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Cases Noted

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INJUNCTION — LITERARY PROPERTY — INVASION OF PRIVACY — *Estate of Hemingway v. Random House, Inc.*, 268 N.Y.S.2d 531 (Sup. Ct. 1966). — Plaintiff, widow of a world-renowned author who was recipient of both the Nobel and Pulitzer Prizes during his lifetime, sought a preliminary injunction restraining publication by defendant publishing company of a book that was written by defendant which characterized a biographical study of a portion of the author's life. The court held that the plaintiff's status as a wife and widow of the renowned author and her activities incidential to it, placed her in the category of a newsworthy personality who, as a figure of public interest, was not given the protection of the statute governing actions for injunction for invasion of right of privacy.

MASTER-SERVANT — NEGLIGENCE ON PART OF MASTER — SUPERIOR AND INFERIOR SERVANTS — *Hefele v. City of New York*, 267 N.Y.S.2d 946 (App. Div. 1966). — Petitioner, a social investigator for the respondent, City of New York, brought suit against the city for injuries received at the hands of one of the respondent's welfare clients. The client had made threats to the case worker and a ruse was devised to call him away from the house during the social worker's visit. Although petitioner's superior had notice of the failure of the ruse, the petitioner was not so informed. Failure to obey the superior's instructions would have resulted in disciplinary action. Reversing the trial court, the Appellate Division held that questions of fact were presented as to the foreseeability of injuries to petitioner by reason of her required attendance at client's apartment. Neither the fellow servant doctrine nor assumption of the risk are applicable when a social case-worker is injured under these circumstances.

SEARCH AND SEIZURE — CONSTITUTIONAL RIGHTS AND VIOLATION THEREOF — UNREASONABLE SEARCHES AND SEIZURES — *State v. Terry*, 5 Ohio St. 2d 135, 214 N.E.2d 114 (1966). — Appellant appealed from a conviction for carrying a concealed weapon. Appellant contended that the evidence used against him was the result of an illegal search because there was no probable cause to stop and "frisk" him. The weapon was discovered when an officer, after observing appellant's suspicious conduct, approached appellant and after identifying himself and asking appellant's name, "frisked" him. The court held a policeman may reasonably inquire of a person concerning his suspicious on-the-street behavior and may "frisk" such person even in the absence of probable cause for arrest. A concealed weapon discovered during the "frisk" can be the basis for a conviction for carrying a concealed weapon. By allowing a "frisk" for weapons, the court is not authorizing a search for evidentiary material or anything else in the absence of reasonable grounds. Such a search is still controlled by the fourth amendment and probable cause is essential.

APPEALS — STATUTORY TIME LIMITATION — LIBERAL CONSTRUCTION OF COMPUTATION OF TIME — *Van Meter v. Segal-Schadel Co.*, 5 Ohio St. 2d 185, 214 N.E.2d 664 (1966). — Plaintiff's claim for unemployment compensation benefits was disallowed and notice thereof mailed on March 14, 1962. Plaintiff applied for a reconsideration on Monday, March 26, 1962, which was denied as not having been filed within the "ten calendar day" time limit provided by Ohio Revised Code section 4141.28(G). The Ohio Supreme Court affirmed the court of appeal's reversal of the administrator's ruling, finding that statutes providing for appeals and appellate proceedings are remedial in nature and should be liberally construed in favor of a right of appeal. Thus where Ohio Revised Code section 5.30 designates Saturday afternoon as a legal holiday, the "last day" within section 1.14 is considered a "legal holiday" and the filing may be done on the following Monday. The court interpreted the general legislative intent that "the last day" for doing an act required by law shall be a full work day.

TAXATION — CHARITABLE EXEMPTION — PROPERTY MUST BE USED EXCLUSIVELY FOR CHARITY, BUT INSTITUTION NEED NOT BE EXCLUSIVELY CHARITABLE — *Bryan Chamber of Commerce v. Board of Tax Appeals*, 5 Ohio App. 2d 195 (1966). —

Plaintiff, as owner and title holder of a 79-acre farm supervised and managed by the Bryan Recreation Council as a public park, applied for exemption from taxes under Ohio Revised Code section 5709.12 which provides that "real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." The Board of Tax Appeals denied the application on the ground that plaintiff was not a charitable institution and therefore not entitled to exemption. The court of appeals reversed, finding that a recreational park accepted for public use and sponsored by the chamber of commerce with no view to profit therefrom is used exclusively for charitable purposes under Ohio Revised Code section 5709.12, and that there is no prerequisite that the institution be exclusively a charitable institution.

TAXATION — EQUALITY AND UNIFORMITY — PROPERTY USED FOR CHARITABLE PURPOSE — *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 N.E.2d 431 (1966). — Appellant, a nonprofit Ohio corporation, acquired real estate for the purpose of erecting apartments thereon for occupancy by aged and needy persons. Rental was to be at or below cost. The loss from rentals to residents unable to pay the fixed rentals was to be covered by grants from appellant. Appellant applied for a charitable exemption from the Ohio property tax under Ohio Revised Code section 5709.12 which extends exemptions to property used exclusively for charitable purposes. The court held, with three justices dissenting, that the use of property for private residential housing is not an exclusive charitable use even though all rentals are at or below cost and do not result in a profit. The fact that residents of the apartments will be assisted by grants from appellant, that contributions to the fund have been designated as charitable contributions by the Internal Revenue Service, and that property passing to appellant under a will was exempt from succession tax are all of value in determining the charitable appellant's purposes, but are not helpful in determining whether the real estate is used exclusively for charitable purposes.

