

# ALR 6th

## Alert

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### From the editor

What do topics like golf course or driving range as nuisance; suppression of statements made during a police interview of a non-English speaking defendant; liability for risk of future identity theft; and validity, construction, and application of arbitration agreements in contracts for admission to a nursing home all have in common? They are all expertly researched, well-organized annotation topics that we have included in the latest and upcoming volumes of A.L.R.6th. Of course, these are just a few of the many annotations included. To find out more specific information on the aforementioned topics and other annotations being published in 49 and 50 A.L.R.6th, check out the Highlights and Coming Soon sections below.

*Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.*

## Highlights

### GOLF AND GOLF COURSES

#### Golf Course or Driving Range as Nuisance

In many ways, a golf course is a very desirable and even ideal neighbor, as it is guaranteed to maintain a large area with beautifully landscaped and maintained lawns, woods, ponds, and other watercourses. Moreover, golf courses are usually closed at night, so the neighborhood has a quiet, rural atmosphere much of the time. Nevertheless, golf courses, especially popular ones, can bring with them a host of problems, such as errant golf balls frequently striking neighboring homes, excessive amounts of cars and noise, especially on popular courses, and downstream pollution from landscaping. Accordingly, a number of methods have been utilized by adjoining landowners seeking legal redress. Cases have reached a variety of conclusions as to whether activities of a golf course causing property damage constituted a nuisance, as this annotation illustrates. [49 A.L.R.6th 477](#)



### JUDGES

#### Disqualification or Recusal of Judge Due to Comments at Continuing Legal Education (CLE) Seminar or Other Educational Meetings

It is not uncommon for a judge, due to his or her expertise and experience, to be invited to take on the role of attorney educator. Moreover, ethical codes for judges encourage them to contribute to the improvement of the practice of law or the legal system. Judges do not divest themselves, however, of ethical responsibilities when they leave the courthouse and speak at bar association seminars, judicial conferences, or the like. Remarks made while lecturing may cast doubt on the judge's capacity to serve impartially if, for example, they reveal a high degree of favoritism or antagonism against a litigant. Litigants have argued that a judge should be recused for making comments showing a predisposition against a class of persons. This annotation collects and discusses all of the cases that have considered whether a judge should be disqualified or recused due to comments he or she made at a continuing legal education (CLE) seminar or other educational meetings. [49 A.L.R.6th 93](#)

## LIMITED LIABILITY COMPANIES

### Construction and Application of Limited Liability Company Acts—Issues Relating to Dissolution and Winding Up of Affairs of Limited Liability Company

A limited liability company (LLC) is a hybrid business entity that offers its members limited liability as if they were shareholders of a corporation, but treats the entity and its members as a partnership for tax purposes. All 50 states and the District of Columbia have enacted LLC legislation. Many state and federal courts have construed and applied state LLC acts regarding issues relating to dissolution and winding up the affairs of an LLC. This annotation collects and discusses all of the cases that have addressed construction and application of state LLC acts with regard to issues relating to dissolution and winding up the affairs of an LLC. This annotation completes the series on Limited Liability Company Acts, consisting of Construction and Application of Limited Liability Company Acts—Issues Relating to Formation of Limited Liability Company and Addition or Disassociation of Members Thereto, [43 A.L.R.6th 611](#); Construction and Application of Limited Liability Company Acts—Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents, [46 A.L.R.6th 1](#); Construction and Application of Limited Liability Company Acts—Issues

Relating to Personal Liability of Individual Members and Managers of Limited Liability Company as to Third Parties, [47 A.L.R.6th 1](#); and Construction and Application of Limited Liability Company Acts—Issues Relating to Derivative Actions and Actions Between Members of Limited Liability Company, [48 A.L.R.6th 1](#). [49 A.L.R.6th 1](#)

## SELF-INCRIMINATION

### Suppression of Statements Made During Police Interview of Non-English-Speaking Defendant

The courts have struggled with determining the admissibility of custodial statements of criminal suspects who do not speak English as their native language. Issues arise as to the quality of any interpreter provided to the suspect during a police interrogation, the accuracy and understandability of Miranda warnings administered to the suspect, and the validity of a suspect's waiver of his or her rights in light of arguable language barriers. The courts have examined questions such as the qualification of a police officer to act as a translator, cultural barriers to understanding Miranda warnings, and the admissibility of the transcript of a confession's translation. This annotation collects and discusses all cases discussing under what circumstances the courts have allowed or disallowed the admission of custodial statements of criminal suspects who do not speak English as their native language. [49 A.L.R.6th 343](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in [50 A.L.R.6th](#) in December 2009. Some of the annotations listed may be rescheduled.



