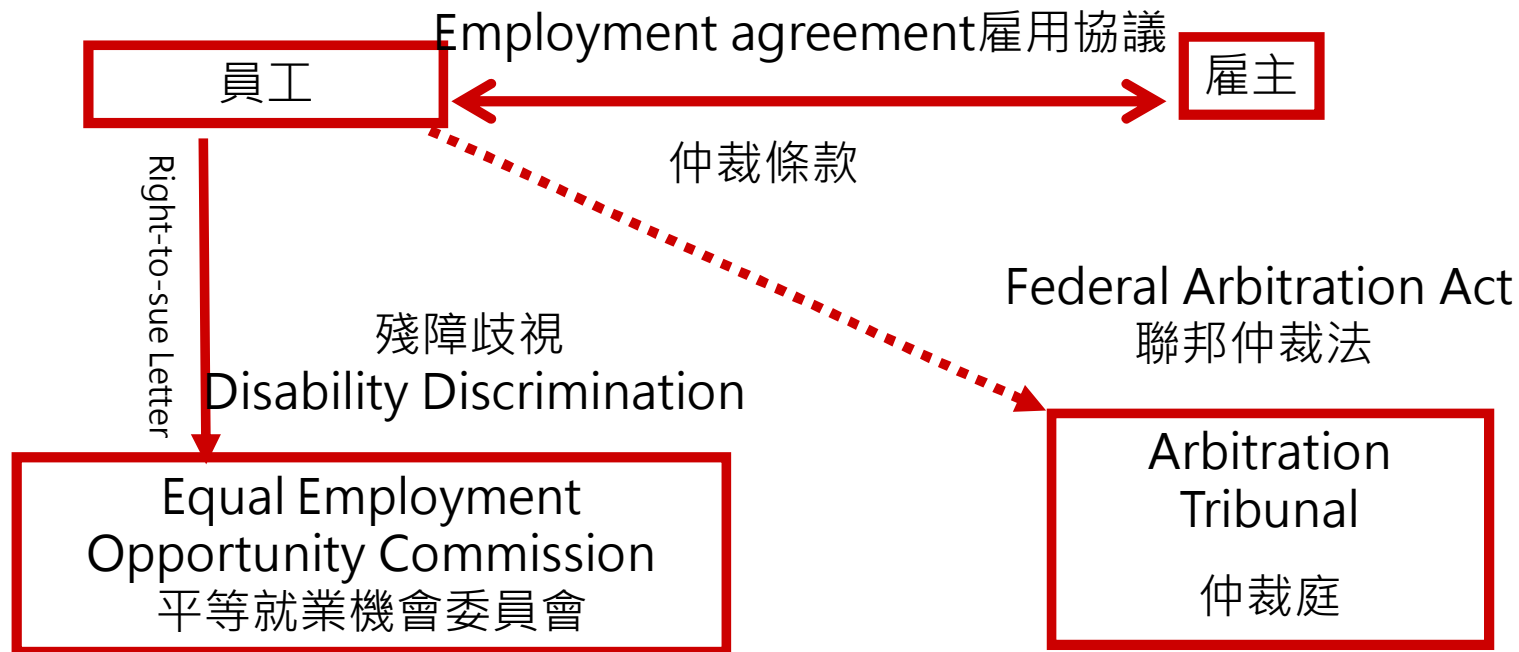
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-  1. [EEOC v. Waffle House, Inc.](#), o. 99-1823 , UPRME COURT OF THE UNITED STATES,?34 U.S. 279; 122 S. Ct. 754; 151 L. Ed. 2d 755; 2002 U.S. LEXIS 489; 70 U.S.L.W. 4081; 81 Empl. Prac. Dec. (CCH) P40,850; 12 Am. Disabilities Cas. (BNA) 1001; 2002 Cal. Daily Op. Service 369; 2002 Daily Journal DAR 485; 15 Fla. L. Weekly Fed. S 63, october 10, 2001, Argued , anuary 15, 2002, Decided


**OVERVIEW:** Court erred in concluding that EEOC was limited to injunctive relief under the ADA when an employee signed a mandatory arbitration agreement as the EEOC had exclusive authority over the forum choice and prayer for relief once a charge was filed.

**CORE TERMS:** eecoc, arbitration, arbitration agreement, victim-specific, arbitrate, public interests, employment practices, reinstatement, enforcement action, injunctive relief ...

