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Case Digest

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Case Digest

The purpose of the *Case Digest* is to identify and summarize for the reader those recent and interesting 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 from May through November, 1972. The Spring issue will include cases reported from December, 1972, through April, 1973. The cases are grouped into 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 aspects of transnational law.

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1. ADMIRALTY

A FEDERAL COURT IS NOT COMPELLED TO ASSERT ITS ADMIRALTY JURISDICTION WHEN THE LITIGANTS HAVE INSUFFICIENT CONTACTS WITH THE UNITED STATES OR WHEN A GOOD FAITH CLAIM FOR EARNED WAGES IS NOT SUPPORTED BY THE EVIDENCE

Plaintiff, a Greek seaman, brought an admiralty action in rem against the vessel and in personam against the vessel's corporate owner, its master, and the corporation's New York area shipping agent. Plaintiff was injured while aboard the vessel in international waters and was subsequently discharged from the vessel in Adak, Alaska, for emergency medical treatment. Shortly thereafter, he returned to Greece at his employer's expense. The libel contained four counts: (1) earned wages; (2) statutory penalties for failure to pay earned wages; (3) unseaworthiness under general maritime law and negligence under the Jones Act; (4) maintenance and cure under general maritime law. Defendants moved to dismiss the libel on the grounds that the court lacked personal jurisdiction over defendants, that plaintiff failed to state a claim upon which relief could be granted, that plaintiff had agreed to litigate all claims in Greece, and on the doctrine of *forum non conveniens.* The district court, following the "contacts" test established in *Lauritzen v. Larsen,* 345 U.S. 571 (1953), determined that the litigants' contacts with the United States were minimal; moreover, the court was not compelled to assert its jurisdiction under 46 U.S.C. §§ 596, 597 (1970) because plaintiff had failed to assert and prove a "good faith" claim for earned wages. Finally, the court held that it was not a convenient forum in which to litigate the question of liability under foreign (Liberian) maritime law. *Mihalinos v. Liberian S.S. Trikala,* 342 F. Supp. 1237 (S.D. Cal. 1972).

SHIPOWNER GUILTY OF DERELECTION IN ITS NONDELEGABLE DUTY TO FURNISH A SEAWORTHY VESSEL HELD NOT ENTITLED TO INDEMNIFICATION

Defendant, Coral Drilling Company, was under contract to Shell Oil Company for the drilling of a well off the Louisiana coast. Defendant Baroid was employed to supply Coral's operation and to transport drilling mud to the well on the M/V Baroid Rocket. Plaintiff, a roustabout in the employ of a Baroid contractor, was injured while attempting to offload the Baroid vessel at Coral's drilling site. On the night of plaintiff's injury, the captain of the Baroid Rocket neglected to have his cargo of palleted sacked mud lashed to the deck to prevent

shifting, tied the vessel to the drilling rig stern with swells rising up to twelve feet, and allowed the Coral crew to direct the offloading of his vessel. Rather than reload spilled pallets in a comparatively safe position farther forward, an operation that would have caused the roustabouts to cross a deck made slippery by mud spillage, Coral's foreman directed the repalleting at the stern of the vessel, where plaintiff was injured by a pallet thrown against him by a wave. The Federal district court, exercising its jurisdiction in admiralty, concluded that Coral did not breach its warranty of workmanlike performance when it elected to unload the vessel under the prevailing circumstances, since reporting the condition of the deck to the ship's captain would merely have called his attention to a fact that he already knew. Consequently, Baroid's negligent and improper loading of the deck cargo, and the captain's complete indifference to the safety of Coral's roustabouts, demonstrated by mooring the vessel as he did, constituted a failure to furnish a seaworthy vessel and an obstruction of Coral's ability to provide safe working conditions. The court held that Baroid must indemnify Coral for its expenditures under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 933 (1971), and must fully compensate plaintiff for his injuries.[1] *Brock v. Baroid Division of National Lead Co.*, 339 F. Supp. 728 (W.D. La. 1972).

1. Note that Congress recently has abrogated the availability of the doctrine of seaworthiness to longshoremen and other harbor workers injured on board ship. *See* Comment, *supra* p. 257. Longshoremen and other harbor workers can, however, still recover against the shipowner in a negligence action; but no longer can the shipowner bring a third-party indemnity action against the stevedore for breach of its warranty of workmanlike performance. *Id.*

INJUNCTION FOR THE REMOVAL OF A DAMAGED VESSEL CANNOT BE GRANTED IN A DIRECT ADMIRALTY PROCEEDING FOR THAT PURPOSE

In an action alleging the negligent burning and sinking of plaintiff's vessel at defendant's wharf, defendant, having raised the vessel, denied negligent culpability and sought a mandatory injunction to have the ship removed from his premises. Defendant argued that an injunction could be granted under either the court's pendant jurisdiction, the court having legitimately assumed admiralty jurisdiction over the maritime tort, or under its ancillary jurisdiction, as a result of the extension of the right to counterclaim to admiralty cases by FED. R. CIV. P. 13. The district court, however, refused to extend *Romero v.*

International Terminal Operating Co., 358 U.S. 354 (1959), which had allowed the issuance of an injunction where the party seeking equitable relief alleged a state claim related to the pending federal maritime cause of action. The court concluded that the injunction sought in the instant case could be characterized only as an independent equity action and was precluded on the basis of the court's power to grant adequate relief solely in admiralty. Moreover, the court held that because the merger of the federal rules did not create new substantive admiralty causes of action, it had no ancillary jurisdiction to issue the mandatory injunction. Finally, assuming that it had the power to force the removal of plaintiff's vessel, the court noted that no injunction could issue until there had been a determination of fault in the tort action. *Nyon Technical Commercial Inc. v. Equitable Equip. Co.*, 341 F. Supp. 777 (E.D. La. 1972).

