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When Office Building Landlords Lease To Retail Tenants (With Form)
Bruce Rosen
Many office buildings have at least some retail space, but landlords of mixed-use buildings rarely develop a retail lease form. Instead, they often just take their form office lease and insert retail provisions. This article presents a checklist of issues to use when negotiating a lease with the occasional retail tenant.

How To Try A $20 Million Condemnation Case From Your Hotel Room
Janet Bush Handy
Although litigating condemnation cases on the road is an important part of condemnation litigation practice, it is a task not covered by standard treatises. The key to mounting an effective long-distance campaign will always be preparation. The author, who has acquired expertise in the art of litigating far from home base, provides some guidelines that you can use to create a checklist as your trial date approaches.

Are You Doing Business With Osama? Terrorism-Related Provisions In Real Estate Documentation (With Forms)
Timothy J. Boyce And Thomas C. Bogle
Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Interdict and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") represents the most significant expansion of U.S. anti-money laundering efforts in over 30 years. The authors explain the legislation’s requirements especially as they pertain to real estate documentation.

Counseling The Client On The CERCLA Windfall Lien
Larry Schnapf
The Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("2002 Brownfield Amendments"), added a bona fide prospective purchaser ("BFPP") defense to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The BFPP defense allows a purchaser to take title to contaminated property knowingly if the purchaser satisfies certain criteria. However, in certain circumstances, the Environmental Protection Agency may perfect a "windfall lien" on the property. This article explains how the purchaser of contaminated property can deal with a windfall lien.

What You Should Know About Construction Financing
David A. Schmudde
Many buildings to be constructed are financed during the construction period by one loan, the construction loan, and then after completion, are financed by a long-term loan, the permanent financing. During construction, the builder or developer needs a flow of money to finance the actual construction of the building. Since the building has no value, a mortgage cannot fully protect a loan. The lenders involved in these two different types of loans usually have very different goals and strategies.

The forms and Practice Checklists in each issue of The Practical Real Estate Lawyer are available on 3.5-inch floppy disks. For more information or to order, call 1-800-CLE-NEWS.
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Caught in the Web of the Internet: The Application of the Americans with Disabilities Act to Online Businesses

Charles D. Mockbee IV

Title III of the Americans with Disabilities Act prohibits discrimination based "on disability in the full and equal enjoyment of the...services...privileges, advantages, or accommodations of any place of public accommodation." Although the Internet has become a major tool in today's society, many business websites are inaccessible to people with disabilities. This Comment focuses on the issue of whether Title III should apply to these online businesses. Through an examination of prior application of the ADA's public accommodation statute to other forms of media and a cost-benefit investigation of implementing proper adjustments to websites, in addition to an analysis of the ADA's fundamental purpose, this Comment hopes to reveal that this vital legislation should apply to online businesses and language should be added to the statute specifically preventing the current ambiguity. Editor: Becky A. Ray

Should Congress Repeal the Alien Tort Claims Act?

Pei-Yun Hsu

The ATCA was enacted more than two hundred years ago and the Congressional intent is vague. When the federal courts have tried to adjudicate alien tort claims, they have directly influenced the United States' foreign policy. The author advocates for Congressional repeal of this antiquated act because, based on the Act of State Doctrine and the Political Question Doctrine, federal courts should not adjudicate the ATCA claims against foreign defendants. Furthermore, the caseload of the federal courts is excessive, and therefore, courts should not bear more burden by hearing cases not involving the U.S. citizens or soil. Moreover, the federal courts do not have authority to effectuate their judgment; if they try to adjudicate such claims, the authority of U.S. courts would be undermined. The only benefit of victims being able to file suit under the ATCA is public attention, but this can also be fulfilled through education and direct media campaigns. When the U.S. courts adjudicate ATCA claims, they face many disadvantages, such as disrupting international relationships and threatening the integrity of the United States judicial system. Therefore, Congress should repeal the ATCA, and the United States should instead become more active in international governmental organizations. Editor: Becky A. Ray
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This casenote examines Padilla v. Bush, in which Judge Michael Mukasey of the Southern District court of New York determined that the Bush Administration’s military detention of an American citizen as an “enemy combatant” in the wake of the September 11, 2001 terrorist attacks was a proper exercise of presidential authority pursuant to the congressional Joint Resolution of September 18, 2001, authorizing the use of military force in the “war on terrorism.” However, Judge Mukasey also affirmed Jose Padilla’s right to petition for habeas corpus, granting him a limited right to counsel to present facts in support of his petition challenging his detention. Judge Mukasey further concluded that, because Padilla’s case was not a criminal proceeding, Padilla had no general Fifth or Sixth Amendment right to counsel. Mukasey thus based Padilla’s right to counsel on the discretionary powers of a federal court to appoint counsel for habeas petitioners under the All Writs Act and 18 U.S.C § 3006A. Having found a “statutory alternative” Mukasey found it unnecessary to derive a right to counsel for Padilla from the Fifth Amendment Due Process Clause. Ms. Burns argues that the district court inadequately addressed the deprivation of “liberty interest” inherent in an executive decision to indefinitely detain a citizen without formal criminal charges and access to counsel. The application to Padilla’s case of procedural due process “balancing” under the standard of Mathews v. Eldridge reveals that the right to counsel for individuals in Padilla’s situation logically arises from the dictates of constitutional due process. While the Padilla court reached essentially the same conclusion via a statutory alternative, the “liberty interests” at stake are of such fundamental character that their protection warrants a broader, more enduring constitutional foundation. Padilla’s case profoundly implicates classic, fundamental liberty interests for which case-specific, post-deprivation statutory remedies are often inadequate. Ms. Burns thus examines how the Padilla court might have applied Fifth Amendment substantive and procedural due process analysis to “discover” a constitutional right to counsel for enemy-combatant citizens. Editor: Becky A. Ray
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