

ALR 6th

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From the editor

Legal issues continue to arise in connection with the ever-increasing use of the Internet worldwide and computers in general. Volume 3 of A.L.R.6th contains three annotations relating to electronic media. Prominent in the news of late has been the prescription of medicine over the Internet, and all the cases addressing state and federal regulation of such activity have been collected and analyzed in one annotation in this volume. Volume 3 also contains annotations relating to libel and slander in electronic communications, and the electronic spoliation of evidence. Further, an annotation on the validity of conditioning probation, supervised release, or parole on restricting computer use of Internet access is scheduled to be published in 4 A.L.R.6th. Volume 3 of A.L.R.6th also contains annotations on such varied topics of interest as admission to the bar (criminal record as affecting an applicant's moral character), evidence (impeachment of a party's own witness), products liability (home and office furnishings), family law (spouse's professional degree or license as marital property, and right to credit on child support for contributions to travel expenses), and criminal law (lesser-included offense charges of voluntary manslaughter to juries in state murder prosecutions). Scheduled for 4 A.L.R.6th are annotations exhaustively collecting and analyzing such topics as workers' compensation for injuries incurred at the worker's home, evidence to trace illegal drug trafficking proceeds, hearsay statements to a 911 operator, bias of a zoning officer, products liability involving saws, estoppel of an insurer to assert a statute of limitation defense, credit for child support beyond emancipation of the child, and identification of the victim as the person named in a robbery indictment or information.

Joel E. Smith, J.D.

Highlights

CHILD SUPPORT

Right to Credit on Child Support for Contributions to Travel Expenses of Child While Child Is Not Living with Obligor Parent

Where one parent has been ordered to pay child support to the other parent for the support of one or more children, the question sometimes arises



whether the obligor parent can or should be allowed credit against any accumulated arrearages for travel expenses that parent assumes on behalf of the children for visitation with the obligor parent or others, moving the child to a new residence, vacations, special events, or college, or for the noncustodial parent's expenses of traveling to exercise or attempt

to exercise visitation rights with a child or children. Courts have disagreed on whether credit should be allowed for these expenses, some allowing and others denying credit. This annotation collects the cases involving a noncustodial parent's right to credit on accrued support payments for travel expenses assumed on behalf of a child or children, for such purposes moving to a new residence, visitation with the noncustodial parent or others, vacations, or special events, or for the noncustodial parent's expenses of traveling to exercise or attempt to exercise visitation rights with a child or children. [3 A.L.R.6th 641](#)

INTERNET

State and Federal Regulation of Prescribing Medication Over the Internet

At first glance, Internet sales of drugs prescribed by an online physician would seem to be a classic situation in which the advantages of virtual business over bricks-and-mortar sales are clear—the customer gets fast and discrete service for a desired specific product, with no need to travel to, and wait at, doctors and pharmacies. Moreover, there is a safety check in that the customer has to fill out a detailed questionnaire showing the need for the drug, which will be reviewed by the physician. However, prescribing medications without a physical examination is unethical and potentially quite dangerous to the patient. Patients often lie about their medical conditions, or are unaware of problems or counterindications that a checkup by the doctor can easily reveal, while the questionnaire systems often do not have significant opportunities for follow-up or interaction with the consumer by the physician. Moreover, unscrupulous sales techniques can bypass even these limited safeguards, shipping the drugs without a physician's prescription. Courts have reached varying conclusions, based on a variety of state and federal statutes and rules, as this annotation illustrates. [3 A.L.R.6th 1](#)

LIBEL AND SLANDER

Individual and Corporate Liability for Libel and Slander in Electronic Communications, Including E-mail, Internet and Websites

The emergence of the Internet age has affected many causes of action, including defamation claims. Computer access enables any individual to send or post electronic communications to individuals, websites and Internet chat rooms basically stating anything that the user pleases. Assuming proper jurisdiction, a cause of action for defamation on the Internet may be brought against the author of the statement that was posted on a website or transmitted by an E-mail, an employer if the individual that wrote the allegedly defamatory statement did so at work, and a company or state agency whose website contains the allegedly defamatory statement. This annotation will examine when liability arises for defamatory statements sent or created electronically. Issues of jurisdiction over defendants that send, or post, allegedly defamatory statements, obligations to seek retractions, and general defamation liability are also affected by the Internet and are discussed herein. [3 A.L.R.6th 153](#)