SHIPOWNER'S LIABILITY FOR DAMAGE TO GOODS IS NOT LIMITED UNDER EITHER THE CARRIAGE OF GOODS BY SEA ACT OR THE FIRE STATUTE WHEN OWNER FAILED TO EQUIP THE VESSEL WITH ADEQUATE MEANS FOR FIGHTING FIRE

Plaintiff sued in admiralty for cargo damage as a result of an engine room fire aboard defendant's vessel. All of the equipment available for fighting an engine room fire was located in, or controlled from, the engine room, making its use impossible. The court found that the fire could have been extinguished had there been an emergency fire-fighting system outside the engine room and held that the vessel was unseaworthy because defendant shipowner failed to exercise due diligence in equipping the vessel. In addition, the court determined that the fire was caused by the "design or neglect" and the actual fault or privity of the defendant and, therefore, defendant was not exempt from liability for the damage under either the Carriage of Goods by Sea Act, 46 U.S.C. § 1304(2)(b) (1971) or the Fire Statute, 46 U.S.C. § 182 (1971). *Asbestos Corp. Ltd. v. Compagnie de Navigation Fraissinet et Cyprien Fabre*, 345 F. Supp. 814 (S.D.N.Y. 1972).

NEGLIGENT SEAMAN'S FAILURE TO PERFORM DUTIES OF HIS EMPLOYMENT BARS RECOVERY OF DAMAGES IN ADMIRALTY

Appellant, chief mate on a vessel owned by the United States, suffered a hernia when he fell through a hole in the flooring sheathing

aboard ship and sued in admiralty on the theory of unseaworthiness for lost wages and other damages. As chief mate, appellant was responsible for inspecting the vessel and for making any repairs necessary to maintain seaworthiness. The court, citing *Walker v. Lykes Bros. S.S. Co.*, 193 F.2d 772 (2d Cir. 1952), held that appellant was barred from recovering damages since the vessel's unseaworthy condition was caused by the breach of his maintenance duties. *Reinhart v. United States*, 457 F.2d 151 (9th Cir. 1972).

PRIVATE CANAL USED AS AN INSTRUMENT OF INTERSTATE COMMERCE IS SUBJECT TO CONGRESSIONAL REGULATION UNDER RIVERS AND HARBORS ACT

Plaintiff brought an action in admiralty for damages to its fender works resulting from three separate collisions from defendant's barges. Plaintiff owned a private barge canal of approximately five miles in length. The canal connected two of plaintiff's plants, located at opposite ends of the canal, with the Intercoastal Waterway, which, in turn, gives access to the Gulf of Mexico. The tug was owned by plaintiff and demise chartered to defendant, who had the exclusive use of it under time charter in plaintiff's barge canal. Defendant contended that the terms of the time charter provided it with absolute immunity against all liability for collision damages and that plaintiff's failure to secure approval from the Secretary of the Army and the Chief of Engineers for the construction of the fender system violated the Rivers and Harbors Act, 33 U.S.C.A. § § 401, 402, and caused and contributed to the collision. The Fifth Circuit held that the only reasonable interpretation of the equivocal language of the time charter was that defendant was exempt from all liability for collision damage except that resulting from the negligence of the master, crew or other servants of the defendant. The court agreed that plaintiff had technically violated the Rivers and Harbors Act, but found that the fender works were not the proximate cause of the collisions and that the collisions were caused solely by defendant's negligence. Finally, in response to plaintiff's argument that the Act was inapplicable to its private canal, the court found that the canal was used as an instrumentality of interstate commerce and subject to congressional regulation under the Act. *Dow Chemical Co. v. Dixie Carriers, Inc.*, 463 F.2d 120 (5th Cir. 1972).

2. ALIENS

DENIAL TO ADOPTED MINOR ALIENS OF THE PRIVILEGE OF AUTOMATIC CITIZENSHIP ON THE NATURALIZATION OF ADOPTIVE PARENTS IS NOT VIOLATIVE OF FOURTEENTH AMENDMENT

Petitioner, an adopted minor son of naturalized parents, sought review of his alien deportation order. Respondent had issued the order pursuant to § 241 (a)(11) of the Immigration and Nationality Act of 1952 following petitioner's narcotics conviction in Texas. Petitioner claimed that § 321 of the 1952 Act, which grants automatic citizenship to natural-born children upon the naturalization of their parents, invidiously discriminated against adopted children in identical circumstances and thus violated both the equal protection and due process clauses of the fourteenth amendment. Respondent argued that citizenship, as interpreted by the United States Supreme Court, is a privilege conferred by Congress in its discretion; consequently, aliens have no constitutional right to citizenship. The Board of Immigration Appeals upheld the deportation order. On appeal, the Fifth Circuit affirmed, holding that Congress may constitutionally deny adopted children the privilege of automatic citizenship upon the naturalization of their adoptive parents. *Hein v. Immigration & Naturalization Serv.*, 456 F.2d 1239 (5th Cir. 1972).

