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WORKMEN'S COMPENSATION — OCCUPATIONAL DISEASE — TUBERCULOSIS — *Paider v. Park East Movers*, 25 App. Div. 2d 62 (N.Y. 1966). — Claimant contracted tuberculosis from a fellow truck driver when he was confined with him in the same cab for some time. Alleging that the cab of the truck was the instrumentality of transmission, the claimant stressed that this was an occupational disease. The court, however, said that it was the co-employee and not the occupation which caused the disease. Thus, there being no distinctive mechanism of transmission inherent in the job, this was not an occupational disease. Further, the hazard of contracting tuberculosis is not necessarily occupational since it could be transmitted in any type of employment.

FEDERAL CIVIL PROCEDURE — PROCESS — DEFECTS AND OBJECTIONS — QUASHING OR VACATION — ON MOTION — *Keckler v. Brookwood Country Club*, 248 F. Supp. 645 (N.D. Ill. 1965). — Where an Indiana manufacturer of golf carts with no contacts with the forum was named as a defendant in a suit to recover damages for personal injuries when a golf cart tipped over on the plaintiff and sought to quash service of process made upon him pursuant to the Illinois "long-arm" statute the court held, first, that although the action was brought upon the theory of strict tort or breach of implied warranty of merchantability the injury was still a tortious act, and, therefore, was within the provisions of the statute, reasoning that though a warranty action was neither tort nor contract, it was closer to the concept of tort, and that there was no good reason for not permitting such claims to come within that statute. However, in quashing the service of process, the court held that insufficient facts were presented in the complaint to show adequate grounds for the service to be within the limits of due process. The court determined that once a defendant acts to take advantage of state law he will conclusively be presumed to have received a benefit therefrom, and where one has received a benefit from the laws of a forum he has such contacts with the forum as would justify service of process under a long arm statute and within the limits of due process. The court then reasoned that the voluntary placing of goods in the Illinois market, and the reasonable anticipation that an action could result from the contract would be sufficient to indicate defendant's benefit from state law. The court stated that since the distribution pattern of the goods created the jurisdictional act, the complaint must show such a pattern within the forum with some particularity; otherwise, the limits of due process would be exceeded.

INCOME TAX — RIGHT TO COUNSEL — *Kohatsu v. United States*, 351 F.2d 898 (9th Cir. 1965). — In a suit for income tax evasion the defendant appealed on the ground that he was denied due process in that the agents of the Internal Revenue Service did not warn him of his constitutional rights and because he did not have benefit of counsel. The information that the agents obtained was through defendant's voluntary action, and without stealth, trickery, or misrepresentation in the course of investigation of the defendant's return. The investigation of the 1958 return started in 1960 and the defendant was not informed of his constitutional rights until late 1961 after another investigatory team was assigned to work on the case. When this other team was assigned defendant contends that the proceedings moved from investigatory to accusatory and that he then should have been informed of his rights. The court ruled against the defendant and affirmed the lower court.

HABEAS CORPUS — RETROACTIVITY — RIGHT TO COUNSEL — *United States v. Pate*, 350 F.2d 240 (7th Cir. 1965). — The accused was arrested and questioned by the police for two days without the assistance of counsel which he had requested. He was not informed of his rights to counsel or to remain silent. His conviction became final prior to the decision in Escobedo v. Illinois, 378 U.S. 478 (1964). The court held that it would not permit collateral attack by habeas corpus on a conviction which became final prior to the announcement of the right to counsel in custodial interrogations.

CONSTITUTIONAL LAW — INVOLUNTARY SERVITUDE OF MENTAL DEFECTIVES — OFFICIAL IMMUNITY — *Jobson v. Henne*, 335 F.2d 129 (2d Cir. 1966). — Plaintiff inmate's suit against officials of a mental institution, alleging involuntary servitude in a therapeutic work program, was dismissed by the district court for failing to state a cause of action. In reversing, the Second Circuit Court of Appeals held that certain mandatory work programs, while therapeutic in nature, may be so ruthless in the amount of work imposed as to amount to involuntary servitude, and plaintiff was entitled to prove such an allegation. The court-made rule of official immunity was held to be no bar to suits against public officials under the Civil Rights Act.

