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Case Digest

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CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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I. ADMIRALTY

ADMIRALTY JURISDICTION EXISTS IN PRODUCTS LIABILITY ACTION ALTHOUGH PRODUCT IS NOT UNIQUE TO MARITIME USE

Plaintiff, a shipyard worker who was exposed to asbestos dust and fiber while installing asbestos insulation, contracted asbestosis, an incurable lung disorder, and sued the manufacturer of the asbestos product, Johns-Manville Corporation, alleging negligent failure to warn and breach of warranty. The district court set aside a jury verdict awarding substantial damages and granted a judgment *n.o.v.* in favor of Johns-Manville. Since the alleged injury bore no relation to traditional maritime activity, the district court declined to assert admiralty jurisdiction. Pursuant to its diversity jurisdiction, the court applied the state statute of limitations which barred plaintiff's claim. The court of appeals vacated and remanded, holding that the district court should have exercised admiralty jurisdiction and applied federal law in adjudicating plaintiff's claim. To determine whether this tort action was "maritime" and thus within federal admiralty jurisdiction, the court applied the bipartite location/relationship test adopted by the Supreme Court in *Executive Jet Aviation, Inc. v. City of Cleveland,* 409 U.S. 249 (1972). The court held that since the insulation was marketed as a maritime asbestos product, it bore a "significant relationship to traditional maritime activity." *Significance*—The instant opinion is the first to hold expressly that admiralty jurisdiction can exist in tort cases when the allegedly haz-

ardous product is not unique to maritime use. *White v. Johns-Manville Corp.*, 662 F.2d 234 (4th Cir. 1981).

BRITISH COURTS HAVE JURISDICTION OVER BRITISH SUBJECTS COMMITTING OFFENSES ABOARD A FOREIGN SHIP ON THE HIGH SEAS

Three British subjects were charged in a British court with violating the Criminal Damage Act of 1971 by committing acts of vandalism on a Danish vessel in the North Sea. The defendants demurred to the indictment on the ground that no British court had jurisdiction to try them. The lower court found that the court had jurisdiction by virtue of s. 686 (1) of the Merchant Shipping Act of 1894 and subsequently convicted all three. The defendants appealed on the grounds that (1) the Criminal Damage Act of 1971 does not apply to offenses committed on foreign ships on the high seas, and alternatively (2) individuals who "belong to" a vessel are not subject to British jurisdiction under the Merchant Shipping Act of 1894. The Court of Appeals dismissed, holding that the term "offense" as used in both the Criminal Damage Act of 1971 and the Merchant Shipping Act of 1894, refers to any offense committed against British law and thus includes offenses encompassed by the Criminal Damage Act of 1971. The passengers were subject to British jurisdiction because they did not have a reasonably permanent attachment to the vessel and therefore did not "belong to" the vessel. *Significance*—This is the first decision to interpret the far-reaching jurisdiction granted British courts under the Merchant Shipping Act of 1894 to include those acts committed by British subjects on foreign ships on the high seas. *Reg v. Kelly*, [1980] 1 Lloyd's L.R. 313.

II. EUROPEAN COMMON MARKET

MEASURES WHICH INCREASE DOMESTIC PRODUCTION ARE NOT EQUIVALENT TO RESTRICTIONS ON IMPORTS

Extrude Hone Limited (EHL), a wholly-owned subsidiary of Extrude Hone Corp., a United States corporation, produces abrasive flow machinery (AFM) in Ireland and imports the machinery to the United Kingdom under patent. Heathway Machine Sales Ltd. sought a compulsory license to produce AFMs under EHL's patent in the United Kingdom and tendered proof that more extensive production of the invention could profitably occur in the United Kingdom; that the demand for the product is currently satisfied through importation; that the market for the product is

not being supplied because the patent proprietor has refused to grant a license on reasonable terms; and that the United Kingdom is prejudiced by the development of industrial activities. EHL objected that granting the license would violate the Treaty of Rome (Treaty) by restricting Irish imports to the United Kingdom. The High Court of Justice of England (Chancery Division—Patents Court) rejected EHL's contention. Although *Firma Joh. Eggers Sohn & Co. v. Freie Hansestadt Breman,* [1979] 1 Common Mkt. L.R. 562 had broadened the prohibition against measures having an effect equivalent to quantitative restrictions, the court emphasized that it is a gross misuse of language to argue that a measure which reduces imports necessarily restricts imports. Although the grant of the license may increase competition and thereby reduce EHL's imports of AFMs to the United Kingdom, measures calculated to encourage competition are in accord with the Treaty. Thus, the grant would not constitute an impermissible quantitative restriction on imports or have an equivalent effect. *Significance*—This case interprets literally the Treaty phrase "quantitative restrictions," and thus narrows the scope of the prohibition of measures having an equivalent effect. *Extrude Hone Corp. v. Heathway Machine Sales Ltd.,* [1981] 3 Common Mkt. L.R. 379.