

South Carolina Law Review

Volume 43
Issue 1 *ANNUAL SURVEY OF SOUTH CAROLINA
LAW*

Article 2

Fall 1991

Table of Contents

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

(1991) "Table of Contents," *South Carolina Law Review*. Vol. 43 : Iss. 1 , Article 2.
Available at: <https://scholarcommons.sc.edu/sclr/vol43/iss1/2>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.

et al.: Table of Contents

SOUTH CAROLINA LAW REVIEW

VOLUME 43

AUTUMN 1991

NUMBER 1

ANNUAL SURVEY OF
SOUTH CAROLINA LAW
(January 1—December 31, 1990)

TABLE OF CONTENTS

Administrative Law

- I. Person Aggrieved by Existing Regulation Not Required to Exhaust Administrative Remedy by Petitioning for Promulgation of New Regulation Before Pursuing Judicial Remedy 1
- II. Issuance of Sanitary Landfill Permit Requires Findings Concerning Future Development of Area 5
- III. Great Deference Given to Decision of Administrative Agency 6

Agency Law

- I. Supreme Court Reversed Court of Appeals and Held That Foster Parents Are Not Employees of the Department of Social Services 10

Bankruptcy Law

- I. Debtor's Interest in an ERISA-Qualified Pension Plan Excluded from the Bankruptcy Estate 14
- II. Fourth Circuit Interprets the Subsequent Advance Rule of Bankruptcy Code Section 547(c)(4) to Allow Setoff Against All Prior Preferential Payments 18

Commercial Law

- I. Six Month Limitations Period on Mechanics Liens Begins When Lienor Files Notice of Lien 24
- II. Judicial Sale Set Aside Solely Because of an Inadequate Price 27
- III. Subcontractor's Statutory Lien Has Priority over Prior Perfected Security Interest in General Contractor's Accounts 31
- IV. Notice of Breach After Acceptance Requirements Are Still an Open Question Under South Carolina's Commercial Code 33

Contract Law

- I. A Unilateral Mistake In a Contract Bid Does Not Necessarily Preclude the Bidder from Rescission 37
- II. Court Applies Recently Adopted Standard That Lost Profits Must Be Established with Reasonable Certainty in Breach of Contract Actions Involving Contemplated Businesses 41

Criminal Law

- I. Evidence of Victim’s Mental Trauma Relevant to Prove Criminal Sexual Conduct and Rule Against Inconsistent Verdicts in Criminal Cases Abolished 44
- II. Consecutive Life Sentences Treated as One General Life Sentence for Parole Purposes and Great Deference Given to Trial Judges in Continuing Jury Deliberations in Capital Cases 47
- III. A Single Trial for Assault with Intent to Commit Criminal Sexual Conduct and Assault and Battery of High and Aggravated Nature Did Not Constitute Double Jeopardy 50
- IV. Conviction for Offense and Lesser-Included Offense Constitutionally Impermissible Absent Contrary Legislative Intent 52
- V. Accidental Shooting in Self-Defense Recognized as Defense to Homicide Prosecution 56

Domestic Law

- I. Military Retirement Benefits Accrued During Marriage Are Subject to Equitable Distribution 59
- II. Visitation Rights to Grandparents Denied Absent Exceptional Circumstances 61
- III. Accused Spouse in Adultery Case Bears Burden of Proving Insanity 64
- IV. Grant of Divorce to Both Parties in No-Fault Marriage Dissolution Upheld 67
- V. Conduct Constituting Adultery and Scope of Equitable Distribution Addressed 69
- VI. Appellate Division of New York Supreme Court Rejects Claim of Common-Law Marriage Based on South Carolina Law 73

Employment Law

- I. ERISA Pre-empts State Common-Law Claims Arising Out of the Administration of Employee Benefit Plans .. 77
- II. Supreme Court Discusses Damages for Breach of Contract Based on Employee Handbook 80

Environmental Law

- I. South Carolina Pollution Control Act Authorizes the Department of Health and Environmental Control to Collect Damages from Governmental Agencies That Violate Act 85
- II. Prior Government Approval of Waste Removal Plan Is Not Necessary to Recover in a Private Action for Response Costs Under CERCLA and a Contract Cannot Insulate a Party from CERCLA Liability 88

