Maryland Law Review

Volume 21 | Issue 1 Article 9

Recent Decisions

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Criminal Law — No Defense To Statutory Rape That Victim Is Married Woman Below The Age Of Consent. *People v. Courtney,* 4 Cal. Rptr. 274 (1960). Defendant was indicted for statutory rape of a female under eighteen years of age who was married, but not to defendant. The California statute makes a girl under eighteen years of age incapable of giving legal consent to illicit acts of sexual intercourse. Defendant contended that the purpose of the statute was to protect young, innocent, naive girls from illicit acts of sexual intercourse, and that the victim, as a married woman, did not fall within the class of persons which the statute was designed to protect. The court, in adhering to the express language of the statute, *held* that the fact that the girl was married was no defense to a charge of statutory rape since the statute did not make an exception for married females.

In *State v. Huntsman,* 115 Utah 283, 204 P. 2d 448 (1949), a similar contention was advanced by a defendant charged with statutory rape, but the court in rejecting it said that had the legislature intended to exclude married females from the protection of the statute it could easily have done so. The Maryland statutes on carnal knowledge provide: "If any person shall carnally know and abuse any woman child under the age of fourteen years . . . every such carnal knowledge shall be deemed [sic] felony. . . ." 3 MD. CODE (1957) Art. 27, § 462; "If any person shall carnally know any female not his wife, between the ages of fourteen and sixteen years, such carnal knowledge shall be deemed a misdemeanor . . ." 3 MD. CODE (1957) Art. 27, § 464. The contention raised in the instant case has never been ruled upon by the Maryland Court of Appeals.

Domestic Relations — Award Of Child's Support May Include Funds For College Education. *Pass v. Pass,* ..... Miss. ....., 118 So. 2d 769 (1960). Petitioner, a divorcee having custody of her eighteen year old daughter who had graduated from high school with a brilliant record, sought an increase in a prior award for child support so that the daughter might attend college. The divorced father had an income in excess of $12,000 a year. In upholding an order increasing the award, the Supreme Court of Mississippi *held* that it was not improper to compel the financially capable father to provide funds for the college education of his gifted minor daughter.

The courts have consistently imposed an obligation on the divorced father to provide his minor children with at least a high school education. *O'Brien v. Springer,* 202 Misc. 210, 107 N.Y.S. 2d 631, 56 A.L.R. 2d 1207, 1213 (1957). Some jurisdictions have indicated that the divorced father's duty to support includes college expenses for a child who has demonstrated college aptitude, where such a duty will not place an overwhelming burden on him. *Calogeras v. Calogeras,* ..... Ohio St. ....., 163 N.E. 2d 713 (1959); *Strom v. Strom,* 13 Ill. App. 2d 354, 142 N.E. 2d 172 (1957). Other jurisdictions, in the absence of agreement, refuse to require a divorced father to provide funds for his child's college education, regardless of his financial capacity or the child's aptitude. *Haag v. Haag,* ..... Ind. ....., 163 N.E. 2d 243 (1959); *Commonwealth v. Stomel,* 180 Pa. Super. 573, 119 A. 2d 597 (1956). See 56 A.L.R. 2d 1207 (1957); MADDEN, HANDBOOK OF THE LAW OF PERSONS AND DOMESTIC RELATIONS (1931) § 112.

The Maryland Court of Appeals has not decided the question of whether a divorced father can be compelled to contribute to his child's college education. In *Johnson v. Johnson,* 202 Md. 547, 97 A. 2d 330 (1953), the Court indicated that the factors to be considered in an award of child support included, *inter alia,* the child's present and future needs for education and the possibility that these needs might increase. The instant case dealt with a statute almost identical to 6 MD. CODE (1957) Art. 72A, § 1, which provides that the parents are charged with the support, care, nurture, and *education* of their minor children.

