

ALR 6th

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From the editor

Thomson/West and the members of the A.L.R. Staff welcome you to the first volume of the Sixth Series of American Law Reports. A.L.R.6th continues a tradition of service to the legal profession dating back to 1919 and combines tried-and-true methods of legal research and exposition with the state of the art in current research references and finding tools. What you see in Volume 1 will be familiar in format and quality but will now include additional references to the latest in electronic search techniques (For more details, see the Guide to Using A.L.R.6th feature beginning on page v of the volume.). We at A.L.R. are pleased with these additional enhancements to our product. We hope you will be, too.

Russell G. Donaldson, J.D.

Highlights

STATE TAXATION

Refund Claim—Limitation of Time

One preliminary step in determining whether a state tax refund claim is time-barred is determining which statutory time limit for asserting such claims, if any, is applicable. This process entails assessing whether a given refund claim lies within the scope of a statute imposing a time limit, as well as ascertaining whether any statutory time limit which arguably is controlling is valid and effective. This annotation collects and analyzes cases dealing with the validity and applicability of statutory time limits relevant to a taxpayer's claim for a state tax refund. [1 A.L.R.6th 1](#)



poses constitutes a violation of a covenant restricting its use to residential purposes depends on the wording of the particular covenant and the nature and extent of the incidental business, professional, or other

use to which the dwelling is being put. A number of similarities can be found in the language used by the drafters with respect to the wording of restrictive covenants that limit the use of property to residential purposes, and to some extent, residential covenant restrictions are categorized and interpreted by the courts according to certain commonly used terms and phrases, including "residential purposes only," "single-family dwellings," and "private residential purposes." This annotation collects and analyzes the cases in which the courts have considered whether the incidental business, professional, or other use of a dwelling constituted a violation of a covenant restricting the use of the property to residential purposes. [1 A.L.R.6th 135](#)

RESTRICTIVE COVENANTS

Residential Purposes Only

The question of whether the incidental use of a dwelling for business, professional, or other pur-

PREMISES LIABILITY

Dangerous Shelves, Displays, Racks, Counters

A storekeeper owes customers the duty to exercise ordinary care to keep the shelves, displays, racks, and the like, on the store premises in a reasonably safe condition so as not to unnecessarily expose patrons to hazardous conditions from those instrumentalities of business. However, the storekeeper is not the insurer of every accident that can occur to a customer: a storekeeper is not liable for injuries to a customer resulting from a danger that is "open and obvious" to the customer, but not unreasonably created or maintained by the storekeeper; a storekeeper is also not liable where a customer extends the use of the shelf, display, rack, or the like, beyond the reasonably foreseeable use. This annotation collects and analyzes all of the cases adjudicating store liability for injuries allegedly caused by accidents involving shelves, displays, racks and counters. [1 A.L.R.6th 297](#)

CHILDREN AND MINORS

Appointment of Legal Representative— Limitation of Actions

Numerous states have statutes providing that the statute of limitations applicable to an action is tolled when the person entitled to bring the action is under the disability of minority at the time that the cause of action accrues. While many such tolling statutes provide that the applicable statute of limitations will continue to be tolled until such time as the specified disability is removed, the majority do not specify the effect, if any, that the appointment of a legal representative, such as a guardian, conservator, guardian ad litem, next friend, or custodian for the minor has on the operation of the tolling statute. Many courts hold that where the applicable statute of limitations is tolled due to a potential plaintiff's minority, the appointment of a legal representative for the minor triggers the running of the applicable limitations period. This annotation covers cases discussing the effect of the appointment of a legal representative for a person under the disability of minority on the operation of a state statutory provision tolling the running of the applicable limitations period on the basis of such disability. [1 A.L.R.6th 407](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in the next volume of A.L.R.6th in March 2005. Some of the annotations listed may be rescheduled.



