

RECENT CASES

Supreme Court of England holds that publication of individual frames of Starsky & Hutch TV programs in magazines and posters violates British Copyright Act

The international appeal of American entertainment has brought with it foreign legal problems for American producers. Great Britain's Supreme Court of Judicature has just issued a significant decision interpreting the Copyright Act of the United Kingdom in a suit filed by Spelling-Goldberg Productions against a British publisher who — without authorization — had published photographs from the Starsky & Hutch television series in magazines and on a poster. The British publisher apparently believed that it's actions were permitted by his

country's Copyright Act; and indeed, a trial court judge originally ruled in the publisher's favor and dismissed Spelling-Goldberg's suit.

It was not disputed that the United Kingdom copyright to the Starsky & Hutch series had been properly obtained by Spelling-Goldberg. And prior to 1956, it seems clear that no British publisher would have done, in good faith, what the defendant in this case did. Prior to that year, the rights of motion picture and television producers (as well as other copyright owners) were governed by the United Kingdom Copyright Act of 1911. That act provided that the owner of a copyright in a "cinematography film" owned a copyright in every individual frame on that film as a distinct photograph. In 1956, however, the British legislature enacted a new Copyright Act in which photographs and "cinematograph films" were distinguished and were dealt with separately, and in minor ways, differently. The

Copyright Act of 1956 provides that cinematograph films may be copyrighted, and if they are, their owners have the exclusive rights to make copies of the films, to show them in public, and to broadcast them.

Because the British publisher in this case published photographs in a magazine and on a poster made from frames of Starsky & Hutch, it appeared to Spelling-Goldberg that the publisher had made copies of their “cinematograph films” in violation of the United Kingdom Copyright Act. Spelling-Goldberg so argued in the lawsuit it filed in England against the publisher.

The publisher argued otherwise, however. The United Kingdom Copyright Act defines “cinematograph film” to mean “any sequence of visual images . . . capable . . . of being shown as a moving picture.” The British publisher thus argued that since the single frames it had copied were not capable of being shown as a moving picture, it had not made copies of the Starsky & Hutch

“cinematograph films,” and thus had not violated any of Spelling-Goldberg’s exclusive rights. The trial court agreed.

On appeal, however, the United Kingdom’s Supreme Court of Judicature reversed. All three judges of that court agreed with Spelling-Goldberg that a single frame of a film is a part of that film, and thus, a copy of a single frame is a copy of the film as well. One judge said that in analyzing this issue under the Copyright Act of 1956, it was necessary to consider its language in “its ordinary sense as distinct from any special sense that can be derived from close analysis of the provisions of the Act.”

Aaron Spelling Productions Inc. and Leonard Goldberg Productions Inc. v. B.P.C Publishing Limited, United Kingdom Supreme Court of Judicature, Court of Appeal

(Civil Division), Case No. 1977 A No. 1452 (February 19, 1980) [ELR 1:23:1]

Producer of undistributed version of Grizzly Adams held entitled to profit participation, even though distributor rejected version as unsatisfactory and had new film produced

Agreements for the financing and distribution of motion pictures usually provide that the producer is to deliver a film that is satisfactory to the financing distributor. Recently, the Supreme Court of Utah reviewed a case which tested the producer's rights and the distributor's obligations where the film delivered by the producer did not satisfy the distributor.

In July of 1973, Dick Robinson entered into an agreement with Mel Hardman Productions, Inc. (the parent

corporation of the distributor Sunn Classic Pictures), pursuant to which Robinson agreed to produce a 90-minute motion picture based on the life of Grizzly Adams. Robinson was to write the story and script for the movie, and play the main character as well. In exchange, Robinson was to be paid \$150,000 plus a percentage of the gross.

Robinson delivered 20 hours of film and was paid his \$150,000. Mel Hardman Productions then hired a film editor to edit Robinson's footage, but Hardman was not satisfied with the results. Robinson was advanced an additional \$35,000 to do further work on the movie, but Hardman was not satisfied with that work either.

As a consequence, Hardman then hired Charles Sellier "to salvage the Grizzly Adams project." It was Sellier's opinion that none of Robinson's footage could be used, and Sellier produced a different movie entitled "The Life and Times of Grizzly Adams" which contained none of

the film shot by Robinson. Sellier's version of the movie was released by Sunn Classic in November of 1974 and was a financial success. It was shown on television, and was the basis for a weekly television series.