ADMIRALTY — STATUTES OF LIMITATIONS AS AFFECTING LACHES — *Giddens v. Isbrandtsen Co.*, 355 F.2d 125 (4th Cir. 1966). — Plaintiff longshoreman's suit at law against a shipowner for personal injury resulting from a maritime tort was dismissed by the district court as barred by laches. The Fourth Circuit, in reversing, held that the three-year statute of limitations of the Jones Act was a much more influential analogy to laches in an admiralty law action than the two year state statute against tort actions relied on by the lower court, particularly where the defendant was able to show no prejudice from the delay.

INTERNAL REVENUE — LIENS — LIQUOR PERMITS — SUBJECT TO CHATTEL MORTGAGE — WHAT LAW GOVERNS — *Paramount Finance Co. v. S & C Tavern, Inc.*, 245 F. Supp. 766 (N.D. Ohio 1965). — Plaintiff, a finance company, filed an action to foreclose its chattel mortgage on the assets of the S & C Tavern. The United States Government was made a party defendant since the Internal Revenue Service, pursuant to a tax lien on said tavern, claimed the net proceeds of the sale of the business. The determination of what party was entitled to the net proceeds of the foreclosure sale was dependent upon a determination of whether the sale price represented the value of the tangible property, or represented solely the value of the liquor permit. A finding in favor of the latter alternative would have required a ruling in favor of the Government, since the Government had a statutory lien on all property, both real and personal, of the deficient taxpayer. The court held that plaintiff was entitled to the net proceeds of the sale, since a liquor permit was not personal property, and had no monetary value. Thus, the court stated that the sale price represented the value of the business to which the plaintiff had a valid security interest.

CRIMINAL LAW — DEFENSE OF NOT GUILTY BY REASON OF INSANITY — BURDEN OF PROOF — DEGREE OF EVIDENCE — *State v. Colby*, 6 Ohio Misc. 19 (C.P. 1966). — Defendant was tried before a three judge panel for the crime of murder in the first-degree in connection with the slaying of a nine-year old youth. The pleas were not guilty and not guilty by reason of insanity. The court, applying Ohio's "right-wrong" test for determining criminal responsibility, found the defendant not guilty by reason of insanity. However, the court went further and severely criticized the "right-wrong" test, used in the instant case. The court declared the test to be based upon an entirely obsolete and misleading conception of the nature of insanity. It was strongly urged that Ohio adopt the test set forth in section 4.01 of the Model Penal Code, which provides as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."

MONOPOLIES — MERGERS — CLAYTON ACT — *National Tea Co.*, 3 TRADE REG. REP. (1966 Trade Cas.) ¶ 17463. — In a four-to-one decision the Federal Trade Commission issued a cease and desist order against the National Tea Company to restrain it from making acquisitions for the next ten years without prior Commission approval. The order came after a finding that National Tea's acquisitions tended to lessen competition in the market areas affected. No specific concentrations in market areas were proven; however, it was held that the tendency to lessen competition itself was a violation of section 7 of the Clayton Act. Both the majority and concurring opinion cited *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963), as authority for the position

that section 7 is concerned with competition in the future as well as present concentrations. A divestiture order was not rendered because the Commission thought that the dynamics of the industry, particularly the ease of entry into it, would dissipate the restraints on competition effected by the acquisitions.

LIMITED PARTNERSHIP — ACTION BETWEEN PARTNERS — ACCOUNTING — *Millard v. Newmark & Co.*, 24 App. Div. 2d 333 (N.Y. 1966). — Plaintiffs are 32 limited partners of Terrace Associates who sued their general partners both in their individual capacity and derivatively. The complaint charged the general partners with fraud, misrepresentation, and misconduct. The plaintiffs seek restitution of assets to Terrace as well as damages for wrongs done to Terrace and to themselves as investors. The court held that even though a limited partnership may be regarded in some instances as a distinct entity for the purpose of pleading, a limited partner has no right to sue in a derivative capacity on behalf of the partnership. If there was wrong done, each partner suffered a separate injury and has his own cause of action.