RECORDS AND RECORDING

Expunction of Adult Criminal Record

Generally, the expunction of an arrest record of a person who has been acquitted is proper only where the acquittal is consistent with a finding of innocence and is not the result of legal technicalities unrelated to the question of guilt or innocence. Expungement of a criminal record typically requires physical destruction of the record by whomever and in whatever depository the record is maintained, such that all traces of the criminal process relating to that offense are destroyed. The issue arises as to the right of a criminal defendant to have his or her record expunged pursuant to either the court's inherent power to grant such relief or pursuant to explicit statutory authority. This annotation collects and analyzes the state and federal cases in which the courts have determined the right of a convicted adult to have his or her criminal record expunged. [2 A.L.R.6th](#)

CIVIL PROCEDURE

Offer of Judgment—Award of Costs Under State Rules

Many states have an offer of judgment rule or statute patterned after the federal offer of judgment rule, Fed. R. Civ. P. 68. Like the federal rule, most states' offer of judgment rules and statutes provide that an offeror is entitled to an award, usually in the form of post-offer costs, "if the judgment finally obtained by the offeree is not more favorable than the offer." Given such, an initial issue is whether the offeree has obtained a judgment since some courts have found that the rule does not apply if the offeror extends an offer and subsequently prevails. This annotation collects and analyzes state cases examining whether an offeror is entitled to an award under a state offer of judgment rule or statute. [2 A.L.R.6th](#)

CHILD SUPPORT

Credit on Arrearages—Education Expenses

Where one parent has been ordered to pay child support to the other parent for the support of one or more children, the question frequently arises whether the obligor parent can or should be allowed credit against any accumulated arrearages for private school tuition or college expenses provided by the obligor

parent. Some courts have held that no credit can be allowed under any circumstances, while others have set out specific circumstances under which credit is appropriate. This annotation collects the cases involving a non-custodial parent's right to credit on accrued support payments for tuition or other educational expenses made on behalf of one or more children. Note also that cases involving payment of money to college students where said money is intended to be and is actually used for educational expenses are also included in this annotation. **2 A.L.R.6th**

CRIMINAL LAW

Lesser-included Offense Charge—Cocaine Cases

Especially where the evidence leaves some room for doubt as to the facts, a person accused of selling

drugs or a similar serious drug crime may request the trial judge to charge the jury that it can find him guilty instead of a lesser included offense such as the mere possession of drugs. While this would seem to be counterintuitive, in that the defendant, who might otherwise be found by the jury to be completely innocent, thereby gives the jury another way of finding him guilty of at least some crime, the defendant would rather lessen the chances of being found guilty of the greater crime, which involves lengthy prison sentences, at the cost of exposure to the relatively light penalties for minor drug crimes. However, not in all cases is a lesser included offense instruction mandated or appropriate. This annotation collects and discusses the cases considering under what circumstances it was appropriate to give a lesser included offense to a greater charge in a cocaine prosecution. **2 A.L.R.6th**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 1 or scheduled for publication in the next volume of A.L.R. Some of the annotations listed may be rescheduled.



Right to Credit on Child Support for Health Insurance, Medical, Dental, and Orthodontic Expenses Paid for Child's Benefit While Child Is Not Living with Obligor Parent. **1 A.L.R.6th 493**

BITES AND BITING

Admissibility and Sufficiency of Bite Mark Evidence as Basis for Identification of Accused. **1 A.L.R.6th 657**

COCAINE

Propriety of Lesser-included-Offense Charge in State Prosecution of Narcotics Defendant — Cocaine Cases. **2 A.L.R.6th**

CORPORATIONS

Acceptance and Application of Reverse Veil-Piercing—Third-Party Claimant. **2 A.L.R.6th**

Construction and Application of "Intracorporate Conspiracy Doctrine" as Applied to Corporation and Its Employees—State Cases. **2 A.L.R.6th**

COVENANTS

Construction and Application of "Residential Purposes Only" or Similar Covenant Restriction to Incidental Use of Dwelling for Business, Professional, or Other Purposes. **1 A.L.R.6th 135**

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Validity and Applicability of Statutory Time Limit Concerning Taxpayer's Claim for State Tax Refund. **1 A.L.R.6th 1**

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