In the meantime, Hardman had sued Robinson to recover the \$185,000 it had advanced to him. In 1975, Robinson filed a counterclaim against Sunn Classic to recover his percentage of the profits from the distribution of the Sellier version of the movie, claiming that the Sellier version was based on his idea, his film and his work.

The case came to trial, before a jury, in January of 1979. The trial lasted five weeks, and the jury saw both the Sellier version and a three-hour edited version of the film Robinson had produced. After almost two days of deliberations, the jury decided that Robinson had not committed a material breach of his contract with Hardman, and that Sunn Classic's distribution of the Sellier

version of the movie constituted the distribution of Robinson's "photoplay," as that term was used in Robinson's contract.

The trial court adopted the jury's finding that Robinson had not materially breached his contract, and thus it denied Hardman recovery of any of the money it had advanced to Robinson. However, the trial court concluded that since the Sellier version which was distributed by Sunn Classic did not contain any of the actual film Robinson had produced, he was not entitled to any profit participation. Robinson appealed.

The legal issue in the case was the definition of the word "photoplay" that appeared in Robinson's contract, because he was entitled to a percentage of profits if his "photoplay" was distributed. The contract itself defined "photoplay" by saying that it "shall be deemed to include, but not limited to, a motion picture production

consisting of 16mm Ektrachrome film complete to the post-production stage . . .”

The trial court had decided that this definition required that part of the “photoplay” be “the celluloid motion picture.” The Utah Supreme Court disagreed, however. It pointed out that the definition of “photoplay” in the contract was illustrative and not all-inclusive. Thus, it said that it would not be unreasonable to conclude that the term “photoplay” was not necessarily limited to the actual film produced by Robinson. The Utah Supreme Court thus concluded that it had been correct to submit to the jury the issue of whether Sunn Classic had distributed Robinson’s “photoplay” by distributing the Sellier version of the movie. And it held that the trial court had committed reversible error when it disregarded the jury’s finding on that issue.

The Supreme Court therefore reinstated the jury’s verdict in favor of Robinson, and remanded the case back

to the trial court for a determination of Robinson's damages.

It appears unlikely that this case will have any major impact on the motion picture industry generally, because it does not purport to interpret the financing / distribution contract involved in the case. Rather, the decision of the Supreme Court merely says that the jury's interpretation should have been respected. Presumably, if the jury had determined that the Sellier version was not the Robinson "photoplay," the Supreme Court would have held that the jury's decision was binding as well. In addition, the ambiguity in Robinson's contract, which made it unclear under what circumstances he was entitled to profit participation, may be avoided by distributors and producers in the future merely by careful drafting. This case does point out the possibility that a distributor may not be satisfied with the version of a movie made by the producer whose idea sparked the

project originally. And contracts can be written to indicate what compensation, if any, the producer is to receive if the idea is retained but an entirely different version is produced by someone else.

Mel Hardman Productions, Inc. v. Robinson, 604 P.2d 913 (Utah 1979) [ELR 1:23:2]

New York exhibitors obtain damages and order barring discriminatory licensing practices by Twentieth Century Fox; Nevada exhibitors fail to establish restraint of trade in action against theater owner

A group of theaters in Westchester County, New York, in an antitrust action against Twentieth Century Fox, alleged that Fox had conspired with General Cinema to restrict the licensing of Fox films for exhibition by the

theaters. The theaters claimed that Fox had treated them less favorably than General Cinema with respect to the royalties charged for the exhibition of Fox films, and had refused to license many of its films to the theaters. A jury returned a verdict in favor of the theaters and against Fox which the court refused to set aside. Thus, an order has been issued enjoining Fox: (1) from licensing any feature motion picture for exhibition in any theater in Northern Westchester County unless plaintiffs shall have been given an equal opportunity (a) to bid or negotiate therefor and (b) to obtain equally favorable terms as to playing time, play dates, house allowances, royalty percentages and advertising contributions by Fox; and (2) from amending or modifying any license agreement or arrangement to allow more favorable terms than those granted to plaintiffs. However, Fox will not be required to license films for exhibition if the theaters

are in fault in paying royalties on previously-exhibited Fox films.