-  2. [Gilmer v. Interstate/Johnson Lane Corp.](#), o. 90-18 , UPRME COURT OF THE UNITED STATES,?00 U.S. 20; 111 S. Ct. 1647; 114 L. Ed. 2d 26; 1991 U.S. LEXIS 2529; 59 U.S.L.W. 4407; 55 Fair Empl. Prac. Cas. (BNA) 1116; 56 Empl. Prac. Dec. (CCH) P40,704; 91 Cal. Daily Op. Service 3498; 91 Daily Journal DAR 5501, anuary 14, 1991, Argued , ay 13, 1991, Decided

**OVERVIEW:** A former employee failed to show that the Age Discrimination in Employment Act precluded arbitration, therefore, the decision that such claims could be subjected to compulsory arbitration pursuant to an arbitration agreement was affirmed.

**CORE TERMS:** arbitration, arbitration agreement, arbitrator's, arbitration clause, interstate, statutory claims, collective-bargaining, claimant, agreement to arbitrate, registration ...

-  3. [EEOC v. Woodmen of the World Life Ins. Soc'y](#), o. 06-1522 , NITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT,?79 F.3d 561; 2007 U.S. App. LEXIS 5528; 99 Fair Empl. Prac. Cas. (BNA) 1595; 89 Empl. Prac. Dec. (CCH) P42,732, ovember 17, 2006, Submitted , arch 9, 2007, Filed

**OVERVIEW:** District court erred when it vacated order compelling employee to arbitrate her Title VII claims and allowed her to intervene and assert cross-claims in EEOC enforcement suit pursuant to 42 U.S.C.S. ?2000e-5(f)(1). Employee should arbitrate her claims. Arbitration agreements were not unconscionable, and employer had agreed to pay arbitrator's fee.

**CORE TERMS:** arbitration, arbitration agreement, enforcement action, arbitrate, unconscionable, intervenor, agreement to arbitrate, causes of action, statutory rights, cross-claim ...



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**Source:** Federal & State Cases, Combined

**Search Terms:** Federal Arbitration Act w/s arbitration and Discrimination w/s Equal Employment Opportunity Commission and Employment agreement

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1. [EEOC v. Waffle House, Inc.](#), o. 99-1823, SUPREME COURT OF THE UNITED STATES, 34 U.S. 279; 122 S. Ct. 754; 151 L. Ed. 2d 755; 2002 U.S. LEXIS 489; 70 U.S.L.W. 4081; 81 Empl. Prac. Dec. (CCH) P40,850; 12 Am. Disabilities Cas. (BNA) 1001; 2002 Cal. Daily Op. Service 369; 2002 Daily Journal DAR 485; 15 Fla. L. Weekly Fed. S 63, October 10, 2001, Argued, January 15, 2002, Decided

**OVERVIEW:** Court erred in concluding that EEOC was limited to injunctive relief under the ADA when an employee signed a mandatory arbitration agreement as the EEOC had exclusive authority over the forum choice and prayer for relief once a charge was filed.

**CORE TERMS:** eeo, arbitration, arbitration agreement, victim-specific, arbitrate, public interests, employment practices, reinstatement, enforcement action, injunctive relief ...

2. [Gilmer v. Interstate/Johnson Lane Corp.](#), o. 90-18, SUPREME COURT OF THE UNITED STATES, 700 U.S. 20; 111 S. Ct. 1647; 114 L. Ed. 2d 26; 1991 U.S. LEXIS 2529; 59 U.S.L.W. 4407; 55 Fair Empl. Prac. Cas. (BNA) 1116; 56 Empl. Prac. Dec. (CCH) P40,704; 91 Cal. Daily Op. Service 3498; 91 Daily Journal DAR 5501, January 14, 1991, Argued, May 13, 1991, Decided

**OVERVIEW:** A former employee failed to show that the Age Discrimination in Employment Act precluded arbitration, therefore, the decision that such claims could be subjected to compulsory arbitration pursuant to an arbitration agreement was affirmed.

**CORE TERMS:** arbitration, arbitration agreement, arbitrator's, arbitration clause, interstate, statutory claims, collective-bargaining, claimant, agreement to arbitrate, registration ...

3. [Gayfer Montgomery Fair Co. v. Austin](#), 012159, SUPREME COURT OF ALABAMA, 70 So. 2d 683; 2003 Ala. LEXIS 205; 20 I.E.R. Cas. (BNA) 202, June 27, 2003, Released, Released for Publication February 19, 2004. As Corrected January 20, 2004.

