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an individual's objectives for the financial stability of his family are carried out after his death.

- <sup>1</sup> Reg 20-2042-2 (c) (1)  
<sup>2</sup> IRC Sec 2056 (c) (1) (A)  
<sup>3</sup> IRC Sec 2056 (a)  
<sup>4</sup> IRC Sec 2056 (d) (7)  
<sup>5</sup> Treas. Reg Sec 20.2056 (b)6(a)  
<sup>6</sup> IRC Sec 101 (d)  
<sup>7</sup> 89 CJS 741  
<sup>8</sup> Rev. Rul. 710497  
<sup>9</sup> IRC Sec. 2041  
<sup>10</sup> IRC Sec 2503 (b)  
<sup>11</sup> *Crummy v. Commissioner*, 397 F.2d82  
<sup>12</sup> TAM 7946007, PLR 7947066

## Sex & Law in Recent Decisions

By: Harold D. Norton & Linda Lee Panlilio

A brief review of some selected 1980 decisions from the Courts of Appeal of Maryland and the Regional United States District Courts and Courts of Appeal gives an indication of the current trend in issues concerning sex and the law.

### TITLE VII<sup>1</sup>

Sexual harassment is now generally recognized as actionable under federal law.<sup>2</sup>

The United States District Court for the District of Columbia in *Williams v. Civiletti*,<sup>3</sup> added to "the foundation of a growing body of law providing remedies for . . . sexual harassment"<sup>4</sup> by holding that a woman's dismissal from employment for rejecting her supervisor's sexual advances violated Title VII.<sup>5</sup>

In *Mazus v. Department of Transportation*,<sup>6</sup> the plaintiff failed to convince the United States District for the Middle District of Pennsylvania that the state's patronage system constituted a discriminatory practice prescribed by Title VII or that it violated her freedom of political association. The plaintiff claimed that the goal of the patronage system was to hire a work force composed of males.

In *Rogers v. McCall*,<sup>7</sup> where a male plaintiff attempted to establish a *prima facie* case using comparative evidence, the D.C. court noted that promotion of a female parole officer instead of her male counterpart "in no way diminished or increased (his) eligibility for promotion,"<sup>8</sup> and was therefore nondiscriminatory.

Other noteworthy decisions resolved procedural issues, holding, for example, that the three year District of Columbia statute of limitations applies to back pay recoverable under Title VII.<sup>9</sup>

Construing the "relation back" provision of Federal Rule 15, in *Kuhn v. Philadelphia Elec. Co.*,<sup>10</sup> the District Court for Pennsylvania determined that an individual class member's Title VII action commenced on the date of her "consent to become party plaintiff,"<sup>11</sup> rather than the date the original class action was filed. This issue was considered by the court to be a case of federal first impression.

Separate but interrelated corporations were treated as a single entity for the jurisdictional requirements of Title VII and the Equal Pay Act<sup>12</sup> by the Pennsylvania Eastern District,<sup>13</sup> in *Ratcliffe v. Ins. Co. of North America*.

The same court spelled out federal pleading requirements for claims brought pursuant to Title VII<sup>14</sup> (failure to allege sex based discrimination constituted failure to allege jurisdiction); the Equal Pay Act<sup>15</sup> (claim must, at least indirectly, allege disparity in wages); the Fourteenth Amendment to the United States Constitution<sup>16</sup> (claim must allege inadequacy of statutory remedies); and Civil Rights Act provisions other than Title VII<sup>17</sup> (claim must plead that the defendant acted under color of state law in section 1983 action).

Proof requirements under Title VII<sup>18</sup> were the subject of many recent federal decisions. In a case where "business necessity" was claimed as a justification for unequal treatment, the female plaintiff was able to refute the defense by establishing that she and other women employees were able to perform all tasks included in the job analysis.<sup>19</sup> In another case, a woman who worked as a foreign language broadcaster for Voice of America, through purchase order contracts rather than employment contracts, was held not to be an "employee within the meaning of Title VII."<sup>20</sup>

In *Kunda v. Muhlenberg College*<sup>21</sup> the United States Court of Appeals found employment discrimination based on sex for failure to promote or grant tenure to a female college professor. The District Court based its decision on evidence that the complainant met all promotion and tenure requirements set forth in the Muhlenberg College Faculty Handbook, and that she "was regarded by her colleagues as an excellent teacher. . ." The Court of Appeals simply noted that the finding was not clearly erroneous under Federal Rule 52(a).<sup>22</sup>

