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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 CASES STEMMING FROM BOAT COLLISIONS ON NAVIGABLE WATERS REGARDLESS OF THE COMMERCIAL OR NONCOMMERCIAL NATURE OF THE VESSELS INVOLVED—*Foremost Insurance Co. v. Richardson*, 102 S. Ct. 2654 (1982).

Plaintiffs, the survivors of a man killed when two pleasure boats collided on the navigable Amite River, brought a negligence claim in the United States District Court for the Middle District of Louisiana. Plaintiff asserted admiralty jurisdiction under 28 U.S.C. section 1333(1). The district court dismissed the case, holding that a collision between two noncommercial vessels did not satisfy the requirement of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), that an injury must bear a significant relationship to traditional maritime activity before admiralty jurisdiction vests. The Fifth Circuit Court of Appeals reversed. Although the court agreed that the injury must manifest a significant relationship to traditional maritime activity, defined as “primarily maritime commerce,” it disagreed that only commercial vessels could meet this test. The court held that when any boats collide on navigable waters they are engaged in traditional maritime activity and the federal courts can assert admiralty jurisdiction. The Supreme Court affirmed the court of appeals, not-

ing that before *Executive Jet*, admiralty jurisdiction was presumed in all cases resulting from boating mishaps on navigable waters. The court reasoned that the need for uniform rules governing navigation, the potential impact on commercial vessels when vessels collide, and the uncertainty which would result from admiralty jurisdiction being dependent upon the intended use of a given boat compelled the assertion of admiralty jurisdiction regardless of a boat's commercial or noncommercial nature. *Significance*—Broadly interpreting the significant relationship test, the Court mandates a more expansive admiralty jurisdiction, which is a departure from the more federalist stance of *Executive Jet*.

SHIPOWNER MAY ATTACH CHARACTER'S PROPERTY AS SECURITY FOR BREACH OF A CHARTER CONTAINING A FORUM SELECTION CLAUSE—*Polar Shipping, Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627 (9th Cir. 1982).

Plaintiff shipowner sued under 28 U.S.C. section 1333 for breach of charter when, upon the charter's expiration, charterer failed to return vessel. Pursuant to Supplemental Admiralty and Maritime Claims Rule B of the Federal Rules of Civil Procedure, the shipowner obtained a writ of foreign attachment and garnishment of freight charges held as security. The charterer contested the court's jurisdiction, which was based upon the forum selection clause in the charter, and argued in the alternative that his fifth amendment due process rights had been violated by this implementation of Supplemental Rule B. The district court upheld the charter's forum selection clause, dismissed the shipowner's breach of charter action for lack of jurisdiction, and vacated the writ of attachment. The district court failed to address the issue of the constitutionality of Supplemental Rule B. The court of appeals reversed and remanded, holding that in the presence of a forum selection clause, security by maritime attachment may be obtained by a shipowner and maintained at the discretion of the district court, but only to ensure an adequate remedy for the shipowner. If the shipowner would be prejudiced by the vacating of prejudgment security, the district court should either preserve the security by retaining jurisdiction, or condition its order on the charterer's provision of adequate security in the selected forum. In addition, the court of appeals upheld the constitutionality of Supplemental Rule B reasoning that: (1) due process did not require preattachment notice or the posting of a bond by the shipowner; (2) the uniqueness of admiralty proceedings did not re-

quire judicial participation in the issuance of the writ; (3) local rules supplemented the lack of an express provision for postattachment hearings; and (4) procedural safeguards for postattachment release of property are met by Supplemental Rule B, local rules, and proper notice. The dissenting judges disagreed with the majority regarding the constitutionality of Supplemental Rule B because in their opinion, the balancing of the parties' interests required by due process was not met. The dissent reasoned that attachment without notice was unconstitutional because it wrongfully deprived the charterer of the temporary use of his property and because prompt postattachment notice and hearings were not provided. *Significance*—The Ninth Circuit Court of Appeals holds for the first time that Supplemental Admiralty and Maritime Claims Rule B does not deny due process. For a detailed discussion of the constitutionality of Rule B see Note, *The Due Process Mandate and the Constitutionality of Admiralty Arrests and Attachments Pursuant to Supplemental Rules B and C*, 12 *Vanderbilt Journal of Transnational Law* 421 (Spring 1979).