**OVERVIEW:** Arbitration of an employee's wrongful discharge claim was required by federal statute since the employee failed to show

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PETITIONER v. WAFFLE HOUSE, INC.

No. 99-1823

SUPREME COURT OF THE UNITED STATES

案名、案號與繫屬法院

534 U.S. 279; 122 S. Ct. 754; 151 L. Ed. 2d 755; 2002 U.S. LEXIS 489; 70 U.S.L.W. 4081; 81 Empl. Prac. Dec. (CCH) P40,850; 12 Am. Disabilities Cas. (BNA) 1001; 2002 Cal. Daily Op. Service 369; 2002 Daily Journal DAR 485; 15 Fla. L. Weekly Fed. S 63

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October 10, 2001, Argued  
January 15, 2002, Decided

**PRIOR HISTORY:** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.**DISPOSITION:** [193 F.3d 805](#), reversed and remanded.[Case in Brief \(\\$\)](#)

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**CASE SUMMARY**

**PROCEDURAL POSTURE:** Petitioner Equal Employment Opportunity Commission (EEOC) sued respondent employer for violating the Americans with Disabilities Act, [42 U.S.C.S. ?12101 et seq.](#) The EEOC's petition for certiorari to the United States Court of Appeals for the Fourth Circuit was granted to consider whether its remedies were limited to injunctive relief when an employee had signed a mandatory arbitration

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CASE SUMMARY

PROCEDURAL POSTURE: Petitioner Equal Employment Opportunity Commission (EEOC) sued respondent employer for violating the Americans with Disabilities Act, 42 U.S.C.S. ?12101 et seq. The EEOC's petition for certiorari to the United States Court was granted to consider whether its remedies were limited to injunctive relief when an employee had signed a agreement.

OVERVIEW: The lower court concluded that the EEOC was precluded from seeking victim-specific relief under Act, (ADA), 42 U.S.C.S. ?12101 et seq., because the policy goals of the Federal Arbitration Act (FAA), 9 U. giving some effect to the employee's arbitration agreement. Pursuant to Title VII of the Civil Rights Act of 19 and the ADA, whenever the EEOC chose to bring an enforcement action in a particular case, it was seeking to simply providing make-whole relief for the employee, even when it pursued entirely victim-specific relief. Thus had signed a mandatory arbitration agreement did not limit the remedies available to the EEOC because the te not authorize courts to balance the competing policies of the ADA and the FAA or to second-guess the EEOC' the remedies authorized by law that it was to seek in any given case. The ADA and Title VII specifically grant over the choice of forum and the prayer for relief once a charge had been filed.

OUTCOME: The judgment was reversed and the case was remanded for further proceedings.

程序  
概要  
判決結果  
核心關鍵字  
批註

CORE TERMS: eeoc, arbitration, arbitration agreement, victim-specific, arbitrate, public interests, employment practices, reinstatement, enforcement action, injunctive relief, lawsuit, settlement, authorize, punitive damages, backpay, federal policy, statutory authority, equitable relief, compensatory, enforceable, arbitral, employment discrimination, disability, engaging, policy goals, favoring arbitration, settlement agreements, binding, signing, Civil Rights Act

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Labor & Employment Law > U.S. Equal Employment Opportunity Commission > Enforcement > General Overview

HN1 Congress has directed the Equal Employment Opportunity Commission to exercise the same enforcement procedures that are set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., with prohibitions of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., against employment discrimination. 42 U.S.C.S. § 12117(a). More Like This Headnote | Shepardize: Restrict By Headnote

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HN2 See 42 U.S.C.S. § 12117(a).

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Federal Arbitration Act > General Overview

Contracts Law > Contract Conditions & Provisions > Arbitration Clauses

International Trade Law > Dispute Resolution > Arbitration

HN3 The Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., broadly provides that a written provision in a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C.S. § 2. Employment contracts, except for those covering workers engaged in transportation, are covered by the FAA. More Like This Headnote | Shepardize: Restrict By Headnote

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HN4 The Federal Arbitration Act, 9 U.S.C.S. § 1 et seq., provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement. 9 U.S.C.S. §§ 3 and 4. These provisions manifest a liberal federal policy favoring arbitration agreements. Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration. More Like This Headnote | Shepardize: Restrict By Headnote



