

# ALR 5th

## Alert

### Route to:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### From the editor

Ours is a mobile society and the automobile continues to play an integral role in the lives of millions of Americans. Because automobile usage is so widespread, it is not surprising that nearly every aspect of this industry is regulated. Volume 88 of ALR5th, the newest volume in the series, discusses the sales aspect of automobiles by addressing the topic of state motor vehicle warranty legislation, better known as lemon laws. Volume 89 of ALR5th will discuss the illegal use of automobiles, covering criminal liability for the illegal removal or alteration of vehicle identification numbers and also the application of statutes permitting the forfeiture of a motor vehicle as a result of operating the vehicle while intoxicated. These and other topics covered in Volume 88 and scheduled to be covered in upcoming Volume 89 are highlighted below.

*Michele C. Kaminski, J.D.*

## Highlights

### CONSTITUTIONAL LAW

**Voir Dire Exclusions of Men from State Trial Jury or Jury Panel—Post *J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127, Cases**

The United States Supreme Court in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S. Ct. 1419, 128 L. Ed. 2d 89, 64 Empl. Prac. Dec. (CCH) P 42967 (1994), extended its holdings that the Equal Protection Clause of the United States Constitution prohibits discrimination against cognizable groups in jury selection to discrimination based on gender. Subsequently, state courts have considered whether voir dire exclusions of men from a state trial jury or jury panel by any party through peremptory challenges violated federal or state constitutional rights or presented some other ground for reversing a judgment. This annotation collects and analyzes state cases in which the courts have



considered challenges alleging that voir dire exclusions of men from a state trial jury or jury panel by any party through peremptory challenges were impermissibly discriminatory. **88 ALR5th 67**

### AUTOMOBILES AND HIGHWAY TRAFFIC

**Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws)**

Beginning in the early 1980s, a substantial number of states adopted 'lemon laws' to give consumers a means of enforcing a manufacturer's express warranty on a motor vehicle. These lemon laws were designed to aid consumers by fostering prompt resolution of problems arising from warranty defects, and they generally require motor vehicle manufacturers to replace or refund the purchase price of a motor vehicle that cannot be made to conform to

its warranty after the manufacturer has had a reasonable opportunity to correct the defect. Issues continue to arise surrounding state lemon law provisions, such as the constitutionality of particular lemon laws, what vehicles fall under lemon law protection, who are appropriate parties in lemon law disputes, and what constitutes a substantial defect warranting relief. This annotation collects and analyzes cases dealing with the validity, construction, and effect of state motor vehicle warranty legislation. [88 ALR5th 301](#)

## COMMUTATION OF SENTENCE

### Revocation of Order Commuting State Criminal Sentence

A commutation is an executive alteration to a criminal sentence, usually exercised by the governor, that substitutes a less severe punishment—typically a shorter term of imprisonment. In many jurisdictions, power has been expressly conferred on the executive to grant commutations of sentences, although the executive may sometimes be restricted in the exercise of the power by constitutional or statutory provisions. Statutes in many states confer on administrative boards or tribunals a power to reduce sentences, which, in effect, constitutes a power to commute sentences in specified circumstances. The authority to commute a sentence is a component of the pardoning power and may be exercised under a general grant of that power; the general power necessarily contains in it the lesser power of remission or commutation. The statute authorizing and controlling the granting of paroles usually prescribes the procedure by which a parole may be revoked and the parole violator recommitted. This annotation collects and analyzes those judicial opinions that address the

validity or interpretation of a gubernatorial or other administrative order revoking the commutation of a state criminal sentence and the procedural requirements applicable to such revocations. For information on related topics such as how a state pardon affects the “convicted” status of one accused of violation of the Gun Control Act of 1968 ([44 A.L.R. Fed. 692](#)) and the right to notice and hearing before revocation of suspension of sentence, parole, conditional pardon, or probation ([29 A.L.R.2d 1074](#)) see the Related Annotations section of this annotation. [88 ALR5th 463](#)

## FOREIGN JUDGMENTS

### Construction and Application of Uniform Foreign Money-Judgments Recognition Act

Getting money judgments enforced across state borders is hard enough for creditors to accomplish, but when the judgment to be recognized is one of a foreign country, the difficulties are compounded. The purpose of the codification of the common law in the Uniform Foreign Money-Judgments Recognition Act, therefore, is to provide a uniform mechanism for the recognition of foreign country money judgments in the same manner as judgments of sister states. Courts have dealt with various asserted reasons for the recognition or nonrecognition of foreign country judgments, and other interpretations of the Uniform Act, as the following annotation illustrates. Refer to [9 Am Jur POF3d 687](#) (Invalidity of Judgment of Court of Foreign Country), [56 Am Jur Trials 529](#) (Strategies for Effective Management of Crossborder Recognition and Enforcement of American Money Judgments), and other useful references listed in the Practice Aids section of this annotation. [88 ALR5th 545](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 89 of ALR5th, in June 2001. Some of the annotations listed may be rescheduled.