Evidence

- I. DNA Print Identification Is Admissible in Judicial Proceedings in South Carolina..... 94
- II. Criminal Defendant’s Right to Present Expert Testimony Strengthened 96
- III. Court Expands Prosecution’s Ability to Introduce Prior Convictions Through Extrinsic Evidence Against Testifying Defendant 100
- IV. Introduction of Additional Convictions to Prove Aggravating Circumstances in Sentencing Phase of Murder Trial Barred 104
- V. Ancient Documents Exception to the Rule Against Hearsay Recognized 107

Insurance Law

- I. A Signed Insurance Loan Receipt Does Not Bar a First-Party Claim 111

Partnership Law

- I. Partnership Agreement May Be Implied from Conduct of the Parties 114

Practice and Procedure

- I. Requirements to Intervene of Right Established..... 117
- II. Personal Jurisdiction Requirements Addressed 120
- III. Court Invalidates Service of Process on a Nonresident Who Was Fraudulently Induced to Enter the Forum State..... 123
- IV. Amendment of Removal Notice After Expiration of the Removal Period Not Allowed..... 126

Probate Law

- I. Court Requires Claimants to Knowingly Waive Elective Share Rights and Upholds the Constitutionality of the Elective Share Provision 130
- II. Constructive Trust Imposed on Property Appointed By Wife in Violation of Promise to Husband..... 133

Property Law

- I. Nuisance Exception to Takings Doctrine Stretched Past Traditional Limits 137
- II. Privately Constructed Canal Connected to a River May Be Navigable Waters 142
- III. Scope of Modification Provisions in Restrictive Covenants Defined 145
- IV. Court Avoids Entanglement in Church Dispute by Holding Plaintiffs Lacked Standing to Sue 148
- V. Interstate Boundary Dispute Between South Carolina and Georgia Resolved 150

Remedies

- I. Standard of Review for Award of Attorney Fees Under Section 15-77-300 Established 157

Securities Law

- I. The Fourth Circuit's New Securities Analysis May Expand Securities Laws Coverage to General Partnership Interests 161

Tax Law

- I. Refund of State Income Taxes to Federal Retirees Denied and State's Tax Refund Statute Narrowly Construed . . . 166
- II. Constitutionality of Ad Valorem Tax Reductions for Large Industrial Enterprises Upheld 170

Tort Law

- I. Modified Form of Comparative Negligence Adopted . . . 174
- II. Economic Loss Rule Rejected in Asbestos Removal Cases 177
- III. Tort of Intentional Interference with Prospective Contractual Relations Adopted 180
- IV. South Carolina's Strict Liability Statute Applicable to Products Sold Before Statute's Effective Date if Also Resold After That Date, and Joint Tortfeasors Liable in Strict Tort Not Entitled to Indemnity 184
- V. Parol Evidence Rule Does Not Apply to a Party's Claim That Negligent Misrepresentations Induced It to Contract 188
- VI. Liability Limits of Tort Claims Act Upheld 191
- VII. Defendant Entitled to Indemnification from Codefendant if Codefendant Found Liable and Defendant Exonerated 195
- VIII. Governmental Immunity for Discretionary Actions Requires Actual Exercise of Discretion 199
- IX. Absolute Privilege for Participants in Judicial Proceedings Expanded 202
- X. Nonpecuniary Damages Presumed in a Parent's Action for the Wrongful Death of a Minor Child 205

