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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.

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

SEAMAN ENTITLED TO MAINTENANCE AND CURE UNTIL INJURY DIAGNOSED INCURABLE

Plaintiff seaman received a severe blow to the head while working on defendant owner's vessel in April, 1968. He was discharged and left the vessel in June, 1968. Just prior to April 27, 1972, it was determined that the blow to plaintiff's head had caused immediate permanent damage to the balancing mechanism of the inner ear. Plaintiff sued for maintenance and cure. The Sixth Circuit Court of Appeals denied relief, holding that right to maintenance and cure ceases once the seaman reaches "maximum medical recovery." The Supreme Court reversed, citing the traditional breadth and inclusiveness of the shipowner's duty of maintenance and cure and the provisions of the Shipowner's Liability Convention, and held that plaintiff seaman was entitled to maintenance and cure from the date when he left the ship until the date when medical diagnosis confirmed the permanent nature of the injury. *Significance*—This case confirms that the Shipowner's Liability Convention reflects the correct rule for determining the duration of maintenance and cure due seamen who are permanently incapacitated, and that the "maximum medical recovery" test is inapplicable in that event. *Vella v. Ford Motor Co.*, 421 U.S. 1 (1975).

INJURED SEAMAN WHO ABANDONS REHABILITATION PROGRAM DUE TO EXTENUATING CIRCUMSTANCES DOES NOT FORFEIT HIS RIGHT TO MAINTENANCE AND CURE

Plaintiff was injured while working as a pipe layer aboard one of defendant's barges. Plaintiff was provided treatment, but, due to his extreme obesity, recovery was slow. A specialist put him on a strict diet and exercise program. When plaintiff voluntarily discontinued the supervised rehabilitative program, defendant terminated maintenance and cure; thereupon, plaintiff withdrew from the unsupervised program. The district court dismissed plaintiff's suit for maintenance and cure. The Fifth Circuit Court of Appeals reversed and remanded, holding that, while willful rejection of recommended medical aid results in a forfeiture of the right to maintenance and cure, reasonable grounds or extenuating circumstances for refusing care or failing to follow medical instructions may exist to prevent the forfeiture. The dissent, citing earlier fifth circuit decisions, contended that unreasonable refusal is established either by willful rejection or by voluntary discontinuation of

treatment. *Significance*—The fifth circuit now requires evidence of willful rejection of aid to establish forfeiture of maintenance and cure. *Coulter v. Ingram Pipeline Co.*, 511 F.2d 735 (5th Cir. 1975).

SHIPOWNER NOT ENTITLED TO INDEMNITY FOR SETTLEMENT PAID TO INJURED SEAMAN UNDER NO LEGAL COMPULSION

A seaman employed by plaintiff shipowner was injured when two loose barges, not owned by plaintiff, rammed plaintiff's vessel. Plaintiff was not negligent and its vessel was seaworthy. The seaman brought suit against plaintiff in state court under the Jones Act. In a court-sanctioned settlement, plaintiff compensated the seaman for his injuries, provided maintenance and cure, and paid attorney's fees and court costs. Plaintiff then brought this action for indemnity against the barges *in rem* and against the owner, charterer, and wharfinger *in personam*. Citing the theory of maritime tort indemnity and the unreasonableness of subjecting the alleged tortfeasor to the whims of the plaintiff in accepting a settlement figure, the court held that plaintiff was under no legal compulsion to pay the Jones Act claim and was thus not entitled to indemnity for the entire settlement amount. Maintenance and cure and payment of attorney's fees and court costs, however, were required of plaintiff as a result of the previous action and, therefore, indemnity was allowed for these expenses. *Significance*—Sums paid by an employer to an injured employee may be recovered by the employer from the tortfeasor only to the extent that payment of the amount by the employer to the employee was made under legal compulsion. *Wisconsin Barge Line, Inc. v. Barge Chem 301*, 390 F. Supp. 1388 (M.D. La. 1975).

THE SUITS IN ADMIRALTY ACT AND THE PUBLIC VESSELS ACT COMPREHEND WRONGFUL DEATH ACTIONS

Plaintiff administratrix of the estate of a deceased Merchant Marine seaman brought a wrongful death action under the Suits in Admiralty Act and the Public Vessels Act. The United States filed a motion for summary judgment alleging, *inter alia*, that those Acts do not provide a cause of action in wrongful death. The court held that the Acts constitute a waiver of sovereign immunity by the United States and are intended to be given the same broad humanitarian interpretation as general maritime law. Thus the Acts are implicitly formed to include a cause of action in wrongful death as *Moragne v. States Marine Lines*, 398 U.S. 375 (1970), found in general maritime law. *Significance*—This case extends

the maritime wrongful death action created by *Moragne* to similar suits against the United States brought under the Suits in Admiralty Act or the Public Vessels Act. *Malgren v. United States*, 390 F. Supp. 154 (W.D. Mich. 1975).

