

ALR 5th

Alert

Route to:

- _____
- _____
- _____
- _____
- _____
- _____

From the editor

Our society continues to grapple with the issues raised by same-sex relationships, and the resolution of these issues more often than not is determined judicially, resulting in a patchwork of legal holdings with limited jurisdictional applicability, rather than being determined legislatively by elected officials. Volumes 80 and 81 of ALR5th address issues arising from same-sex relationships that have been addressed judicially, such as child custody and visitation rights, and addressed judicially, and legislatively, at the judiciary's behest, such as marriage between persons of the same sex. Other issues impacting families addressed in these two volumes of ALR5th include the exercise of emergency jurisdiction under the Uniform Child Custody Jurisdiction Act, and the question whether the operation of children's day care businesses violate restrictive covenants.

Jason B. Binimow, J.D.

Highlights

INFANTS

Child custody and visitation rights arising from same-sex relationship

Gay and lesbian couples are raising children, and just as in heterosexual relationships, if a couple dissolves, a dispute may arise over the partners' rights to custody of, and visitation with, those children. Some courts have been willing to apply various equitable doctrines to permit an award of custody or visitation rights to a partner. This annotation collects and analyzes the state and federal cases discussing the propriety of an award of child custody or visitation rights, arising from a now-dissolved same-sex relationship, to the former partners in the relationship. [80 ALR5th 1](#)

INFANTS

[Emergency jurisdiction of court under §§ 3\(a\)\(3\)\(ii\) and 14\(a\) of Uniform Child Custody Jurisdiction Act](#)



[and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§ 1738A\(c\)\(2\)\(C\)\(ii\) and 1738A\(f\), to protect interests of a child notwithstanding the existence of a prior, valid custody decree rendered by another state](#)

When emergency jurisdiction is asserted under the UCCJA or the PKPA, the question arises whether a second state can exercise jurisdiction in emergency circumstances if the custody decree state continues to have jurisdiction. This annotation discusses the emergency jurisdiction of a court under §§ 3(a)(3)(ii) and 14(a) of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, 28 U.S.C.A. §§ 1738A(c)(2)(C)(ii) and 1738A(f), to protect the interests of a child notwithstanding the existence of a prior, valid custody decree rendered by another state. See the related annotations in § 1[b] for a complete list of all the annotations construing the Uniform Child Custody Jurisdiction Act

and the Parental Kidnapping Prevention Act. [80 ALR5th 117](#)

CONSTITUTIONAL LAW

[Validity, construction, and application of state and local enactments regulating parades](#)

Many localities have enacted a wide variety of ordinances that attempt to define and limit the rights of persons to organize and conduct parades, including a permit requirement, time and place limitations, and the imposition of fees. This annotation collects and discusses the state and federal cases in which the courts have considered the validity, construction, and application of state statutes, local ordinances, and agency rules and regulations that limit, restrict, define, or otherwise impact on the right of individuals to parade on public property. [80 ALR5th 255](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 81 of ALR5th, in September 2000. Some of the annotations listed may be rescheduled.



Marriage

[Marriage between persons of same sex](#)

A question of both social and legal importance is whether the institution of marriage should be extended to same-sex couples. While the earlier courts addressing the issue all declined to make that extension, courts in more recent cases have evinced a greater willingness to find a constitutional right to marriage on behalf of same-sex couples. This annotation collects and analyzes the state and federal cases that discuss whether the laws of a particular jurisdiction permit two persons of the same sex to enter a legal marriage, and, if not, whether the refusal to permit such a marriage is valid. The annotation also extends to the question whether foreign same-sex marriages are recognized in a local jurisdiction (or state same-sex marriages recognized by the Federal Government), and, if not, whether this lack of recognition is valid. [81 ALR5th](#)

CHILD CARE

[Children's day care use as violation of restrictive covenant](#)