Finally, in *Clark v. Alexander*,<sup>23</sup> where Title VII provided the basis for a cause of action regarding discrimination in the military, Judge Robinson commented: "The evidence establishes beyond doubt that pervasive systematic defects existed and continue to exist in the (Department of Army) Career Program,"<sup>24</sup> leading "inexorably to the inference of discriminatory intent."<sup>25</sup>

### THE EQUAL RIGHTS AMENDMENT

“This enlightenment found expression in our own sovereignty on November 7, 1972, with the ratification of Article 46 of the Maryland Declaration of Rights: ‘Equality of rights under the law shall not be abridged or denied because of sex.’”<sup>26</sup> See Note, *The Maryland Equal Rights Amendment: Eight Years of Application*,<sup>27</sup> where this topic is thoroughly covered.

In this eighth year of ERA in Maryland, the Court of Appeals, in *Kline v. Ansell*,<sup>28</sup> held that the common law cause of action known as criminal conversation violates the ERA and can no longer be maintained in Maryland.

### ABORTION

The United States Supreme Court held in *Harris v. McRae*<sup>29</sup> that the Hyde Amendment<sup>30</sup> violates neither the Fifth Amendment to the United States Constitution nor its Establishment Clause, and that Title XIX<sup>31</sup> does not require states to fund the abortions that the Amendment seeks to reimburse. And in *Williams v. Zbarraz*,<sup>32</sup> a state statute limiting state funds for abortion did not deny Fourteenth Amendment equal protection. See also: *The “Right” To Abortion*, this issue.

### MARITAL PROPERTY

From what gloss has been placed on the “new” Marital Property Act<sup>33</sup> we know that it does not violate procedural due process by failing to require a showing of existing grounds for divorce prior to an award *pendente lite*, that it does not allow an uncompensated taking under the state and federal constitutions,<sup>34</sup> that the Court of Appeals will look to the preamble,<sup>35</sup> that the statute has announced legislative policy “to give careful consideration to both monetary and nonmonetary contributions by the spouses to the marriage,”<sup>36</sup> and that mental retardation can establish a child’s minority status under the statute regardless of his chronological age.<sup>37</sup>

### WORKMAN COMPENSATION

In denying a shipowners 12(b)(6) motion against claims for consortium tacked onto a longshoreman’s personal injury claim, Judge Kaufman, held in *Kozoldek v. Gearbulk*<sup>38</sup> that consortium is a cognizable interest under general maritime law.

<sup>1</sup> Popularly known as the Civil Rights Act of 1964, §701 *et. seg.*, as amended  
<sup>2</sup> 42 USC §2000e (1976) *et. seg.*  
<sup>3</sup> 487 F. Supp. 1387 (D.D.C. 1980)  
<sup>4</sup> *Id.* at 1388, citing *Miller v. Bank of America*, 600 F.2d 211, 213 (9th Cir. 1979); *Barnes v. Costle*, 561 F.2d 983, 990-95 (D.C. Cir. 1979); *Tomkins v. Public Service Electric and Gas Co.*, 568 F.2d 1044, 1048 (3d Cir. 1799); *Garber v. Saxton Business Products*, 552 F.2d 1032, 1032 (4th Cir. 1977) (Per Curiam); *Heelan v. John*