2. ALIEN'S RIGHTS

MERE SEPARATION OF AN ALIEN AND HIS SPOUSE SHORTLY AFTER MARRIAGE DOES NOT MAKE THE MARRIAGE A SHAM FOR IMMIGRATION PURPOSES

Petitioner alien's request for adjustment of his status from student visitor to permanent resident was denied after the Board of Immigration Appeals determined that his marriage to a resident alien was a sham. Petitioner and his wife testified that they had married for love, not in an attempt to circumvent the immigration laws, but had quarreled and separated shortly after the marriage. Their testimony as to the time and extent of separation had been impeached. The Ninth Circuit Court of Appeals reversed, noting that the imposition of standards on a marriage to ascertain its validity would raise serious constitutional questions, and held that it is the parties' intent at the time of the marriage that determines whether the marriage is actually a sham. *Significance*—Evidence of separation shortly subsequent to marriage is relevant in ascertaining whether the marriage is valid for purposes of immigration law, but evidence of such separation, taken alone, cannot support a finding that the marriage is a sham. *Bark v. Immigration & Nat. Serv.*, 571 F.2d 1200 (9th Cir. 1975).

ENTRY OF AN ALIEN INTO THE UNITED STATES INCLUDES ANY ENTRANCE FOLLOWING A MEANINGFUL INTERRUPTION OF THE ALIEN'S PERMANENT RESIDENCE

Respondent Immigration and Naturalization Service brought a deportation proceeding against petitioner alien based on his conviction for the voluntary manslaughter of his former wife. Deportation is authorized only if it occurs within five years after the alien's "entry" into the United States. Because petitioner had made a one-month trip into the interior of Mexico within five years of the deportation proceeding, the Ninth Circuit Court of Appeals held that his return constituted an entry, thus making him subject to deportation. The Court based its holding on the statute defining entry as any coming by an alien into the United States, excepting any alien who is a permanent resident whose departure was not intended or reasonably to be anticipated by him or was not volun-

tary. Factors to be considered include the length and purpose of the absence, and whether travel documents were necessary. *Significance*—Intent to abandon residence in the United States is not necessary to establish an "entry." Rather an alien "enters" the United States if he had the intent to depart, did so, and later returned. *Munoy-Casarez v. Immigration & Nat. Serv.*, 511 F.2d 947 (9th Cir. 1975).

DENIAL OF APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION DUE TO OVERSUPPLY OF APPLICANTS FOR EMPLOYMENT MUST BE BASED ON REGIONAL SURVEY IN ALIEN'S FIELD OF EXPERTISE

Plaintiff alien applied for alien employment certification as a political science and foreign affairs instructor. Defendant Regional Manpower Administration denied the application due to a generalized survey indicating an overabundance of applicants for positions as "faculty members" within the region. Plaintiff sought judicial review, alleging that the category used was overly broad and thus an abuse of discretion. The court held that the purpose of the alien employment certification program is to prevent an influx of aliens when there are sufficient native applicants for the particular employment involved. In this case, the data utilized by defendant in evaluating the application could not provide an indication of whether an oversupply existed. Therefore, the case was remanded to reevaluate the level of employment in the area of plaintiff's expertise. *Significance*—For purposes of alien employment certification, any area of expertise must be reasonably well-defined and the pool of available domestic workers may only include those with whom the alien would likely compete for work. *Yusuf v. Regional Manpower Admin. of the Dep't of Labor*, 390 F. Supp. 292 (W.D. Vir. 1975).

3. CUSTOMS

AIRCRAFT MAKING EMERGENCY LANDING IN THE UNITED STATES AND NOT DISCHARGING OR LOADING PASSENGERS OR CARGO IS NOT SUBJECT TO CUSTOMS SEARCH

Defendant's plane was flying from Jamaica to the British Virgin Islands when, due to bad weather, it was required to make an emergency refueling stop in Puerto Rico. Customs officials searched the plane and found four large suitcases of marijuana. Defendant was convicted of knowingly and intentionally importing marijuana. The First Circuit Court of Appeals reversed, explaining that regulations applicable to forced landings of aircraft are *in pari*

materia with the statute, which provides that vessels entering port in distress or for purpose of taking on stores or fuel without discharging or loading passengers or cargo are not required to make an entry at the customs house. Thus, the marijuana was unlawfully seized in this case and should have been suppressed. *Significance*—Although not covered by statute, customs search and seizure rules applicable to emergency landings of aircraft parallel those in force for emergency vessel stops. Implementing such a "hands off" policy recognizes legislative intent and fundamental principles of international law. *United States v. Nunes*, 511 F.2d 871 (1st Cir. 1975).

