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## Contracts

Robert C. Bensing

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Home-rule charter cities, however, have the authority to enact ordinances to punish participants in lotteries who derive no profit therefrom.<sup>8</sup>

Commission of an accused to Lima State Hospital for one month on the unsworn statement of the prosecutor as to his belief of insanity based on hearsay without formal hearing or presentation of evidence denied the accused his liberty without due process of law. He was freed after a habeas corpus hearing.<sup>9</sup>

Delegation of authority by the General Assembly to the Board of Liquor Control to adopt arbitrarily, without any standards prescribed, minimum mark-up prices for wine, and to fix minimum mark-up prices for wine distribution at wholesale or retail was held constitutional.<sup>10</sup> The private business of wine-selling is carried on as a privilege. It is not such an ordinary lawful business which is a property right protected by the Ohio Constitution. Liquor selling involves public interest; states have historically regulated rates and prices of such businesses. This case carries the delegation of authority to an administrative body to the utmost limits. Rate-making and price fixing for public utility rates, for example, are delegated with general standards prescribed. Unreasonable rate fixing is unconstitutional. Perhaps the subject-matter of liquor is so inherently in need of regulation that arbitrary action is permitted. Generally, from a legal point of view, arbitrary is synonymous with unconstitutional.

To deny Negroes the right to rent in a public housing project erected with public funds violates the Fourteenth Amendment of the United States Constitution as well as the Federal Civil Rights Act and may be the basis for a mandatory injunction to compel admittance.<sup>11</sup>

OLIVER SCHROEDER, JR.

## CONTRACTS

### *Restrictive Covenant in Employment Contract*

A declaratory judgment action was brought in *Segal v. Flescher*<sup>7</sup> to determine whether a restrictive covenant which the plaintiff was required to insert in contracts with salesmen employed by the plaintiff to sell the de-

<sup>7</sup> State *ex rel.* English v. Ind. Comm'n, 115 N.E.2d 391 (Ohio 1953)

<sup>8</sup> Columbus v. Barr, 115 N.E.2d 391 (Ohio 1953).

<sup>9</sup> State *ex rel.* Similak v. Bushong, 159 Ohio St. 259, 111 N.E.2d 918 (1953).

<sup>10</sup> Blackman v. Board of Liquor Control, 65 Ohio L. Abs. 97, 113 N.E.2d 893, *app. dis'm* 158 Ohio St. 368, 109 N.E.2d 475 (1952).

<sup>11</sup> Vann v. Toledo Metropolitan Housing Authority, 113 F. Supp. 210 (N.D. Ohio 1953).

fendant's products was valid. The covenant restricted the salesmen, during their employment, and for five years after the termination thereof, from engaging in, or accepting employment from, or becoming interested in, a business similar to the business carried on by the defendant. Held: Since the covenant contained no restrictions as to space, it failed to meet the requirement of being reasonably limited as to space, and was therefore invalid.

### ***Infant: Disaffirmance of Contract; Recovery from Agent for Undisclosed Principal***

...In *Datko v. Gieb*,<sup>2</sup> the plaintiff, a minor, contracted to purchase an automobile from defendant and paid defendant the full purchase price. After delivery, the plaintiff offered to return the car and demanded return of his money on the ground that he was a minor. The defendant refused. After purchase of the car, the plaintiff learned for the first time that defendant had been acting as an agent for one Beckett who was the owner of the car, and that the certificate of title was in Beckett's name. The certificate had been signed in blank by Beckett and delivered in this form by the defendant to the plaintiff. Upon trial, after the foregoing evidence was introduced, and upon the defendant's motion for judgment at conclusion of the plaintiff's case, the court granted the motion for the reason that the defendant did not have the certificate of title to the car in his name. The plaintiff appealed. The court of appeals, per curiam, held that the motor vehicle title law was not involved, and that where the defendant acted for an undisclosed principal, making the contract in his own name, he was bound by his contract and the infant purchaser had the right to look to him for the return of the money upon disaffirmance of the agreement.

### ***Recovery by Defaulting Contractor***

Despite earlier case law of Ohio to the contrary, the Cuyahoga County Court of Appeals in *Kirkland v. Archbold*<sup>3</sup> held that defaulting contractor who has by his labor and materials materially enriched the estate of the other party, should be afforded relief to the reasonable value of the work done, less whatever damage the other party to the contract has suffered, notwithstanding that the defaulting plaintiff's performance did not constitute substantial performance.

### ***Cost Plus Fee Contract: Amount of Recovery***

In *Burton, Inc. v. Durkee*,<sup>4</sup> the court held that in an action by a building contractor to recover the unpaid balance under a cost plus fee contract, the builder is not limited in his recovery to only that amount which he can

<sup>1</sup> 93 Ohio App. 315, 113 N.E.2d 608 (1952)

<sup>2</sup> 113 N.E.2d 672 (Ohio App. 1953)

<sup>3</sup> 113 N.E.2d 496 (Ohio App. 1953)

<sup>4</sup> 158 Ohio St. 313, 109 N.E.2d 265 (1952)