DENIAL OF AN EXTENSION OF THE PRIVILEGE OF VOLUNTARY DEPARTURE DURING THE PERIOD OF APPLICATION FOR AN IMMIGRANT VISA FOUND NEITHER CAPRICIOUS NOR ARBITRARY

Appellant, a Greek national, entered the United States and married an American citizen. His first wife filed a visa petition on his behalf to allow his entry into the United States under immediate relative status as her husband. Subsequently, his wife withdrew the application because of marital difficulties and deportation proceedings were commenced. Appellant was repeatedly granted the discretionary privilege of voluntary departure from the United States, but he refused to depart. Several months later, appellant's second wife refiled the application, which was approved and forwarded to Canada; however, appellant again refused to go to Canada and reenter in compliance with Service regulations. A third warrant for deportation was issued and appellant filed a petition for habeas corpus, claiming that the Immigration Service acted arbitrarily and capriciously in

denying him additional time in which to comply with the voluntary departure privilege. In addition, appellant contended that the refusal was contrary to the longstanding policy of the Service of granting extensions during the period of application for an immigrant visa. The federal district court denied appellant's petition. On a review of the record, the court of appeals affirmed on the grounds that the privilege of voluntary departure had been repeatedly extended to appellant, that appellant had been afforded procedural due process, and that the decision to institute deportation proceedings did not constitute arbitrary or capricious agency action. *Vassiliou v. District Director of Immigration and Naturalization Serv.*, 461 F.2d 1193 (10th Cir. 1972).

THE STATE HAS NO DUTY TO INFORM AN ALIEN ACCUSED OF A CRIME THAT DEPORTATION MAY BE A CONSEQUENCE OF A PLEA OF GUILTY

Appellant, an alien, entered a plea of guilty to charges of possession of marijuana for sale and was convicted, fined and placed on probation. Subsequently, appellant was informed that his conviction subjected him to deportation proceedings by the Immigration and Naturalization Service. Appellant then filed, *inter alia*, a motion to vacate the conviction on the ground that he was not informed that deportation was a consequence of his guilty plea. The court of appeals held that the possibility of deportation was not a "consequence" as to which there was a duty to inform appellant before the acceptance of his plea of guilty. *State v. Rodriguez*, 499 P.2d 167, 17 Ariz. App. 553 (1972).

AN ALIEN CANNOT BE DENIED EMPLOYMENT MERELY BECAUSE SHE IS NOT A UNITED STATES CITIZEN

Plaintiff, a resident alien living with her citizen husband in San Antonio, Texas, sued to enjoin defendant employer from continuing its policy against hiring aliens. Defendant, a clothing manufacturer, had refused to hire plaintiff because she was not a citizen of the United States. The court rejected defendant's attempt to distinguish citizenship from national origin and held that a refusal to hire solely because of citizenship was discriminatory conduct based on plaintiff's "national origin," and was prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) (1970). *Espinoza v. Farah Mfg. Co.*, 343 F. Supp. 1205 (W.D. Tex. 1971).

AVOIDANCE OR EVASION OF MILITARY SERVICE BY A FORMER PERMANENT RESIDENT ALIEN DISQUALIFIES HIM FROM BOTH UNITED STATES CITIZENSHIP AND ADMISSION AS A PERMANENT RESIDENT ALIEN

Petitioner, a Peruvian citizen, entered the United States to marry an American citizen. Changing his status to permanent resident alien in order to remain in the United States, petitioner became subject to military conscription. Prior to his induction, he returned to Peru and changed his classification to draft-exempt, nonimmigrant status. When he sought reentry to the United States, the Immigration Service, acting pursuant to 8 U.S.C. § 1182 (a) (22) (1970), permitted him to remain only for a short time, contending that petitioner was an alien who had departed the United States in order to evade military service. Petitioner appealed, arguing that the statute was intended to apply to "draft dodgers" who intended to return at the cessation of hostilities, but that he merely desired nonimmigrant status. The court determined that petitioner was attempting to evade the draft, but that it was unimportant whether his evasion from military service was lawful or unlawful since 8 U.S.C. § 1426 (1970) provides that even aliens who lawfully seek relief from military service are ineligible for United States citizenship and, therefore, may be properly excluded from admission as permanent resident aliens. *Riva v. Mitchell*, 460 F.2d 1121 (3d Cir. 1972).

