

ALR

Federal 2d

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From the editor

There are constitutional and statutory protections covering inventions, and original literary, artistic, and intellectual works. Copyright is granted to allow the creator or copyright owner exclusive rights over the creation, while patents are granted to allow inventors or patent holders exclusive rights in the invention. In the upcoming volumes of A.L.R. Fed. 2d, we will look at court opinions about the reissues of defective patents ([41 A.L.R. Fed. 2d 309](#)) and copying infringement suits against the Federal Government ([42 A.L.R. Fed. 2d](#)). Other topics of interest include the preemption of state-law labor-related claims by the Airline Deregulation Act ([41 A.L.R. Fed. 2d 215](#)) and the doctrine of consular nonreviewability ([42 A.L.R. Fed. 2d](#)).

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Highlights

LABOR AND EMPLOYMENT

Preemption Labor Claims ADA

The Airline Deregulation Act was enacted for the purpose of deregulating the airline industry to promote reliance on competitive market forces and to provide efficiency and lower prices. It includes a preemption provision, 49 U.S.C.A. §41713(b)(1), whose purpose is to prevent the states from regulating the newly deregulated airline industry regarding prices, routes, and services. This standard is more easily stated than applied, and courts evaluate each situation on a case-by-case basis. This annotation collects and discusses federal and state cases concerning specifically preemption by the Airline Deregulation Act of state law labor-related claims. [41 A.L.R. Fed. 2d 215](#)



PATENTS

Reissue of Defective Patents

Section 251 of Title 35, U.S.C.A., provides that whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the government may, upon a proper application, reissue the patent for the invention disclosed in the original patent. However, the statute imposes various restrictions and limitations on this process, including a provision that no reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. This annotation collects and discusses federal and state cases in which the courts have construed, discussed, and applied 35 U.S.C.A. § 251, concerning reissue of defective patents. [41 A.L.R. Fed. 2d 309](#)

CIVIL RIGHTS

Ministerial or Ecclesiastical Exception

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based on race, color, religion, sex, or national origin. As a general rule, individuals are not proper Title VII defendants regardless of whether the individuals are named in either their official or representative capacities. Instead, the only proper individual defendants in a Title VII action are supervisory employees. Following from the general rule that when a supervisor engages in activity which results in an adverse tangible employment action against the employee, the employer is held vicariously liable for the employee's actions, where an employee suffers a tangible employment action at the hands of his or her supervisor as the result of prohibited discrimination, the employer may be held liable under Title VII on the premise that the supervisor acted within the scope of his or her agency. Some courts apply a "ministerial exception" to Title VII because churches must be able to possess the freedom to select those who will carry out its mission. This exception precludes the application of Title VII to the employment relationship between certain individuals and religious institutions and is

aimed at preventing the introduction of government standards into a religious institution's selection of its own clergy. The issue arises as to the application of the First Amendment's "ministerial exception," also referred to as the "ecclesiastical exception," to a federal civil rights claim. This annotation collects and discusses all of the cases which have construed and applied the First Amendment's "ministerial exception," also referred to as the "ecclesiastical exception," to a federal civil rights claim. **41 A.L.R. Fed. 2d 445**

CRIMINAL LAW

Foreign Business Records

A foreign certification under 18 U.S.C.A. § 3505, which permits admission of foreign records of regularly conducted activity in criminal proceedings where certain requirements are met, serves to authenticate such foreign records, and thus dispenses with the necessity of calling a live witness to establish authenticity. This annotation collects and discusses all of the cases determining the admissibility of foreign business records for which authentication is attempted according to the provisions of 18 U.S.C.A. § 3505. **41 A.L.R. Fed. 2d 537**

Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 42 of A.L.R. Fed. 2d in December 2009. Some of the annotations listed may be rescheduled.



ALIENS

Consular Nonreviewability

The doctrine of consular nonreviewability provides that courts do not have subject matter jurisdiction to review decisions made by consular officers regarding the grant or denial of visas. Although courts have consistently recognized the validity of the doctrine, they have carved out certain exceptions. Thus, in some instances, the consular nonreviewability doctrine has been held inapplicable to a consular officer's failure to perform a nondiscretionary duty, such as where a consular officer has unduly delayed in deciding whether to grant or deny a visa. An exception to the doctrine has also been recognized, in some instances, where United States citizens allege that the denial of a visa has violated their constitutional rights or where there has been improper action by a consular officer. This annotation collects and analyzes court opinions which have construed or applied the doctrine of consular nonreviewability. **42 A.L.R. Fed. 2d**

COPYRIGHT AND LITERARY PROPERTY

Copyright Infringement

Pursuant to 28 U.S.C.A. § 1498(b), the exclusive action for infringement by the United States or its specified affiliates (including a government corporation) of the copyright in any work protected

under the copyright laws of the United States is a suit in the Court of Federal Claims for the recovery of the reasonable and entire compensation as damages for such infringement. A copyright suit under 28 U.S.C.A. § 1498(b) cannot be maintained against the United States with respect to any copyrighted work (1) prepared by a person while in the employment or service of the United States (2) where the copyrighted work was prepared as a part of the official functions of the employee or, in the preparation of which, Government time, material, or facilities were used. This annotation collects and discusses all of the cases construing and applying 28 U.S.C.A. § 1498(b) governing copyright infringement suits against the federal government. **42 A.L.R. Fed. 2d**

ENTRAPMENT

Entrapment Defense

A lawyer is obligated to use reasonable skill in the representation of a client. In criminal proceedings, the defense of entrapment, which, in essence, prohibits law enforcement officials from instigating criminal

acts by otherwise innocent persons in order to punish them, is an affirmative defense that must be raised by the defendant. The issue arises in federal cases as to the adequacy of defense counsel's representation of a defendant with regard to the entrapment defense. This annotation discusses the federal cases which have determined the adequacy, competency, and effectiveness of defense counsel's representation of a criminal defendant concerning matters pertaining to the entrapment defense. **42 A.L.R. Fed. 2d**

VETERANS AND VETERANS' ADMINISTRATION

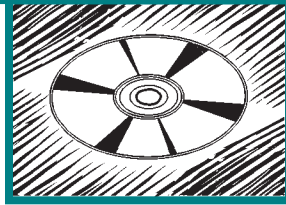
VEOA Improved Redress

The Veterans Employment Opportunities Act of 1998 ("VEOA"), Pub. L. 105-339, 112 Stat. 3182, in addi-

tion to granting specified preferences to veterans who seek federal employment, provides a method for seeking redress where certain veterans' preference rights have been violated in hiring decisions made by the federal government. This annotation shall collect and discuss all of the cases which have construed and applied the provisions governing improved redress under the Veterans Employment Opportunities Act of 1998 ("VEOA"), 5 U.S.C.A. §§ 3330a to 3330c. **42 A.L.R. Fed. 2d**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 41 of A.L.R. Fed. 2d or scheduled for publication in Volume 42 of A.L.R. Fed. 2d. Some of the annotations listed may be rescheduled.



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