

ALR 6th

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From the editor

To help sort out the always difficult task of distribution of property during divorce and separation proceedings, we have two new annotations dealing with such matter in the upcoming volumes of A.L.R.6th. The issues surrounding inherited property and whether it is to be considered marital or separate property during a divorce action is explored in **38 A.L.R.6th 255**, and an annotation in **39 A.L.R.6th** will examine the idea of “active appreciation” of property with respect to the appreciation in value of separate property during marriage with contribution by either spouse, and whether such appreciation constitutes “separate” or “community” property. Also of note is our continuing coverage of what constitutes a “custodial interrogation” requiring informing a suspect of his or her Miranda rights, this time where the suspect is in jail or prison (**38 A.L.R.6th 97**), while an annotation in **39 A.L.R.6th** will further our coverage of a worker’s right to workers’ compensation benefits for physical injury or illness suffered as a result of nonsudden emotional or mental stimuli and the particular circumstances under which they are compensable.

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

Highlights

CRIMINAL LAW

Custodial Interrogation—Prison

The United States Supreme Court decision of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966), established the due process right of a person subjected to a custodial interrogation by law enforcement authorities to the presence of counsel during such interrogation. *Miranda* states that the Fifth Amendment privilege against self-incrimination is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves. *Miranda*



warnings are due only when a suspect interrogated by the police is in custody. A “custodial interrogation” which triggers the requirement that law enforcement officers administer *Miranda* warnings is defined as questioning initiated by such officers after a person has been taken into

custody or otherwise deprived of his or her freedom of action in any significant way. Two discrete inquiries are essential to the determination of whether a suspect was in custody at the time of an interrogation: first, what were the circumstances surrounding the interrogation, and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. The issue arises as

to what constitutes “custodial interrogation” within the rule of *Miranda*, requiring that a suspect be informed of his or her federal constitutional rights before the custodial interrogation occurs, when the purported interrogation occurs in jail or prison. This annotation collects and analyzes the cases in which the courts have addressed the issue as to what constitutes “custodial interrogation” within the rule of *Miranda*, requiring that a suspect be informed of his or her federal constitutional rights before the custodial interrogation occurs, when the purported interrogation takes place in jail or prison. See the list of related annotations therein for annotations that discuss other particular applications of the *Miranda* custody rule. [38 A.L.R.6th 97](#)

DIVORCE AND SEPARATION

Inherited Property—Divorce Action

In a divorce proceeding, the court may not divest a spouse of his or her separate property. However, the court’s determination that certain property is, or is not, subject to division may be of negligible importance in determining distribution in light of the great latitude afforded the courts in making equitable distributions. The courts may even accomplish the desired goal by awarding substantially all of the marital assets to one of the spouses. In some jurisdictions, the court has no power to award more than 100% of the marital estate. Also, in some jurisdictions, although the court lacks jurisdiction to distribute nonmarital property, it can consider such property when apportioning the marital property. Property owned by a husband or wife at the time of marriage remains the separate property of such spouse and does not qualify as an asset eligible for distribution on divorce. However, in order to overcome the presumption that property owned by the parties is marital, the spouse asserting that the property is separate must prove that the entire property was acquired exclusively as non-marital property and that its character was not subsequently altered by action of the owner. In determining what is property “acquired” prior to the marriage, property purchased and possessed prior to the marriage will be considered “acquired” prior to the marriage even though part of the purchase price is paid after the marriage. The issue arises as to whether property which is inherited by a spouse is marital or separate property in a divorce action. This annotation

collects and addresses the cases in which the courts have considered whether property which is inherited by a spouse is marital or separate property in a divorce action. [38 A.L.R.6th 313](#)

SALES AND USE TAXES

Bad Debts

State sales tax statutes generally require a vendor to collect the tax from the purchaser at the time of the sale and to remit the tax to the state with a tax return for the period in which the sale occurred. Thus, a vendor making a credit or installment sale to a customer who later defaults in payment will have remitted sales tax to the state that it could not collect from the customer. “Bad debt” statutes provide relief to vendors in this situation. These statutes allow a vendor to credit the uncollectible amount of sales taxes against the taxes due on a subsequent tax return or, with the same result, to deduct the uncollectible receipts in computing the taxable receipts on such return. Some statutes also provide for a refund of the uncollected sales taxes previously paid. The reported cases have dealt with a number of issues under these statutes. A number of recent cases involved the issue of whether a third-party lender that acquired customers’ obligations from a retail vendor was entitled to recover sales taxes paid by the vendor on accounts that became uncollectible. This annotation collects and analyzes cases involving the recovery of sales tax paid on bad debts. [38 A.L.R.6th 255](#)

WHEELCHAIRS

Hospitals—Wheelchairs

Wheelchairs are a boon for people who have restricted mobility for a variety of reasons, and are of critical need in hospitals where non-ambulatory patients can be transported within the hospital’s premises much more easily than by moving beds or gurneys. However, even where the wheelchair is not defective, careless treatment of a wheelchair patient, such as allowing the patient to fall during transport or a transfer out of or into the wheelchair can result in the patient being injured. Courts have reached a variety of conclusions as to a hospital’s liability for injuries to a patient through the use of wheelchairs, as this annotation illustrates. [38 A.L.R.6th 399](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 39 A.L.R.6th in November 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.