WORKER EMPLOYED ABOARD AN OFFSHORE DRILLING PLATFORM MAY BRING A CLAIM UNDER MARITIME TORT LAW FOR WRONGFUL DISCHARGE—*Roberie v. Gulf Oil Corp.*, No. 820013 (W.D. La. Aug. 4, 1982)

Plaintiff brought suit against Gulf Oil Corporation after his employment as a deckhand on a fixed drilling platform was terminated. The plaintiff alleged that he was fired in retaliation for having previously brought suit against Gulf for injuries sustained in an accident in the course of his employment. Gulf moved for dismissal based upon lack of jurisdiction asserting that the Outer Continental Shelf Lands Act (OCSLA) mandated that all claims for compensation brought by workers on fixed platforms on the outer continental shelf are governed by the Longshoremen and Harbor Worker's Compensation Act (LSHWCA) and are within the exclusive purview of the United States Department of Labor. Although the district court acknowledged that OCSLA bars a worker who sustains injury on a platform beyond a marine league from shore from bringing a maritime claim, it denied the motion on the grounds that the situs of the instant wrongful termination could not be localized in the way that a physical injury might be to a position aboard the platform. The plaintiff therefore was not limited to a suit under LSHWCA, but could make a claim under general maritime tort law in federal court. *Significance*—An em-

ployee working on the outer continental shelf is not precluded from bringing a claim for wrongful discharge in federal district court under general maritime law despite the Outer Continental Shelf Lands Act's apparent limitation that such actions be brought exclusively under the Longshoremen and Harbor Worker's Compensation Act.

THE IMMIGRATION AND NATURALIZATION ACT DOES NOT APPLY TO THE NATIONALITY OF CREWS OF FOREIGN VESSELS OPERATING ON THE UNITED STATES CONTINENTAL SHELF—*Piledrivers' Local v. Smith*, 541 F. Supp. 460 (C.D. Cal. 1982)

A piledriver's union brought suit against federal officials to enforce the Immigration and Naturalization Act (INA) against Heerema Marine Contractors, S.A., who was using a foreign vessel crewed by seamen traveling under transit visas in the installation of a drilling and production platform on the outer continental shelf (OCS) of the United States. A legal opinion had been issued by the Department of Justice stating that the INA did not apply to the OCS; this position also was supported by the Immigration and Naturalization Service and the Department of State. The district court held that it did not have subject matter jurisdiction under the federal mandamus statute, 28 U.S.C. section 1361, to hear the case and that as a matter of law the Immigration and Naturalization Act did not apply to the OCS. Citing *Sheehan v. Army & Air Force Exchange Service*, 619 F.2d 1132 (5th Cir. 1980), the court noted that before jurisdiction under 28 U.S.C. section 1361 attaches, the plaintiff must have a clear right to the relief sought, the defendant must have a clear duty to act, and there must be no other adequate remedy available. Because of the Immigration and Justice Department positions concerning the applicability of the Immigration and Naturalization Act, the court found that basis for mandamus jurisdiction was lacking. The court further reasoned that the 1978 amendment to the Immigration and Naturalization Act, 43 U.S.C. section 1356 (a) (3), which sets out OCS manning requirements, preempted the Act, making it no longer applicable to the OCS. *Significance*—This is the first case to apply the 1978 amendment to the Immigration and Naturalization Act which renders the Act inapplicable to the outer continental shelf.

ADMIRALTY ACTION FOR NEGLIGENCE, TRESPASS, AND NUISANCE BETWEEN ADJACENT PROPERTY OWNERS IS GOVERNED BY FEDERAL

COMMON LAW RULES—*Nissan Motor Corp. in the United States v. Maryland Shipbuilding Drydock Co.*, 544 F. Supp. 1104 (D. Md. 1982)