## IDENTITY THEFT

### Liability for Risk of Future Identity Theft

Identity theft has been a growing problem in recent years. "Dumpster diving" and other methods such as diverting mail can retrieve sensitive personal information from paper records. In addition, the use of computer storage of data, while saving enormous amounts of space that was formerly crammed with hard-to-access paper files, nevertheless can lead to huge security problems, since a skilled hacker may be able to break into a supposedly secure system and instantly retrieve millions of bits of sensitive information about individuals. Furthermore, mere mistakes or carelessness by data control and retention personnel can leave such information open to practically anyone browsing the Internet. Moreover, the theft of computer equipment, especially laptops or other personal devices, with personal information saved onto its memory but not encrypted, similarly has caused large-scale information leaks. Nevertheless, it is

often unclear whether anyone has actually accessed or used any compromised information, and this is especially the case where an opportunistic thief steals a laptop for its hardware value but has no interest in any of the programs or information saved to its memory. In such a case, case law has

considered whether there is liability for mere potential or future identity theft. This annotation will collect and discuss the state and federal cases considering whether and under what circumstances there can be liability under state law for future or potential identity theft, where the private information of an individual or individuals has been stolen, left to public view, or otherwise compromised but where, to the knowledge of the parties, there have been no attempts to use the data. [50 A.L.R.6th](#)

## NURSING AND CONVALESCENT HOMES

### Validity, Construction, and Application of Arbitration Agreement in Contract for Admission to Nursing Home

The use of mandatory arbitration clauses in the context of nursing home admission agreements is widespread. Various issues concerning such clauses have been litigated. This annotation will collect and discuss those cases in which the courts have construed the validity, construction, or application of an arbitration agreement contained in a contract for admission to a nursing home or similar long term care facility. [50 A.L.R.6th](#)

## SUBROGATION

### Right of Insurer to Assert Equitable Subrogation Claim Against Attorney for Insured on Grounds of Professional Malpractice

The uniquely personal nature of an attorney's duty to his or her client and the confidentiality of the attorney-client relationship have led the courts to question whether the doctrine of equitable subrogation can be applied to permit an insurer, upon paying an insured's loss, to succeed to any legal malpractice claims that might have accrued to the insured in connection with the loss. This annotation will collect all the cases that have discussed the right of an insurer to assert an equitable subrogation claim against an attorney for the insured on the grounds of professional malpractice. **50 A.L.R.6th**

## VEGETATION

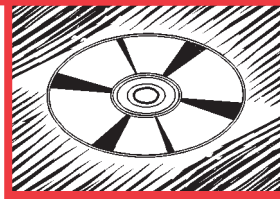
### Comment Note: Governmental Liability for Failure to Reduce Vegetation Obscuring View at Railroad Crossing or at Street or Highway Intersection

The public is entitled to the unobstructed and uninterrupted use of the entire width of highways and streets,

except insofar as the public authority or abutting owners are permitted to encroach on the primary public right to a limited extent or for a temporary purpose. Any unauthorized obstruction or encroachment that materially impedes or interferes with the use of a highway constitutes a public nuisance. The duty to remove an obstruction rests primarily on the person or agency responsible for its existence and as a result, the issue arises as to the liability of a municipality for its alleged failure to reduce vegetation obscuring the view at a railroad crossing or at a street or highway intersection. This annotation will collect and analyze the state and federal cases in which the courts have discussed or decided whether, or under what circumstances, a governmental entity may be held liable for damages due to its failure to reduce vegetation that obscures or obstructs the view at a railroad crossing or at a street or highway intersection. See also Governmental Liability for Failure to Maintain Trees Near Public Way, and Establishing Liability of a State or Local Highway Administration, **41 Am. Jur. Proof of Facts 3d 109**, and Where Injury Results from the Failure to Place or Maintain Adequate Highway Signs, **31 Am. Jur. Proof of Facts 3d 351**. **50 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 **49 A.L.R.6th** or scheduled for publication in **50 A.L.R.6th**. Some of the annotations listed may be rescheduled.



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