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CASE DIGEST

The purpose of this *Case Digest* is to identify and summarize for the reader recent cases that have less significance than those that merit an in-depth analysis. Included in the digest are cases that apply established legal principles without necessarily introducing new ones.

This digest includes cases reported mainly from late 1974. The cases are grouped in topical categories, and references are given for further research. It is hoped that attorneys, judges, teachers and students will find that this digest facilitates research in problems involving current aspects of transnational law.

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1. ADMIRALTY

SHIPOWNER'S WARRANTY OF SEAWORTHINESS EXTENDS TO ANY REGULARLY USED MODE OF INGRESS OR EGRESS

Plaintiff longshoreman appealed from dismissal for failure to state a claim in a suit against defendant barge owner. Plaintiff was injured when he slipped and fell from an allegedly unstable and poorly lit gangway providing access to defendant's barge. Plaintiff brought suit on grounds of unseaworthiness and negligence. Defendant shipowner claimed that its warranty of seaworthiness did not extend to the gangway owned by a separate company, and that the gangway was neither appurtenant to nor part of the barge. The court of appeals reversed and remanded, holding that the gangway was a part of the vessel or its appurtenances, if it was regularly used as a means of ingress or egress. Relying on *Victory Carrier, Inc. v. Law*, 404 U.S. 202 (1971), the court reasoned that "seaworthiness" comprehends the barge owner's duty to supply his crew with a suitable ship, including a suitable means to board and disembark. *Significance*—This holding establishes a shipowner's liability for boarding injuries sustained by employees, even if the boarding apparatus is owned and operated by a third party. *Reyes v. Marine Enterprises, Inc.*, 494 F.2d 866 (1st Cir. 1974).

AWARD OF PREJUDGMENT INTEREST IN ADMIRALTY MAY BE DENIED PARTY SUBSTANTIALLY AT FAULT

Negligence of both parties caused the stranding of plaintiff's vessel. Plaintiff sought division of damages and prejudgment interest. The district court awarded plaintiff prejudgment interest, even though plaintiff's negligence was substantially greater than that of defendant. The court of appeals reversed and remanded, holding that prejudgment interest may be withheld in the discretion of the trial court, if the party to whom the interest would be awarded is substantially at fault. The court reasoned that denial of prejudgment interest to a party substantially at fault would ameliorate the harshness of the divided damages doctrine. *Significance* — This decision broadens the scope of the trial court's discretion to refuse prejudgment interest awards to parties substantially at fault. *Iberian Tankers Co. v. Gates Constr. Corp.*, 504 F.2d 747 (2d Cir. 1974).

CONTRIBUTION WILL LIE AGAINST THE UNITED STATES IN NONCOLLISION MARITIME CASES WHEN UNITED STATES AND THIRD PARTY ADJUDGED MUTUALLY NEGLIGENT

The United States and Standard Oil each petitioned for limitation of liability for damages resulting from a gasoline fire in San Francisco Bay caused by mutual negligence. Standard sought contribution from the Government for those claims filed only against Standard. The district court, relying on *Halcyon Lines v. Haenn Ship Ceiling & Refitting Co.*, 342 U.S. 282 (1952), denied Standard's claim, holding that contribution between joint tortfeasors will not lie in a noncollision maritime action. The court of appeals reversed and remanded, holding that contribution will lie in noncollision maritime actions between joint tortfeasors when no statute precludes recovery from the joint tortfeasor against whom contribution is sought. The court reasoned that because the Admiralty Act and the Public Vessels Act constitute a waiver of Governmental immunity in these cases, the *Halcyon* doctrine was inapplicable. *Significance*—This decision allows joint tortfeasors to recover contribution from the Government in noncollision maritime actions. *United States v. Standard Oil Co.*, 495 F.2d 911 (9th Cir. 1974).