IMPORTED MATERIAL FORMED FROM PLASTIC BUT USED AS BONDING AGENT SHOULD BE CLASSIFIED FOR CUSTOMS DUTY PURPOSES AS CEMENT, NOT SPECIALLY PROVIDED FOR, RATHER THAN AS PLASTICS MATERIAL

Plaintiff importer challenged the classification of hydroxylated polyurethane as plastics material under the Tariff Schedules, rather than as cement, which carries a lesser tariff levy. The substance was specifically designed to bond polyvinyl chloride to itself and other materials when in solution with ethyl acetate or acetone and under application of heat. The court ruled that the substance should be classified as cement, not specially provided for. A substance specifically designed for cementing and which, in its imported condition, can accomplish that purpose, is a cement even if made from plastic. The fact that the substance involved in the instant case is used in solution and under heat does not detract from its essential nature as a cement. *Significance*—In determining whether an importation is a cement or an ingredient used in the making of a cement, its mixture with a solvent before use to enhance adhesion will not render it an ingredient if, in its original form, it is capable of use as a cement. *Naftone, Inc. v. United States*, 390 F. Supp. 535 (Cust. Ct. 1975).

4. JURISDICTION

SALE OF AROUND THE WORLD AIRLINE TICKETS BY TRAVEL AGENT IN NEBRASKA CONSTITUTES TRANSACTION OF BUSINESS BY AN AIRLINE WITHIN MEANING OF NEBRASKA LONG-ARM STATUTE

Plaintiff airline passengers bought around the world airline tickets from a travel agent in Nebraska. The travel agent had an express agency agreement with Pan American World Airways which was authorized by defendant Aeroflot to sell tickets thereon.

Due to a revolution in Kabul, Afghanistan, defendant Aeroflot recommended to plaintiffs an alternative flight from Tashkent to Karachi. Upon arrival in Karachi, plaintiffs allegedly were forcibly detained at a remote terminal, due to defendant Aeroflot's failure to obtain permission to enter Pakistani air space. Plaintiffs brought suit in Nebraska under the Warsaw Convention. Defendant Aeroflot contested jurisdiction and moved to dismiss. Treaty jurisdiction was found in a Warsaw Convention provision that suit may be brought at the place of destination and for questions of procedure to be governed by the law of the forum. Subject matter jurisdiction was clearly present and not seriously contested. The Nebraska long-arm statute provides for personal jurisdiction over a person who acts directly or through an agent, as to a cause of action arising from the person's transaction of any business in the state. The authorization of Pan American to sell tickets for defendant Aeroflot and the express agency agreement between Pan American and the travel agency in Nebraska were held to meet the requirements of the Nebraska statute for personal jurisdiction. *Significance*—This case demonstrates the application of jurisdictional requirements under the Warsaw Convention: the need to establish treaty, subject matter, and personal jurisdiction. The requisite personal jurisdiction may be met through the use of the state long-arm statute. *Vergara v. Aeroflot "Soviet Airlines"*, 390 F. Supp. 1266 (D. Neb. 1975).

5. TREATIES

"PLACE OF DESTINATION" UNDER WARSAW CONVENTION CAN MEAN EITHER THE ULTIMATE DESTINATION OR DESTINATION OF A PARTICULAR FLIGHT

Plaintiff administratrix brought suit in Los Angeles for the deaths of two airline passengers resulting from a crash of defendant's airplane while enroute from Montreal to Los Angeles. The passengers had purchased round trip tickets at Montreal, but the date, time, and flight of the return trip were left open. Defendant airline, on motion for a new trial, argued that under the Warsaw Convention, the cause of action must be brought at the place of destination, which, in this instance, was Montreal. The court, finding an open ticket to be more an option than a contract, demonstrated that the Convention does not speak of final or ultimate place of destination, and showed that in both Canadian Regulatory Authority usage and United States Civil Aeronautics Board usage, place of destination can mean either the ultimate destination as

listed on the ticket or the destination of a particular flight. The court held that the District Court for the Central District of California had jurisdiction over the action and denied the defendant's motion. *Significance*—When an ultimate destination is yet undetermined because no particular return flight has been chosen, "place of destination" can mean that of the determinable flight from point of origin. *Aanestad v. Air Canada, Inc.*, 390 F. Supp. 1165 (C.D. Calif. 1975).