THE SECRETARY OF LABOR IS EMPOWERED TO DENY PREFERENCE VISAS TO ALIENS WHEN NO SHORTAGE OF DOMESTIC WORKERS EXISTS

Petitioners, Philippine citizens in the United States under preference visas as teachers, applied for extensions of their expired visas. Five months after petitioners' applications were filed the Secretary of Labor began to require submission of letters stating that applicants have a job offer for a teaching position before extensions of teacher preference visas would be granted. Petitioners, unable to obtain teaching offers nine months after their applications were filed, were ordered by the Immigration Service to show why they had overstayed their allotted time. Petitioners contended that the nine month delay by the Immigration Service in the processing of their applications constituted a denial of due process and gross abuse of function. The court held that 8 U.S.C. § 1182(a)(14)(1970) clearly empowers the Secretary of Labor to deny entry to laborers if there is no domestic shortage of that type of worker. In addition, the court determined that it did not have jurisdiction to review the orders of the

District Director of Immigration because the petition for review was brought under 8 U.S.C. § 1105(a)(1970), which provides only for judicial review of orders of deportation and exclusion. *Carino v. Immigration and Naturalization Serv.*, 460 F.2d 1341 (7th Cir. 1972).

AN ALIEN WHO IS NEVER LEGALLY RELIEVED OF LIABILITY FOR SERVICE IN THE UNITED STATES MILITARY DOES NOT LOSE HIS ELIGIBILITY FOR CITIZENSHIP IN THE UNITED STATES

In 1950, plaintiff, a Semitic refugee from World War II Germany residing in the United States, applied for and received an exemption from military service as an alien pursuant to section 4(a) of the Selective Service Act of 1948, 50 U.S.C. § 454(a) (1950), *as amended*, 50 U.S.C. § 454 (1970). He recognized at that time that his action would, under the Immigration and Nationality Act § 315(a), 8 U.S.C. § 1426(a) (1970), preclude him from United States citizenship. The Universal Military Training and Service Act of 1951, 50 U.S.C. § 454 (1970), eliminated plaintiff's alien exemption, and, although he sought further relief as a "treaty" alien protected by the Treaty of Friendship, Commerce and Consular Rights with Germany, December 8, 1923, 44 Stat. 2132, 2136 (1923), his Selective Service Board failed to change his classification from that of an exempt alien resident. The district court, adhering strictly to the principle of *Astrup v. Immigration and Naturalization Serv., 402 U.S. 509 (1971)*, held that, because of the abrogation by diplomatic fiat, June 2, 1953, [1954] 5 U.S.T. 828, T.I.A.S. No. 2972, of his 1923 treaty exemption, he was never legally relieved of his obligation to serve in the military. Consequently, the failure of his local board to induct him did not preclude his eligibility for naturalization in the United States. *In re Chrambach*, 346 F. Supp. 362 (D. Md. 1972).

NONRESIDENT ALIEN CORPORATION HAS STANDING TO CHALLENGE ADMINISTRATIVE ACTION

Plaintiff CONCICA, a Honduran construction corporation, submitted the lowest bid to the Central American Bank for Economic Integration (CABEI), which had obtained a loan from the Agency for International Development (AID) to finance infrastructure construction projects in Latin America. AID and CABEI were to approve the contract and contractors. AID's Washington office determined that CONCICA lacked the corporate experience required by AID regulations and disallowed the bid. CONCICA challenged the agency

action in district court. The district court agreed with AID's contention that the tests for standing to challenge administrative actions, formulated in *Ballerina Pen Co. v. Kunzig*, 433 F.2d 1204 (D.C. Cir. 1970), *cert. denied sub nom. National Industries for Blind v. Ballerina Pen Co.*, 401 U.S. 950 (1971), were inapplicable because CONCICA was a nonresident alien, and that consequently CONCICA lacked standing. On appeal, the Court of Appeals for the District of Columbia reversed. The court noted that § 10 of the Administrative Procedure Act, 5 U.S.C. § 706 (1970), logically included persons such as CONCICA and observed that granting standing probably would not precipitate a flood of dilatory suits. The court noted also that AID was required by statute to apply the funds at its disposal in a manner designed to foster the economic independence of Latin America and at the same time achieve maximum efficiency for each dollar spent. Emphasizing that the allowance of CONCICA's suit would foster both goals, the court concluded that the coalescence of all these factors required a finding that CONCICA had standing. *Constructores Civiles de Centroamerica, S.A. (CONCICA) v. Hannah*, 459 F.2d 1183 (D.C. Cir. 1972).

3. CONSTITUTIONAL LAW

THE OATH OF ALLIEGANCE AS A PREREQUISITE TO THE ISSUANCE OF A PASSPORT VIOLATES THE RIGHT TO TRAVEL GUARANTEED BY THE FIFTH AMENDMENT

Plaintiff, a United States citizen, mailed an executed application form to the Passport Office of the United States Department of State, but refused to swear to or affirm the oath of allegiance. Defendant, the Secretary of State, required the oath as a prerequisite to the issuance of a passport. Plaintiff subsequently brought suit in federal district court, seeking a declaratory judgment that the required oath was violative of the first and fifth amendments and an unauthorized requirement under either explicit or implicit statutory authority. Defendant contended that he, as Secretary of State, had both express and implied authority to require the oath pursuant to 22 U.S.C. § 211-13 (1971). The court ruled in favor of the plaintiff, holding that the requirement that United States citizens swear to or affirm the contents of the oath of allegiance as a prerequisite to the issuance of a passport both was unauthorized by the statute and unconstitutionally abridged plaintiff's right to travel guaranteed by the fifth amendment. *Woodward v. Rogers*, 344 F. Supp. 974 (D.D.C. 1972).