Many courts have faced the issue of whether the use

ATTORNEYS

[Adequacy of defense counsel's representation of criminal client—issues of mental matters concerning persons, other than counsel's client, who are involved in criminal case](#)

A question may arise as to whether a defense attorney has provided adequate representation during criminal proceedings with respect to issues of mental matters concerning persons other than the defendant-client, such as codefendants, victims, and other actual or potential witnesses. This annotation collects and analyzes state and federal decisions discussing or determining the adequacy, competency, or effectiveness of defense counsel's representation of a criminal defendant with respect to issues of mental matters concerning persons, other than the client, who are involved in the defendant's criminal case. [80 ALR5th 55](#)

of premises for children's day care violates restrictive covenants. Some courts hold that children's day care use does not violate such covenants, as the activities involved are consistent with the overall plan of the subdivision as a residential area, that the observable difference between family day care homes and homes occupied by large families is minimal, and that strong public policy favors family day care homes. Other courts have reached contrary results depending on the particular circumstances presented and the varying rules applied by the courts. This annotation collects and analyzes cases considering the question whether the use of premises for children's day care violates restrictive covenants. [81 ALR5th](#)

KNOCK AND ANNOUNCE

[What constitutes compliance with knock-and-announce rule in search of private premises—state cases](#)

The common-law knock-and-announce principle that police officers, before exercising their authority to break open the doors of a dwelling, first ought to announce their presence and authority, forms a part of the reasonableness inquiry under the Fourth Amendment. Additionally, many states have statutes and decisions that require that the officers must also demand and be refused admittance, or wait a reasonable amount of time, before making a forcible entry. Many courts have been required to determine whether the police officers who executed the search complied with the knock-and-announce rule. This annotation collects and

analyzes state cases in which the courts have discussed whether the police, in entering private premises to conduct a search, have complied with those requirements commonly referred to as the “knock-and-announce rule.” **81 ALR5th**

JURISDICTION

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under

long-arm statutes and due process clause

Courts faced with the issue of determining whether Internet presence is sufficient to assert jurisdiction over a defendant have generally based their decision on the nature and quality of commercial activity conducted over the Internet. This annotation collects those cases addressing the issue of whether particular Web site activity is sufficient to support a court’s assertion of personal jurisdiction over a defendant. **81 ALR5th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 80 or scheduled for publication in volume 81 of ALR5th. Some of the annotations listed may be rescheduled.



ALIMONY

Copyright, patent, or other intellectual property as marital property for purposes of alimony, support, or divorce settlement. **80 ALR5th 487**

ATTORNEY OR ASSISTANCE OF ATTORNEY

Adequacy of defense counsel’s representation of criminal client—issues of mental matters concerning persons, other than counsel’s client, who are involved in criminal case. **80 ALR5th 55**

Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney’s family or law firm is beneficiary, grantee, legatee, or devisee. **80 ALR5th 597**

BLOODHOUNDS

Evidence of trailing by dogs in criminal cases. **81 ALR5th**

CABLE TELEVISION

Cable television equipment or services as subject to sales or use tax. **81 ALR5th**

CHILD CARE

Children’s day care use as violation of restrictive covenant **81 ALR5th**

CIVIL RIGHTS

Availability and scope of punitive damages under state employment discrimination law. **81 ALR5th**

COMMUNITY PROPERTY

Spouse’s cause of action for negligent personal injury, or proceeds therefrom, as separate or community property. **80 ALR5th 533**

COMPUTERS

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause. **81 ALR5th**

CONSTITUTIONAL LAW

Marriage between persons of same sex. **81 ALR5th**

COURTS

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause. **81 ALR5th**

COVENANTS

Children’s day care use as violation of restrictive covenant **81 ALR5th**

CUSTODY AND SUPPORT OF CHILDREN

Child custody and visitation rights arising from same-sex relationship. **80 ALR5th 1**

Emergency jurisdiction of court under §§ 3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§ 1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding the existence of prior, valid custody decree rendered by another state. **80 ALR5th 117**