## INSURANCE

### Application of Qualified Pollution Exclusion Clause in Liability Insurance Policy

One of the most hotly litigated insurance coverage questions of the late 1980s and early 1990s

has been the scope and application of the variously worded pollution exclusions contained in the standard commercial general liability policy. Enormous financial and human resources have been expended in such litigation. The standard qualified pollution exclusion clause restores coverage if the discharge of pollutants was “sudden and accidental.” It has been held that the word “sudden” should be construed to mean “unexpected”; other courts, however, have rejected this construction, as the cases collected in this annotation illustrate. [89 ALR5th](#)

## **AUTOMOBILES AND HIGHWAY TRAFFIC**

### **Criminal Liability, Under State Law, Concerning Illegal Removal or Alteration of Vehicle Identification Number, Including Sale or Possession of Altered Motor Vehicles or Parts**

A client had gotten a really good deal on a used car, or so he thought. Now he faces criminal charges, since the car had no vehicle identification number (VIN) on it, and illegally removing or altering a VIN or selling or possessing a motor vehicle or motor vehicle part with an altered or removed VIN constitute crimes in most states. In order to impose liability, state courts normally require a culpable mental state on the part of the defendant in altering or removing a VIN or in possessing a vehicle or vehicle part with an altered or removed VIN. However, some states do not require any culpable mental state on the part of the defendant when selling or possessing a vehicle or vehicle part with a removed or altered VIN. This annotation collects and analyzes cases dealing with the criminal liability under state law for illegally removing or altering a VIN, or selling or possessing a vehicle or vehicle part with an altered or removed VIN. For related research aids (for example, [11 Am Jur POF3d 343](#), “Lemon Law” Litigation—Existence of Substantial Defect; [1 Am Jur POF2d 677](#), Fraudulent Alteration of Odometer), consult the Practice Aids section of this annotation. **89 ALR5th**

## **AUTOMOBILES AND HIGHWAY TRAFFIC**

### **Validity, Construction, and Application of Statute Permitting Forfeiture of Motor Vehicle for Operation of Vehicle While Intoxicated**

A number of jurisdictions in the United States have enacted statutes that provide for the forfeiture of vehicles that drunk drivers use to commit their offenses. Forfeiture is a divestiture of property, without com-

pensation, as a result of default or of an offense. A legal fiction underlying civil in rem forfeiture actions is that the property itself, not its possessor or owner, is guilty of the offense that triggered the forfeiture action. Several important constitutional questions can arise in forfeiture actions, including whether a forfeiture order violated the double jeopardy clause, the excessive fines clause, the due process clause, or the equal protection clause of federal and/or state constitutions. Additional issues include defenses to forfeiture based on ownership issues or the question of an adequate nexus between the vehicle and the offense for which the forfeiture is imposed. This annotation collects and analyzes those cases in which courts have construed, applied, and determined the validity of statutes that authorize the forfeiture of motor vehicles that are involved in drunken-driving episodes. **89 ALR5th**

## **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

### **Criminal Prosecutions Under State RICO Statutes for Engaging in Organized Criminal Activity**

The federal Racketeer Influenced and Corrupt Organizations Act (18 U.S.C.A. §§ 1961 et seq.) has proven to be a powerful, even ruthless enemy of Organized Crime in America since its passage in 1970. A number of states have passed legislation intended to mirror, at the state level, the strategies and tactics of the federal legislation in order to have their own potent weapon against Organized Crime. Key questions that arise in the use of these “Little RICO” statutes revolve around issues of who, what organizations, and what activities are subject to prosecution under these statutes, as discussed in this annotation. See also [10 Am Jur POF3d 289](#), “Pattern of Racketeering Activity” Under the Racketeer Influenced and Corrupt Organizations Act (RICO), and other sources listed in the Research References section of this annotation. **89 ALR5th**

# **Index**

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 88 or scheduled for publication in Volume 89 of ALR5th. Some of the annotations listed may be rescheduled.