THE UNITED STATES MAY CONSTITUTIONALLY RESTRICT THE IMPORTATION OF ENEMY LITERATURE UNDER THE TRADING WITH THE ENEMY ACT

Plaintiff, an antiwar organization, sought to gain possession of Red Chinese literature forwarded from North Vietnam and to avoid the licensing requirements of the Trading with the Enemy Act, 50 U.S.C. App. § 5(b) (1971). The United States Government had confiscated the publications pending submission by the intended recipients of information required regarding the addressee's identity and the intended use of the material. The Act becomes operative only during time of war or other period of national emergency declared by the President and applies only to property in which any foreign country or national has, or has had, an interest. Plaintiff alleged that the statute unconstitutionally delegated congressional powers without appropriate standards because, under the Act, the President was given unreviewable power to declare a national emergency. Plaintiff further alleged that the Act unconstitutionally imposed prior restraints on first amendment freedoms in its licensing procedures. The Third Circuit held that since the legislative design of preventing enemy nations from deriving economic benefit from transactions with persons subject to the jurisdiction of the United States was wholly proper as a weapon in any international struggle, and since the statute provides guidance to the Office of Foreign Assets Control regarding the exercise of its functions, plaintiff's first constitutional challenge must fail. Similarly, the court found that the United States had a compelling interest in regulating the flow of money to certain countries and that the loss of plaintiff's anonymity, alleged to induce a chilling effect on first amendment freedoms, would not outweigh the Government's interest in preventing American economic support of her enemies. The duty of disclosure under the Act was not sufficiently onerous to render its regulations unconstitutional as applied. *Veterans and Reservists for Peace in Vietnam v. Regional Comm'r.*, 459 F.2d 676 (3d Cir. 1972).

CONGRESS MAY EXCLUDE ALIENS WITHOUT INFRINGING THE FIRST AMENDMENT RIGHTS OF CITIZENS WHO WISH TO COMMUNICATE WITH THE FOREIGN NATIONAL

Plaintiff, a Belgian citizen and editor of a weekly socialist newspaper, was an avowed Marxist, but had been permitted to speak in the United States in 1962 and 1968 by the Attorney General's waiver under § 1182 (d) (3) (A) of the Immigration and Nationality Act

of 1952. His 1969 visa application was denied, however, because of his alleged affiliation with the world communist movement, and because his activities in the United States in 1962 and 1968 allegedly went beyond the scope of his authorization and constituted a flagrant abuse of the opportunities afforded him to express his views in this country. Plaintiff brought suit challenging certain sections of the Act, 8 U.S.C. § § 1182 (a) (28) (D), (G) (v), (d) (3) (A) (1971), and was joined by several professors at colleges and universities in the United States who had hoped to engage plaintiff as a speaker at their respective institutions. Plaintiffs alleged that the challenged sections of the Act, which declare that any alien who is, or at any time has been, a member of certain leftist and extremist political organizations is ineligible for a visa and excluded from admission to the United States, imposed a prior restraint on constitutionally protected communication and predicated exclusion on belief and advocacy not allied with unlawful speech or conduct. The United States Supreme Court reversed the three-judge district court and held that Congress had delegated to the Attorney General its plenary power to exclude aliens or to prescribe the conditions of their entry into this country. Consequently, the courts will not look behind the Attorney General's decision nor test it by balancing its justification against the first amendment rights of those who seek personal communication with the alien applicant, unless it is shown that the refusal to waive the statutory exclusion was not for a legitimate reason. *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

4. CONTRACTS

IN ORDER TO PRECLUDE RECOVERY FOR BAGGAGE DAMAGE UNDER THE WARSAW CONVENTION THE AIR CARRIER MUST ADEQUATELY INFORM ITS PASSENGERS OF THE THREE DAY PERIOD DURING WHICH WRITTEN CLAIMS MUST BE FILED

Plaintiff's baggage was damaged while being carried from St. Maarten to New York on defendant's airline. After presentation of plaintiff's evidence at trial, defendant moved to dismiss the action on plaintiff's failure to show that he had submitted a written complaint

to the carrier within three days of the damage as required by the Warsaw Convention, 49 U.S.C. § 1502 (1970). Plaintiff had orally informed the carrier of the damage within three days, but had not discovered the requirement for written complaint until more than three days had elapsed. The New York trial court concluded that although the treaty does require timely written notice of claim, the requirement was too well-hidden in the Lilliputian print of the conditions of contract on the ticket to be enforceable. The three day period operates as a limitation on liability, but it must be adequately disclosed to the passenger in advance or it will be deemed abandoned. *Sofranski v. KLM Royal Dutch Airlines*, 68 Misc. 2d 402, 326 N.Y.S.2d 870 (Civ. Ct. 1972).

