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Judicial Highlights: Maryland

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TORTS—False Arrest

In *Kimbrough v. Giant Food Inc.*, 339 A.2d 688 (1975), a supermarket night watchman brought action against the supermarket and two store detectives for false arrest. The Circuit Court directed a verdict for the defendants. The Court of Special Appeals of Maryland, Davidson, J., held that where the store detectives saw the night watchman leave the supermarket after work carrying two bags of groceries which had been left at the store the previous evening by a customer, and that the night watchman had not paid for same and could offer no credible explanation, the store detectives had probable cause to arrest the watchman for shoptlifting and to institute criminal proceedings against him. The defendants were thereby exempt from civil liability for false arrest and imprisonment and for malicious prosecution.

TORTS—Agency

In *Rusnack v. Giant Food, Inc.*, 337 A.2d 445 (1975), a tort action was filed against Giant Food, Inc. alleging that one of its employees assaulted the plaintiff while in its store. The Circuit Court directed a verdict for the defendant, and the Court of Special Appeals of Maryland, Orth, C. J., affirmed, holding the doctrine of respondeat superior not to apply so as to make employer liable for damages suffered by the customer. This was so held because the other defendant who assaulted the customer, while an employee of the corporation, was not on duty at the time of the assault nor was he an employee of that particular store where the assault occurred and was only present because he was shopping for his own personal use.

TORTS—Deceit

Donald E. Schwartzbeck brought action against an automobile dealer for common-law deceit. He had bought an automobile as a "demonstrator" and later learned that the car had in fact been previously sold and owned by a private individual. Judgement was rendered for the defendant-dealer and the Court of Special Appeals of Maryland, Powers, J., affirmed, holding that the plaintiff was not entitled to recover in absence of proof of compensatory damages, and that punitive damages were not allowable in absence of such proof. *Schwartzbeck v. Loving Chevrolet, Inc.*, 339 A.2d 700 (1975).

TORTS—Liability for Executing a Warrant

Plaintiff-Ballew sued the federal government under the Federal Tort Claims Act after having been shot while federal agents and local police were attempting to conduct a search of his apartment pursuant to a warrant. The United States District Court for the District of Maryland, Alexander Harvey, II, J., rendered judgement for the government, holding that the federal agents acted reasonably and in exercise of due care in procuring the warrant. Also, the federal agent in shooting at the plaintiff inside his apartment was acting reasonably under emergency conditions then existing in order to avoid injury to himself in that the plaintiff was pointing a revolver at the agent. Further, the plaintiff knew the officers were at his door, and rather than admitting them and submitting to a search, he attempted to barricade the door and prevent entry. The plaintiff was thus contributorily negligent. *Ballew v. United States*, 389 F. Supp. 47 (1975).

TORTS—Emotional Disturbance (CONTRACTS)

Action was brought by parents against a nursing home, in which their son was being cared for at the time of his death, for damages because of mental stress based on both tort and contract claims. In this case of *White v. Diamond*, 390 F. Supp. 867 (1975), the United States District Court for the District of Maryland, Frank A. Kaufman, J., granted defendant's motion for summary judgement holding, inter alia, that under the applicable Maryland law the parents were not entitled to recover damages for emotional disturbance because of defendant's alleged negligence. Nor could the parents recover, the Court held, for breach of contract in which the parents claimed to be third-party beneficiaries.

CONTRACTS—Covenants Not To Compete

In *Hebb v. Stump, Harvey and Cook, Inc.*, 334 A.2d 563 (1975), the Court of Special Appeals of Maryland noted that for alleged violations of covenants not to compete in employment contracts, the types of restrictions which typically have been held to be seperable, fall into the following categories (citing Williston and the Restatement): (1) restrictions which cover an excessive area, (2) restrictions which cover an excessive time, (3) restrictions which are too broad in the nature of the business included, and (4) restrictions which are too broad in the class of persons with whom the promisor engages not to compete. [In the present case, the covenant was held enforceable].

CRIMINAL LAW

In *Sutton v. State*, 334 A.2d 126 (1975), the Court of Special Appeals, Gilbert, J., held, inter alia, that there was reversible error in using against defendant his in-custody silence, following the invocation of his Miranda rights, in order to impeach defendant with respect to his trial testimony that a third person had committed the crime with which he was charged.

The Court of Special Appeals of Maryland, Lowe, J., in *Perkins v. State*, 339 A.2d 360 (1975), inter alia, rejected defendant's defense of entrapment. It was

held that the defendant, convicted of unlawful distribution of marijuana, conspiracy to violate the controlled dangerous substance laws, and maintenance of a common nuisance, was not the victim of entrapment just because police officers simulated smoking marijuana in his presence, lulling defendant into believing that the officer, like himself, acquired the smoking habit in Viet Nam. The Court stated that the defendant failed to show the requisite repeated and persistent solicitation of a previously law-abiding citizen in order to overcome his reluctance to commit a crime, and, as there was no inducement, there was no entrapment.