The court let stand the jury decision in favor of Fox on the royalty discrimination claim, noting that “charging different royalties to different exhibitors . . . in the absence of a conspiracy, does not violate the, Sherman Act.” And the theaters had not established the existence of such a conspiracy to discriminate against them.

In determining reasonable attorneys’ fees, the court commented that there had been a “disproportionate ratio of partners’ time to associates’ time” and concluded that an overall weighted average of \$100 per hour would be a reasonable hourly rate. Attorneys’ fees of \$72,850 were therefore awarded to the theaters in addition to damages in the amount of \$136,799.

In a separate, longstanding antitrust action in Nevada, certain theater owners contended that Raymond Syufy and Syufy Enterprises had conspired with film

distributors to restrain competition by forcing distributors and exhibitors to offer and exhibit films on a day and a date basis only. In a counterclaim, the theater owners alleged that Syufy had used “litigation, threats, coercion and fabrication of evidence to eliminate and prevent competition between Syufy theatres and other theatres in the Western United States.”

A Federal District Court in Nevada granted Syufy’s motion for summary judgment, noting that the Syufy corporations were not separate entities and could not have conspired among themselves, and that “injury by way of litigation costs is not enough.” The counterclaimants had failed to demonstrate that there were agreements between the distributors and Syufy with resultant restraint of trade and causally connected damages.

Beech Cinema, Inc. v. Twentieth Century Fox Film Corp., 481 F.Supp. 15 (S.D.N.Y. 1979), 1980-1 CCH

Trade Cases, Para. 63,086 (S.D.N.Y. 1979); Las Vegas Drive-In Theatre v. National General Theatres, 1979-2 Trade Cases, Para. 62,895 (D. Nev. 1979) [ELR 1:23:3]

Rookie professional athlete unable to use income averaging provisions of Internal Revenue Code to reduce federal taxes

Rookie professional athletes frequently enjoy dramatic increases in their incomes as soon as they finish college. Equally dramatic taxes frequently accompany those incomes, however; and over the years, rookies (and their parents) have attempted to reduce the government's tax bite in a variety of creative ways. The "income averaging" provisions of the Internal Revenue Code (sections 1301 through 1305) were designed to afford some measure of relief to taxpayers whose incomes fluctuate

widely from year to year; and thus it is not surprising that rookie athletes have attempted to use income averaging to reduce their tax obligations.

In order to be eligible to use income averaging, a taxpayer must have provided at least one-half of his or her own support prior to the year for which income is to be averaged. It is this requirement which prevents most taxpayers from averaging the incomes of their first years in the workforce with the low or nonexistent incomes of their student years.

Back in 1971, a rookie athlete argued that he was eligible to average his income because he had provided more than half of his support while in college. The support he provided for himself, he said, was received by him in the form of an athletic scholarship from the college he attended. The Tax Court rejected this contention, however. It held that athletic scholarships were not support furnished by the student himself, and thus they could not

be considered in determining whether the student furnished half or more of his own support. *Heidel v. Commissioner*, 56 T.C. 95 (1971).

Recently, another rookie athlete tried to use income averaging to reduce the taxes he otherwise would have had to pay on the more than \$52,000 he earned during the year he finished college. This particular rookie (or his wife) had worked while he was in college, and thus he was not relying on his athletic scholarships to establish that he had supported himself. The amount that he (or his wife) had earned from that work was less than the value of those scholarships, however, and thus he excluded the scholarships entirely in determining the amount of support he had received while in college.

Unfortunately for him — and for the legions of well-paid rookies to come — the Tax Court has ruled that the value of athletic scholarships must be included in determining the amount of support a student athlete received

while in college. That ruling, coupled with the Tax Court's earlier ruling that scholarships are not support furnished by the student himself, meant that the rookie in this case — and in all but the most unusual cases to come — had failed to provide half of his own support while in college. Thus he too was ineligible to use the income averaging provisions of the Internal Revenue Code.

