

ALR 5th

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From the editor

Technology, whether related to evidentiary issues or as the substantive issue in contention, continues to be a matter followed closely by ALR5th. [95 ALR5th 471](#) has an annotation on voice spectrographic analysis, which is a scientific technique that assists in the identification of an unknown voice on a tape recording, and the results of voice spectrographic analysis may be offered as evidence in a legal proceeding, particularly in a criminal proceeding in which the issue is whether the unknown voice on a tape recording is that of the defendant; and [96 ALR5th](#) has an annotation on those state and federal cases in which courts have determined whether a World Wide Web domain name violated a state trademark protection statute or unfair trade practices act. Other annotations of note in the two volumes discuss whether work-related inefficiency, incompetency, or negligence constitutes "misconduct" barring unemployment compensation, and the discipline of an attorney for failure to comply with continuing legal education requirements.

Jason B. Binimow, J.D.

Highlights

CONSTITUTIONAL LAW

Construction and Operation of Twenty-Seventh Amendment to United States Constitution Relating to Congressional Compensation

The Twenty-Seventh Amendment to the United States Constitution provides that a law relating to the compensation of Congress may not take effect until an election of representatives has intervened. It was first proposed in 1789 as part of the original amendments to the Constitution, which we know as the Bill of Rights, but was only adopted in 1992. A few cases have since applied or construed the amendment. While it has been held that a congressman did not have standing to challenge congressional pay change provisions on Federal Constitutional Twenty-Seventh Amendment grounds, as there was no proof of an injury, other cases have reached differing conclusions, as the annotation illustrates. [95 ALR5th 459](#)



UNEMPLOYMENT COMPENSATION

Work-related Inefficiency, Incompetence, or Negligence as "Misconduct" Barring Unemployment Compensation

In order to disqualify an individual from receiving unemployment benefits, an employer must demonstrate that the employee was terminated for misconduct related to his employment. Courts have held that an incident caused by the employee's mere negligence, or by his inability to perform his job, does not constitute misconduct sufficient to justify disqualification. Rather, courts have defined misconduct as the willful or wanton disregard of an employer's interests, evidenced by a violation of the employer's rules or policies, or disregard by the employee of standards of behavior which the employer has the right to expect. Misconduct is further defined to include negligence if the degree or frequency of the employee's

negligent acts evidences wrongful intent or shows a substantial disregard of the employer's interests or the employee's duties. This annotation collects and analyzes unemployment compensation cases dealing with attempted disqualification of claimants terminated for inefficiency, incompetence, or negligence amounting to misconduct related to their employment. [95 ALR5th 329](#)

VISITS AND VISITATION

Religion as Factor in Visitation Cases

It is typically held that the custodian of a child may determine the child's upbringing, including the child's education, health care, and religious training, without involvement by the court, unless there is danger to the child's physical health or emotional development. Therefore, while the custodian should have discretion as to what school the child should attend, and the religious training of the child, a court will not enjoin the noncustodial parent from discussing religion with the child or involving the child in the parent's religious activities, in the absence of a showing that the child will be harmed thereby. The issue arises as to whether, or under what circumstances, questions of religion are a proper matter for consideration by the courts in making an award of child visitation rights. This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided whether, or under what circumstances, questions of religion are a proper matter for consideration by the courts in providing for and regulating visitation rights following an award of custody of a child. [95 ALR5th 533](#)

VOICE

Admissibility and Weight of Voice Spectrographic Analysis Evidence

Voice spectrographic analysis is a scientific technique that assists in the identification of an unknown voice on a tape recording. The results of voice spectrographic analysis may be offered as evidence in a legal proceeding, particularly in a criminal proceeding in which the issue is whether the unknown voice on a tape recording is that of the defendant. In determining the admissibility of evidence regarding voice spectrographic analysis, courts have applied a variety of tests of admissibility. The majority of courts that have excluded evidence regarding voice spectrographic analysis have applied the test of admissibility for scientific evidence set forth in *Frye v. U.S.*, 293 F. 1013, 34 A.L.R. 145 (App. D.C. 1923) (the "*Frye* test"). Under the *Frye* test, evidence based on a scientific technique is admissible if the scientific technique is sufficiently established to have gained general acceptance in the particular field in which it belonged. Numerous courts have either implicitly or explicitly rejected the *Frye* test and held, under alternative tests of admissibility, that evidence regarding voice spectrographic analysis is admissible. This annotation collects and discusses the state and federal cases in which the courts have considered the admissibility of evidence regarding voice spectrographic analysis, as well as the weight to be given such evidence. [95 ALR5th 471](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 96 of ALR5th, in March 2002. Some of the annotations listed may be rescheduled.