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No. 99-1823

### SUPREME COURT OF THE UNITED STATES

534 U.S. 279; 122 S. Ct. 754; 151 L. Ed. 2d 755; 2002 U.S. LEXIS 489; 70 U.S.L.W. 4081; 81 Empl. Prac. Dec. (CCH) P40,850; 12 Am. Disabilities Cas. (BNA) 1001; 2002 Cal. Daily Op. Service 369; 2002 Daily Journal DAR 485; 15 Fla. L. Weekly Fed. S 63

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January 15, 2002, Decided

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1. [EOC v. Waffle House, Inc.](#), 1998 U.S. Dist. LEXIS 23245 (D.S.C. Mar. 20, 1998) ●
2. **Affirmed in part and reversed in part by, Remanded by:**  
[EOC v. Waffle House, Inc.](#), 193 F.3d 805, 1999 U.S. App. LEXIS 24911, 7 Accom. Disabilities Dec. (CCH) P7-080, 9 Am. Disabilities Cas. (BNA) 1313, 76 Empl. Prac. Dec. (CCH) P46129 (4th Cir. S.C. 1999) ●

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29 DECISION(S) CITED BY: 534 U.S. 279

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- 1. **Dissenting opinion citing:**  
[General Tel. Co. v. EEOC](#), 446 U.S. 318, 100 S. Ct. 1698, 64 L. Ed. 2d 319, 1980 U.S. LEXIS 95, 22 Empl. Prac. Dec. (CCH) P30861, 22 Fair Empl. Prac. Cas. (BNA) 1196, 29 Fed. R. Serv. 2d (Callaghan) 925 (1980) ●  
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- 2. **Dissenting opinion citing:**  
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- 3. **Dissenting opinion citing:**  
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- 4. **Distinguishing:**  
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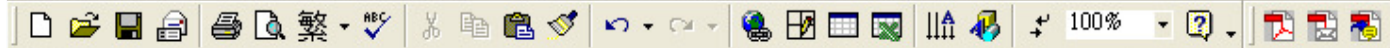
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**Shepard's®**  **McNeil v. Economics Laboratory, Inc., 800 F.2d 111 (TOA)**

- 32. **Overruled by:**  
[Coston v. Plitt Theatres](#), 860 F.2d 834, 1988 U.S. App. LEXIS 14758, 48 Empl. Prac. Dec. (CCH) P38422, 48 Fair Empl. Prac. Cas. (BNA) 248 (7th Cir. Ill. 1988) [LexisNexis Headnotes HN9, HN10](#)  
  
860 F.2d 834 [p.836](#)
  
- 33. **Cited by:**  
[Overgard v. Cambridge Book Co.](#), 858 F.2d 371, 1988 U.S. App. LEXIS 16564, 47 Empl. Prac. Dec. (CCH) P38340, 47 Fair Empl. Prac. Cas. (BNA) 1623 (7th Cir. Wis. 1988) [LexisNexis Headnotes HN9, HN10, HN11, HN18](#)  
  
858 F.2d 371 [p.377](#)
  
- 34. **Cited by:**  
[Rengers v. WCLR Radio Station, Div. of Bonneville International Corp.](#), 857 F.2d 363, 1988 U.S. App. LEXIS 12760, 47 Empl. Prac. Dec. (CCH) P38303, 47 Fair Empl. Prac. Cas. (BNA) 1480 (7th Cir. Ill. 1988) [LexisNexis Headnotes HN9](#)  
  
857 F.2d 363 [p.365](#)

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➤ **Coston v. Plitt Theatres, 860 F.2d 834** ([Copy w/ Cite](#)) Pages: 6

that the *Syvock* standard for defining "willful" was consistent with the test announced in *Thurston*. See [Rengers v. WCLR Radio Station, 825 F.2d 160 \(7th Cir. 1987\)](#), vacated, 486 U.S. 1020, 108 S. Ct. 1990, 100 L. Ed. 2d 223 (1988); [Graefenhain v. Pabst Brewing Co., 827 F.2d 13 \(7th Cir. 1987\)](#); [Kossmann v. Calumet County, 800 F.2d 697 \(7th Cir. 1986\)](#), cert. denied, 479 U.S. 1088, 107 S. Ct. 1294, 94 L. Ed. 2d 151 (1987); [McNeil v. Economics Laboratory, Inc., 800 F.2d 111 \(7th Cir. 1986\)](#), cert. denied, 481 U.S. 1041, 107 S. Ct. 1983, 95 L. Ed. 2d 823 (1987).