ADMIRALTY JURISDICTION DOES NOT EXTEND TO SHORESIDE INJURY CAUSED BY UNLOADED CARGO

Plaintiff longshoreman was struck and injured by a steel billet while removing the billets from an improperly loaded gondola car parked alongside defendant's ship. Plaintiff contended that his injury resulted from defendant's negligent failure to require shipper to load the gondola properly. Plaintiff based jurisdiction upon the Extension of Admiralty Jurisdiction Act, which extends shipowner liability under admiralty remedies to shoreside injury, if injury is caused by an appurtenance of the ship. The court dismissed for lack of jurisdiction. Relying upon the test announced in *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971), the court reasoned that the unloaded billets had not yet become cargo and, therefore, plaintiff's injury was not caused by an appurtenance of the ship for purposes of conferring jurisdiction under the Act. *Significance*—This holding further delineates the limits of shoreward extension of admiralty jurisdiction under the Extension of

Admiralty Jurisdiction Act. *Sacillotto v. National Shipping Corp.*, 381 F. Supp. 558 (D. Md. 1974).

ADMIRALTY JURISDICTION DOES NOT EXTEND TO SHORESIDE INJURY CAUSED BY NEGLIGENT HANDLING OF SHIPOWNER'S DUNNAGE WHEN STEVEDORE USES OWN EQUIPMENT

Plaintiff longshoreman was injured when struck by ship's dunnage that slid off a forklift being driven along a pier during cargo operations. Plaintiff, asserting jurisdiction under the Extension of Admiralty Jurisdiction Act, contended that the shipowner had negligently failed to eliminate an unsafe method of pierside operation—moving shipowner's dunnage without leather safety bridles. Defendant shipowner claimed that at the time of the accident, the dunnage had been removed from the ship and its tackle, and was, therefore not the responsibility of the shipowner. The court held the shipowner not liable for failure to eliminate a negligent pierside method of operation by a stevedore who was using his own equipment. The court reasoned that the shipowner had no duty to supervise the method of moving cargo when it was in no way subject to his control. *Significance*—This holding restricts the shoreside extension of admiralty jurisdiction recognized in *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971) from those cases in which *any* appurtenance of the ship causes damage ashore to those in which an appurtenance over which the shipowner has or should have control causes the shoreside damage. *Mascuilli v. American Export Isbrandtsen Lines, Inc.*, 381 F. Supp. 770 (E.D. Pa. 1974).

2. ARBITRATION

FOREIGN ARBITRATION AWARD MAY BE ENFORCEABLE AT BANKRUPTCY ALTHOUGH ISSUED AFTER INITIATION OF BANKRUPTCY PROCEEDINGS

Defendant Fotochrome filed petition for bankruptcy in New York and obtained a preliminary order suspending all proceedings by creditors, including any pending arbitration. Copal Company, a Japanese corporation neither doing business nor present in the United States, appealed the stay order. Copal claimed that the New York court had no jurisdictional basis for suspending arbitration proceedings between Fotochrome and Copal in Japan, where a Japanese arbitration association had held its hearings and award was pending. Copal further claimed that the Japanese arbitration

judgment should be enforced as a provable debt in the New York bankruptcy proceedings. The court held that the minimum contacts necessary to assert jurisdiction over Copal and the Japanese arbitrator at the time the stay order issued were not present, and, therefore, the foreign parties were not bound by the order. The court ruled further that the United States Treaty with Japan on Friendship, Commerce and Navigation, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards require that the Japanese arbitral award be granted finality status in the New York bankruptcy proceedings. The court reasoned that the last expression of congressional will, as embodied in the United Nations Treaty, and the desire for stability of expectation in the resolution of international disputes overrode other considerations. *Significance*—Foreign creditors may be preferred over United States creditors to the extent that foreign arbitration proceedings are not subject to stays by a bankruptcy judge, and to the extent that foreign awards may be final for bankruptcy purposes, although issued after initiation of bankruptcy proceedings. *In re Fotochrome*, 337 F. Supp. 26 (E.D.N.Y. 1974).