PHYSICIANS AND SURGEONS — CAPACITY AND QUALIFICATIONS — CAPACITY OF CORPORATION TO PRACTICE MEDICINE — *Cleveland Clinic v. Sombrio*, 6 Ohio Misc. 48 (Akron Munic. Ct. 1966). — Plaintiff, Cleveland Clinic, a corporation organized by licensed physicians to engage in the corporate form of the practice of medicine, sued defendant for, among other things, the balance due on an operation. Defendant moved to strike this item on the grounds that a corporation cannot practice medicine in Ohio. The court held that the practice of medicine is different from the practice of law which is controlled by the judicial branch of government. The practice of medicine, or any other profession, is controlled by the legislature in Ohio, and Ohio Revised Code chapter 1785 has authorized professions to organize into corporations. Therefore, the defendant's motion to strike was overruled.

TAXATION — ASSESSMENT OF REAL PROPERTY — CONSTITUTIONAL REQUIREMENT PREFERRED OVER STATUTORY REQUIREMENT — *Koblenz v. Board of Revision*, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966). — Appellants claimed that the 1963 tax assessment of their real property by the county auditor was illegal because the ratio of the assessed value of their property to the fair market value was greatly in excess of the prevailing average ratio of other real property in the county. The court held that the uniform tax assessment requirement of the Ohio Constitution, and the equal protection guarantee of the United States Constitution prevailed over state statutory requirements that the property be assessed at its true value in money (Ohio Rev. Code sections 5713.01, 5717.03). Here the property had been assessed at an amount which was discriminatory, and the taxpayer had the right to have his assessment reduced to the percentage of the true value in money at which others were taxed, even though this constituted a departure from the requirements of the Ohio statute.

BOARD OF EDUCATION — CREATION AND MAINTENANCE OF NUISANCE — INJUNCTION TO RESTRAIN — *Wayman v. Board of Educ.*, 5 Ohio St. 2d 248, 215 N.E.2d 394 (1966). — Plaintiff brought a suit in equity for an injunction to restrain the defendant board of education from maintaining a parking lot in such a manner that it

constituted a nuisance to his home in Akron, Ohio. Most jurisdictions recognize the rule that a board of education is immune from that liability for negligent acts committed in the operation and maintenance of a public school system. However, the court held that the doctrine of governmental immunity from liability in tort is not a good defense against a cause of action for an injunction to abate a nuisance which endangers or damages the property of another.

WILLS — REQUISITES AND VALIDITY — REVOCATION AND REVIVAL — PROBATE, ESTABLISHMENT, AND ANNULMENT — *In re Estate of Downie*, 6 Ohio Misc. 36 (P. Ct. 1966). — Proponents of a will sought to have it admitted to probate. It contained a bequest "to each of the following named six persons." Rather than six names only four were listed — the last two names were torn off. The contestants claimed the will should not be probated on the ground that the tearing constituted an effective revocation. The court held Ohio Revised Code section 2107.33 only recognizes revocation of the will in its entirety and in the absence of a showing that the tearing was the act of the testator, the will will not be deemed revoked. A copy of the torn page can be introduced into evidence to show what was torn from the original.

CONSTITUTIONAL LAW — SELF-INCRIMINATION — *State v. Carriker*, 5 Ohio App. 2d 255, 214 N.E.2d 809 (1966).—The defendant was charged with trespassing, a misdemeanor. The defendant had unlawfully entered the premises of another and had been observed by police officers who notified him that his presence was in violation of the law. The trial court convicted him of the charge and the decision was affirmed on appeal. The court held that the evidence supported the charge and that, in addition, the trial court did not violate constitutional provisions relating to self-incrimination in requiring the defendant, over objection of his counsel, to rise and identify himself at the trial.

TORT — NEGLIGENCE — LIABILITY OF LANDLORD'S AGENT — *Jacobs v. Mutual Mortgage & Inv. Co.*, 6 Ohio St. 2d 92, 216 N.E.2d 49 (1966). — Plaintiff injured herself in the hallway of an apartment house in which she was a tenant when she caught her foor in a tear in the carpeting and fell to the floor. The court held the manager of the apartment liable on the ground that whoever undertakes to manage real property pursuant to a contract for a fixed period terminable by the owner only upon a bona fide sale of the property and, who under such contract, accepts exclusive management and control of the premises and has power and authority to select and dispossess all tenants, rent at stipulated rates any part of the premises, execute and enforce all leases, hire, pay, control, and discharge all employees with respect to the premises and make all ordinary repairs, without consent of the owner, has sufficient possession and control of the carpeted hallway to be liable to an injured tenant.

FTC PROCEDURE—VALIDITY OF ORDER—MAJORITY OF FTC QUORUM—*Flotill Prods., Inc. v. FTC*, 358 F.2d 224 (9th Cir. 1966). — An order of the Federal Trade Commission must be supported by three of the agency's five members in order to be enforceable. The agency had by custom considered that a majority vote of a three-member quorum would validate an order. The court ruled that the formulation of the quorum-majority rule was not a valid exercise of the agency's power to make its own procedural rules and, therefore, absent clear congressional authorization, the rule could not stand.

PARENT AND CHILD — TORT LIABILITY OF PARENT TO UNEMANCIPATED CHILD — MALICIOUS INTENT TO INJURE — EVIDENCE OF ABANDONMENT OF PARENTAL RELATIONSHIP—*Teramano v. Teramano*, 6 Ohio St. 2d 117, 216 N.E.2d 375 (1966). — The plaintiff, defendant's unemancipated son, was seriously injured when the handicapped and intoxicated defendant drove his car into his driveway at an excessive rate of speed and failed to stop in time to avoid hitting plaintiff. The court held that a parent is immune from a suit by his unemancipated child unless the facts of the case are sufficient to show abandonment of the parental relationship, and that while malicious intent will result in such abandonment, such intent was not proven in the instant case.