Nevertheless, every other circuit, except the Third Circuit, that has addressed willfulness in ADEA cases has adopted the "knew or showed reckless disregard" standard approved by the Supreme Court in *Thurston*. See [Wilhelm v. Blue Bell, Inc., 773 F.2d 1429, 1435 \(4th Cir. 1985\)](#), cert. denied, 475 U.S. 1016, 106 S. Ct. 1199, 89 L. Ed. 2d 313 (1986); [Powell v. Rockwell \[\\*\\*6\] Int'l Corp., 788 F.2d 279, 285-86 \(5th Cir. 1986\)](#); [Williams v. Caterpillar Tractor Co., 770 F.2d 47, 50-51 \(6th Cir. 1985\)](#); [Nolting v. Yellow Freight Sys., 799 F.2d 1192, 1197-98 \(8th Cir. 1986\)](#); [Gilchrist v. Jim Slemmons Imports, Inc., 803 F.2d 1488, 1495-96 \(9th Cir. 1986\)](#); [Smith v. Consol. Mut. Water Co., 787 F.2d 1441, 1443 \(10th Cir. 1986\)](#); [Lindsey v. American Cast Iron Pipe Co., 810 F.2d 1094, 1099-1100 \(11th Cir. 1987\)](#). The Third Circuit has even gone beyond *Thurston* by adopting a more stringent "outrageousness" standard for awarding liquidated damages. See [Dreyer v. Arco Chem. Co., 801 F.2d 651, 657-58 \(3d Cir. 1986\)](#), cert. denied, 480 U.S. 906, 107 S. Ct. 1348, 94 L. Ed. 2d 519 (1987).

Since we issued our opinion in *Plitt*, the Supreme Court has also decided [McLaughlin v. Richland Shoe Co., 486 U.S. 128, 108 S. Ct. 1677, 100 L. Ed. 2d 115 \(1988\)](#). In that case, the Court reiterated its support for the willfulness standard enunciated in *Thurston* and further defined the term "willful" for both Fair Labor Standards Act and ADEA violations by adding that it "is generally understood to refer to conduct that is not merely negligent." *Id.* at  , 108 S. [\*\*7] Ct. at 1681. In further clarifying the willfulness test, the Court also stated:

We recognize that there is some language in *Trans World Airlines v. Thurston* . . . not necessary to our holding, that would permit a

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# 案例分析

## Shepard 's & TOA範例說明



# Case- McNeil v. Econs. Lab., 800 F.2d 111

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800 F.2d 111, \*; 1986 U.S. App. LEXIS 29174, \*\*;  
41 Fair Empl. Prac. Cas. (BNA) 1789; 41 Empl. Prac. Dec. (CCH) P36,492

JOHN W. McNEIL, Plaintiff-Appellee, Cross-Appellant v. ECONOMICS LABORATORY, INC., Defendant-Appellant, Cross-Appellee

Nos. 85-1332, 85-1398

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

800 F.2d 111; 1986 U.S. App. LEXIS 29174; 41 Fair Empl. Prac. Cas. (BNA) 1789; 41 Empl. Prac. Dec. (CCH) P36,492

February 13, 1986, Argued  
August 27, 1986, Decided  
August 29, 1986, Filed

**PRIOR HISTORY:** [\*\*1] Appeals from the United States District Court for the Northern District of Illinois, Western Division, No. 81 C 20150 - Stanley J. Roszkowski, Judge.

**DISPOSITION:** AFFIRMED.

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2. **Following:**  
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4. **Citing:**  
[Wauwatosa Fire Dep't v. Orzel](#), 464 U.S. 992 (1983)Ⓐ  
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# Case- McNeil v. Econs. Lab., 800 F.2d 111

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41 Fair Empl. Prac. Cas. (BNA) 1789; 41 Empl. Prac. Dec. (CCH) P36,492

JOHN W. McNEIL, Plaintiff-Appellee, Cross-Appellant v. ECONOMICS LABORATORY, INC., Defendant-Appellant, Cross-Appellee

Nos. 85-1332, 85-1398

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

800 F.2d 111; 1986 U.S. App. LEXIS 29174; 41 Fair Empl. Prac. Cas. (BNA) 1789; 41 Empl. Prac. Dec. (CCH) P36,492

February 13, 1986, Argued  
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**DISPOSITION:** AFFIRMED.

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[U.S.C.S. 7621 et seq.](#) Plaintiff cross appealed, alleging that the district court erred by concluding that the violation was not willful and abused its discretion by refusing to award front pay.