3. CONTRACTS

Contract Imposing Monetary Obligation Upon the United States Must Be in Writing to Be Enforceable

The United States brought suit against defendant shipper to recover additional storage, handling and shipping costs resulting from shipper's failure to perform an oral charter agreement with Commodity Credit Corporation (CCC), a government agency, for carriage of foodstuffs from the United States to South Vietnam. The district court denied the defendant's motion for judgment on the pleadings and certified the question of whether the oral contract was enforceable. The sole issue before the court of appeals was whether the CCC could recover damages for an unperformed oral contract for carriage. The relevant statute and regulations were the Supplemental Appropriations Act, the Federal Procurement Regulations and regulations specific to the CCC. The Government contended the writing requirement set forth by the statute and regulations existed only for recordation purposes and had no effect on contracts with private parties. The defendant contended that the statute and regulations required that an agree-

ment obligating the Government to an expenditure of funds must be in writing to be binding. The court agreed with defendant and held the contract unenforceable. The court reasoned that sustaining the Government position here would remove reciprocally the protection of the Government which was the initial intent of the statute. The court based its holding on the relevant statute and Congressional intent. *Significance*—This decision establishes that monetary obligations of the United States must be in writing to be enforceable by either party. *United States v. American Renaissance Lines, Inc.*, 494 F.2d 1059 (D.C. Cir. 1974).

4. CUSTOMS

IMPORTER NEED NOT DISPROVE CLASSIFICATION OF ITEM AS A TOY IN ORDER TO ESTABLISH THAT IT IS A GAME

Plaintiff importer appealed from a judgment of the Customs Court, which upheld a customs appraiser's classification of one of plaintiff's imported items as a toy rather than a game. The Tariff Schedules define "toy" as any article chiefly used for the amusement of children or adults. A "game" is specifically excepted from requirement of classification as "toy" even though it meets the description of "toy." In customs classification cases, plaintiff has a dual burden: he must first prove that the customs appraiser's classification is incorrect and then show that his own classification is correct. Here the court determined that the burden of proof is on the importer to show merely that its merchandise should be classified as a game, and that it is not required to demonstrate that other classifications are improper. The court based its reasoning upon the explicit statutory exception of items from the "toys" classification for items which meet the requirements of both "toys" and "games." *Significance*—when the applicable tariff schedule explicitly excepts an item from a classification, importer need not prove the customs appraiser's classification is incorrect to establish that his own classification is correct. *Mego Corp. v. United States*, 505 F.2d 1288 (C.C.P.A. 1974).

MERE CHANGE IN ACCOUNTING PRACTICE WILL NOT LOWER CUSTOMS DUTY

Plaintiff was sole United States distributor for a French brandy exporter. The exporter deducted two dollars per case from its in-

voice price in consideration of plaintiff's financing of United States advertising. Plaintiff claimed the lower invoice price should be reflected in the dutiable export price. The Customs Court held that the advertising discount had been properly included in the dutiable price. The court reasoned that the discount merely represented a change in accounting practices, since the exporter had previously financed advertising and included the cost in plaintiff's invoice price. *Significance*—Import duty may not be reduced by mere changes in accounting procedure which do not represent actual changes in the practice of the parties. *Schieffelin & Co. v. United States*, 504 F.2d 1147 (C.C.P.A. 1974).

WOOD PRODUCTS MUST BE WHOLLY OF WOOD OR IN CHIEF VALUE OF WOOD TO BE ASSESSED AS SUCH UNDER THE TARIFF SCHEDULES

Plaintiff challenged the assessment on its imported musical jewelry boxes under the Tariff Schedules. The jewelry boxes—made of leatherette, metal, wood and textile fabric—were classified under Tariff Schedule 6 as articles of metal for household use. Plaintiff claimed that the boxes should have been classified under Schedule 2, which specifically cites "jewelry boxes of wood" as an example and imposes a lower tariff. The Government claimed that the Tariff Schedules define the word "of" as "wholly of" or "in chief value of," and that since the boxes were in chief value of metal, they should be assessed as articles of metal. Plaintiff admitted that the chief value was derived from metal, but contended that "of wood" means that wood is the predominant material. For support plaintiff cited *Oxford International Corp. v. United States*, 68 Cust. Ct. 12 (1972), which provided an exception to the chief value definition when the material composing the article determined its character and use. The court, granting the Government's motion for summary judgment, held that the Tariff Schedules definition of "of" as "in chief value of" controlled. The court reasoned that Congress intended to standardize assessment of tariffs, and that the *Oxford* type of exception threatened to undermine this system. *Significance*—This decision establishes that an article made "of" a material is to be classified for tariff purposes on the basis of the material that constitutes its chief value and virtually eliminates the predominant materials exception. *Sears, Roebuck & Co. v. United States*, 371 F. Supp. 1073 (Cust. Ct. 1973).

