

ALR 5th *Alert*

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From the **editor**

Actions brought as a result of police conduct continue to create substantive case law. 100 ALR5th has an annotation on the immunity of police or other law enforcement officers from liability in defamation actions while 101 ALR 5th has an annotation on recovery for emotional distress resulting from the behavior of law enforcement officers, allegedly constituting outrageous conduct. Also of note, 101 ALR 5th will have an annotation on the liability of churches or other religious organizations for the negligent hiring, retention or supervision of clergy based on sexual misconduct.

Amy Keane, J.D.

Highlights

When Time Period Commences as to Claim Under Workers' Compensation or Occupational Diseases Act for Death of Worker Due to Contraction of Disease

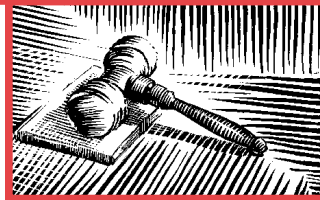
Workers Compensation

In order to obtain benefits under a workers' compensation or occupational diseases act for the death of a worker due to contraction of work-related disease, statutory provisions specifying the time within which the worker's death has to occur in order to be compensable must be satisfied and the claim must be filed within the time allowed by statute. The cases which have determined when the time periods under a workers' compensation or occupational diseases act commence with respect to a claim for the death of a worker from contraction of a work-related disease are collected in this annotation. [100 ALR5th 567](#)

Loss or Impairment of Vision as Within Meaning of Total Disability Clause

Insurance

In order to impose liability on an insurer for loss or impairment of vision under a total disability clause, it is necessary to make a showing that the level of injury, or disease, or other cause rises to the level of total disability. Many courts hold that there must be an entire and irrevocable



loss of sight which some courts have applied more lenient standards that do not require total loss of sight. This annotation collects cases concerning whether the loss or impairment of vision is within the coverage of a total disability clause in a policy of insurance. [100 ALR5th 293](#)

Enforcement of Arbitration Agreement Contained in Construction Contract by or Against Nonsignatory

Arbitration

Arbitration clauses are often included in construction contracts to clarify the procedure that will be followed in the event of a disagreement between the contracting parties. Third persons who are not parties to an arbitration agreement or to a contract containing an arbitration clause, and who are not claiming under or through such parties, ordinarily are not bound by the arbitration agreement. There are exceptions to this general rule, however. While recognizing these exceptions, the majority of courts generally refuse to enforce an agreement to arbitrate against a person who was not a signatory party to that agreement. This annotation collects and analyzes the cases discussing the enforcement of arbitration clauses that are contained within construction contracts and subcontracts, by or against nonsignatories. [100 ALR5th 481](#)

Immunity of Police or Other Law Enforcement Officer From Liability in Defamation Action

Libel and Slander

Generally, a law enforcement officer may be held liable for the communication of defamatory matter which is not within the scope of the officer's duties or if the officer acted maliciously. The liability of a law enforcement officer is generally dependent on the applicability of a privilege to the communication in question. While

in particular circumstances police officers have been granted absolute privileges for their communications, in other cases a qualified or conditional privilege has attached to such communications. This annotation collects and summarizes those state and federal cases in which courts have determined whether the liability of a law enforcement officer or the officer's bond, for a particular defamatory communication was precluded on the basis of common law or statutory immunity for such communication. [100 ALR5th 341](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 101 of ALR5th, in September 2002. Some of the annotations listed may be rescheduled.



Failure of State Prosecutor to Disclose Exculpatory Medical Reports and Tests as Violating Due Process

Nondisclosure-Medical Reports

The police and the prosecution are often accused by the defense of suppressing, losing, destroying, or otherwise failing to produce exculpatory evidence, including medical reports, despite statutory or constitutional requirements that all such evidence be turned over to the defense upon request. However, whether evidence is in fact material and exculpatory depends upon the facts of individual cases. This annotation collects and discusses state and federal cases in which the courts determined whether the action of a state prosecutor in negligently or deliberately suppressing, losing, or otherwise failing to produce the results of lay or professional medical reports and tests violated federal due process guarantees as set forth in *Brady* and its progeny. 101 ALR5th

Validity and Efficacy of Minor's Waiver of Right to Counsel—Cases Decided Since Application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967)

Attorney or Assistance of Attorney

The competency required of a defendant seeking to waive the right to counsel is the competence to waive the right, not the competence to represent oneself, and the trial court must satisfy itself that the waiver of the right is knowing and voluntary. An effective waiver of the right to counsel, once made, carries through to all subsequent proceedings unless the defendant later requests counsel, or other circumstances suggest that waiver is limited in scope. The applicable due process standard in juvenile proceedings is fundamental fairness, with an emphasis on fact-finding procedures. However, the rights of juveniles are not co-extensive with those of adults, and their rights may be legitimately

curtailed when the restriction serves a state's interest in promoting the health and growth of children. This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided under what circumstances a minor may effectively waive the right to counsel, in connection with either criminal

proceedings, juvenile court proceedings, or other commitment proceedings in which liberty is at stake. 101 ALR5th

Right to Credit on Child Support Arrearages for Time Parties Resided Together After Separation or Divorce

Divorce and Separation

When couples with children have divorced or separated, and have either continued to reside in the same household, or have returned to living in the same household at some later time, courts have disagreed over the effect this cohabitation should have upon child support arrearages. Often the obligor parent is allowed credit against arrearages for periods of time during which the parties cohabitated, particularly where it can be shown that the obligor spouse substantially contributed to household expenses, or where the parties' finances had become intermingled. Some courts have denied credit, either based on the facts of the particular case, or as a general rule. Where the obligor parent has returned to the home of the custodial parent solely for the purpose of performing childcare duties, however, and the parties have not reconciled or resumed their former relationship, the courts have universally rejected claims for credit against child support arrearages for time spent living in the same household or for the value of childcare services rendered by the obligor parent. This annotation collects and analyzes cases in which parents, one of whom had been ordered to pay child support to the other, cohabitated thereafter, with the result that the obligor parent later sought credit against his or her child support arrearages for the time the parties cohabitated. 101 ALR5th

Who Are "Clergy" or the Like Within Privilege Attaching to Communications to Clergy Members or Spiritual Advisers

Privileged Communications—Clergy

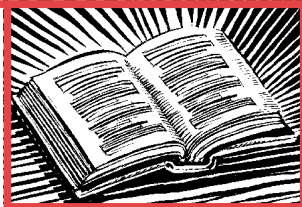
When many of us have a crisis of conscience we turn to our spiritual advisors. We all assume that the confidences we

discuss with our spiritual advisors remain privileged. Many state statutes regulating the admissibility of privileged communications contain a clergy-communicant privilege protecting various statements made to clergy members. However, these statutes, and the courts interpreting them,

differ regarding which individuals or entities are “clergy” who may fall within the protection of the statute. This annotation collects those cases discussing who falls within the definition of “clergy” or the like as applied to the various state clergy-communicant privileges. 101 ALR5th

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