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Contracts

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of the state constitution, which is self-executing.[40] The legislative amendment to the state code in section 3507.07, which authorizes the listing of candidates of each political party in a separate or vertical column, was held unconstitutional.

The constitutional authority to sue the state is not self-executing, however. The supreme court held that legislation must first be adopted to allow a tort action by a patient against Ohio State University Hospital.[41] Four judges concurred,[42] stating that since there was no allegation that this state function was proprietary, it should be treated as being governmental, thereby making the state immune. Two dissenters[43] viewed Ohio Revised Code section 3335.03[44] as authorizing this tort action against the University trustees.

The 1955 enactment authorizing a public off-street underground parking lot on the statehouse grounds[45] succumbed to the constitutional requirement in article II, section 26, that a general law must have uniform operation throughout the state. If the parking were limited to cars present for state business, the supreme court intimated that no quo warranto to oust the public commission members would have been granted.[46]

Finally, another court held that for constitutional purposes, the determination of what constitutes "the practice of law" is solely within the power of the judiciary.[47]

OLIVER SCHROEDER, JR.

CONTRACTS

FAILURE FOR WANT OF DEFINITENESS

Trammel v. Morgan[1] involves a dispute between a boxer and his manager. On April 11, 1955, the boxer's father was appointed guardian of the person and of the estate of the boxer. The reason for the guardianship is not disclosed. It is not because of the son's minority, however, for he was an adult at the time of the appointment.[2] On the day of his appointment, the boxer's father, as guardian, entered into a written agreement with the plaintiff-manager. This agreement provided that the manager was to manage the boxer

40. State *ex rel.* Wesselman v. Board of Elections, 170 Ohio St. 30, 162 N.E.2d 118 (1959).

41. Wolf v. Ohio State University Hospital, 170 Ohio St. 49, 162 N.E.2d 475 (1959).

42. *Id.* at 54, 162 N.E.2d at 478 (concurring opinion).

43. *Id.* at 54, 162 N.E.2d at 478 (dissenting opinion).

44. Under this section, the Board of Trustees of The Ohio State University are given "the right as such, of suing and being sued. . . ."

45. OHIO REV. CODE §§ 5538.01-.21, .99.

46. State *ex rel.* Saxbe v. Alexander, 168 Ohio St. 404, 155 N.E.2d 678 (1959).

47. *In re* Unauthorized Practice of Law in Lucas County, 160 N.E.2d 423 (Ohio C.P. 1955).

and the latter was to fight exclusively for the manager; the contract was to continue until November 15, 1955. On October 9, 1955, the manager and the *boxer,* by endorsement on the original agreement, sought to extend the original contract. By the terms of the endorsement the manager and the boxer agreed ". . . to continue this contract for five years after L. C. [the boxer] becomes 21 years old."[3] In addition, the manager agreed to purchase a home for the boxer ". . . suitable for his family, at a fair price to be paid out of L. C.'s earnings as a boxer."[4]

After performing the original agreement, but before the purchase of the house, the boxer refused to perform under the extension agreement. The manager thereupon brought a declaratory judgment action to determine the validity of the two agreements. The court of appeals held that the extension agreement was not enforceable, reasoning that the provision for the purchase of the home was ". . . too indefinite for enforcement, and that the contract never became effective because the purchase of the house by the plaintiff was a requirement precedent to the agreement becoming effective as a binding contract, *no other* consideration therefor appearing."[5]

There is no disagreement with the court's conclusion that the provision for the purchase of the home was too indefinite and that the agreement was, therefore, unenforceable. It has long been a principle of contract law that the essential terms of an agreement must be reasonably certain. However, why the court said there was no other consideration (and even italicized the "no other") is not clear. It would seem only natural to infer when parties agree "to continue this agreement," that they intend that which constituted the consideration in the original agreement to be adopted and continued in the extension agreement. Further, the court did not comment upon the fact that the boxer was under guardianship at the time of the extension agreement. Therefore, one can only speculate as to whether the extension contract also might have been unenforceable because of the boxer's lack of capacity.

Third Party Beneficiary Contracts

Visintine & Company v. New York, Chicago & St. Louis Railroad Company[6] is the latest case in a long line of Ohio cases to recognize the right of recovery by a creditor-beneficiary in a third party beneficiary contract. The case is believed to be of interest not so much for this point, however, as for the fact that the court stated

1. 158 N.E.2d 541 (Ohio Ct. App. 1957).
2. The trial court found that the boxer was born November 15, 1933.
3. Trammell v. Morgan, 158 N.E.2d 541 (Ohio Ct. App. 1957).
4. *Ibid.*
5. *Id.* at 542.
6. 169 Ohio St. 505, 160 N.E.2d 311 (1959).

that it is generally held that either a *donee* or a creditor-beneficiary may recover. While the statement is admittedly dictum, the status of third party donee-beneficiary contracts in Ohio has been so uncertain, outside of the more or less sui generis area of life insurance contracts, that any pronouncement seems significant.

Real Estate Broker's Commission

Creta v. Ridgeway[7] was an action for the recovery of a realty commission. Ridgeway, the owner of the realty, signed an exclusive listing contract to sell the property for $10,000 cash. The owner's wife also signed the listing agreement with the plaintiff-broker. The property was never sold for cash. However, the broker brought an offer to purchase the property for $10,000, with a specified down payment and the remainder payable in monthly installments; this offer contained the following condition: "This contract subject to Seller getting a $4500 loan on said property." The owner signed the above offer. The broker found a building and loan association willing to make the loan to the owner, provided the owner's wife would sign the mortgage and note to be given by the owner to the association. This the wife refused to do. Consequently, the owner could not get the loan, the sale was not consummated, and the owner refused to pay the broker his commission. In holding that the broker could not recover, the court of appeals stated: ". . . [T]he conditions precedent to a binding contract . . ." of sale between seller and buyers "were not fulfilled. . . . That being the case, Ridgeway [the owner] was not liable for a commission."[8]

Where a real estate broker contracts with the owner of property to find a purchaser for a commission for his services; produces a buyer; *and the owner enters into a written contract of sale with the buyer,* the real estate broker, in the absence of fraud, is entitled to his commission, and ". . . is not required to prove that the buyer was ready, willing and able to consummate the transaction, nor is it a defense that the transaction was never consummated."[9] This was the holding in *Retterer v. Bender.*[10]

Funeral Expenses of Parent; Child Not Liable in Quasi Contract

In *Miles v. Wolfe*[11] it was held that in the absence of a true contract, *i.e.,* an express contract or one implied in fact, an adult child is under no legal duty to pay a funeral director for funeral services rendered to the child's deceased parent.

7. 161 N.E.2d 511 (Ohio Ct. App. 1958).
8. *Id.* at 512.
9. Retterer v. Bender, 106 Ohio App. 369, 374, 154 N.E.2d 827, 831 (1958).
10. *Id.* at 369, 154 N.E.2d at 827.
11. 155 N.E.2d 287 (Ohio Munic. Ct. 1956).