Jolitz v. Commissioner, 73 T.C. No. 57 (1980) [ELR 1:23:3]

Westinghouse Broadcasting granted summary judgment in libel lawsuit filed by Carl McIntire, because editorial found to be fair comment on matters of public concern

Carl McIntire, the pastor of a New Jersey church and the director of a nationally broadcast religious radio program, brought an action for defamation against Westinghouse Broadcasting Company, the owner and operator of a television station in Baltimore, alleging that an editorial broadcast by the station in 1972 contained false and defamatory statements. The editorial had commented on a protest staged by McIntire and his followers when a Soviet ship visited the Baltimore harbor. The editorial mentioned that a group of neo-Nazis had engaged in a similar protest and also referred to an international atmosphere of distrust exemplified by the Arab terrorist attack at the Munich Olympic games.

A Federal District Court in Massachusetts has granted summary judgment to Westinghouse, finding that the editorial was fair comment on events of public concern and that there had been no clear and convincing showing that any defamatory falsehoods had been published with

actual malice. The editorial did not state that any alliance existed among McIntire, the neo-Nazis and the Arabs and, according to the court “[t]he defendant was not constitutionally required to arrange its editorial comments in such a way as to present the plaintiff in the best possible light and to treat commentworthy matters under separate headings.”

McIntire v. Westinghouse Broadcasting Company, Inc.,
479 F.Supp. 508 (D.Mass. 1979) [ELR 1:23:4]

Advertising discounts may violate antitrust laws where given only to agencies

The judgment of a Federal District Court in New York City dismissing an antitrust action brought by a book club against the New York Times, Time Incorporated,

four leading advertising agencies and the American Association of Advertising Agencies, has been reversed by a Federal Court of Appeals. (The District Court opinion was reported at ELR 1:6:5). Ambook contended that pursuant to an agreement among the defendants, it had been forced to use the services of advertising agencies because the agencies received a 15% discount from the publishers while advertisers who did not use an agency were required to pay established rate card charges.

The Court of Appeals found that evidence had been presented from which a trier of fact might infer that the discounting practice was the result of an agreement among and between the media and the advertising agencies “rather than representing independent identical decisions by hundreds of newspapers and magazines.” The court noted that the media offered no evidence to show what legitimate business advantage, save continuity and fear of reprisal, inhered in the dual rate system. No

independent reason was offered for one of the media's not doing what could be thought to be in its own self-interest — offering the lower rate to direct advertisers who performed the same service for which agencies received discounts as a means of increasing the offeror's share of the direct advertising market.

Summary judgment in favor of Time and the New York Times was therefore reversed, and all other participants in the alleged agreement were found jointly and severally liable for any damages that are established by Ambook.

Ambook Enterprises v. Time Inc., 612 F.2d 604, 1979-2 CCH Trade Cases, Para. 62,979 (2d Cir. 1979) [ELR 1:23:4]

Producers of *The Wiz* need not indemnify theater operator for claim brought by injured theater patron

A theater patron who sustained injuries in a fall on an icy staircase at a theater brought an action against the theater operator, who in turn sought to shift any liability to the producers of “*The Wiz*,” the show then being performed at the theater. The licensing agreement between the theater and the producers set forth the producer’s obligation to obtain insurance protection and contained an indemnification clause by which the producers assumed all responsibility “with respect to any claim or demand for any loss, damage and/or injury to any property, person, or thing owned, rented or brought into Theatre by Producer.”

A Court of Appeals in Illinois has affirmed a lower court judgment granting summary judgment to the producers. The court found that the indemnity clause of the

licensing agreement was “too general and too broad to be construed as indemnifying the Theatre for its own negligence which resulted in the [patron’s] injury.” Further, the clause covered only the persons working to further the production; the patron, who was “not an instrumentality of the Producers and was not under their control” was therefore not covered.

The court also pointed out that the licensing agreement prohibited the producers from making any alterations to, or repairs of, the theater. Placing the loss on a party who was not in a position to prevent any accidents would not further public safety, observed the court.

The theater operator alleged that indemnity should have been available because the producers had failed to purchase the required liability insurance. But such indemnification was denied, because the agreement did not state that it was the theater’s own negligence which was being insured.

Bates v. Select Lake City Theater Operating Co., Inc.,
397 N.E.2d 75 (Ill.App. 1979) [ELR 1:23:5]

**Written release found insufficient by itself to relieve
Saddle Club of liability for wrongful death of horse
show participant**

The Supreme Court of Wisconsin has partially reversed an order of summary judgment granted in a wrongful death action brought by the widow of a participant in a horse show “cutting” event who died of injuries he sustained during the event. The court ruled that a release signed by the deceased related only to injuries that might have resulted from the condition of his own property. In this case the widow alleged that her husband’s death was caused by the condition of the property owned or controlled by the defendants.

