

ALR 5th

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From the editor

Family law issues continue to be matters closely followed by ALR5th. Volumes 99 and 100 look at the potentially volatile areas of child custody and visitation with annotations on the restriction of visitation rights based on the sexual conduct of the noncustodial parent and an examination of the case law decided under the Uniform Child Custody Jurisdiction and Enforcement Act. Volume 99 will also include an annotation on the effect of a divorce or settlement agreement on the divorced spouse's right to recover as named beneficiary on the former spouse's individual retirement account. In addition, Volume 100 will have an annotation on the construction, validity, and application of state carjacking statutes.

Amy Keane, J.D.

Highlights

Restrictions on Child Visitation Rights Based on Sexual Conduct of Parent

Visitation Rights

Often times after a divorce the visitation rights of the noncustodial parent raise a number of issues. One such issue is whether the noncustodial parent's consensual sexual conduct or relationship with another adult affects that parent's visitation rights. Some jurisdictions have held that harm to the child is assumed to result from exposure to the noncustodial parent's nonmarital sexual conduct or relationship, thereby justifying visitation restrictions designed to insulate the child from such exposure. Other jurisdictions have held that the custodial parent must establish actual harm to the child to secure restrictions on the noncustodial parent's visitation rights. In general, jurisdictions are less likely than they once were to impose visitation restrictions on the basis of a heterosexual relationship. A larger number of jurisdictions, however, will impose visitation restrictions when the noncustodial parent is involved in a gay or lesbian relationship. This annotation collects and analyzes the state and federal cases discussing the award of visitation rights to a parent as to the parent's child from a marriage as such rights are affected by the parent's consensual sexual conduct or relationship with another adult. [99 ALR5th 475](#)



Validity of Requirement that, as Condition of Probation, Defendant Submit to Warrantless Searches

Search and Seizure

A defendant who has been found guilty of a criminal offense may be granted probation by postponing the entry of a final judgment or sentence on the verdict, that is, by suspending imposition of the sentence, or probation may be granted by suspending the execution of a sentence already imposed. It is well settled that probation must be conditionally granted. Conditions are ordinarily attached to the granting of probation in an effort to rehabilitate the probationer, although these conditions have been limited by some courts to preventing the probationer from committing the same offense for which probation is being granted. Among the conditions more commonly imposed is the requirement that, to receive probation, the probationer must consent to warrantless searches of the probationer's person and property. This annotation collects and analyzes the state and federal cases considering the question of the validity of the requirement that an adult probationer submit to warrantless searches as a condition of probation. [99 ALR5th 557](#)

Liability of Owner or Operator of Automatic Passenger Elevator for Injury Resulting from Use of Elevator

Elevators and Escalators

Owners, lessees or managers of buildings have been involved in numerous cases arising from injuries occurring in connection with the operation of automatic passenger elevators on the premises. The elevator cases demonstrate both the technological advances made through the years by elevator manufacturers, and the development of the law relating to elevator injuries. Because of statutes, ordinances or caselaw, elevator owners or managers in many states are held responsible for the safe operation and proper maintenance of elevators on their premises. Some courts have ruled that this responsibility cannot be avoided simply by entering into a full service agreement with an elevator maintenance company. In many of the cases, the overriding issue has been whether the owner knew or should have known of problems with the elevator and failed to respond to protect the passengers. This annotation collects and discusses all of the cases which have adjudicated the liability of a building owner, lessee or manager for injury or death resulting from use of an automatic passenger elevator. [99 ALR 5th 141](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 100 of ALR5th, in August 2002. Some of the annotations listed may be rescheduled.



Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) revises and clarifies its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), in significant ways. For one, the UCCJA turned out to have exploitable loopholes allowing for concurrent jurisdiction in more than one state, which encouraged jurisdictional competition and conflict and forum shopping. The UCCJEA has attempted to address this problem by prioritizing home state jurisdiction and providing for exclusive continuing jurisdiction in the initial decree state. Section 202 of the UCCJEA provides that a state which has made an initial child custody determination continues to have exclusive jurisdiction until one of two events occur: (1) the child and parents or persons acting as parents no longer have a significant connection to the state and there is no longer substantial evidence there; or (2) the child and parents or persons acting as parents do not presently reside in the state. This annotation collects and discusses the cases decided under the Uniform Child Custody Jurisdiction and Enforcement Act. [100 ALR5th](#)

Sufficiency of "At the Well" Language in Oil and Gas Leases to Allocate Costs

Gas and Oil

Oil and gas lease royalty clauses often refer to the point at which royalties are to be priced or valued as "at the well" or "at the mouth of the well." The location of this valuation point becomes important in the pricing of royalties on gas due to the need to transport gas by pipeline to market or to compress the gas for entry into a pipeline or to otherwise treat the production for marketing purposes. Most cases have allowed the oil and gas lessee to deduct these costs from royalty payments, allocating postproduction costs to the lessor and lessee, proportionately. Some of these cases have allocated costs between the lessor and lessee because the lease set the valuation point "at the well," and costs beyond the wellhead were considered to be postproduction. However, some cases have decided that the "at the well" language in lease royalty clauses did not have the effect of allocating transportation, gathering, compression and dehydration costs between the lessors and lessees or their assigns. This annotation collects and analyzes all the state and federal cases discussing whether, and under what circumstances the allocation of costs for royalty valuations is determined by "at the well" language in oil and gas leases. [99 ALR5th 415](#)