In *Redman v. State,* 337 A.2d 441 (1975), two defendants' convictions of grand larceny and possession of controlled paraphernalia were reversed and remanded by the Court os Special Appeals of Maryland, Moylan, J. The defendants were absent from a portion of a pretrial hearing on a motion to suppress physical evidence and to suppress an in-court identification. This was held to be reversible error in that a suppression hearing is a stage of the "trial," and thus, the defendants had a right to be present.

In *Johnson v. State,* 336 A.2d 113 (1975), after the defendant was convicted of burglary and sentenced to twelve years by the trial court, the Court of Special Appeals of Maryland, Digges, J., vacated the sentence because of statements of the trial judge at the time of allocution. It was apparent to the Court of Special Appeals that the trial judge, at least in some degree, punished the defendant more severely because he failed to plead guilty and instead stood trial. It was held improper to conclude the defendant's constitutionally-protected decision to plead not guilty, requiring the State to prove the defendant's guilt beyond a reasonable doubt, be a factor which influences the judge to the defendant's detriment. The Court noted that this view is in accord with nearly all of the U.S. courts, both federal and state, that have considered the question.

COMMERCE—Federal v. State Regulatory Powers

In *Becker v. Crown Central Petroleum Corp.,* 340 A.2d 324 (1975), the Court of Special Appeals, Orth, C. J., reviewed whether or not federal regulations of a field of commerce should be preemptive of state regulatory powers. The Court, citing *Pennsylvania v. Nelson,* 350 U.S. 497, stated "that three of the most widely accepted tests for supercession were (1) the scheme of federal regulation was so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it; (2) the federal statutes touch a field in which federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; (3) enforcement of state legislation presents a serious danger of conflict with the administration of the federal program." Applying these tests to the present case, the federal act in question (the Lanham Act) was held not preemptive of Maryland's power to regulate marketing agreements between distributors and dealers of gasoline products.

POLICE DEPARTMENT HAIR REGULATION

A former county policeman brought action seeking damages and an injunction arising out of his discharge for failure to conform to a county police department hair regulation. The United States District Court for the District of Maryland granted defendant's motion for summary judgement. In *Schott v. Fornoff,* 515 F.2d 344 (1975), the Court of Appeals for the Fourth Circuit reversed, holding the police department's hair regulation to be arbitrary and capricious. It was reasoned that a one-quarter inch clearance between hair on side of head and the ear did not bear a reasonable relationship to the constitutionally-permissible objective or efficient police enforcement. [Widener, Circuit Judge, filed opinion dissenting from denial of rehearing in which Field, Circuit Judge, joined].

CHIROPRACTIC PHYSICIANS

An action was brought for a declaratory judgement and injunction against chiropractors' use of the term "physician" by itself or in a combination with other words. The Circuit Court of Baltimore City, James W. Murphy, J., entered the injunction. In *Beverungem v. Briele,* 333 A.2d 664 (1975), the Court of Special Appeals of Maryland, Orth, J., affirmed, holding that use of the phrase "chiropractic physician" by a chiropractor who is not licensed to practice medicine is prohibited. It was reasoned that the use of "physician" in connection with the name of a person implies that he is engaged in the practice of medicine so that if a person so using the word is not, in fact, licensed to practice, by the mere use of the word he is unlawfully engaged in the practice of medicine.

NOTES ON PRISONERS' RIGHTS

On July 24, 1975, Attorney General Francis B. Burch and Assistant Attorney General John P. Stafford Jr. responded to Donald C. Barnes' request as to whether Frederick County Jail inmates may be denied the right to receive newspapers when they have access to radio, television, magazines, and books. The reasons for wanting to deny the privilege of receiving newspapers are that, in the past, newspapers have been used to clog toilets, to start fires, to cause inmates to request a change of venue because of undue publicity, and to cause inmates to become distraught or unnerved.

The Opinion by the Attorney General for the State of Maryland was that these reasons are insufficient to override either the pretrial inmates', or the convicted prisoners', First Amendment right to receive newspapers. It was noted that limitations as to time and place may eliminate some of the problems.

It was stated that "[i]nmates do not lose all their constitutional rights because of their incarceration. *Washington v. Lee,* 263 F. Supp. 327 (M.D. Ala. 1966), aff'd, 390 U.S. 333 (1968). The right to receive newspapers is part of the First Amendment rights." [citations omitted].

Further, *Seale v. Manson,* 326 F. Supp. 1375 (D. Conn. 1971) observed that "the difficulties in the administration of a prison community and the need for restrictive regulations are recognized, but also, the personal and civil rights of the prisoner must be respected."