5. IMPORT-EXPORT

IMPOSITION OF CITY FRANCHISE TAX ON IMPORTED GOODS SIGNIFICANTLY MODIFIED AFTER ARRIVAL IN THE UNITED STATES HELD NOT UNCONSTITUTIONAL

The Finance Administrator for the City of New York found a deficiency in the gross receipts declared by petitioner, a wholly-owned subsidiary of a French automobile manufacturer, for the sale of automobiles imported from France. All of the cars imported by petitioner required some modification after their delivery to the United States; those sold wholesale were refitted at petitioner's warehouse with only a few accessories, while those sold at retail were modified with domestic optional equipment to suit the individual purchasers. Although the United States Constitution, art. I, § 10, bars state imposition of tax on imports, the New York Court of Appeals held that *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419 (1827), permitted the city franchise tax on imported goods that, because of modifications effected in the United States, have not preserved their character as imports and have become intermingled with locally manufactured products. The court held taxable the income derived from the retail sales of automobiles that had undergone considerable transformation in this country, but the income from wholesale sales, where the changes made did not affect the essential character of the product, was held nontaxable. *Citroen Cars Corp. v. New York Dep't of Finance*, 30 N.Y.2d 300, 283 N.E.2d 758, 332 N.Y.S.2d 882 (1972).

6. JURISDICTION

ICAO Council Has Jurisdiction To Decide Whether Pakistan Overflights Violated the Chicago International Civil Aviation Convention and the International Air Services Transit Agreement

The Council of the International Civil Aviation Organization (ICAO) assumed jurisdiction over Pakistan's application and complaint, which alleged that the suspension by India of Pakistan civil aircraft flights over Indian territory constituted a breach of the Chicago International Civil Aviation Convention of 1944 and the International Air Services Transit Agreement of 1944. India appealed ICAO's ruling on the ground that the Council did not have jurisdiction to hear any disputes on the issue of overflights because the Chicago Convention and the Transit Agreement had been suspended between the two states. Pakistan argued that India had no right to appeal the Council's decision, since article 84 of the Chicago Convention and article II, § 2, of the Transit Agreement permit an appeal only from a decision of the Council on the merits of the dispute. The Court rejected Pakistan's objections, reasoning that for purposes of the jurisdictional clauses of these treaties the final decisions of the Council on its competence should not be distinguished from final decisions on the merits. Noting that the dispute centered about the interpretation or application of the treaties, the Court held that the Council had jurisdiction to entertain Pakistan's application and complaint. The Court determined that the competence of the tribunal is controlled by the character of the dispute and the issues presented, not by the defenses on the merits. *India v. Pakistan*, [1972] I.C.J. Gen. List No. 54, 11 Int'l Legal Materials 1080 (1972).

The Immigration and Nationality Act and the Farm Labor Contractor Act Do Not Provide Private Rights of Action

Three separate civil actions were consolidated for appeal because each case involved the same central issue: whether a private right of action will be implied from a federal regulatory statute. In *Chavez*, appellants, domestic farm workers, alleged that appellees, domestic employers, had employed Mexicans who had illegally entered the United States. Because of this situation, appellants alleged that they had been deprived of work and that their wages had been depressed. Appellants claimed standing to sue for damages under the Immigration and Nationality Act, 8 U.S.C. § § 1101 *et seq.* (1971). In *Sanchez* and *Olguin*, migrant workers claimed a private right of action under the

Farm Labor Contractor Registration Act of 1963, 7 U.S.C.A. §§ 2041-53 (Supp. 1970). Appellants sought damages for breach of contract and for various violations of the Act. In both cases the appellants urged the court to find that the legislative purpose of each statute implied a private remedy. Furthermore, appellants claimed that governmental agencies were "grossly inadequate" in enforcing the statutes and that the instant court therefore should enforce the Acts. The court held that in the absence of congressional intent to provide for private causes of action under these statutes, the court was precluded from fashioning its own remedies; moreover, the court concluded that the issue raised by these cases was a political question beyond the jurisdiction of the courts. *Chavez v. Freshpict Foods, Inc.*, 456 F.2d 890 (10th Cir. 1972).

THE REPUBLIC OF CHINA MAY EXERCISE JURISDICTION OVER CRIMINAL OFEENSES COMMITTED IN CHINA BY UNITED STATES MILITARY PERSONNEL UNDER THE STATUS OF FORCES AGREEMENT

Plaintiff, a member of the United States Air Force stationed in Taiwan, was arrested at a Chinese residence and charged with illegal possession of drugs. He sought an injunction to prevent his transfer to the civilian custody of the Chinese Government and to compel the Air Force to transport him to the United States for trial. The federal district court held that since plaintiff's misconduct did not arise in the performance of his official duties, the status of forces agreement between the United States and the Republic of China allowed China to exercise criminal jurisdiction over this type of case. The international executive agreement lawfully precluded the court from assuming jurisdiction over the subject matter of plaintiff's action and the United States was obliged to surrender custody of plaintiff to Chinese authorities. *Starks v. Seamans*, 339 F. Supp. 1200 (E.D. Wisc. 1972).