Courts have reached a variety of conclusions as to whether a reprimand, fine, suspension, or disbarment was the appropriate penalty, given the particular circumstances. [96 ALR5th](#)

ATTORNEY OR ASSISTANCE OF ATTORNEY

Discipline of Attorney for Failure to Comply with Continuing Legal Education Requirements

One of the many responsibilities of attorneys admitted to the bar is to keep up-to-date with required continuing legal education (CLE) courses. Although only a few days' worth of courses are required each year, a number of lawyers fail to complete these classes, with varying reasons and excuses, and the bar associations of many states are increasingly active in requesting that such individuals be disciplined.

EMOTIONAL INJURY

Recovery under State Law for Negligent Infliction of Emotional Distress under Rule of *Dillon v. Legg*, 68 Cal. 2d 728, 69 Cal. Rptr. 72, 441 P.2d 912 (1968), or Refinements Thereof

Prior to *Dillon v. Legg*, 68 Cal. 2d 728, 69 Cal. Rptr. 72, 441 P.2d 912, 29 A.L.R.3d 1316 (1968), recovery for emotional distress due to witnessing negligent injury to another, when allowed, was strictly limited to persons who either suffered physical impact or were in the zone of physical danger created by the defendant's conduct. By virtue of *Dillon*, California became the first

jurisdiction to hold that the foreseeability of psychic trauma to bystanders is the primary limitation on recovery by bystanders for negligent infliction of emotional distress. *Dillon* set forth three "guidelines" for determining foreseeability of emotional harm to the bystander plaintiff. Twenty-eight states have adopted *Dillon's* holding that recovery for emotional distress suffered by bystanders is not limited to persons who suffer physical impact or are in the zone of danger. Those states have likewise adopted *Dillon's* premise that foreseeability of psychic trauma is the proper starting point for analyzing the merits of bystander claims. Most employ their own refinements of the three *Dillon* guidelines in order to limit bystander recovery. This annotation collects and analyzes cases applying the rule of *Dillon*, or refinements thereof, to determine recovery for emotional distress due to witnessing injury to another. **96 ALR5th**

LABOR AND EMPLOYMENT

Validity and Operation of Preemployment Drug Testing - State Cases

Employers naturally desire to learn, as early as possible, whether an employee is a habitual drug user, since such

persons may be at greater-than-normal risk for accidents or substandard job performance, and consequently, employers desire to make use of the many available tests to determine whether a job applicant is currently using drugs as an indicator of the likelihood of future on-the-job drug use. Job applicants, on the other hand, cite privacy and "due process" interests to avoid the intrusive procedures inherent in such tests. How such preemployment drug tests work, whether and under what conditions they are permissible, and the consequences of positive results where obtained, form the subject matter of this annotation, which collects and analyzes the state cases dealing with this very current legal issue. **96 ALR5th**

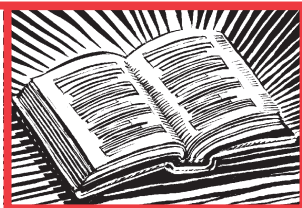
TRADEMARKS, TRADENAMES, AND UNFAIR TRADE PRACTICES

World Wide Web Domain as Violating State Trademark Protection Statute or State Unfair Trade Practices Act

All states provide statutory trademark protection, typically through a state trademark protection statute or unfair trade practices act. This protection is independent of federal statutory protection. This annotation collects and summarizes those state and federal cases in which courts have determined whether a World Wide Web domain name violated a state trademark protection statute or unfair trade practices act. **96 ALR5th**.

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