5. JURISDICTION

CONGRESS MAY REGULATE THE INTERSTATE COMMERCE OF PUERTO RICO

This action was brought by the Secretary of Labor to compel a Puerto Rican labor organization to comply with the election provisions of the Labor-Management Reporting and Disclosure Act. Defendant organization claimed that the Act was not applicable in the Commonwealth of Puerto Rico because regulation of Puerto Rican commerce was not within the power of Congress. The court held that Congress may not regulate Puerto Rican commerce which is local in character, but may regulate its interstate commerce. The court found that Congress did not give up the power to regulate Puerto Rican interstate commerce in the 1952 Agreement creating the Commonwealth of Puerto Rico. The labor organization was involved in interstate commerce, and, therefore, the Act applied. The court did not resolve whether such power might reside in the commerce clause. *Significance*—This decision formally recognizes the power of Congress to regulate the interstate commerce of Puerto Rico. *Hodgson v. Union de Ernysleados de los Supermercados Pueblos*, 371 F. Supp. 56 (D.P.R. 1974).

6. SHIPPING

FREIGHT FORWARDER ASSOCIATED WITH SHIPPER-CONNECTED ENTERPRISE MAY REMAIN INDEPENDENT UNDER SHIPPING ACT

The Federal Maritime Commission ordered defendant, an independent freight forwarder, to terminate relations with a shipper-connected service enterprise. Defendant and the service organization, which procured freight forwarders for its shipper-clients, were connected through common ownership and interlocking directorates. The Commission claimed that defendant was not independent as required by the Shipping Act because it was directly or indirectly controlled by the service organization which was shipper-connected with a beneficial interest in the shipments forwarded by defendant. The court held that defendant's association with an enterprise that rendered services to shipper-clients would not affect defendant's status as an independent freight forwarder since this type of service organization is not included within the meaning of the term "shipper" as contemplated in the Shipping

Act. The court's narrow construction of "beneficial interest" to mean the right to use and enjoy propery legally owned by another excluded the service organization's relationship to its shipper-clients. Without such beneficial interest the relationship between defendant and the service organization could not give rise to indirect rebates to shippers in violation of the Act. *Significance*—This holding establishes that a freight forwarder may associate with a shipper-connected enterprise and yet maintain independent status as required by the Shipping Act. *Norman G. Jenson, Inc. v. Federal Maritime Comm'n.*, 497 F.2d 1053 (8th Cir. 1974).

7. TAXATION

VENUE IN NONRESIDENT ALIEN TAX REFUND SUIT LIES IN COURT OF CLAIMS ONLY

Plaintiff, a non-resident alien, brought suit in the district court against defendant Internal Revenue Service for recovery of two jeopardy assessments. Defendant moved for dismissal for lack of venue, asserting that the applicable statute, 28 U.S.C.A. § 1402(a)(1), which grants venue to the court of the district wherein plaintiff resides, precludes by definition suits by non-resident aliens. Plaintiff contended that dismissal would restrict suits by non-resident aliens to the Court of Claims, denying them the choice of forums available to United States residents in violation of the equal protection clause, depriving them of the right to trial by jury, and adding unreasonable time and expense to litigation of claims. In holding that district courts lack venue to hear tax refund suits brought by non-resident aliens, the court adopted defendant's interpretation of the venue provision and ruled that the slight inconvenience imposed upon non-resident aliens by restricting them to the Court of Claims does not violate equal protection. *Significance*—Non-resident aliens may bring tax refund suits in the Court of Claims only, where a jury trial is unavailable. *Malajalian v. United States,* 504 F.2d 842 (1st Cir. 1974).