Validity, Construction, and Application of State Carjacking Statutes

Carjacking

A huge upsurge in the incidence of forcible thefts of automobiles from their owners, which occurrences did not fit neatly within the pre-existing definitions of crimes such as robbery and kidnapping, has led to the enactment of state carjacking statutes. While the terms of such provisions differ, they generally prohibit the coercive taking of a vehicle from the owner's presence. The courts have applied these provisions in a number of different situations. This annotation collects and discusses the cases which have considered the validity, construction, and application of state carjacking statutes. [100 ALR5th](#)

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness

Exclusion from Courtroom

Although the United States Constitution guarantees the right to a public trial under the Sixth Amendment, that right is not absolute. In many cases, the Sixth Amendment right to a public trial has been abrogated in favor of the officer's safety or the value of ongoing investigations. Trial courts must balance the competing rights and justifications, and appellate courts don't always agree with the trial courts' conclusions concerning justification for closing the courtroom. The question becomes further complicated by questions concerning the duration of the closure, against whom the courtroom is closed, the adequacy of the judicial hearing on the necessity of closure, and the sufficiency of detail in the trial judge's findings.

This annotation collects and discusses the cases which have considered the exclusion of the public from a state criminal trial to preserve the safety or confidentiality of an undercover police officer witness. **100 ALR5th**

Right to Contribution or Indemnity on Behalf of Owner, Operator, Maintainer, Repairer, or Installer of Automatic Passenger Elevator in Action by Elevator User

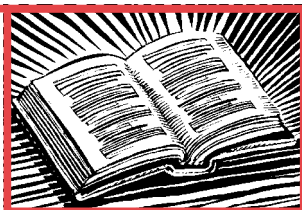
Elevators and Escalators

The owner, operator, maintainer, repairer, and installer of an automatic passenger elevator owe various duties to elevator passengers so as to avoid injury. The general rule is that one who is compelled to pay or satisfy the whole or to bear more than his or her just share of a common burden or obligation, on which several persons are equally liable

or which they are bound to discharge, is entitled to contribution against the others to obtain from them payment of their respective shares. The right to indemnity stands on the principle that everyone is responsible for the consequences of his or her own negligence, and if another person has been compelled to pay the damages which ought to have been paid by the wrongdoer, they may be recovered from him or her. An owner, operator, maintainer, repairer, or installer of an automatic passenger elevator may be entitled to contribution or indemnity from a third party for any liability to an injured passenger. Federal and state cases, which have discussed the right to contribution or indemnity on behalf of an owner, operator, maintainer, repairer, or installer of an automatic passenger elevator in an action brought by an elevator user, are collected in this annotation. **100 ALR 5th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 99 or scheduled for publication in volume 100 of ALR5th. Some of the annotations listed may be rescheduled.



ARBITRATION

Enforcement of Arbitration Agreement Contained in Construction Contract by or Against Nonsignatory. **100 ALR5th**

ASSAULT AND BATTERY

Validity, Construction, and Application of State Carjacking Statutes. **100 ALR5th**

AUTOMOBILES AND HIGHWAY TRAFFIC

Validity, Construction, and Application of State Carjacking Statutes. **100 ALR5th**

BENEFICIARIES

Divorce Decree or Settlement Agreement as Affecting Divorced Spouse's Right to Recover as Named Beneficiary on Former Spouse's Individual Retirement Account. **99 ALR5th 637**

BUILDING AND CONSTRUCTION CONTRACTS

Enforcement of Arbitration Agreement Contained in Construction Contract by or Against Nonsignatory. **100 ALR5th**

CARJACKING

Validity, Construction, and Application of State Carjacking Statutes. **100 ALR5th**

CHILDREN

Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act. **100 ALR5th**

CIVIL RIGHTS AND DISCRIMINATION

Discrimination Against Pregnant Employee as Violation of State Fair Employment Laws. **99 ALR5th 1**

CONTRIBUTION

Right to Contribution or Indemnity on Behalf of Owner, Operator, Maintainer, Repairer, or Installer of Automatic Passenger Elevator in Action by Elevator User. **100 ALR5th**

CRIMINAL LAW

Validity of Requirement that, as Condition of Probation, Defendant Submit to Warrantless Searches. **99 ALR5th 557**

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness. **100 ALR5th**

Validity, Construction, and Application of State Carjacking Statutes. **100 ALR5th**

Validity, Construction, and Application of State Carjacking Statutes. **100 ALR5th**

DIVORCE AND SEPARATION

Divorce Decree or Settlement Agreement as Affecting Divorced Spouse's Right to Recover as Named Beneficiary on Former Spouse's Individual Retirement Account. **99 ALR5th 637**

Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act. **100 ALR5th**

DOMICILE AND RESIDENCE

Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act. **100 ALR5th**

DRUGS AND DRUGGISTS

Validity, Construction, and Application of Municipal Drug Exclusion Zone. **100 ALR5th**

DUE PROCESS

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness. **100 ALR5th**

ELEVATORS AND ESCALATORS

Right to Contribution or Indemnity on Behalf of Owner, Operator, Maintainer, Repairer, or Installer of Automatic Passenger Elevator in Action by Elevator User. **100 ALR5th**
Liability of Owner or Operator of Automatic Passenger Elevator for Injury Resulting from Use of Elevator. **99 ALR5th 141**

EMOTIONAL INJURY

Immediacy of Observation of Injury as Affecting Right to Recover Damages for Shock or Mental Anguish from Witnessing Injury to Another. **99 ALR5th 301**

Action for Intentional Infliction of Emotional Distress Against Paramours. [99 ALR5th 445](#)

ESTOPPEL AND WAIVER

Judicial Estoppel in Civil Action Arising from Representation or Conduct in Prior Administrative Proceeding. [99 ALR5th 65](#)

EXCLUSION FROM COURTROOM

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness. [100 ALR5th](#)

FORCE AND VIOLENCE

Validity, Construction, and Application of State Carjacking Statues. [100 ALR5th](#)

GAS AND OIL

Sufficiency of "At the Well" Language in Oil and Gas Leases to Allocate Costs. [99 ALR5th 415](#)

GOVERNMENTAL IMMUNITY OR PRIVILEGE

Immunity of Police of Other Law Enforcement Officer from Liability in Defamation Action. [100 ALR5th](#)

HEALTH AND ACCIDENT INSURANCE

Clause in Life, Accident, or Health Policy Excluding or Limiting Liability in Case of Insured's Use of Intoxicants or Narcotics. [100 ALR5th](#)

HIJACKING

Validity, Construction, and Application of State Carjacking Statues. [100 ALR5th](#)

HOMOSEXUALITY

Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct. [99 ALR5th 475](#)

HUSBAND AND WIFE

Divorce Decree or Settlement Agreement as Affecting Divorced Spouse's Right to Recover as Named Beneficiary on Former Spouse's Individual Retirement Account. [99 ALR5th 637](#)

INDEMNITY

Right to Contribution or Indemnity on Behalf of Owner, Operator, Maintainer, Repairer, or Installer of Automatic Passenger Elevator in Action by Elevator User. [100 ALR5th](#)

INSURANCE

Clause in Life, Accident, or Health Policy Excluding or Limiting Liability in Case of Insured's Use of Intoxicants or Narcotics. [100 ALR5th](#)

JURISDICTION

Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act. [100 ALR5th](#)

LABOR AND EMPLOYMENT

When Limitations Period Begins to Run as to Claim for Death Benefits for Contracting of

Disease Under Workers' Compensation or Occupational Diseases Act. [100 ALR 5th](#)

LIBEL AND SLANDER

Immunity of Police or Other Law Enforcement Officer from Liability in Defamation Action. [100 ALR5th](#)

LIFE INSURANCE

Clause in Life, Accident, or Health Policy Excluding or Limiting Liability in Case of Insured's Use of Intoxicants or Narcotics. [100 ALR5th](#)

LIMITATION OF ACTIONS

When Limitations Period Begins to Run as to Claim for Death Benefits for Contracting of Disease Under Workers' Compensation or Occupational Diseases Act. [100 ALR 5th](#)

MINES AND MINERALS

Sufficiency of "At the Well" Language in Oil and Gas Leases to Allocate Costs. [99 ALR 5th 415](#)

MUNICIPAL CORPORATIONS

Immunity of Police or Other Law Enforcement Officer from Liability in Defamation Action. [100 ALR5th](#)

NEGLIGENCE

Immediacy of Observation of Injury as Affecting Right to Recover Damages for Shock or Mental Anguish from Witnessing Injury to Another. [99 ALR5th 301](#)

PAROLE, PROBATION, AND PARDON

Validity of Requirement that, as Condition of Probation, Defendant Submit to Warrantless Searches. [99 ALR5th 557](#)

PUBLIC OFFICERS AND EMPLOYEES

Immunity of Police or Other Law Enforcement Officer from Liability in Defamation Action. [100 ALR5th](#)

TRIALS

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness. [100 ALR5th](#)

UNIFORM CHILD CUSTODY JURISDICTION ACT

Construction and Operation of the Uniform Child Custody Jurisdiction and Enforcement Act. [100 ALR5th](#)

VISITS AND VISITATION

Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct. [99 ALR5th 475](#)

WITNESSES

Exclusion of Public from State Criminal Trial in Order to Preserve Safety or Confidentiality of Undercover Police Officer Witness. [100 ALR5th](#)

WORKERS' COMPENSATION

When Limitations Period Begins to Run as to Claim for Death Benefits for Contracting of Disease Under Workers' Compensation or Occupational Diseases Act. [100 ALR 5th](#)

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