Summary judgment was also denied to the individual conducting the event on the ground that if he was “in control of and supervising the ‘cutting’ event at the time the accident occurred as alleged, he owed a duty of ordinary care in conducting the event so that participants would not be injured.” The question of whether such care was exercised was held to be a question of fact requiring a trial.

However, the insurance company involved was found to be entitled to summary judgment since its policy excluded coverage for the type of injury sustained by the deceased rider.

The court also ruled that certain defendants might have been liable under Wisconsin’s “safe-place” statute.

Ruppa v. American States Ins. Co., 284 N.W.2d 318
(Wisc. 1979) [ELR 1:23:5]

Penthouse and Hustler magazines obtain injunction barring Georgia county official from harassing magazine s retailers; but Federal Court of Appeals holds that January 1978 issues of the magazines were obscene

The publishers of the magazines Penthouse, Hustler, High Society, Eros and Gallery brought an action against Hinson McAuliffe, the Solicitor General for Fulton County, Georgia, alleging that he had conducted a campaign of bad faith and harassment against their retailers, resulting in the termination of sales of the August 1977 issues of the magazines in Fulton County. A Federal District Court in Georgia enjoined McAuliffe from making warrantless arrests of the retailers for selling the issues in question. The court also found that McAuliffe's activities constituted an informal system of prior

restraint in violation of the First and Fourteenth Amendments of the United States Constitution

In a second set of complaints' similar relief was sought in connection with the January 1978 issues of Playboy, Penthouse and Oui magazines. The allegedly unconstitutional activities of McAuliffe were not at issue since the magazines were sold in the county pursuant to an agreement between the publishers and McAuliffe. The District Court was asked to decide whether the magazines were obscene and the court ruled that the issues were not obscene within the meaning of *Miller v. California*, 413 U.S. 15 (1973).

A Federal Court of Appeals in Georgia has partially affirmed and partially reversed the District Court decisions.

The Court of Appeals noted that McAuliffe's investigators "essentially possessed sole discretion for determining whether the Georgia [obscenity] statute was

being violated.” It was contended that the investigators had sufficient expertise to determine whether the statute was being violated and whether probable cause therefore existed to make warrantless arrests. But the court found that “[t]here must be some judicial determination of obscenity before a seizure or ‘constructive seizure’ may occur,” and that the investigators, who had no written instructions or guidelines, could not determine whether the magazines were obscene.

McAuliffe also contended that the retailers and wholesalers had “voluntarily” withdrawn the publications and, hence, there being no seizure, there could be no prior restraint. But the court rejected this argument and upheld the decision granting injunctive and declaratory relief against the complained-of enforcement activities, noting that McAuliffe “with the use of a calculated scheme that included public announcements in the local newspapers, systematic visits to retailers of the magazines in

question, and a program of carefully timed warrantless arrests, effected a `constructive seizure' of the complainant's publications without first allowing a neutral, detached magistrate to make an independent determination of the propriety of the seizure."

The Court of Appeals ruled, however, that the January 1978 issues of Penthouse and Oui, although not Playboy, were obscene under the standards set forth in Miller, because taken as a whole, the magazines appealed to the prurient interest and included patently offensive descriptions of sexual conduct. In particular, according to the court, the items entitled "Penthouse Forum," "Call Me Madam," "Couples," and "The Skins of Peggy" in Penthouse and "Sex Tapes" and "Sex Tape Letters" in Oui were found to describe "hard core" sexual conduct "in such a manner that exceeds the customary limits of good taste usually found in literature. The explicitness and amount of detail coupled with the

offensive language used to describe the actual sexual experiences or sexual fantasies were presented in such a manner that was patently offensive.”

Treating each magazine as a separate work that is to be taken as a whole, although made up of separate component articles, the court concluded that the two issues in question lacked serious literary, artistic, political or scientific value. The District Court decision on this issue was therefore reversed.