**OVERVIEW:** The court affirmed a judgment that defendant employer's discharge of plaintiff employee violated the Age Discrimination in Employment Act (ADEA), [29 U.S.C.S. 7621 et seq.](#) Plaintiff was removed from a sales manager position and offered a non-salaried, commission-based position as a sales representative. The district court's conclusion that defendant's proffered reason for failing to offer a commensurate position was pretextual and was not clearly erroneous because plaintiff's alleged misconduct occurred well in the past and was not included in plaintiff's performance evaluations. The court also held there was sufficient evidence, based on statements by a supervisor, supporting an inference of defendant's intent to discriminate based on age. The court rejected plaintiff's assertions on cross appeal that he was entitled to liquidated damages and front pay. It was not clearly erroneous for the district court to find that violation of the ADEA was not willful, a prerequisite for liquidated damages under [29 U.S.C.S. 7626\(b\)](#). The court also held that it was not an abuse of discretion to decline to award front pay until age seventy based on the evidence presented at trial.

**OUTCOME:** A verdict and damage award for plaintiff employee in an age discrimination action was affirmed on the grounds that defendant employer's proffered reason for the discharge was pretextual and the result of an intent to discriminate. The court also affirmed the damage award because there was insufficient evidence to support awards of liquidated damages or front pay.

**CORE TERMS:** front, age discrimination, prima facie case, discriminate, discharged, chemical, training, reinstatement, termination, reduction in force, reduction-in-force, discriminatory, sales force, manager, proffered reasons, inappropriate, friction, isolated, pretext, willful, hire, young people', eliminated, terminated, bright, direct evidence, circumstantial evidence, willful violation, liquidated damages, appropriate cases

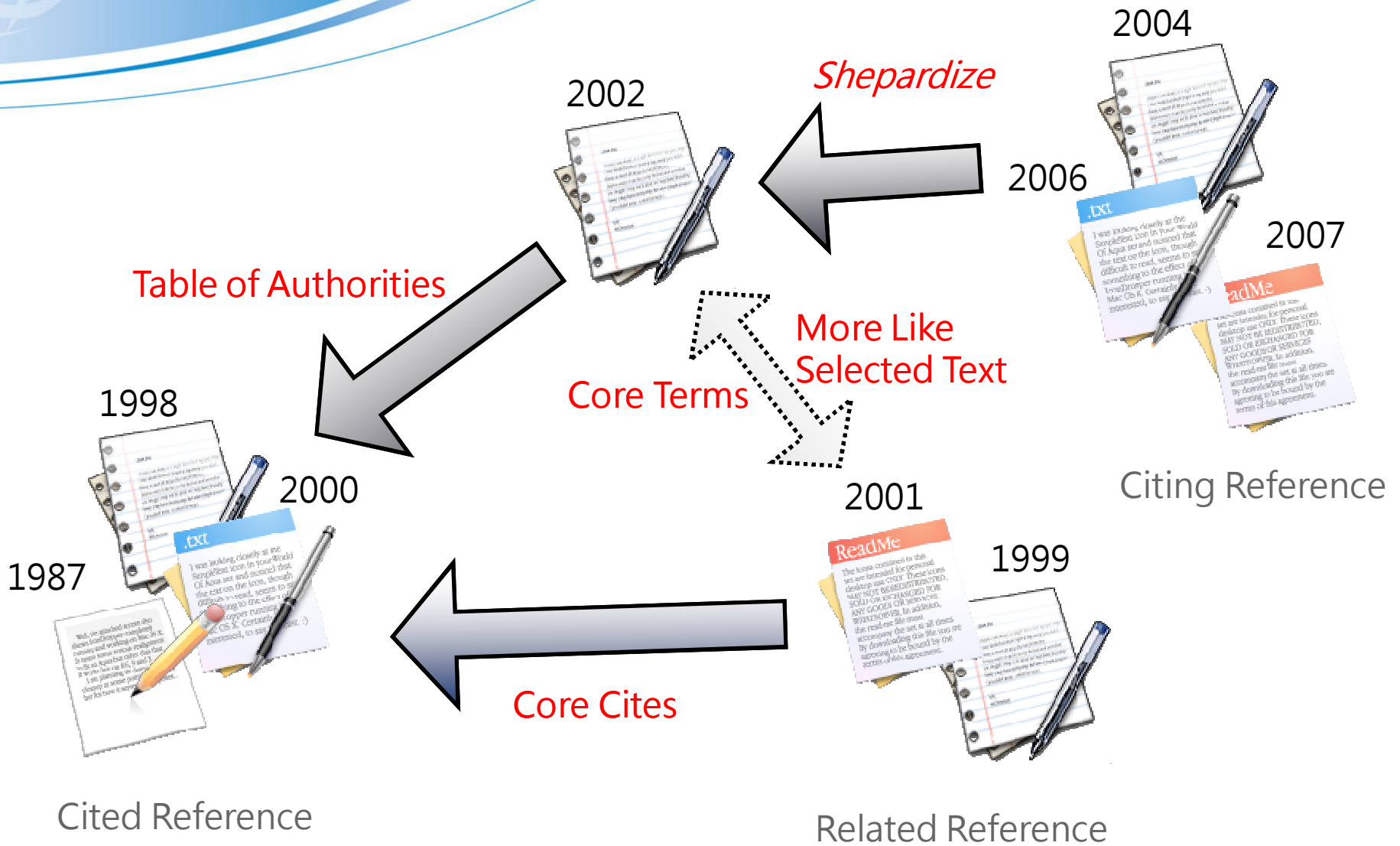
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**HN1** The Age Discrimination in Employment Act, [29 U.S.C.S. 7623\(a\)\(1\)](#), makes it unlawful for an employer to fail or refuse to hire or to