TORTS — INJURIES TO PERSON — INTERFERENCE WITH EMPLOYMENT OR OCCUPATION — TELECOMMUNICATIONS — CIVIL RIGHTS AND LIABILITIES — *Morrison v. National Broadcasting Co.*, 226 N.Y.S.2d 406 (App. Div. 1965). — Plaintiff, a young university student, alleged that defendants, television producers and executives, falsely induced him to take part in a well-known television quiz show, "Twenty-one," which was in fact rigged and dishonest. Plaintiff alleged that is a result of his innocent participation and the scandal about the show, his general reputation was harmed and he was deprived of two scholastic opportunities. To defendants' assertion that the plaintiff failed to state a cause of action, the Appellate Division, reversing the lower court, held that the case "explores the common law reach in providing a remedy for foreseeable harms resulting from intentional conduct." The intentional use of wrongful means and the deliberate exposure of the plaintiff to an unreasonable risk provides a basis for remedy, even though defendants' conduct could not be neatly categorized as deceit, negligence, defamation, or prima facie tort.

ARMED SERVICES — VALIDITY OF STATUTES — *United States v. Smith*, 249 F. Supp. 515 (S.D. Iowa 1965). — Defendant publicly burned his selective service registration certificate to express his opposition to the war in Viet Nam and the selective service in general; he was charged with violating a statute which made it a criminal offense for one to either willfully and knowingly mutilate his selective service registration certificate, or to fail to have such certificate in his possession at all times. The court held that the statute did not deprive defendant of his constitutional right to assemble peaceably; moreover, while the statute admittedly resulted in a partial abridgment of defendant's right to freedom of speech, such result is justified because it promotes the operation of the selective service system.

CRIMINAL LAW — DISCHARGE FOR FAILURE TO PROSECUTE — DOUBLE JEOPARDY — *City of Columbus v. Nappi*, 5 Ohio St. 2d 99, 214 N.E.2d 83 (1966). — Defendant was charged with violation of a section of the Ohio Revised Code and a city ordinance. The charge was dismissed because of the prosecution's delay in proceeding after the affidavits charging defendant were filed. Upon the subsequent charge of the same alleged crime, defendant pleaded double jeopardy and lack of a speedy trial. The court allowed the second prosecution holding that the discharge was purely procedural and pertained only to a release from custody not from the specified offense. In the absence of express statutory language barring a subsequent prosecution, the import of the Ohio Revised Code is not to dismiss defendant from the charge which can then be brought at a later date. The right to a speedy trial applies only to an existing charge; successive prosecutions as such do not violate this right.

CONSTITUTIONAL LAW — CRUEL AND UNUSUAL PUNISHMENT — IMPRISONMENT OF SEXUAL PSYCHOPATHS — *People v. Schaletzke*, 49 Cal. Rptr. 275 (D. Ct. App. 1966). — Defendant pleaded guilty to performing lewd and lascivious acts on the body of a fourteen year old child. The superintendent of a state hospital to which defendant

had been committed reported that defendant was a "mentally disordered sex offender, but he is not amenable to treatment in a hospital setting." The defendant was sentenced to a state prison. The appellate court rejected defendant's claim that this was cruel and unusual punishment on the ground that the primary purpose of the act was to protect the public, and rehabilitation of the psychopath was only a secondary purpose.

CONSTITUTIONAL LAW — UNLAWFUL ASSEMBLY — PUNISHMENT OF SIT-INS DOES NOT VIOLATE THE FIRST AMENDMENT — *In re Bacon*, 49 Cal. Rep. 322 (D. Ct. App. 1966. — The accused was a part of a protest demonstration at a college administration building. Upon the closing of the building, the accused refused to leave and was arrested. The court rejected defendant's claim that the California statutes requiring one to leave a public building after closing and prohibiting unlawful assembly were unconstitutional. In upholding the statutes, the court found that the interest of a democratic society in ordered liberty outweighed the right of free speech and free assembly.