

ALR Federal *Alert*

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From the editor

Welcome to the second series of A.L.R. Federal. The second series of A.L.R. Federal will, on occasion, address issues that have been adjudicated by courts in the United States and other sovereign nations, as such international decisions, while not of precedential value, may nevertheless be given effect via the principle of comity or may otherwise be of persuasive value to the application of commonlaw principles, statutes, or treaties in other nations. The first such annotation is *Marriage Between Persons of Same Sex—United States and Canadian Cases*, 1 A.L.R.Fed. 2d 1, which collects and analyzes the United States and Canadian cases discussing 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 first two volumes of the second series will also address issues concerning the extradition of aliens, including evidence of past persecution in Asian nations for the purpose of finding refugee status, and removal, under 8 U.S.C.A. § 1231, of aliens to their country of birth without acceptance by their country of birth, addressing the new Supreme Court decision of *Jama v. Immigration and Customs Enforcement*, 125 S. Ct. 694 (U.S. 2005). Be sure to review the “How to Use ALR Federal 2d” materials in the front of the volume, which outlines enhancements added to the new series and provides tips for finding relevant A.L.R. Fed. 2d annotations in print and online.

Jason B. Binimow, J.D.

Highlights

ALIENS

Sufficiency of Evidence to Establish Alien’s Past Persecution Entitling Alien to Status of Refugee Under § 101(a)(42)(A) of The Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A))—Alleged Persecution in Asian Nations

One method of establishing refugee status under § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)) is for aliens to demonstrate that they are unable or unwilling to return to, and unable or unwilling to avail themselves of the protection of, the country of their nationality, because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. This annotation collects and discusses the cases that have adjudicated the sufficiency of the evidence to establish an alien’s past persecution entitling the alien to the status of a refugee un-



der § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)) concerning alleged persecution in Asian nations. Note the related annotations of Sufficiency of Evidence to Establish Alien’s Past Persecution Entitling Alien to Status of Refugee Under

§ 101(a)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in African and Oceanian Nations, 199 A.L.R.Fed. 307, Sufficiency of Evidence to Establish Alien’s Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in European and Asian Nations, 182 A.L.R. Fed. 147, Sufficiency of Evidence to Establish Alien’s Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(a)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in North and South American Nations, 180 A.L.R. Fed. 369, and Sufficiency of Evidence to Establish Alien’s

Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(a)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in African and Oceanian Nations, 177 A.L.R. Fed. 203. [1 A.L.R. Fed. 2d 89](#)

ELECTIONS

[Validity, Construction, and Application of Uniformed and Overseas Citizens Absentee Voting Act \(UOCAVA\), 42 U.S.C.A. §§1973ff et seq.](#)

In an effort to improve and simplify the procedures for voting in federal elections for citizens no longer living in the United States, and improving upon the limitations of earlier legislation to that end, Congress in 1986 enacted the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C.A. §§1973ff to 1973ff-6. This Act provides for registration and voting in elections for federal office by United States citizens who formerly resided in one of the states and now live abroad or serve in the military abroad. It mandates state compliance and authorizes the Attorney General to enforce its provisions. Of the few cases discussing this Act, most deal with its constitutionality, affirming that it does not violate equal protection or other guarantees. This annotation collects and discusses all of the federal and state cases addressing the Uniformed and Overseas Citizens Absentee Voting Act. [1 A.L.R. Fed. 2d 251](#)

INSURANCE

[Federal Regulation of Viatical Life Insurance Programs, Viatical Settlements, and Viatical Investments](#)

In light of both the investment and insurance aspects of a viatical settlement, viatical settlements are subject to a variety of federal regulations, including those involving securities law, insurance law, ERISA, and criminal law. A viatical settlement is an investment under which an investor purchases an interest in a life insurance policy of a terminally ill person—typically an AIDS victim—at a discount, with the discount depending upon the insured's life expectancy. Upon the insured's death, the investor receives the proceeds of said life insurance policy. Increasingly, viatical settlements are authorized and regulated by statute. This annotation collects and discusses those cases dealing with federal regulation of viatical settlements. [1 A.L.R. Fed. 2d 269](#)

MARRIAGE

[Marriage Between Persons of Same Sex—United States and Canadian Cases](#)

A question of both social and legal importance is whether the institution of marriage should be extended to same-sex couples. The courts of Canada and the United States, while sharing the heritage of the common law, have reached varying decisions regarding this issue. The Supreme Court of Canada in *Same-Sex Marriage, Re*, 2004 WL 2749380 (Can. 2004), held that the Canadian federal government's proposed act to accord same-sex couples the ability to marry is within the exclusive legislative competence of Parliament and is consistent with the Canadian Charter of Rights and Freedoms. The Supreme Judicial Court of Massachusetts in *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N.E.2d 941 (2003), held that the limitation of the protections, benefits, and obligations of civil marriage to individuals of opposite sexes, by interpreting the statutory term "marriage" as employed in the marriage-licensing statutes to apply only to male-female unions, lacked a rational basis and violated state constitutional equal protection principles. In this annotation's reported case, the court in *Wilson v. Ake*, 2005 WL 281272, 1 A.L.R. Fed. 2d 1 (M.D. Fla. 2005), in which a lesbian couple, who had been legally married in Massachusetts, sued the United States Attorney General and Florida court clerk, asserting that Florida was required to recognize their marriage, and seeking a declaration that the Defense of Marriage Act and the Florida statute withholding recognition for same-sex marriages entered into in Florida or elsewhere, were unconstitutional, held that DOMA did not violate the Full Faith and Credit Clause, the right to marry a person of the same sex is not a fundamental right guaranteed by the Due Process Clause, DOMA did not violate equal protection or due process guarantees, and the Florida statute was not unconstitutional. This annotation collects and analyzes the United States and Canadian cases discussing 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 of 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. [1 A.L.R. Fed. 2d 1](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 2 of A.L.R. Fed. 2d in May 2005. Some of the annotations listed may be rescheduled.



