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Commerce - Regulation of Sales as Burden on Interstate Commerce

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as it is in states not recognizing contributory negligence as a defense to guest statutes.

Wisconsin's rejection of assumption of risk as a defense in host-guest cases is a radical departure from widely accepted principles. The court in the instant case justified its holding by noting the modern prevalence of liability insurance and the desirability of shifting the burden of injuries from the individual to the motoring public. Such arguments involve value judgments.

It is hard to justify the rule of assumption of risk because it prevents the automobile guest from recovering for negligence which in other situations would clearly allow recovery. Such a rule has led to workmen's compensation laws.[20] Similiar proposals have been made regarding automobile legislation.[21]

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COMMERCE — REGULATION OF SALES AS BURDEN ON INTERSTATE COMMERCE. — Plaintiff purchased materials in Utah to be used on a construction job in Oregon. The contract of sale and the bill of lading called for an out-of-state shipment, and the purchase price included freight rates commensurate with common carrier's rates to the out-of-state destination. The nature of the order made it certain that the materials could be consumed only in Oregon. Plaintiff accepted delivery to himself in Utah and immediately transported the goods to Oregon where they were consumed. The Utah Tax Commission levied a sales tax on this transaction. The Supreme Court of Utah *held* that this tax imposed a burden on interstate commerce and therefore was invalid. *Pacific States Cast Iron Pipe Co. v. States Tax Commission* 13 Utah 2d 113, 369 P.2d 123 (1962).

Because Congress has the exclusive power to regulate

20. James, **Assumption of Risk,** 61 Yale L. J. 141, 154 (1952).

21. See Corish, **The Automobile Guest,** 14 B. U. L. Rev. 729 at 750 (1934). "One entrusted with the operation of an automobile upon the crowed highways of today should not be clothed with immunity for negligent driving which results in injuries to the occupants of his machine. The social interests to be protected demand that the rule be changed by legislative function."

interstate commerce,[1] states are prohibited from imposing upon it burdensome taxes.[2] The Commerce Clause, however, does not excuse interstate commerce from paying its "fair share."[3] States may tax interstate commerce when such taxes do not directly burden the interstate process.[4] Thus a tax may be levied, provided its burden will be reasonably related to the powers of the state and is non-discriminatory.[5]

Until recently Congress has imposed no regulations on the states power to tax interstate commerce.[6] Nor has the U. S. Supreme Court dealt with the constitutionality of a sales tax imposed on goods delivered by common carrier to another state after title has passed.[7] Presumably, such a tax could be a direct burden on interstate commerce and therefore invalid.[8] The Supreme Court of the United States, however, has upheld certain taxes where the buyer received title and accepted delivery to himself in the seller's state.[9] Delivery is immaterial if in substance the transaction is interstate.[10]

The Supreme Court has said that a tax imposed on the privilege of doing interstate commerce is invalid.[11] Likewise a tax is invalid if it discriminates against interstate commerce either by providing a direct commercial advantage to local business,[12] or if it subjects interstate commerce to the burden of multiple taxation.[13] Where the local sale is sufficiently separate from the interstate process the states may levy a sales tax.[14] This factor alone, however, is not sufficient to

1. U.S. Const. art. I, § 4; Gibbons v. Odgen, 22 U.S. 1 (1824); Woodruff v. Parham, 75 U.S. 123 (1868); Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959).

2. Gibbons v. Odgen, 22 U.S. 1 (1824).

3. Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

4. Flicklen v. Shelby County Taxing District, 145 U.S. 1 (1892); Postal Telegraph Cable Co. v. Adams, 155 U.S. 688 (1895); Postal Telegraph Cable Co. v. Richmond, 249 U.S. 252 (1918).

5. Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951).

6. 15 U.S.C. §§ 381-383 (Supp. 1960).

7. Heyman v. Hays, 236 U.S. 178 (1915); McLeod v. Dilworth Co., 322 U.S. 327 (1944).

8. McLeod v. Dilworth Co., 322 U.S. 327 (1944).

9. International Harvester Co. v. Dept. of Treasury, 322 U.S. 340 (1944); McGoldrick v. Berwind-White, 309 U.S. 33 (1940).

10. Savage v. Jones, 225 U.S. 501 (1912); Heyman v. Hays, 236 U.S. 178 (1915); Rearick v. Pennsylvania, 203 U.S. 507 (1906); New Orleans R.R. Co. v. Sabine Tram Co., 227 U.S. 111 (1913).

11. Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951).

12. Nippert v. Richmond, 327 U.S. 416 (1946); Memphis Gas Co. v. Stone, 335 U.S. 87 (1948).

13. Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

14. Western Live Stock v. Bureau of Revenue, 303 U.S. 250 (1938); Memphis Gas Co. v. Stone, 335 U.S. 87 (1948); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

sustain such a tax.[15] The taxable incident must not lend itself to repeatable taxes in other states.[16] The multiplication of taxes would erect a barrier to interstate commerce, the exact thing the Commerce Clause prohibits.[17] Flaws in our system of taxation among the states make possible numerous incidences where a buyer may be subjected to multiple taxation.[18] This is the case where the buyer takes delivery in his own equipment and actually transports the goods to another state. Both the sales tax of the selling state and the use tax of the consuming state may be applicable.[19]

There appears a need for uniform legislation in the field of state taxation of interstate commerce. The possibility of multiple taxation is ever present when a buyer accepts delivery to himself in the seller's state. Presently many states including North Dakota impose a sales tax although the interstate effect of the transaction is assured. The U. S. Supreme Court should strike down this tax as being a direct burden on interstate commerce when the factual situation assures an interstate transaction.

DON COOKE

CONFLICT OF LAWS — WRONGFUL DEATH RECOVERY UNDER FEDERAL TORT CLAIMS ACT — CONFLICT OF LAWS RULE APPLIES AS WELL AS INTERNAL LAW OF PLACE OF NEGLIGENCE. — The petitioners are the personal representatives of passengers killed when an American Airlines plane crashed in Missouri while enroute from Tulsa, Oklahoma, to New York City. The cause of the crash was traced back to the overhaul depot in Tulsa where an unsafe cylinder was placed in one of the engines. Petitioners brought suit against the United States in the Federal District Court in Oklahoma basing their claim on the failure of the Civil Aviation Agency to exercise proper surveillance of practices employed by the airlines in maintaining their aircraft. Petitioners had already received a $15,000 settlement from American Airlines which was the maximum

15. Memphis Gas Co. v. Stone, 335 U.S. 87 (1948).
16. Case of State Freight Tax, 82 U.S. 232 (1872); Memphis Gas Co. v. Stone, 335 U.S. 87 (1948).
17. Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).
18. See Note, 46 Va. L. Rev. 1051 (1960).
19. **Ibid.**