Penthouse International, Ltd. v. McAuliffe, 610 F.2d 1353 (5th Cir. 1980) [ELR 1:23:5]

Several obscenity statutes and ordinances held to be unconstitutional or otherwise invalid in recent decisions

The Supreme Court of Tennessee has invalidated the Tennessee Obscenity Act of 1978 with the result that the state's prior obscenity law continues in effect. The court found that the definition of obscene materials in the 1978 statute went beyond the guidelines established by the United States Supreme Court in *Miller v. California*, 413 U.S. 15 (1973), and constituted "Impermissible encroachments on freedom of speech and press" in violation of the Tennessee Constitution and the First and Fourteenth Amendments of the U.S. Constitution. The court also found that the statute was void under the due process clauses of the state and federal constitutions since it failed to identify clearly those who would be subject to and exempt from its criminal penalties. The court also ruled that the definitions of several phrases in the statute, such as "unwholesome" and "value," were vague and unintelligible and therefore void.

The Duluth City Code regulating the distribution of obscene material exempted certain schools, museums, churches, government agencies and physicians from its coverage. The Supreme Court of Minnesota has held that this provision was unconstitutional as a violation of the equal protection clause because it granted “total immunity” to particular groups and institutions regardless of the manner in which the material was used. According to the court an “arbitrary” and “overbroad” classification was thus created with limited relevance to achieving the exemption’s objective of permitting the dissemination of obscene material for legitimate educational, scientific or artistic purposes. And the inclusion of “income tax exempt organizations” in the definition of exempted institutions was found ambiguous, the court citing and agreeing with the similar finding in *Leech v. American Booksellers Assn.* (above) that “. . . [t]he use of taxable entity for inclusion and nontaxable entity for

exclusion is too nebulous, too lacking in definite limits, and too vague to inform men of common intelligence who is included and who is exempt from the criminal penalties.”

The main portion of the ordinance, which adopted the obscenity criteria set forth in *Miller v. California*, 413 U.S. 15 (1973), was upheld by the court, but the defendants’ conviction was reversed because they had not had a jury trial. The court agreed with the defendants’ contention that the *Miller* decision “assumes that the critical determination of obscenity will be made by a jury, although it does not require a jury finding,” and held, under its supervisory powers, that a criminal obscenity charge must be tried to a jury.

The Appellate Division of the New York Supreme Court has found that a section of the New York City Administrative Code requiring a license for the presentation of “live shows” was an unconstitutional

infringement of the defendants' First Amendment rights since it failed to set forth any standards to govern the issuance of such licenses. The court therefore reversed the defendant theater owner's conviction for violating the ordinance.

The Supreme Court of Washington has held that a Spokane County ordinance relating to the sale of obscene material was invalid and has reversed the defendants' conviction for violating the ordinance, finding that the state's obscenity statute was intended to "preempt the field of criminalizing obscenity" since it set forth a comprehensive, detailed and uniform system of obscenity prohibition.

Leech v. American Booksellers Assn., 582 S.W.2d 738 (Tenn. 1979); City of Duluth v. Sarette, 283 N.W.2d 533 (Minn. 1979); People v. Calbud Theatre, Inc., 421

N.Y.S.2d 289 (N.Y.App. 1979); City of Spokane v. Portch, No. 45668, P.2d (Wash. 1979) [ELR 1:23:6]

Briefly Noted:

Libel.

The Supreme Court of Massachusetts has granted summary judgment to a radio station in an action brought by a police officers' union alleging that the use of the word "communism" during a radio talk show discussion of certain union actions was defamatory. The court found that the statement was an opinion based on facts which were apparent and disclosed and therefore did not constitute actionable defamation. Further, the statement occurred in the context of a public debate over a labor contract and would be taken by the audience as "mere

perjorative rhetoric.” And since a public-employee union was involved (being a public figure of at least limited range) actual malice had to be shown, but no evidence had been presented to demonstrate “mordant unconcern” with the truth of the statement on the part of the show’s host or the station.

National Association of Government Employees, Inc. v. Central Broadcasting Corporation, 396 N.E.2d 996 (Mass. 1979) [ELR 1:23:7]

Libel.

A Federal District Court in Pennsylvania, in response to a motion for judgment notwithstanding the verdict, has upheld a jury verdict awarding nominal damages of \$1.00 to an individual who alleged in a false light

invasion of privacy claim that “The Guns of Autumn,” a television documentary about hunting, portrayed him as an unsportsmanlike hunter.