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- 2. [73 FR 38375](#), Proposed Rules, DEPARTMENT OF COMMERCE (DOC) National Oceanic and Atmospheric Administration (NOAA) DEPARTMENT OF THE INTERIOR (DOI) Fish and Wildlife Service (FWS), 50 CFR Part 404, [Docket No. 080227317-8741-01] RIN 0648-AW44, Papahānaumokuākea Marine National Monument Proclamation Provisions, Monday, July 7, 2008, ACTION: Proposed rule; request for public comments., FEDERAL REGISTER Vol. 73, No. 130
- 3. [73 FR 37840](#), Rules and Regulations, ENVIRONMENTAL PROTECTION AGENCY (EPA), 40 CFR Part 52, [EPA-R03-OAR-2008-0178; FRL-8687-2], Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Columbia County Area, Wednesday, July 2, 2008, ACTION: Final rule., FEDERAL REGISTER Vol. 73, No. 128
- 4. [73 FR 37841](#), Rules and Regulations, ENVIRONMENTAL PROTECTION AGENCY (EPA), 40 CFR Part 52, [EPA-R03-OAR-2008-0182; FRL-8687-1], Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Susquehanna County Area, Wednesday, July 2, 2008, ACTION: Final rule., FEDERAL REGISTER Vol. 73, No. 128
- 5. [73 FR 37843](#), Rules and Regulations, ENVIRONMENTAL PROTECTION AGENCY (EPA), 40 CFR Part 52, [EPA-R03-OAR-2008-0180; FRL-8687-3], Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Crawford County Area, Wednesday, July 2, 2008, ACTION: Final rule., FEDERAL REGISTER



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- ▲ 1. [MedImmune, Inc. v. Genentech, Inc.](#), o. 05-608, SUPREME COURT OF THE UNITED STATES, 27 S. Ct. 764; 166 L. Ed. 2d 604; 2007 U.S. LEXIS 1003; 75 U.S.L.W. 4034; 81 U.S.P.Q.2D (BNA) 1225; 2007-1 Trade Cas. (CCH) P75,543; 20 Fla. L. Weekly Fed. S 27, October 4, 2006, Argued, January 9, 2007, Decided, The LEXIS pagination of this document is subject to change pending release of the final published version.

**OVERVIEW:** A patent licensee's payment of royalties under protest did not preclude a justiciable case or controversy under U.S. Const. art. III, since licensors' threatened legal action was coercive and preserved the licensee's right under the Declaratory Judgment Act to seek a declaration that the patent was invalid, unenforceable, or not infringed.

**CORE TERMS:** patent, royalty, declaratory judgment, licensee, license agreement, license, invalid, contract claim, invalidity, injunction ...

- ▲ 2. [eBay Inc. v. MercExchange, L.L.C.](#), o. 05-130, SUPREME COURT OF THE UNITED STATES, 47 U.S. 388; 126 S. Ct. 1837; 164 L. Ed. 2d 641; 2006 U.S. LEXIS 3872; 74 U.S.L.W. 4248; 78 U.S.P.Q.2D (BNA) 1577; 19 Fla. L. Weekly Fed. S 197, March 29, 2006, Argued, May 15, 2006, Decided, The LEXIS pagination of this document is subject to change pending release of the final published version.