An automobile importer brought an admiralty action for trespass on strict liability theory for damage to new cars caused by paint, soot, and other particles emanating from neighboring ship repair yard. The district court reasoned that because only Maryland and New York apply strict liability for trespass in admiralty, the federal interest in the free flow of maritime commerce would be promoted most effectively by application of a uniform federal common law. Rejection by the court of strict liability in admiralty was supported by federal case law and by distinguishing *Bell v. The Tug Shrike*, 332 F.2d 330, (4th Cir.), cert. denied, 379 U.S. 844 (1964), in which Virginia law was applied in the absence of applicable maritime or common law rules. The court held that a trespass in admiralty did not exist because the paint damage was caused by an unintentional nonnegligent entry and a theory of nuisance in admiralty did not apply since normal occupants of the heavy industrial area were not substantially annoyed or disturbed by the shipyard's activities. *Significance*—This decision promotes uniformity by applying a federal common law rule incorporating traditional trespass and nuisance doctrines to the rights and obligations of adjacent property owners in the absence of applicable maritime rules.

II. ALIENS

A STATE MAY NOT REFUSE A FREE PUBLIC EDUCATION TO CHILDREN NOT LEGALLY ADMITTED INTO THE UNITED STATES. *Plyler v. Doe*, 102 S. Ct. 2382 (1982)

Plaintiff, in a class-action lawsuit filed on behalf of undocumented school-age children of Mexican origin, challenged a Texas statute which withheld state funds for the education of children not legally admitted into the United States and which authorized local school districts to deny enrollment in their public schools to the plaintiffs. In a five to four decision, the Supreme Court affirmed the court of appeals' holding that the statute violated the equal protection clause of the fourteenth amendment.

The Court first found that illegal aliens physically present in the state are "persons within the jurisdiction of the state" and thus protected by the fourteenth amendment. The Court next considered the classification scheme. Recognizing that undocu-

mented aliens are not a "suspect class" and that education is not a "fundamental right," the Court nevertheless disregarded the rational basis test to measure the constitutionality of the statute. Further finding that education plays the "pivotal role of . . . sustaining our political and cultural heritage, and that the denial of education results in an "inestimable toll . . . on the social, economic, intellectual, and psychological well being of the individual . . .," the Court held the statute would be unconstitutional unless it "furthers some substantial goal of the State." According to the Court, the children's undocumented status alone was an insufficient reason for refusing them an education because that classification neither reflected nor corresponded to any congressional immigration policy. The Court also found that neither the state's interest in preserving its limited resources, its need for protection from an influx of illegal immigrants, nor its claim that the children, once educated, were more likely to leave the state justified the denial of free public education to "a discrete group of innocent children" Because the statute was not shown to further some "substantial state interest," the Court declared it unconstitutional. *Significance*—The Court's decision is significant in at least two respects: (1) it explicitly recognizes that illegal aliens are protected by the equal protection clause of the fourteenth amendment; (2) it creates an elevated standard of constitutional review in situations involving public education and the children of undocumented aliens. For an in-depth analysis of the district court opinion, see Recent Decision, 12 *Vanderbilt Journal of Transnational Law* 787 (1979).

STATE UNIVERSITY DENIAL OF IN-STATE STATUS TO NONIMMIGRANT ALIENS VIOLATES SUPREMACY CLAUSE—*Toll v. Moreno*, 50 U.S.L.W. 4880 (U.S. June 28, 1982)

Nonimmigrant aliens domiciled in Maryland brought a class action suit against the University of Maryland challenging its policy of denying in-state status and its accompanying preferential treatment in admissions and tuition cost to G-4 visaholders as a violation of the due process, equal protection, and supremacy clauses of the United States Constitution. Although the district court noted that the University's eligibility policy was designed to provide educational subsidies to those who contributed to its economic viability through state taxation revenues, the court found the policy unconstitutional. The Fourth Circuit Court of Appeals affirmed, holding that the policy was impermissible as a suspect

classification of alienage without a legitimate compelling state interest under the equal protection clause, and alternatively, that the policy encroached on federal power over immigration in violation of the supremacy clause. The Supreme Court, while not addressing the due process or equal protection claims, affirmed, holding that the policy as applied to G-4 visaholders and their dependents violated the supremacy clause. The Court found that because various federal statutes, treaties, and international agreements permitted G-4 visaholders to enter the United States and exempted the visaholders from federal as well as many state and local taxes on their organizational salaries, the policy of denying in-state status eligibility solely on the basis of the visaholders' immigration classification and state tax exemption imposed by ancillary discriminatory burden not contemplated by Congress; therefore, the denial of in-state status constituted an impermissible state regulation on immigration. *Significance*—This decision requires a state to design its policies concerning access of aliens to state programs to complement, not to frustrate, congressional policies regulating the admissions and treatment of aliens.