Uhl v. Columbia Broadcasting Systems, Inc., 476 F.Supp. 1134 (W.D.Pa. 1979) [ELR 1:23:7]

Racing Regulation.

A Federal Court of Appeals has affirmed a preliminary injunction by which Mountain Laurel Racing was enjoined from denying a harness driver access to its race-track. The driver had filed suit under 42 U.S.C. section 1983 contending he had been denied due process, after being told to remove his horses from the track because of alleged inconsistent driving. At issue in the case was whether the actions of Mountain Laurel Racing were

“state action” such that due process had to be afforded to the driver. The Court of Appeals agreed with the District Court that Mountain Laurel’s actions were “state

success on his claim that he had been denied due process.

Fitzgerald v. Mountain Laurel Racing, Inc., 607 F.2d 589 (3d Cir. 1979) [ELR 1:23:7]

Labor Arbitration.

Arbitrator Thomas Christopher has decided that Media Productions, Inc. did not violate the meal period provisions of the IATSE Collective Bargaining Agreement. The dispute arose while members of the Media crew, including IATSE members, were on location in Colorado

and Arizona filming a television series, “The Sacketts.” A charter flight from Colorado to Arizona had to be abandoned because higher than anticipated ground temperatures resulted in the charter plane’s being burdened with excess weight. As a consequence, the crew had to fly on scheduled Frontier Airlines commercial flights which delayed their arrival in Arizona. At issue in the arbitration was whether the IATSE members of the crew had had an opportunity to eat a meal other than the Frontier Airlines meal within six hours of their last meal, as required by their Collective Bargaining Agreement, and if not, whether the Frontier Airlines meal served satisfied the meal requirements of that Agreement. The arbitrator found that the IATSE members had had an opportunity to eat while in the airport waiting for the takeoff of the Frontier Airlines scheduled flight, and that even if they had not, the Frontier Airlines meal satisfied the Agreement’s meal requirement.

Media Productions, Inc. and IATSE, 79-2 ARB, Para. 8582 (1979) [ELR 1:23:7]

Copyright.

A Federal District Court in Florida has awarded United Feature Syndicate \$16,000 in statutory damages for the infringement of its copyrights to the “Peanuts” characters. The defendant had sold unauthorized heat transfers of two versions of “Snoopy,” and the court’s award granted United \$8,000 per version. Attorney’s fees of \$1,230 were awarded as well.

United Feature Syndicate, Inc. v. Rheingold, CCH Copyright Law Reports, Para. 25,114 (S.D.Fla. 1979) [ELR 1:23:7]

Constitutional Law.

A Federal District Court in Vermont has held that the administrators of a public high school district did not violate the First Amendment rights of students or school librarians when those administrators ordered the librarians to remove from the school's library shelves copies of *Dog Day Aftenoan* by Patrick Mann and *The Wanderers* by Richard Price.

Bicknell v. Vergennes Union High School Board of Directors, 475 F.Supp. 615 (D.Vt. 1979) [ELR 1:23:7]

Torts.

The Supreme Court of Michigan has held that where two people owned a drag strip as tenants in common,

but only one of the owners actually exercised possession and control of the property, only the owner who exercised possession and control owed a duty of care to race spectators. Accordingly, the court affirmed the dismissal of a wrongful death action against the passive owner which had been filed by the estate of a spectator who was killed in an accident at the drag strip.

Merritt v. Nickelson, 287 N.W.2d 178 (Mich. 1980)
[ELR 1:23:7]

DEPARTMENTS

In the Law Reviews:

Complying with New Recordkeeping for the Investment Tax Credit on Motion Picture Films by Robert J. Miller, *The Journal of Taxation*, January 1980, pg. 13-15.

Tax Accounting for Retuned Magazines, Paperbacks and Records - An Examination of Code Section 458 by Mark J. Sullivan, *58 Taxes Magazine* 279-282 (April 1980)

Tax Treatment of Artists' Charitable Contributions, *89 Yale Law Journal* 144-167 (1979)

The NFL's Final Victory Over *Smith v. Pro-Football Inc.*, *27 Cleveland State Law Review* 541-564

Obscenity and Freedom of Expression in Michigan by
Robert C. Black, 56 University of Detroit Journal of Ur-
ban Law 27-98 (1979)
[ELR 1:23:8]