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**FEDERAL TORT CLAIMS ACT—RECOVERY BY SERVICEMAN
FOR INJURY TO PERSONAL PROPERTY**

The plaintiff, called to active duty with the Naval Air Reserve for a fourteen day training period, was allowed recovery under the Federal Tort Claims Act¹ for damage to his automobile. While parked in a lawfully designated area at the Naval Air Station, the automobile was sprayed with sand and gravel by the backwash of a propeller from a Naval airplane negligently "revved" to speed greater than was necessary to taxi the airplane away from the area.²

The right of a serviceman or his executor to bring suit under the Federal Tort Claims Act for personal injury or death has been established by the Supreme Court of the United States, which has allowed recovery in those instances where injury or death has arisen from conduct not incident to military service.³ On the other hand the Court has held that injuries arising out of conduct incident to service are not actionable under the statute.⁴

The problem presented in the principal case was the application of the law as established in actions for personal injury under the Federal Tort Claims Act to an action involving damage to the personal property of a serviceman. The Court extended the decisions of the personal injury cases, concluding that the use of private property for the furtherance of a serviceman's own purpose is not such as may be said to arise out of duty incident to his military service.

¹ 28 U.S.C. §§ 921 *et seq.* (1946).

² *Lund v. United States*, 104 F. Supp. 756 (Mass. 1952).

³ In *Brooks v. United States*, 337 U.S. 49, 69 Sup. Ct. 918 (1949), the plaintiff recovered for the wrongful death of his son who was killed when the car in which he was riding collided with an army truck. At the time of the accident decedent was on furlough and recovery was allowed upon the basis of the fact that decedent was not then engaged in conduct incident to his service duty. *Accord*, *Brown v. United States*, 99 F. Supp. 685 (S.D. W. Va. 1951).

⁴ *Feres v. United States*, *Jefferson v. United States* and *United States v. Griggs*, 340 U.S. 135, 71 Sup. Ct. 153 (1950). (The Supreme Court here considered three cases which were reported in one opinion.) In the *Feres* case an action was brought by the executrix of the deceased serviceman who died when the barracks in which he was quartered were consumed by fire allegedly caused by the negligent maintenance of a defective heating plant. The plaintiff sought recovery in the *Jefferson* case upon discovery and removal from his stomach of a towel marked "Medical Department U. S. Army" during an operation following his discharge eight months after an army surgeon had performed an abdominal operation. Suit was brought in the *Griggs* case by the executrix of the deceased whose death was allegedly caused by the unskilled and negligent medical treatment of army physicians.

⁵ 59 STAT. 662 (1945), 31 U.S.C. § 222(e) (1946). See 32 CODE FED. REGS. §§ 751.1 *et seq.* for interpretive regulations which include possibility for a final appeal to the Secretary of the Navy.

⁶ See 32 CODE FED. REGS. § 751.4(g) for loss in consequence of hazards in connection with aircraft, or 32 CODE FED. REGS. § 751.4(j) for loss of property at quarters or other authorized place for the reception of property.