FEDERAL COURTS CANNOT GRANT INJUNCTIVE RELIEF AGAINST PICKETING BY LABOR UNIONS OF FOREIGN VESSELS IN UNITED STATES PORTS

Plaintiff, the Port of Houston Authority, brought this action to enjoin six defendant unions from maintaining peaceful, informational picket lines against three foreign vessels in the Port of Houston. Defendants sought to publicize alleged declining job opportunities and substandard wages and working conditions for American seamen caused by the use of foreign vessels. Plaintiff contended that since the

vessels could not be unloaded, the picketing constituted both an interference with foreign commerce, which is protected by bilateral treaties, and a substantial loss of its income. The District Court for the Southern District of Texas ruled that the Norris-LaGuardia Act, 29 U.S.C. § § 101-15, precluded it from assuming jurisdiction to grant injunctive relief. On appeal, the Fifth Circuit affirmed, following *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U.S. 365 (1960), in which the United States Supreme Court held that the Norris-LaGuardia Act contained no exception for interference with foreign trade or commerce and denied injunctive relief in a similar factual situation. *Port of Houston Authority v. International Organization of Masters*, 456 F.2d 50 (5th Cir. 1972).

ECONOMIC BENEFITS DERIVED FROM PATENT LICENSING AGREEMENT FOUND SUFFICIENT TO SUBJECT FOREIGN MANUFACTURERS TO FEDERAL COURT JURISDICTION UNDER STATE LONG-ARM STATUTE

Appellants, British manufacturers, appealed a federal district court order denying their motion to quash service of process because of lack of in personam jurisdiction. Service had been effected pursuant to the Illinois long-arm statute in a civil antitrust action. Appellants' only contacts with Illinois were as parties to a patent licensing arrangement with an Illinois licensee and as visitors in Illinois to discuss a suit being litigated in another state. Appellants had no office or property in Illinois, and all their manufacturing was done in Great Britain. In addition, title to the manufactured goods passed to their customers in Great Britain. The Seventh Circuit, emphasizing the importance of the continuing economic control that appellants maintained over their Illinois licensees and the profits and royalties received from Illinois sales, held that in personam jurisdiction had been attained properly under the state long-arm statute. *Fisons Ltd. v. United States*, 458 F.2d 1241 (7th Cir. 1972), *cert. denied*, 405 U.S. 1041 (1972).

FEDERAL COURTS HAVE JURISDICTION OVER FOREIGN CORPORATIONS AND FOREIGN NATIONALS ENTERING THE UNITED STATES FOR THE PURPOSE OF INDUCING PERSONS TO INVEST ABROAD

Plaintiff, an American corporation, contracted in Pennsylvania with defendants, Spanish citizens and corporations, to exchange 76,000 shares of its common stock for defendants' fifty per cent interest in five Spanish corporations. Plaintiff became concerned about the financial records of the Spanish corporations and after an

audit by an American accounting firm, sought rescission of the contract, damages and cancellation of future loan obligations. Plaintiff claimed that defendants had committed common law fraud and had violated section 10 (b) and Rule 10b-5 of the Securities and Exchange Act of 1934. Defendants moved to dismiss on the grounds that the court lacked personal jurisdiction over them and that plaintiff had refused to submit his complaint to arbitration as stipulated in the contract. The court declared that before there could be any arbitration on damages, it must first determine whether there were grounds for rescission, because the arbitration panel could not grant rescission. In addition, the court held that jurisdiction over the five Spanish corporations was proper under the tests announced in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). When a foreign corporate officer comes into the United States to induce a person to purchase stock and to extend loans, and signs a contract in the United States, the corporation has had sufficient contacts within the country to satisfy jurisdictional requirements. *Alco Standard Corp. v. Benalal*, 345 F. Supp. 14 (E.D. Pa. 1972).

THE MERE ARRIVAL OF DAMAGED GOODS AT A PORT IN ILLINOIS IS NOT A SUFFICIENT BASIS ON WHICH TO PREDICATE SUBSTITUTED SERVICE OF PROCESS UNDER THE ILLINOIS NONRESIDENT WATERCRAFT OPERATORS' ACT

Plaintiff brought proceedings in admiralty against the vessel and its British owner when his goods arrived in the Port of Chicago from the Port of Antwerp, Belgium, in damaged condition. Service of process was made on the Illinois Secretary of State pursuant to the Illinois Non-Resident Watercraft Operators' Act, Ill. Rev. Stat. ch. 110, § 263b (1969), which permits such service if the cause of action arose from a negligent act or omission committed in Illinois waters. Defendant moved to quash service of process on the ground that the libel failed to allege actions or omissions in Illinois waters sufficient to bring the cause within the provisions of the Act. Plaintiff contended that the mere arrival of the goods in a damaged condition in Chicago constituted sufficient incidents to show damages growing out of the use of Illinois waters. The court, following *Valkenburg, K.G. v. The S.S. Henry Denny*, 295 F.2d 330 (7th Cir. 1961), granted defendant's motion to quash service of process, declaring that the cargo's arrival in damaged condition does not sufficiently prove that the deterioration of the cargo grew out of the use of Illinois waters. *Nimpex International, Inc. v. S.S. Monksgarth*, 342 F. Supp. 510 (N.D. Ill. 1971).