DAMAGES

Availability and scope of punitive damages under state employment discrimination law. **81 ALR5th**

DEATH

Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient’s suicide. **81 ALR5th**

DISCIPLINE AND DISCIPLINARY ACTIONS

Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney’s family or law firm is beneficiary, grantee, legatee, or devisee. **80 ALR5th 597**

DOGS

Evidence of trailing by dogs in criminal cases. **81 ALR5th**

EXEMPLARY DAMAGES

Availability and scope of punitive damages under state employment discrimination law. **81 ALR5th**

HOMOSEXUALITY

Child custody and visitation rights arising from same-sex relationship. [80 ALR5th 1](#)

Examination and challenge of state case jurors on basis of attitudes toward homosexuality. [80 ALR5th 469](#)

Marriage between persons of same sex. [81 ALR5th](#)

HUSBAND AND WIFE

Copyright, patent, or other intellectual property as marital property for purposes of alimony, support, or divorce settlement. [80 ALR5th 487](#)

Spouse's cause of action for negligent personal injury, or proceeds therefrom, as separate or community property. [80 ALR5th 533](#)

JURISDICTION

Emergency jurisdiction of court under §§ 3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§ 1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding the existence of prior, valid custody decree rendered by another state. [80 ALR5th 117](#)

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause. [81 ALR5th](#)

KNOCK AND ANNOUNCE

What constitutes compliance with knock-and-announce rule in search of private premises—state cases. [81 ALR5th](#)

LADDERS

Products liability: ladders. [81 ALR5th](#)

LANDLORD AND TENANT

Children's day care use as violation of restrictive covenant [81 ALR5th](#)

LONG ARM STATUTES

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause. [81 ALR5th](#)

MARRIAGE

Marriage between persons of same sex. [81 ALR5th](#)

PARADES

Validity, construction, and application of state and local enactments regulating parades. [80 ALR5th 255](#)

PHYSICIANS AND SURGEONS

Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient's suicide. [81 ALR5th](#)

PRODUCTS LIABILITY

Products liability: ladders. [81 ALR5th](#)

PUNITIVE DAMAGES

Availability and scope of punitive damages under state employment discrimination law. [81 ALR5th](#)

SALES

What constitutes warranty explicitly extending to "future performance" for purposes of U.C.C. § 2-725(2). [81 ALR5th](#)

SALES AND USE TAXES

Cable television equipment or services as subject to sales or use tax. [81 ALR5th](#)

SEARCH AND SEIZURE

What constitutes compliance with knock-and-announce rule in search of private premises—state cases. [81 ALR5th](#)

Evidence of trailing by dogs in criminal cases. [81 ALR5th](#)

SMELL AND ODOR

Evidence of trailing by dogs in criminal cases. [81 ALR5th](#)

SUICIDE

Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient's suicide. [81 ALR5th](#)

TELECOMMUNICATIONS

Internet web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause. [81 ALR5th](#)

TRAILING

Evidence of trailing by dogs in criminal cases. [81 ALR5th](#)

Uniform Commercial Code

What constitutes warranty explicitly extending to "future performance" for purposes of U.C.C. § 2-725(2). [81 ALR5th](#)

VOIR DIRE

Examination and challenge of state case jurors on basis of attitudes toward homosexuality. [80 ALR5th 469](#)

WARRANTIES

What constitutes warranty explicitly extending to "future performance" for purposes of U.C.C. § 2-725(2). [81 ALR5th](#)

WORKERS' COMPENSATION

Employee's injuries sustained in employer's restroom as covered by worker's compensation. [80 ALR5th 417](#)

Have questions or need help? Please call customer support at 1-800-225-7488 or email at alr@westgroup.com.



WEST GROUP

Bancroft-Whitney • Clark Boardman Callaghan
Lawyers Cooperative Publishing • WESTLAW® • West Publishing