CLOSE CORPORATION

Breach of Fiduciary Duty

The traditional rule has been that corporate shareholders do not owe one another a fiduciary duty; rather, corporate officers and directors owe shareholders such a duty.

In recent years, however, some courts have been finding an exception to this rule in the case of closely-held corporations. This annotation will collect and discuss state

and federal cases in which the courts considered and discussed whether, in the context of litigation between individual shareholders as such, specific conduct constituted a breach of the fiduciary duty owed by a majority or controlling shareholder, or group of shareholders, to a minority shareholder or shareholders of a close corporation. **39 A.L.R.6th**

DIVORCE AND SEPARATION

“Active Appreciation”

In cases where a divorce court is a court of equity, it has the inherent power, when granting a divorce, to adjudicate the property rights of the parties when requested to do so, such as when the husband and wife cannot agree on the disposition of their property. The power of a court to transfer the property of one spouse to the other, or otherwise dispose of it, without regard to equitable rights, must rest upon an enabling statute; thus, if there is no statutory authority there is no power to transfer property from one spouse to the other. The principle of equitable distribution, that is, the apportionment of the marital assets or estate between divorcing parties in an equitable and just manner, regardless of title ownership, whether set forth by statute or judicial construction, authorizes the courts to divide the property of the parties or to award the property of one spouse to the other in such manner as seems just and equitable, which does not always mean an equal division or percentage distribution. An “equitable distribution” award does not flow from any legal duty between spouses, but involves an adjustment of the equities, rights, and interests of the parties in the marital property. Trial courts may use any reasonable means to reach an equitable distribution, and have broad discretion in dividing the assets of the marital estate. The issue arises as to the application of the doctrine of “active appreciation” in divorce and separation cases with respect to the appreciation in value of separate property during marriage with contribution by either spouse, and whether such appreciation constitutes “separate” or “community” property. This annotation will collect and discuss all of the cases which have applied the doctrine of “active appreciation” in divorce and separation cases with respect to the appreciation in value of separate property during marriage with contribution by either spouse as separate or community property. **39 A.L.R.6th**

FORUM SELECTION CLAUSES

“Floating” Forum

A “floating” forum selection clause designates a forum by reference to mutable facts; namely, the location of one of the parties to the agreement which contains the clause, or the location of that party’s assigns. Such clauses have been attacked where the forum chosen by the clause changes between the time the agreement was entered into and the commencement of litigation. This annotation will collect and analyze all cases discussing the enforceability of floating forum selection clauses. **39 A.L.R.6th**

WORKERS’ COMPENSATION

Nonsudden Mental Stimuli

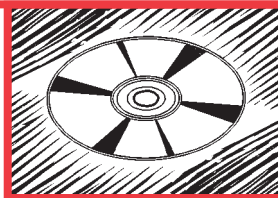
Heart attacks, strokes, cerebral hemorrhage and other kinds of injuries and illnesses that sometimes lead to death as a result of nonsudden emotional or mental stimuli in the workplace have increased particularly in recent years. While workers’ compensation laws are construed liberally in favor of employees, it does not mean that all physical injuries or illnesses brought on by stressful working conditions are compensable. Emotional stress, to some degree, accompanies the performance of any contract of employment, but when this is within the bounds of the ups and downs of normal human experience, courts frequently decline to impose liability on employers for conditions resulting from “cumulated” strain. The compensability of physical injuries brought on by nonsudden mental stimuli depends on the particular circumstances surrounding the occurrence of the stress or mental stimuli. This annotation will collect and analyze the cases that discuss the right to workers’ compensation benefits for physical injury or illness suffered by a worker as a result of nonsudden emotional or mental stimuli and the particular circumstances under which they are compensable. See the list of related annotations therein for annotations that discuss other instances of workers’ compensation concerning emotional or mental stimuli. **39 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 **38 A.L.R.6th** or scheduled for publication in **39 A.L.R.6th**. Some of the annotations listed may be rescheduled.

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