

# ALR 6th

## Alert

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### From the editor

Volumes 22 and 23 of A.L.R.6th continue to bring you a wide variety of topics. Volume 22 contains annotations on contract law, claims of unconscionability of a contract as subject to the compulsory arbitration clause in a contract; marriage law, the validity of bigamy and polygamy statutes and constitutional provisions; and insurance law, the construction and application of the directors' and officers' liability insurance policy—exclusive of exclusion and notice of claim provisions. Volume 23 contains annotations on such subjects as criminal law, the construction and application of state drug paraphernalia acts; product liability, the product liability of cardiac pacemakers; and taxes, cable television equipment or services as subject to sales or use tax.

*Michael F. Alberti, J.D.*

## Highlights

### CRIMINAL LAW

#### Cigarette Lighter as Deadly or Dangerous Weapon

Certain instrumentalities, such as firearms and brass knuckles, when used in the ordinary and usual manner contemplated by their design or construction, are so clearly capable of causing serious bodily injury or death that they are classified as deadly weapons per se. Although a cigarette lighter is not inherently a deadly, dangerous, or offensive weapon, a cigarette lighter may be used in such a manner during the commission of a crime so as to constitute a deadly, dangerous, or offensive weapon. This annotation collects and discusses all cases which have considered whether a cigarette lighter was used as a deadly, dangerous, or offensive weapon. **22 A.L.R.6th 533**



### CAPITAL OFFENSES

#### Timeliness of Challenge, Under 42 U.S.C.A. § 1983, to Constitutionality of State Executions by Lethal Injection

In *Hill v. McDonough*, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (U.S. 2006), the United States Supreme Court held that an action challenging the particular protocol to be followed in conducting an execution by lethal injection, but not challenging the lawfulness of execution by lethal injection generally, may be pursued under 42 U.S.C.A. § 1983. The Supreme Court stressed that filing an action that could proceed under section 1983 did not entitle an inmate to a stay of execution as a matter of course, as both the state and the victims of crime have an important interest in the timely enforcement of a sentence.

This annotation collects and analyzes all the federal and state cases discussing the timeliness of an action challenging, under 42 U.S.C.A. § 1983, execution by lethal injection in a state capital proceeding. [22 A.L.R.6th 19](#)

## **NEWSPAPERS AND PERIODICALS**

### **Liability of Newspaper for Libel and Slander — Twenty-First Century Cases**

With minor variations among the jurisdictions, when stating a claim of newspaper libel, states follow the Restatement of Torts in its definition of defamation. In order to create liability for newspaper libel, there must be: 1) a false and defamatory statement concerning another; 2) an unprivileged publication to a third party; 3) fault amounting at least to negligence on the part of the publisher; and 4) actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. This annotation collects and discusses twenty-first century state and

federal cases in which the courts have considered newspaper libel. [22 A.L.R.6th 553](#)

## **WORKERS' COMPENSATION**

### **Validity, Construction, and Application of Statutes Providing that Worker Who Suffers Workplace Injury and Subsequently Tests Positive for Alcohol Impairment or Illegal Drug Use Is Not Eligible for Workers' Compensation Benefits**

Certain statutes provide that a worker who suffers a workplace injury and subsequently tests positive for alcohol impairment or illegal drug use is not eligible for workers' compensation benefits. This annotation collects and discusses those cases in which the courts have considered the validity, construction, and application of statutes providing that a worker who suffers a workplace injury and subsequently tests positive for alcohol impairment or illegal drug use is not eligible for workers' compensation benefits. [22 A.L.R.6th 329](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in [23 A.L.R.6th](#) in April 2007. Some of the annotations listed may be rescheduled.



mentally incompetent, and under a legal disability. This annotation covers cases discussing when a person, other than one claiming posttraumatic stress syndrome or memory repression, is within the coverage of a statutory provision tolling the running of the applicable limitations period on the basis of a mental disability. [23 A.L.R.6th](#)

## **LIMITATIONS OF ACTIONS**

### **Tolling Running of Limitations Period on Basis of Mental Disability**

In an attempt to avoid the statute of limitations in an action in which the defendant has asserted the same as a bar to the action, a plaintiff may argue that the statute of limitations was tolled pursuant to state statutory law. 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 a specified mental disability at the time that the cause of action accrues. Whether an individual's mental condition is sufficient to toll the statute of limitations under a state's tolling statute depends on a variety of factors, including the wording of the particular statutory provision, the particular facts and circumstances regarding the individual's mental condition, and the court's determination of the differences between, and relationships among, such terms of art as insanity, unsoundness of mind,

## **DRUGS AND NARCOTICS**

### **State Drug Paraphernalia Acts**

Many states have enacted drug paraphernalia statutes designed to stop or control the sale of devices that can be used to grow, produce, process, store, ingest, inhale, or inject illegal drugs. The enforcement of these statutes has given rise to numerous issues regarding their construction and application. This annotation collects and analyzes cases dealing with the construction and application of state drug paraphernalia statutes. [23 A.L.R.6th](#)

## **CORPORATIONS**

### **"Deepening Insolvency" as Cause of Action in Tort**

"Deepening insolvency" has been defined as prolonging an insolvent corporation's life through bad debt. Some courts have treated deepening insolvency as an independent cause of action. Others have viewed it as a theory of damages, often raised in response to the defense that increased debt injured the

creditors, but did not harm (and actually helped) the corporation. Finally, some have rejected the theory outright or raised serious questions about its viability. This annotation collects and analyzes cases addressing “deepening insolvency.” **23 A.L.R.6th**

## **PRODUCTS LIABILITY**

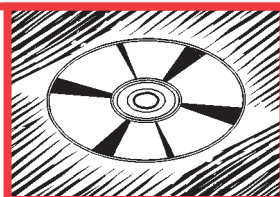
### **Cardiac Pacemakers**

From the outset of the medical practice of implanting electronic pacemakers in human bodies to regulate heartbeats, implant patients have attempted to hold

manufacturers liable for defective performance by these devices. Aside from the issue of possible preemption by federal law, actions to recover for injury allegedly resulting from a defective cardiac pacemaker or other medical device proceed along the same lines as products liability actions generally. This annotation collects and analyzes all the federal and state cases discussing the liability of the manufacturer of a cardiac pacemaker or a similar cardiac rhythm management device for personal injury suffered by a patient implanted with such a device made by the manufacturer. **23 A.L.R.6th**

# **Index**

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume **22 A.L.R.6th** or scheduled for publication in **23 A.L.R.6th**. Some of the annotations listed may be rescheduled.



## **ADULT BUSINESSES**

Validity of Statutes and Ordinances Regulating Operation of Sexually Oriented Businesses—Nature of Regulation. **23 A.L.R.6th**

## **ARBITRATION**

Claim of Unconscionability of Contract as Subject to Compulsory Arbitration Clause Contained in Contract. **22 A.L.R.6th 49**

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## **BANKRUPTCY**

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Validity, Construction, and Application of State Statutes Enhancing Penalty for Sale or Possession of Controlled Substances Within Specified Distance of Playgrounds. **23 A.L.R.6th**

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## ZONING

Validity, Construction, and Application of Inclusionary Zoning Ordinances and Programs. **22 A.L.R.6th 295**

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