**OVERVIEW:** Traditional four-factor test applied by courts of equity when considering whether to award permanent injunctive relief to prevailing plaintiff applied to disputes arising under Patent Act. Where lower courts did not fairly apply traditional principles in deciding patent holder's motion for a permanent injunction, judgment was vacated and remanded.

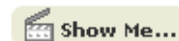
**CORE TERMS:** patent, injunction, injunctive relief, Patent Act, equitable, principles of equity, general rule, right to exclude, holder, com ...

- ▲ 3. [Merck KGaA v. Integra Lifesciences I, Ltd.](#), o. 03-1237, SUPREME COURT OF THE UNITED STATES, 245 U.S. 103; 125 S. Ct. 2372;



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- [eBay Inc. v. MercExchange, L.L.C.](#), No. 05-130, SUPREME COURT OF THE UNITED STATES, 76 S. Ct. 1837; 164 L. Ed. 2d 641; 2006 U.S. LEXIS 3872; 74 U.S.L.W. 4248; 78 U.S.P.Q.2D (BNA) 1577; 19 Fla. L. Weekly Fed. S 197, March 29, 2006, Argued, May 15, 2006, Decided, The LEXIS pagination of this document is subject to change pending release of the final published version.
 

**OVERVIEW:** Traditional four-factor test applied by courts of equity when considering whether to award permanent injunctive relief to prevailing plaintiff applied to disputes arising under Patent Act. Where lower courts did not fairly apply traditional principles in deciding patent holder's motion for a permanent injunction, judgment was vacated and remanded.

**CORE TERMS:** patent, injunction, injunctive relief, Patent Act, equitable, principles of equity, general rule, right to exclude, holder, com ...
- [Merck KGaA v. Integra Lifesciences I, Ltd.](#), No. 03-1237, SUPREME COURT OF THE UNITED STATES, 745 U.S. 193; 125 S. Ct. 2372; 162 L. Ed. 2d 160; 2005 U.S. LEXIS 4840; 73 U.S.L.W. 4468; 74 U.S.P.Q.2D (BNA) 1801; 18 Fla. L. Weekly Fed. S 394, April 20, 2005, Argued, June 13, 2005, Decided, The LEXIS pagination of this document is subject to change pending release of the final published version. Judgment entered by, On remand at Integra Lifesciences I, LTD. v. Merck KGaA, 421 F.3d 1289, 2005 U.S. App. LEXIS 17342 (Fed. Cir., 2005) Judgment entered by, On remand at Integra Lifesciences I, Ltd. v. Merck KGaA, 2007 U.S. App. LEXIS 17930 (Fed. Cir., July 27, 2007)
 

**OVERVIEW:** Drug company's use of patented tripeptide sequence in preclinical studies was protected under 35 U.S.C.S. § 271(e)(1) at least as long as there was a reasonable basis to believe that the compound tested could be subject of FDA submission and that experiments would produce types of information relevant to a drug application under 21 U.S.C.S. § 355.

**CORE TERMS:** preclinical, peptide, compound, experiment, exemption, patented, infringement, clinical, patent, testing ...
- [Holmes Group, Inc. v. Vornado Air Circulation Sys.](#), No. 01-408, SUPREME COURT OF THE UNITED STATES, 735 U.S. 826; 122 S. Ct. 1889; 153 L. Ed. 2d 13; 2002 U.S. LEXIS 4022; 70 U.S.L.W. 4489; 62 U.S.P.Q.2D (BNA) 1801; 2002 Cal. Daily Op. Service 4781; 2002 Daily Journal DAR 6073; 15 Fla. L. Weekly Fed. S 325, March 19, 2002, Argued, June 3, 2002, Decided, On remand at Holmes
 

**OVERVIEW:**

**CORE TERMS:**

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Whether the principle of res judicata is modified in criminal cases in U.S. especially in the first degree murders?

選取關鍵字:

- Principle or rule or common law
- Res judicata
- Modified or Modification or Modify
- Criminal or Crime
- Murder
- First Degree or 1<sup>st</sup> Degree

# Example

Whether the principle of res judicata is modified in criminal cases in U.S. especially in the first degree murders?

檢索策略：

(Principle or rule or common law) w/s Res judicata and Modif! w/p Core-terms (Criminal or Crime) and Murder w/s (First Degree or 1st Degree)

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