UNDOCUMENTED ILLEGAL ALIEN LABORERS ENTERING THE UNITED STATES CONSTITUTE COMMERCE UNDER THE HOBBS ACT—*United States v. Hanigan*, 681 F.2d 1127 (9th Cir. 1982)

Criminal charges were brought against three ranch owner defendants for the assault, kidnapping, and robbery of three undocumented Mexican aliens who had entered the United States illegally in search of agricultural employment. The defendants were acquitted in the state court, but defendant Hanigan was convicted in the federal district court under the Hobbs Act, 18 U.S.C. section 1951. This portion of the Hobbs Act makes it a federal crime to obstruct, delay, or affect commerce "or the movement of any article or commodity in commerce, by robbery" Hanigan argued initially that the court had no jurisdiction under the Hobbs Act because alien labor or laborers could not be considered an "article or commodity" in commerce. Labor is explicitly excluded from the definition of "commerce" in the anti-trust laws, and, according to the defendant, could not be included in the meaning of commerce under the Hobbs Act. Additionally, Hanigan contended that, even if labor itself is included within the definition of commerce, the term commerce, as used in the Hobbs Act, does not include illegal commerce such as aliens who are present in the United States without proper labor certification under

the 1952 Immigration and Nationality Act. The court held that movement of alien labor or laborers across national boundaries constitutes commerce within the meaning of the Hobbs Act and that the illegality of such commerce did not limit the constitutional power of Congress to regulate it under the Hobbs Act. Noting that the definition of commerce for antitrust purposes was not relevant to the meaning of commerce under the Hobbs Act, the court explained that commerce is the intercourse between nations and parts of nations and that such intercourse may include the movement of persons. Moreover, the court found that Hanigan could point to nothing in the statute or legislative history to support the argument that commerce regulated by the Hobbs Act must be legal commerce. According to the court, it would be anomalous to contend that Congress could make entry into the United States—the movement of persons—unlawful, while simultaneously contending that the same movement of persons is not “commerce over which the United States has jurisdiction”—the phrase Congress used in the Hobbs Act. *Significance*—Although the Seventh Circuit in *United States v. Blakey*, 607 F.2d 779 (7th Cir. 1979), found that the Hobbs Act included commerce which was of mixed legal and illegal character, no court prior to the instant court has extended the Hobbs Act to wholly illegal commerce.

III. JURISDICTION

ELECTRONIC TRANSFER OF FUNDS BY A NONRESIDENT ALIEN THROUGH UNITED STATES BANKS CONFERS JURISDICTION ON UNITED STATES COURTS—*United States v. Gilboe*, 684 F.2d 235 (2d Cir. 1982)

United States Attorney General brought criminal charges against defendant, nonresident alien, who misrepresented himself as a shipowner in negotiating grain shipments from Argentina and the United States to the Peoples Republic of China. The defendant electronically transferred money received from China through New York banks to banks in the Bahamas. After a jury trial the federal district court convicted the defendant of wire fraud in violation of 18 U.S.C. section 1343 and of interstate and international transportation of funds obtained by fraud in violation of 18 U.S.C. section 2314. The court of appeals affirmed, holding that the district court had jurisdiction even though the acts precipitating the fraud occurred outside the United States.

In a question of first impression, the court of appeals found that the electronic transfer of fraudulently obtained funds from one bank to another met the "transportation" requirement of 18 U.S.C. section 2314, thereby conferring jurisdiction to the federal district court under 18 U.S.C. section 1343. Venue was proper under 18 U.S.C. section 3237(a) because the defendant sent telexes and made telephone calls from New York and because the funds in question transferred through New York banks were "such commerce" moving "from, through, or into" the Southern District of New York within the meaning of the statute. *Significance*—This decision is the first to find that electronic transfers of funds meets the "transportation" requirement of 18 U.S.C. section 2314. This finding confers jurisdiction upon a federal district court over cases in which fraudulently obtained funds are transferred electronically through banks in its district, despite the absence of other contracts between the defendant and the United States and despite a lack of actual, tangible currency transferred by banks.