Evidence — Plea Of Guilty To Traffic Offense Admissible In Subsequent Civil Suit As Evidence Of Negligence. *Ando v. Woodberry, et al.,* 8 N.Y. 2d 165, 168 N.E. 2d 520 (1960). Defendant pleaded guilty in traffic court to a charge of making an improper turn. In a subsequent civil suit, plaintiff, whom defendant struck when making the improper turn, attempted to introduce defendant's traffic court plea of guilty as an admission by defendant of his negligence. The trial court refused to allow the evidence. In reversing, the New York Court of Appeals, in a case of first impression in that court, *held* that the plea of guilty constituted an admission and should have been allowed in the civil suit as evidence of facts constituting negligence. The dissent felt that the plea of guilty should not be allowed because most people charged with minor traffic

violations plead guilty to avoid inconvenience, regardless of their guilt or innocence.

The majority of jurisdictions hold that a plea of guilty by an accused in a criminal case may be introduced against him as an admission in a subsequent civil suit arising out of the same offense. *Koch v. Elkins*, 71 Idaho 50, 225 P. 2d 457 (1950); *Piechota v. Rapp*, 148 Neb. 443, 27 N.W. 2d 682 (1947). Such a plea is not treated as conclusive and may be explained by the defendant. MCCORMICK, EVIDENCE (1954) § 242, n. 32. There are a few courts that will not admit evidence of a plea of guilty in a subsequent civil suit, specifically in traffic cases, but this exclusion is usually controlled by statute. *Warren v. Marsh*, 215 Minn. 615, 11 N.W. 2d 528 (1943). The Maryland Court of Appeals has not ruled on the instant question. Cases are collected in 18 A.L.R. 2d 1287, 1307 (1951).

Mortgages — Termination Of Interest Payments In Foreclosure Proceedings. *Ex Parte Aurora Federal Savings and Loan Ass'n*, 223 Md. 135, 162 A. 2d 739 (1960). A mortgage called for payment of interest by mortgagor until the whole of the principal sum and interest was *paid*. The mortgagor defaulted and after foreclosure proceedings and a sale by the trustee pursuant to 5 MD. CODE (1957) Art. 66, § 6, a question arose as to whether the principal sum due the mortgagee was *paid* when the foreclosure sale took place or when the auditor's account was ratified, said ratification occurring several months after the sale. The Circuit Court for Anne Arundel County allowed the mortgagee interest only up to the date of the foreclosure sale. The Maryland Court of Appeals, in a case of first impression, reversed the lower court and *held* that the mortgagee was entitled to interest until the date of the ratification of the auditor's account. The Court said that 5 MD. CODE (1957) Art. 66, § 6, which provides, in part, that the proceeds of foreclosure sales shall be accounted for and be distributed by the court in the usual manner of sales by decree, did not prevent the parties from agreeing to payment of interest beyond the date of the foreclosure sale. The Court further said that in Maryland a mortgagee is not actually paid his claim until ratification of the auditor's account. Thus it concluded that, in view of the terms of the mortgage, the parties had agreed to the payment of interest beyond the date of the foreclosure sale.

In seven Maryland counties, Anne Arundel County not included, it is provided by statute that interest payments on a mortgage shall continue for sixty days after the foreclosure sale or until the ratification of the auditor's account, whichever occurs first. 5 MD. CODE (Cum. Supp. 1960) Art. 66, § 8.

For cases from other jurisdictions reaching a result similar to that of the instant case see *Trompen v. Hammond,* 61 Neb. 446, 85 N.W. 436 (1901), and *Lombard Inv. Co. v. Barton,* 5 Kan. App. 197, 47 P. 154 (1896). See also 134 A.L.R. 846 (1941).

Quasi Contracts — Quantum Meruit Recovery Upon Attorney's Lien For Services Under A Champertous Contract. *Application of Kamerman,* 278 F. 2d 411 (2nd Cir. 1960). Petitioner, an attorney, represented a corporation in a tax refund action in the United States District Court for the Southern District of New York under an agreement which provided that he was to bear the expense of an expert witness. In an ancillary proceeding, petitioner sought to enforce an attorney's lien for his fee, which was based on this agreement. Because the agreement was champertous, the District Court denied the attorney's lien on the ground that it was equitable in nature, but indicated that recovery on a *quantum meruit* basis could be sought in an action at law. On appeal, the Court of Appeals for the Second Circuit adopted the view that an attorney may recover on a *quantum meruit* basis for services rendered under a champertous fee agreement, but reversed and remanded to allow a lien for an amount to be determined by *quantum meruit.*

An agreement between an attorney and client is champertous, and thus unlawful, if it provides that the attorney will undertake to carry on the litigation at his own expense and risk. 6 WILLISTON ON CONTRACTS (Rev. ed. 1938) § 1712.