*Mansville Corp.*, 451 F. Supp. 1382, 1388-91 (D. Colo. 1978); *Munford v. James T. Barnes & Co.*, 441 F. Supp. 459, 465-67 (E.D. Mich. 1977)  
<sup>5</sup> Specifically 42 U.S.C. §200e-16(a) (1976)  
<sup>6</sup> 489 F. Supp. 376 (M.D. Pa. 1980)  
<sup>7</sup> 488 F. Supp. 689 (D.D.C. 1980)  
<sup>8</sup> *Id.* at 696. *cf. Sanford v. O’Neill*, 616 F.2d 92 (3d Cir. 1980) (material issue of fact existed concerning alleged discriminatory administration of department firearms qualifications test and weight standards; district court order granting summary judgment vacated.)  
<sup>9</sup> *Laffey v. Northwest Airlines, Inc.*, 481 F. Supp. 199 (D.D.C. 1979)  
<sup>10</sup> 487 F. Supp. 974 (E.D. Pa. 1980)  
<sup>11</sup> 29 U.S.C. §256 (1976)  
<sup>12</sup> The Equal Pay Act of 1963, enacted as section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)  
<sup>13</sup> 482 F. Supp. 759 764-65 (E.D. Pa. 1980)  
<sup>14</sup> *LaGare v. U. of Penn. Medical School*, 488 F. Supp. 1250, 1254 (E.D. Pa. 1980)  
<sup>15</sup> *Id.* at 1255  
<sup>16</sup> *Id.*  
<sup>17</sup> *Id.* at 1255  
<sup>18</sup> As set forth in the cases of *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) and *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577-8 (1978)  
<sup>19</sup> *Helbing v. Unclaimed Salvage and Freight Co.*, 489 F. Supp. 956, 962 (E.D. Pa. 1980)  
<sup>20</sup> *Spiridesu Reinhardt*, 486 F. Supp. 685 (D.D.C. 1980)  
<sup>21</sup> 621 F.2d 532 (3d Cir. 1980)  
<sup>22</sup> *Id.* at 544  
<sup>23</sup> 489 F. Supp. 1236 (D.D.C. 1980)  
<sup>24</sup> *Id.* at 1246  
<sup>25</sup> *Id.* at 1247  
<sup>26</sup> *Coleman v. State*, 37 Md. App. 322, 323, 377 A2d 553, 554 (1977)  
<sup>27</sup> 9 U. BALT. L. REV. 342 (1980)  
<sup>28</sup> 287 Md. 575, 414 A 2d 929 (1980)  
<sup>29</sup> -----US-----, 100 S. Ct. 2671 (1980)  
<sup>30</sup> Pub. L. No. 96-123, 93 Stat. 926 (1979); see also Pub. L. No. 96-86 §118, 93 Stat. 662 (1979)  
<sup>31</sup> 42 U.S.C. §1396 *et. seg.* (1976 & 1980 Supp.)  
<sup>32</sup> -----US-----, 100 S. Ct. 2694 (1980)  
<sup>33</sup> See. MD. CTS. & JUD. PROC. CODE ANN. §§3-6A-01 to 3-6A-07 (1980 Repl. Vol.), Note, *Property Disposition Upon Divorce in Maryland: An Analysis of the New Statute*, 8 U. BALT. L. REV. 377 (1979); Levi, *The Tax Consequences of the Maryland Marital Property Act*, 9 U. BALT. L. REV. 12 (1979)  
<sup>34</sup> *Pitsenberger v. Pitsenberger*, 287 Md. 20, 410 A2d 1052 (1980)  
<sup>35</sup> *Kemp v. Kemp* 287 Md. 165, 173 N.5, 411 A2d 1028, 1033n.5 (1980) (Dictum)  
<sup>36</sup> *Wimmer v. Wimmer*, 287 Md. 663, 414 A2d 1254, 1257n.2 (1980) (Dictum)  
<sup>37</sup> *Colburn v. Colburn*, 45 Md. App. 313, 412 A2d 1309 (1980)  
<sup>38</sup> 481 F. Supp. 513 (D.C. Md. 1979)

Solution to Word Puzzle

Y	W	L	D	E	M	U	R	R	E	R	I	C
T	A	N	E	G	L	I	G	E	N	T	N	A
N	F	E	E	I	T	A	C	M	R	N	D	E
E	I	G	D	Q	I	H	T	A	O	W	I	L
M	L	L	O	P	U	V	W	I	L	L	C	P
G	E	T	A	T	S	E	T	D	L	O	T	G
D	N	W	A	R	R	A	Y	A	L	A	M	N
U	I	G	R	H	C	A	P	I	A	S	E	I
J	U	R	Y	I	D	B	S	E	E	F	N	D
N	E	I	L	K	T	S	U	N	I	O	T	A
L	O	P	A	M	U	N	J	R	O	S	H	E
C	E	B	W	E	M	A	F	E	D	T	T	L
R	I	E	H	T	N	E	M	E	S	A	E	P