Workers' Compensation Law

I. Standard of Review, Test for Causation, and Allocation of Burdens of Proof In Workers' Compensation Retaliatory Discharge Cases Established.....	208
II. Recovery for Successive Permanent and Total Disability to the Same Body Part Not Allowed.....	210
III. Discovery Rule Not Applicable to Workers' Compensation Claims.....	214
IV. Exception to the Traditional Heart Attack Rule for Heat-Induced Heart Attacks Created.....	218

et al. Table of Contents
TABLE OF CASES SURVEYED

Adams v. South Carolina Department of Health & Environmental Control, 399 S.E.2d 788 (S.C. Ct. App. 1990)	5
Anderson v. Raine (<i>In re Moore</i>), 907 F.2d 1476 (4th Cir. 1990).	14
Bailey v. J.W.K. Properties, Inc., 904 F.2d 918 (4th Cir. 1990).	161
Baker Hospital v. Isaac, 301 S.C. 248, 391 S.E.2d 549 (1990).	77
Barnhill v. Insurance Co. of North America, 130 F.R.D. 46 (D.S.C. 1990).	126
Bass v. State, 395 S.E.2d 171 (S.C. 1990), <i>vacated</i> , 111 S. Ct. 2881 (1991).	166
Berkeley Electric Cooperative, Inc. v. Town of Mt. Pleasant, 394 S.E.2d 712 (S.C. 1990).	117
Blair v. Blair, 396 S.E.2d 374 (S.C. Ct. App. 1990).	148
Brown v. Earnhardt, 396 S.E.2d 358 (S.C. 1990).	61
Chapman v. Citizens & Southern National Bank, 395 S.E.2d 446 (S.C. Ct. App. 1990).	133
Charleston Television, Inc. v. South Carolina Budget & Control Board, 301 S.C. 468, 392 S.E.2d 671 (1990), <i>rev'g</i> 296 S.C. 444, 373 S.E.2d 892 (Ct. App. 1988).	1
City of Rock Hill v. South Carolina Department of Health & Environmental Control, 394 S.E.2d 327 (S.C. 1990).	85
Crandall Corp. v. Navistar International Transportation Corp., 395 S.E.2d 179 (S.C. 1990).	180
Crichton v. Wheeling National Bank (<i>In re Meredith Manor, Inc.</i>), 902 F.2d 257 (4th Cir. 1990).	18
Crowell v. Herring, 301 S.C. 424, 392 S.E.2d 464 (Ct. App. 1990).	202
Erkes v. Kasperek, 399 S.E.2d 6 (S.C. Ct. App. 1990), <i>cert. denied</i> , No. 1541, Advance Sheet 3 (S.C. Feb. 9, 1991).	145
Georgia v. South Carolina, 110 S. Ct. 2903 (1990).	150
Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990).	188
Halbersberg v. Berry, 394 S.E.2d 7 (S.C. Ct. App. 1990), <i>cert. denied</i> , No. 1508, Advance Sheet 19 (S.C. Sept. 22, 1990).	114
Hampton Nursing Center v. State Health & Human Services Finance Commission, 399 S.E.2d 434 (S.C. Ct. App. 1990).	6
Heath v. County of Aiken, 394 S.E.2d 709 (S.C. 1990).	157
Holley v. Owens Corning Fiberglas Corp., 301 S.C. 519, 392 S.E.2d 804 (Ct. App.), <i>aff'd per curiam</i> , 397 S.E.2d 377 (S.C. 1990).	218
Hughes v. Nelson, 399 S.E.2d 24 (S.C. Ct. App. 1990).	142
<i>In re Patrick</i> , 402 S.E.2d 664 (S.C. 1991).	130
Investors Savings Bank v. Phelps, 397 S.E.2d 780 (S.C. Ct. App. 1990).	27
Jennings v. Hurt, 160 A.D.2d 576, 554 N.Y.S.2d 220, <i>appeal dismissed</i> , 76 N.Y.2d 870, 561 N.E.2d 884, 560 N.Y.S.2d 984 (1990), <i>appeal denied</i> , 77 N.Y.2d 804, 569 N.E.2d 1026, 568 N.Y.S.2d 347 (1991).	73
Johnson v. Pritchard, 395 S.E.2d 191 (S.C. Ct. App. 1990).	107
Kershaw County Board of Education v. United States Gypsum Co., 396 S.E.2d 369 (S.C. 1990).	177
Ketterman v. South Carolina Farm Bureau Mutual Insurance Co., 395 S.E.2d 187 (S.C. Ct. App. 1990).	111
Lucas v. South Carolina Coastal Council, 404 S.E.2d 895 (S.C. 1991), <i>cert. granted</i> , 60 U.S.L.W. 3208 (U.S. Nov. 18, 1991) (No. 91-453).	137
Matthews v. State, 300 S.C. 238, 387 S.E.2d 258 (1990).	52
Mauldin v. Dyna-Color/Jack Rabbit, 400 S.E.2d 494 (S.C. Ct. App. 1990).	214
Medlin v. Greenville County, 401 S.E.2d 667 (S.C. 1991).	210
Miles v. Miles, 397 S.E.2d 790 (S.C. Ct. App. 1990).	67
National Fire Insurance Co. v. Brown & Martin Co., 726 F. Supp. 1036 (D.S.C. 1989), <i>aff'd mem.</i> , 907 F.2d 1139 (4th Cir. 1990).	37