The view adopted in the instant case represents the weight of authority in the United States. 85 A.L.R. 1365 (1933). The minority view is that the champertous conduct of an attorney should bar recovery of both the agreed compensation and the value of his services. Notable among those supporting the minority view are 6 WILLISTON ON CONTRACTS (Rev. ed. 1938) § 1713, 4841; and RESTATEMENT, CONTRACTS (1932) § 545, 1049. There is no Maryland Court of Appeals decision on point. How-

ever, champerty is a species of barratry, the crime of frequently inciting or soliciting litigation, PERKINS ON CRIMINAL LAW (1957) Ch. 5, 449, and barratry is a misdemeanor in Maryland, 3 MD. CODE (1957) Art. 27, § 13. For further discussion, see Note, *Collateral Effects of Champertous Agreements,* 27 Col. L. Rev. 981 (1927); Note, *Attorney's Recovery for Services Under a Void or Champertous Contract,* 3 Iowa L. Bull. 43 (1917).

Real Property — Surface Water — Civil Law Rule As Affected By Reasonableness Of Use Rule. *Sainato v. Potter,* 222 Md. 263, 159 A. 2d 632 (1960). Defendants owned lot 7 and plaintiffs owned lot 8, the lots being adjacent. In its original state, lot 7 was higher than lot 8. Surface water drained from lot 7 across lot 8. Plaintiffs later graded lot 8 which raised its level above that of lot 7, causing surface water to collect on lot 7. Defendants then filled in lot 7, making it once again higher than lot 8, and causing silt and debris to be washed onto lot 8 by the renewed flow of surface water. Plaintiffs, although denied injunctive relief in the lower court, were awarded damages. Defendants appealed and the Court of Appeals *held* that plaintiffs could recover damages for excessive amounts of silt and debris, but not for the renewed flow of surface water. The Court indicated that although defendants had a right under the civil law rule to raise the level of lot 7 even though this renewed the flow of surface water across plaintiffs' land, they did have a duty under the reasonableness of use rule to take precautions against unduly harming plaintiff's land with silt and debris.

The majority of jurisdictions in the United States, including Maryland, adhere to the civil law rule under which a higher landowner is entitled to have surface water flow naturally from his land onto lower lands, the lower landowners having no right to obstruct it. *Battisto v. Perkins,* 210 Md. 542, 124 A. 2d 288 (1956); *Shanan v. Brown,* 179 Ala. 425, 60 So. 891 (1913); *Bradbury v. Vandalia Levee and Drainage Dist.,* 236 Ill. 36, 86 N.E. 163 (1908). The principal minority view is the common enemy doctrine, which allows a lower landowner to ward off and obstruct surface water coming from other lands. *Chadeayne v. Robinson,* 55 Conn. 345, 11 A. 592 (1887); 56 Am. Jur. 552, Waters, § 69. A third view is the reasonableness of use rule, under which landowners must take reasonable precautions against harming each other's

property. *City of Franklin v. Durgee,* 71 N.H. 186, 51 A. 911 (1901); Note, *Rule as to Surface Waters in Minnesota,* 2 Minn. L. Rev. 449 (1918). The instant case, following earlier Maryland cases, indicates that Maryland also applies the reasonableness of use rule to preclude undue hardship to an adjoining landowner under too strict an application of the civil law rule. See Note, *Maryland Surface Waters — A Critical Analysis,* 18 Md. L. Rev. 61 (1958); and Note, *Drainage of Surface Waters under the Civil Law Rule as Applied in Maryland,* 11 Md. L. Rev. 58 (1950).

