

ALR

Federal 2d

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From the editor

While *U.S. v. Booker* has changed the U.S. Sentencing Guideline from mandatory to advisory, courts are still required to consult the provision when handing down sentences. In the upcoming volumes of A.L.R. Fed. 2d, we will be looking at the provisions for both upward enhancement and downward departure. In 29 A.L.R. Fed. 2d, we cover the downward departure where the defendant's criminal history was overrepresented in severity (29 A.L.R. Fed. 2d 359). In 30 A.L.R. Fed. 2d, we look at enhancement for a charge of attempted murder based on the nature of the injury sustained. In these volumes, the topic of extending copyright law is also covered. Firstly, we'll look at restoring copyright protection to foreign works that have fallen into the public domain (29 A.L.R. Fed. 2d 501), and in a future volume, we'll look at how copyright law applies to jewelry (30 A.L.R. Fed. 2d).

Michael T. Poccia, Editor and Jennifer J. Ho, J.D.

Highlights

VICARIOUS LIABILITY

Graves Amendment

The Graves Amendment (49 U.S.C.A. §30106), enacted August 10, 2005, as part of a comprehensive transportation bill called the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), generally preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner. The Graves Amendment applies with respect to any action commenced on or after the date of its enactment. This annotation shall collect and analyze the federal and state cases in which the courts have discussed or determined the validity, construction, or application of the Graves Amendment. 29 A.L.R. Fed. 2d 223



ALIENS, IMMIGRATION, AND CITIZENSHIP

Refugee Persecutors

A provision of the Immigration and Nationality Act, 8 U.S.C.A. § 1101(a)(42), defines the term "refugee" not to include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. Pursuant thereto, 8 U.S.C.A. §§ 1158(b)(2)(A)(i) and 1231(b)(3)(B)(i) forbid the granting of asylum and the withholding of removal of individuals who have participated in the persecution of others on a protected ground. This annotation collects and analyzes cases construing, applying, or discussing the validity of these statutory provisions. 29 A.L.R. Fed. 2d 267

SENTENCING AND PUNISHMENT

U.S.S.G. § 4A1.3(b)(1)

Section 4A1.3(b) of the United States Sentencing Guidelines allows courts to depart downward from the otherwise applicable sentencing guideline range where “reliable information indicates that the defendant’s criminal history category substantially overrepresents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.” The Sentencing Guidelines are now considered advisory rather than mandatory, after the U.S. Supreme Court’s 2005 decision in *United States v. Booker*, but courts are still required to consult their provisions and consider them in sentencing. This annotation will collect and discuss all of the federal court cases which have construed and applied the downward departure provision of U.S.S.G. § 4A1.3(b)(1). **29 A.L.R. Fed. 2d 359**

COPYRIGHT AND LITERARY PROPERTY

Uruguay Round Agreements Act

Section 514(a) of the Uruguay Round Agreements Act (URAA), 17 U.S.C.A. § 104A, enacted in 1994, provides for the restoration of foreign-based copyrights that have fallen into the public domain in the United States as a result of a copyright lapse due to noncompliance with U.S. copyright formalities. The statute also affords certain limited protections to so-called “reliance” parties that made use of a work in the public domain that had now been restored to copyrighted status by the statute. This annotation discusses all of the cases considering the validity, construction, and application of § 514(a) of Uruguay Round Agreements Act, codified at 17 U.S.C.A. § 104A, which restores copyright protection to certain foreign works that had fallen into the public domain. **29 A.L.R. Fed. 2d 501**

Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 30 of *A.L.R. Fed. 2d* in August 2008. Some of the annotations listed may be rescheduled. Advance copies of coming annotations may be obtained by customers, free of charge, by calling 1-800-225-7488, or by sending an e-mail message to ALRLCS-Rochester@thomson.com.



SENTENCING AND PUNISHMENT

Federal Guidelines’ Aggravating Factors for Attempted Murder

In determining the base offense level for assault with intent to commit murder or attempted murder under United States Sentencing Guideline (U.S.S.G.) § 2A2.1, district courts are to apply specified level adjustments where the specific offense characteristic of § 2A2.1(b)(1) is met, that is, where victims sustain particular degrees of injury. In such cases, courts must determine whether a victim has sustained permanent or life-threatening bodily injury, serious bodily injury, or some degree of injury in between those levels sufficient to justify application of the specific offense characteristic. This annotation collects and analyzes cases construing or applying the provisions of U.S.S.G. § 2A2.1(b)(1). **30 A.L.R. Fed. 2d**

ENVIRONMENTAL LAW

Magnuson Fishery Act

In response to evidence of massive domestic and foreign overfishing and other problems in the various ocean fisheries, Congress in 1976 enacted statutes which, together with later amendments, are known as the Magnuson-Stevens Fishery Conservation and

Management Act, 16 U.S.C.A. §§ 1801 to 1883. The Secretary of Commerce, together with various agencies, is entrusted by the Act with regulating ocean fishing within the 200 mile limit surrounding the country, and the Secretary and the agencies are authorized to issue fishery management plans, amendments to such plans, and other regulations. However, they cannot simply enact whatever rules they please, but all rules must be in accord with 10 National Standards for fishery conservation and management, as provided in 16 U.S.C.A. § 1851(a). This annotation discusses whether particular rules issued by the various authorities were in accord with these standards. **30 A.L.R. Fed. 2d**

CONSUMER PROTECTION

Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C.A. § 227, was enacted by Congress as a response to consumer complaints regarding the growing number of unsolicited telemarketing calls and fax advertisements. The TCPA prohibits the use of any telephone fax machine or similar device to send unsolicited advertisements unless certain conditions are met. It also provides for a private right of action in which a plaintiff may be awarded damages of \$500 per fax, which amount will be tripled where a defendant violated the statute “willingly and knowingly.” After several years, enterprising attorneys came to realize that the TCPA could be a powerful class action weapon, sometimes yielding astronomical sums in damages. The courts are divided however as to whether class actions brought under the TCPA are appropriate. This annotation discusses the cases in both federal and state courts which have considered the propriety of class actions under the TCPA. **30 A.L.R. Fed. 2d**

COPYRIGHT AND LITERARY PROPERTY

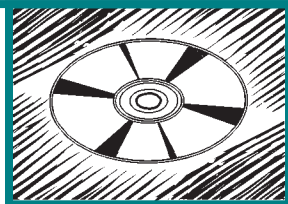
Copyright—Jewelry

Pursuant to power granted by the United States Constitution, U.S. Const. Art. I, § 8, cl. 8, Congress passed the Copyright Act, 17 U.S.C.A. §§ 101 et seq., which includes jewelry in the category of works which may be copyrighted. To qualify for copyright protection, a piece of jewelry, like other works, must be original as to its author

and possess a minimum level of creativity. In order to establish infringement of a jewelry copyright, the copyright owner must demonstrate that the alleged infringer has actually copied the owner's work, and that such copying is illegal because a substantial similarity exists between the alleged infringer's work and the protectible elements of the owner's work. This annotation collects and discusses those cases which have addressed the application of copyright law to jewelry. **30 A.L.R. Fed. 2d**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 29 of A.L.R. Fed. 2d or scheduled for publication in Volume 30 of A.L.R. Fed. 2d. Some of the annotations listed may be rescheduled.



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