7. TRADE REGULATION

COMITY BETWEEN NATIONS DOES NOT REQUIRE DISMISSAL IN A CASE INVOLVING THE ANTITRUST ACTIVITIES OF A FOREIGN CORPORATION IN THE UNITED STATES

Plaintiff, a Swiss company, contracted with defendant, a French corporation, for the transportation of chemical commodities from the United States to Europe. Since defendant maintained offices in and conducted business within the State of New York, plaintiff brought an action in the United States District Court for the Southern District of New York, alleging defendant's breach of the charter party agreement and failure to honor plaintiff's exercise of an option to extend the charter party agreement. In a second but related action, plaintiff charged defendant with conspiring to fix prices and monopolization of the transportation of chemical products and sought treble damages under the Sherman Act. Defendant challenged the court's jurisdiction in both actions on the basis of a Franco-Swiss treaty that required that suits between nationals of France and Switzerland be brought in the courts of the defendant's nation. The district court held that Fed. R. Civ. P. 17(b), which subjects corporations to suit in the state of their incorporation, gave the court jurisdiction to hear both actions. The Second Circuit, however, held that the pleadings on the first action revealed no basis for federal jurisdiction, but found that the parties' presence in the United States as business entities active in the State of New York evidenced sufficient contacts with this country to permit a federal court to retain subject matter jurisdiction over the antitrust action. Moreover, the strong policy embodied in the Sherman Act against allowing monopolies in the United States overrides considerations of comity between nations. *Joseph Muller Corp. Zurich v. Societe Anonyme de Gerance et D'Armament*, 451 F.2d 727 (2d Cir. 1971).

PRIOR USE OF A TRADEMARK IN A FOREIGN COUNTRY DOES NOT ENTITLE ITS OWNER TO CLAIM EXCLUSIVE TRADEMARK RIGHTS IN THE UNITED STATES

Plaintiff, a large and established toiletries and cosmetics manufacturing firm doing business as "Johnson and Johnson," alleged trademark infringement and unfair competition and brought action under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (1970), for monetary damages and injunctive relief against defendant, a firm owned by Cuban immigrants doing business in California as

"Johnson Laboratories." Defendant manufactured and sold a toilet water product, "Agua de Colonia, Johnson," which formerly had been produced in Cuba by Manuel Johnson, now deceased. The United States market for this product was comprised primarily of Cuban refugees. The federal district court found that defendant's use of the trade name created a likelihood of confusion, might preclude plaintiff from expanding its business to the manufacture of a similar product, and concluded that the prior use of a trademark in a foreign country does not entitle its owner to claim exclusive trademark rights in the United States against one who, in good faith, has adopted a similar trademark prior to the entry of the foreigner into the domestic market. Furthermore, the court determined that defendant's restriction of its sales to the so-called Cuban submarket did not negate the finding of a likelihood of confusion and granted summary judgment for plaintiff. *Johnson & Johnson v. Diaz*, 339 F. Supp. 60 (C.D. Cal. 1971).

EXPROPRIATION AND DISSOLUTION OF A FOREIGN CORPORATION BY A FOREIGN SOVEREIGN NEITHER DEPRIVES FORMER OWNERS AND FIDUCIARIES OF THE RIGHT TO MAKE AN EFFECTIVE ASSIGNMENT OF A REGISTERED UNITED STATES TRADEMARK NOR CANCELS THAT TRADEMARK

Former owners of a Cuban brewery corporation that had been confiscated by the Castro regime, and Maltina corporation, the American assignee of the Cuban brewery's trademark registered in the United States Patent Office, sought damages and injunctive relief against defendant brewery for alleged infringement activities. Plaintiffs claimed that the "Cerveza Cristal" trademark had been properly assigned to Maltina, even though the Cuban brewery had been dissolved in accordance with Cuban law. Defendants moved for summary judgment on the ground that, since the Cuban corporation had ceased to exist under Cuban law, plaintiff had no further rights in the United States trademark and, consequently, defendant was privileged to market its beer under the "Cerveza Cristal" label. The federal district court granted summary judgment for defendant. On appeal, the Fifth Circuit reversed. Although the federal court was precluded from considering the propriety of the Cuban Government's expropriation of the assets of the brewery within Cuba, the corporation retained a de facto existence in the United States and the disposition of property with an American situs was beyond the territorial reach of the expropriating government. The court reserved

the question whether any particular individual or group of individuals had the right to act in the United States on behalf of an enterprise dissolved by a foreign sovereign and held only that the expropriation and dissolution of the Cuban corporation neither deprived the former owners and fiduciaries of the corporation of the right to make an effective assignment of the United States trademark nor cancelled that trademark. *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021 (5th Cir. 1972), *rehearing and rehearing en banc denied*, July 11, 1972.