Sales — The Necessity For Privity Of Contract In Breach Of Implied Warranty. *Peterson v. Lamb Rubber Company,* ..... Cal. 2d ....., 353 P. 2d 575 (1960). Plaintiff was injured while using a defectively manufactured abrasive wheel which had been purchased by his employer from defendant manufacturer. Plaintiff sought to recover from defendant for breach of implied warranties of fitness for use and of merchantable quality, relying on § 15 of the UNIFORM SALES ACT, adopted in California. The trial court sustained defendant's demurrer on the ground that no privity of contract existed between plaintiff and defendant. The California Supreme Court, in overruling the trial court, *held* that as the plaintiff was a member of the industrial family of his employer, and since privity existed between employer and defendant, plaintiff could recover.

Generally no recovery is allowed for breach of implied warranty unless privity of contract exists. *Burr v. Sherwin Williams Co.,* 42 Cal. 2d 682, 268 P. 2d 1041 (1954). An exception to this rule which has gained acceptance in California and a few other jurisdictions is in the case of food and beverages where privity is not required between consumer and manufacturer. *Vaccarezza v. Sanguinetti,* 71 Cal. App. 2d 687, 163 P. 2d 470 (1945); *Jacob E. Decker & Sons, Inc. v. Capps,* 139 Tex. 609, 164 S.W. 2d 828 (1942). The UNIFORM COMMERCIAL CODE, now adopted in five states, § 2-318, extends a seller's warranty to persons in the family or household of the buyer, or to guests of the buyer if it is reasonable to expect that such persons may use, consume, or be affected by the goods.

Maryland is more strict than California on the requirement of privity in that it does not recognize any exception to the general rule. *State v. Consol. Gas Etc.*

Co., 146 Md. 390, 126 A. 105 (1924). However, in *Vaccarino v. Cozzubo*, 181 Md. 614, 31 A. 2d 316 (1943), noted 8 Md. L. Rev. 61 (1943), it was held that where plaintiff's daughter purchased pork sausage for family use from defendant grocer, privity did exist between plaintiff and defendant since the daughter was plaintiff's agent in making the purchase. See further 18 Md. L. Rev. 268 (1958).

Taxation — New Formula For Determining Home Builder's Taxable Gain From Sale Of Homes Subject To Ground Rents. *Welsh Homes, Inc. v. C.I.R.*, 279 F. 2d 391 (4th Cir. 1960). Taxpayer, a real estate developer in Maryland, bought unimproved land and divided it into lots. On each lot he erected a house and created ground rents which he retained upon sale of the houses and transfer of the leasehold interests. The Tax Court applied a new method for computing the taxable gain upon the sale of a leasehold interest by allocating the builder's costs between the reversion and the leasehold, and deducting the cost allocable to the leasehold interest from its sales price. The Fourth Circuit Court of Appeals, in affirming the decision of the Tax Court, adopted this new formula.

The formula is: ". . . the ratio of the value of the leasehold to the aggregate value of the leasehold and the reversionary interest is first ascertained and then the ratio is applied to the aggregate cost of the land and the building. The result obtained represents the cost basis of the leasehold." (394). Using the Court's illustration, if a buyer pays $12,000 for the leasehold interest in an improved lot subject to an annual ground rent of $120, which capitalized at 6% is $2,000, the value of the whole property is $14,000. If the builder paid $500 for the land and $10,000 to construct the house, the ratio of the value of the leasehold to the value of the whole property is twelve-fourteenths. Applying this ratio to the total costs of the builder, the cost of the leasehold is thus determined to be $9000, resulting in a taxable gain of $3000 to the builder.

Under the old formula, the gain was measured by the difference between the purchase price of the leasehold and the cost of constructing the house. *Commissioner of Internal Revenue v. Simmers' Estate*, 231 F. 2d 909 (4th Cir. 1956), noted in 17 Md. L. Rev. 241 (1957). The new formula was first suggested in this note. See also 19 Md. L. Rev. 349 (1959).