ALIENS

[Removal Under 8 U.S.C.A. § 1231 of Aliens to Their Country of Birth Without Acceptance by Country of Birth](#)

Section 241 of the Immigration and Nationality Act, 8 U.S.C.A. § 1231, provides for the removal of aliens who have been ordered removed. The United States Supreme Court in *Jama v. Immigration and Customs Enforcement*, 125 S. Ct. 694 (U.S.

2005), held that an alien who is found ineligible to remain in the United States may be removed to a country without the explicit, advance consent of that country's government. This annotation collects and discusses the cases which have considered the issue of whether 8 U.S.C.A. § 1231 and its predecessor permits the Attorney General to remove aliens to their country of birth without acceptance by that country, as well as the issue of detention when there is no acceptance. **2 ALR Fed 2d**

AMERICANS WITH DISABILITIES ACT

What Constitutes Substantial Limitation on Major Life Activity of Interacting With Others for Purposes of Americans with Disabilities Act (42 U.S.C.A. §§12101 to 12213)

For purposes of the Americans with Disabilities Act (ADA) (Title 42, The Public Health and Welfare, 42 U.S.C.A. §§12101 to 12213), the term "disability," with respect to an individual, means: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. Although interacting with others is not among the major life activities expressly identified in regulations promulgated by the federal agencies charged with implementing the various titles of the ADA, that list is not exhaustive, and a number of cases have held that interacting with others is a major life activity and considered the issue of what constitutes a substantial limitation on it for purposes of the ADA. This annotation collects and analyzes all of the cases that have considered what constitutes a substantial limitation on the major life activity of interacting with others for purposes of the ADA. Note the related annotations of What General or Systemic Diseases or Conditions Constitute Substantial Limitation on Major Life Activity of Walking for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 199 A.L.R. Fed. 481, What Constitutes Substantial Limitation on Major Life Activity of Eating for Purposes of Americans with Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 198 A.L.R. Fed. 209, What Constitutes Substantial Limitation on Major Life Activity of Speaking for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 195 A.L.R. Fed. 407, What Constitutes Substantial Limitation on Major Life Activity of Breathing for Purposes of Americans with Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 194 A.L.R. Fed. 455, What Constitutes Substantial Limitation on Major Life Activity of Caring for Oneself for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 192 A.L.R. Fed. 483, What constitutes substantial limitation on major life activity of working for purposes of Americans with Disabilities Act (42 U.S.C.A. secs. 12101-12213), 141 A.L.R. Fed. 603, and What Constitutes Substantial Limitation on Major Life Activ-

ity of Working for Purposes of State Civil Rights Acts, 102 A.L.R.5th 1. **2 A.L.R. Fed. 2d**

BANKRUPTCY

What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient to Award Damages—Chapter 11 and 12 Cases

In 1984, Congress amended the automatic stay provisions of the Bankruptcy Code to add 11 U.S.C.A. § 362(h), which states that a debtor who can prove injury due to a willful violation of the automatic stay can recover actual damages, including costs, attorney's fees, and, potentially, punitive damages. In order to prove a willful violation of the stay, courts will typically examine whether the violator had knowledge of the bankruptcy case when acting and whether the violator intended to carry out the proscribed act. Federal courts have addressed what constitutes a willful violation of the automatic stay provisions sufficient to award damages in Chapter 11 and 12 cases. Cases that have addressed what constitutes a willful violation of the automatic stay provisions of the Bankruptcy Code sufficient to award damages in Chapter 11 and 12 cases, pursuant to 11 U.S.C.A. § 362(h), are collected in this annotation. Note related annotation of Remedies and damages for violations of the automatic stay provisions of the Bankruptcy Code (11 U.S.C.A. sec. 362(h)), by parties other than the Federal Government, 153 A.L.R. Fed. 463. **2 A.L.R. Fed. 2d**

CRIMINAL LAW

Validity, Construction, and Application of 18 U.S.C.A. § 3144, Governing Arrest and Detention of Material Witnesses to Federal Crimes

Under the material witness statute, 18 U.S.C.A. § 3144, if it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impractical to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of 18 U.S.C.A. § 3142, governing pretrial release or detention. No material witness may be detained because of an inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition and if further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure. This annotation collects and analyzes the cases construing or applying § 3144, or determining its constitutional validity. **2 A.L.R. Fed. 2d**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 1 or scheduled for publication in volume 2 of A.L.R. Federal 2d. Some of the annotations listed may be rescheduled.



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