## **AERIALS AND ANTENNAS**

Tower or Antenna as Constituting Nuisance. **88 ALR5th 641**

## **AUTOMOBILES AND HIGHWAY TRAFFIC**

Validity, Construction and Effect of State Motor Vehicle Warrant Legislation (Lemon Laws). **88 ALR5th 301**



Criminal Liability, Under State Law, concerning Illegal Removal or Alteration of Vehicle Identification Number, Including Sale or Possession of Altered Motor Vehicles or Parts. **89 ALR5th**

Validity, Construction, and Application of Statute Permitting Forfeiture of Motor Vehicle for Operation of Vehicle While Intoxicated. **89 ALR5th**

## **COMMUTATION OF SENTENCE**

Revocation of Order Commuting State Criminal Sentence. **88 ALR5th 463**

## **CONSUMER PROTECTION**

Right to Private Action Under State Consumer Protection Act—Equitable Relief Available. **89 ALR5th**

## **EXTORTION AND BLACKMAIL**

Criminal Prosecutions Under State RICO Statutes for Engaging in Organized Criminal Activity. **89 ALR5th**

## **EVIDENCE**

Admissibility, in Rape Case, of Evidence that Accused Raped, or Attempted to Rape, Person Other than Prosecutrix—Offenses Unspecified as to Time. **88 ALR5th 429**

## **FOREIGN JUDGMENTS**

Construction and Application of Uniform Foreign Money-Judgments Recognition Act. **88 ALR5th 545**

## **INDIANS**

Construction and Application of Indian Child Welfare Act of 1978, 25 U.S.C.A. §§ 1901 et seq. (ICWA), upon Child Custody Determinations. **89 ALR5th**

## **INSURANCE**

Construction of Qualified Pollution Exclusion Clause in Liability Insurance Policy. **88 ALR5th 493**

Application of Qualified Pollution Exclusion Clause in Liability Insurance Policy. **89 ALR5th**

## **JUDGMENTS, ORDERS, AND DECREES**

Revocation of Order Commuting State Criminal Sentence. **88 ALR5th 463**

Construction and Application of Uniform Foreign Money-Judgments Recognition Act. **88 ALR5th 545**

## **JURY AND JURY TRIAL**

Voir Dire Exclusions of Men from State Trial Jury or Jury Panel—Post-J.E.B. v. Alabama ex rel T.B., 511 U.S. 127, Cases. **88 ALR5th 67**

## **NUISANCES**

Tower or Antenna as Constituting Nuisance. **88 ALR5th 641**

## **PARENT AND CHILD**

Construction and Application of Indian Child Welfare Act of 1978, 25 U.S.C.A. §§ 1901 et seq. (ICWA), upon Child Custody Determinations. **89 ALR5th**

## **POSSESSION**

What Constitutes “Constructive Possession” of Unregistered or Otherwise Prohibited Weapon Under State Law. **88 ALR5th 121**

## **PRODUCTS LIABILITY**

Firearm or Ammunition Manufacturer or Seller’s Liability for Injuries Caused to Another by Use of Gun in Committing Crime. **88 ALR5th 1**

## **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

Criminal Prosecutions Under State RICO Statutes for Engaging in Organized Criminal Activity. **89 ALR5th**

## **TORTS**

Recovery Under State Law for Negligent Infliction of Emotional Distress Due to Witnessing Injury to Another Where Bystander Plaintiff Must Suffer Physical Impact or be in Zone of Danger. **89 ALR5th**

## **UNIFORM COMMERCIAL CODE**

Sufficiency and Timeliness of Buyer’s Notice Under UCC § 2-607(3)(a) of Seller’s Breach of Warranty. **89 ALR5th**

Duress, Incapacity, Illegality, or Similar Defense Rendering Obligation a Nullity as Affecting Enforceability of Negotiable Instrument Against Holder in Due Course Under UCC [rev] § 3-305(a)(1)(ii). **89 ALR5th**

## **UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT**

Construction and Application of Uniform Foreign Money-Judgments Recognition Act. **88 ALR5th 545**

## **USE TAX**

Items or Materials Exempt from Use Tax as Becoming a Component Part or Ingredient of Manufactured or Processed Article. **89 ALR5th**

## **WARRANTIES**

Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws). **88 ALR5th 301**

## **WEAPONS AND FIREARMS**

Firearm or Ammunition Manufacturer or Seller’s Liability for Injuries Caused to Another by Use of Gun in Committing Crime. **88 ALR5th 1**

What Constitutes “Constructive Possession” of Unregistered or Otherwise Prohibited Weapon Under State Law. **88 ALR5th 121**

Have questions or need help? Please call customer support at 1-800-225-7488 or email at [alr@westgroup.com](mailto:alr@westgroup.com).



**WEST GROUP**

A THOMSON COMPANY