Nelson v. Concrete Supply Co., 399 S.E.2d 783 (S.C. 1991), <i>aff'd</i> , 115 S.Ct. 1121 (1995), 131 S.Ct. 1121 (1991), Art. 2	174
Niver v. South Carolina Department of Highways & Public Transportation, 395 S.E.2d 728 (S.C. Ct. App. 1990)	199
Panhorst v. Panhorst, 301 S.C. 100, 390 S.E.2d 376 (Ct. App. 1990)	69
Poinsett Construction Co. v. Fischer, 301 S.C. 343, 391 S.E.2d 875 (Ct. App. 1990)	31
Preferred Savings & Loan Association v. Royal Garden Resort, Inc., 301 S.C. 1, 389 S.E.2d 853 (1990), <i>aff'd</i> 295 S.C. 268, 368 S.E.2d 78 (Ct. App. 1988)	24
Quirk v. Campbell, 394 S.E.2d 320 (S.C. 1990)	170
Richland-Lexington Airport District v. Atlas Properties, Inc., 901 F.2d 1206 (4th Cir. 1990)	88
Rutherford v. Rutherford, 401 S.E.2d 177 (S.C. Ct. App. 1991)	64
Scott <i>ex rel.</i> McClure v. Fruehauf Corp., 396 S.E.2d 354 (S.C. 1990)	184
Self v. Goodrich, 300 S.C. 349, 387 S.E.2d 713 (Ct. App. 1989)	205
Shaw v. Hughes, 400 S.E.2d 501 (S.C. Ct. App. 1991)	123
Simmons v. Robinson, No. 23473 (S.C. filed Sept. 9, 1991)	10
Small v. Springs Industries, 300 S.C. 481, 388 S.E.2d 808 (1990)	80
South Carolina Federal Savings Bank v. Thornton-Crosby Development Co., 399 S.E.2d 8 (S.C. Ct. App. 1990)	41
Southeastern Steel Co. v. W.A. Hunt Construction Co., 301 S.C. 140, 390 S.E.2d 475 (Ct. App. 1990)	33
State v. Alexander, 401 S.E.2d 146 (S.C. 1991)	44
State v. Atkins, 399 S.E.2d 760 (S.C. 1990), <i>cert. denied</i> , 111 S. Ct. 2913 (1991)	47
State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990)	94
State v. Frazier, 397 S.E.2d 93 (S.C. 1990)	50
State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990)	100
State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990)	56
State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990)	96
State v. Riddle, 301 S.C. 68, 389 S.E.2d 665 (1990)	104
Tiffault v. Tiffault, 401 S.E.2d 157 (S.C. 1991)	59
Town of Winnsboro v. Wiedeman-Singleton, Inc., 398 S.E.2d 500 (S.C. Ct. App. 1990)	195
Wallace v. Milliken & Co., 406 S.E.2d 358 (S.C. 1991), <i>aff'd as modified</i> , 300 S.C. 553, 389 S.E.2d 448 (Ct. App. 1990)	208
White v. Stephens, 300 S.C. 241, 387 S.E.2d 260 (1990)	120
Wright v. Colleton County School District, 301 S.C. 282, 391 S.E.2d 564 (1990)	191