

ALR 5th

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From the editor

Technology continues to erode our privacy. Federal and state courts have struggled to apply the constitutional right of privacy to 21st century issues in an attempt to delineate a citizen's expectation of privacy in this technological age. The constitutionality of secret video surveillance is examined in 91 ALR5th, and the expectation of privacy in internet communications will be examined in 92 ALR5th. Other technological issues of note in 91 and 92 ALR5th include recovery from an electrical utility for personal injury or property damage resulting from stray voltage, and state regulation of telephone "slamming," respectively.

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Highlights

CONFESSION OF JUDGMENT

Vacating or Opening Judgment by Confession on Ground of Fraud, Illegality, or Mistake

Often a judgment in a civil action is obtained in accordance with an agreement made by the purported debtor under which authority is granted to enter the judgment without the necessity for adducing proof of the claim that is asserted. Following entry, such "confessed" judgments may nonetheless be challenged on several grounds, including mistake, illegality, or fraud. This annotation collects the cases where a confessed judgment was challenged on the grounds of fraud, illegality, or mistake. [91 ALR5th 485](#)

ELECTRICITY

Recovery from Electrical Utility for Personal Injury or Property Damage Resulting from Stray Voltage

A potential basis of liability for an electrical utility is personal injury or property damage resulting from exposure to stray voltage. This liability arises most



often in the context of farm operations, where livestock come into contact with stray voltage. This annotation collects and summarizes those cases in which courts have considered recovery from an electrical utility for personal injury

or property damage resulting from stray voltage. [91 ALR5th 517](#)

ENTRUSTMENT

Liability Based on Entrusting Automobile to One Who is Intoxicated or Known to be Excessive User of Intoxicants

The owner of a vehicle, or one responsible for its use, who entrusts it to a person whom the responsible person knew, or should have known, was intoxicated at the time of the entrustment or whom the responsible person knew was a habitual user of alcohol or drugs, may be held liable for damages caused by the person to whom the vehicle was entrusted. This annotation collects and analyzes those cases in which liability for damage caused by an intoxicated driver was sought to be imposed on the

owner or other person having control of the vehicle on the theory that the owner or controller was negligent in entrusting the vehicle to a person whom the owner or controller knew, or should have known, was intoxicated at the time of entrustment, or because the person entrusted with the vehicle was known to be a habitual user of alcohol or drugs. [91 ALR5th 1](#)

RECUSAL

Laws Governing Judicial Recusal or Disqualification in State Proceeding as Violating Federal or State Constitution

Statutes or rules governing judicial disqualification or recusal have been found to violate various constitutional provisions. This annotation collects and analyzes the cases adjudicating the constitutionality of statutes governing judicial recusal or disqualification in state proceedings. [91 ALR5th 437](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 92 of ALR5th, in October 2001. Some of the annotations listed may be rescheduled.



CORPORATIONS

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

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, most of which relate to the nature of the transaction under which the assets and rights connected with the production and distribution of the particular products had been transferred from the predecessor to the successor. 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. Several courts have recognized that a successor

SEARCH AND SEIZURE

Constitutionality of Secret Video Surveillance

Secret video surveillance may be used to catch criminals in the act under circumstances where a human observer might be in danger, to observe nonverbal criminal conduct that listening devices would miss, or to make a record of observed wrongdoing. State and federal courts, analyzing the legality of such surveillance under the Federal Constitution's Fourth Amendment and other state or federal constitutional provisions, have reached varying conclusions depending on such factors as whether the party complaining of the surveillance had a reasonable expectation of privacy, whether a search warrant authorizing the surveillance had been properly issued, or whether the search had been consented to by a proper party. This annotation collects and discusses the cases adjudicating the constitutionality of secret video surveillance. [91 ALR5th 585](#)

may be liable for failing to warn of dangers associated with use of products issued by its predecessor if the successor has established a special relationship with the owner or user of the product, and if the successor has actual or constructive knowledge of the defective or dangerous condition of the product. This annotation collects and analyzes the cases in which courts have determined whether successor corporations had such an independent duty to warn of the defective or dangerous condition of products issued by their predecessors. See [47 Am Jur Proof of Facts 2d 293](#), Products Liability: Failure of Business Successor to Warn of Defect in Predecessor's Product, and other relevant research sources listed in the Practice Aids section of the annotation. [92 ALR5th](#)

RESTITUTION AND IMPLIED CONTRACTS

Persons or Entities Entitled to Restitution as "Victim" under State Criminal Restitution Statute

As the legislative and judicial branches search for more creative methods of punishing criminal offenders, rather than typical fines or imprisonment, one such alternative is the levying of restitution orders to the "victim" of the crime. However, restitution statutes have come under attack under a number of fronts, including who constitutes a "victim" so as to be entitled to compensation. When a victim has died, the question becomes whether the family,

spouse, children, or parents can stand in as a representative of the "victim" so as to be compensated under these restitution statutes. If the victim has not died, courts are less inclined to extend statutory definitions of "victim" to include family members. At issue also are whether government agencies or departments, including law enforcement agencies, can receive reimbursement when they were either directly victimized by criminal offenders, or suffered losses because of investigating the crime or providing services or reimbursement for services to assist crime victims. Another hotly litigated area is whether insurance companies who have reimbursed criminal victims for their losses can be deemed victims so as to entitle them to restitution. This annotation collects and analyzes cases in which the courts have analyzed which persons and entities can be classified as "victims" (or, under some statutory schemes, "aggrieved persons") so as to be entitled to criminal restitution under state law. See "Who is 'victim,' so as to be entitled to restitution under Victim and Witness Protection Act (18 U.S.C.A. secs. 3663, 3664)," 108 A.L.R. Fed. 828, and other related annotations listed in § 1[b] of the annotation. 92 ALR5th

SEARCH AND SEIZURE

Expectation of Privacy in Internet Communications

The explosion of computer technology and communications has spawned a new area of litigation and legal concerns with regard to the constitutional expectation of privacy in Internet communications. An expectation of privacy has generally not been found to exist with regard to subscriber information pro-

vided by service users to their Internet service providers, records on individuals' Internet usage, or as to communications made on Internet websites. Nor, generally, have courts found a reasonable expectation of privacy to exist in e-mail or electronic chat-room communications. However, under particular circumstances, a court has found an expectation of privacy to exist as to e-mail transmissions made on an Internet service provider's computer subscription service, and a limited reasonable expectation of privacy was found to exist with regard to e-mail messages sent or received on the service. This annotation collects and discusses the cases that have considered the constitutional expectation of privacy in Internet communications. For a related discussion, see 84 A.L.R.5th 1, Validity of search or seizure of computer, computer disk, or computer peripheral equipment, and other topics listed in the Related Annotations section. 92 ALR5th

TELECOMMUNICATIONS

State Regulation of Telephone "Slamming"

"Slamming" is a term used to describe the unauthorized switching of a customer's long distance telephone service carrier by a long distance service provider or by a contractor, reseller, or other representative of such provider. Some states have statutes and regulations specifically forbidding this practice. Courts have also applied state statutes pertaining to unfair trade practices or consumer fraud to claims of "slamming." This annotation collects and discusses those state and federal cases concerning state regulation of the "slamming" of long distance telephone service. 92 ALR5th

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