SPOILIATION

Electronic Spoliation of Evidence

As the use of computers and data processing systems has increased, the scope of information potentially subject to discovery has skyrocketed. It is generally recognized that the intentional spoliation or destruction of evidence relevant to a case raises a presumption, or, more properly, an inference, that this evidence would have been unfavorable. Such a presumption or inference arises, however, only where the act was intentional, and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent. This annotation collects and summarizes those state and federal cases that have considered the issues relating to electronic spoliation of evidence. [3 A.L.R.6th 13](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 4 of A.L.R.6th. Some of the annotations listed may be rescheduled.



CUSTODY AND SUPPORT OF CHILDREN

Right to Credit on Child Support for Continued Payments to Custodial Parent for Child Who has Reached Majority or Otherwise Becomes Emancipated

Where one parent has been ordered to make periodic payments to the other parent for the

support of one or more children, the question sometimes arises whether the obligor parent has accrued overpayments where that parent has continued to pay child support on behalf of a child who has reached majority, and whether credit can or should be allowed against any such accumulated arrearages. In some cases in which an award of child support is entered on behalf of more than one child, the continued payment of the full amount may be held to constitute an overpayment, while in other cases it may be held that such payment does not accrue overpayments. This annotation collects the cases involving a non-custodial parent's right to credit on accrued child support payments for overpayments paid to the custodial parent for a child who has reached majority or otherwise become emancipated. **4 A.L.R.6th**

HEARSAY

When is Hearsay Statement Made to 911 Operator Admissible as "Excited Utterance" Under Uniform Rules of Evidence 803(2) or Similar State Rule

Quite often the best evidence of what happened during a crime turns out to be the immediate report of the crime to 911 emergency services. For example, the caller may be injured and die before trial. More commonly, and especially with domestic dispute violence, the caller changes his or her mind and decides not to press charges or cooperate with the police investigation. In such case, the prosecution will have to deal with the problem that the statement is hearsay in that it is an out of court statement being introduced into evidence for the truth of the statement. Many courts have considered whether the 911 audiotape or transcript is admissible under the exception for excited utterances, under which a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. This annotation collects and discusses the state and federal cases considering under what circumstances a statement made during a call to a 911 emergency operator is admissible, despite hearsay

objections, under the exception for an "excited utterance," under Uniform Rules of Evidence 803(2) or a similar state rule. **4 A.L.R.6th**

PAROLE, PROBATION, AND PARDON

Validity of Condition of Probation, Supervised Release, or Parole Restricting Computer Use or Internet Access

There are a number of adjudications under which a convicted criminal defendant is subject to the court's authority while not under physical confinement. Where a defendant is subject to this control, the court is permitted, within statutory and constitutional limitations, to issue conditions with which the defendant is required to comply. This annotation collects and analyzes all the federal and state cases discussing the validity of a condition, restricting a convicted criminal defendant's computer use or Internet access, imposed as a condition of probation, parole, supervised release, or a related adjudication, such as community control, community supervision, a suspended sentence, or a conditional release. **4 A.L.R.6th**

WORKERS' COMPENSATION

Right to Workers' Compensation for Injury Suffered at Worker's Home Where Home Is Claimed as "Work Situs"

Workers' compensation benefits have been awarded to workers who have suffered an injury at home in a number of jurisdictions where the home is established as a "work situs" or a place of employment for purposes of workers' compensation coverage. This annotation collects and analyzes the cases, which discuss the right to compensation for injury suffered by a worker at home under circumstances where the home is a "work situs" for purposes of workers' compensation coverage, discussing the various requisites of, and factors affecting, compensability, and how the rules have been applied under particular circumstances and with respect to particular occupations. **4 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 3 or scheduled for publication in volume 4 of A.L.R.6th. Some of the annotations listed may be rescheduled.



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