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Contracts - Restraint of Trade or Competition in Trade - Construction of Restrictive Covenants

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corded the same orderly trial as any other defendant.[18]

It is submitted that the power given courts to punish for a direct contempt is an irregularity in our system that guarantees due process of law. It seems to permit punishment without actual due process of law. The summary punishment power is given to the courts because they have already heard the facts that would be brought out in the trial for contempt and it enables the courts to preserve their existence and power. The exercise of the formalities of law would not be an expedient means of handling cases of direct contempt. The defendant does not lose his rights; justice is afforded the defendant by appeal if he feels the sentence received is excessive for the contempt he has committed, or that the court has abused its discretion.

CONRAD GREICAR

CONTRACTS — RESTRAINT OF TRADE OR COMPETITION IN TRADE — CONSTRUCTION OF RESTRICTIVE COVENANTS — The Plaintiff, a partnership, sought to enjoin the defendant, an ex-partner, from practicing medicine in violation of a restrictive convenant entered into between the plaintiff and the defendant in a contract for employment. The contract expressly stated that should the defendant terminate his employment with the plaintiff, he would refrain from practicing medicine or surgery within a 25 mile radius for three years. Defendant subsequently left the plaintiff's employ and soon thereafter opened a practice within the area mentioned in the contract.

The Supreme Court of Iowa *held,* two judges dissenting, that the injunction should be granted since the covenant imposed restrictions which were reasonable as to time and area and not in conflict with public policy.

The dissent considered the restriction as to area to be unreasonable, since there were few orthopedic surgeons practicing within the heavily populated 25 mile radius, and therefore the restriction was greater than necessary to protect the plaintiff. *Cogley Clinic v. Martini,* 112 N.W.2d 678 (Iowa 1962).

Injunctive relief is granted not as an absolute right, but

18. People v. Spain, 307 Ill. 283, 138 N.E. 614 (1923).

according to equitable principles, taking into account the facts and circumstances of each case.[1] It has long been held that the test to be applied to restrictive covenants is one of reasonableness.[2] A covenant is usually held unreasonable and therefore invalid if it fails to set a time limit;[3] imposes an undue hardship on the defendant;[4] unduly restricts the area in which the defendant may engage in the same occupation;[5] or is opposed to the interests of the public.[6] With this concept of reasonableness in mind, the courts tend to construe contracts of this nature most strictly.[7]

The type of service performed must also be taken into consideration. Contracts are generally held valid in the event that the covenantee's business will be seriously injured if the injunction is not granted.[8] Similarily, when time and area are specified and the restrictions are reasonable, contracts are held valid which involve the sale of goodwill[9] or the dissolution of a partnership.[10]

Definite time and area limitations do not seem so important in all jurisdictions. In the case of *Lewis v. Krueger, Hutchinson and Overton Clinic,*[11] a time limit was not specified. Nonetheless, the court imposed an injunction limited to three years, on the basis that this time limit was "reasonable".[12] A similar contract, which also lacked a time limit, was held valid on the basis that restraining the defendant from the practice of medicine in the city of Chicago imposed no hardship upon him as he was not restrained from practicing in any other

1. Dr. Allison, Dentist, Inc. v. Allison, 360 Ill. 638, 196 N.E. 779 (1935).

2. Central v. Cushman, 143 Mass. 353, 9 N.E. 629 (1887); Williams v. Thompson, 143 Minn. 454, 174 N.W. 307 (1919).

3. Brecher v. Brown, 235 Iowa 627, 17 N.W.2d 377 (1945).

4. Mutual Loan Co. v. Pierce, 245 Iowa 1051, 65 N.W.2d 405 (1954) "The benefit which the plaintiff could possibly gain by the enforcement would be trivial and far out of proportion to the hardship to the defendant." Tawney v. Mutual System of Maryland, 186 Md. 508, 47 A.2d 372 (1946).

5. Droba v. Berry, 139 N.E.2d 124 (Ohio Ct. C.P. 1955).

6. Rakestraw v. Lanier, 104 Ga. 188, 30 S.E. 735 (1898); Tawney v. Mutual System of Maryland, 186 Md. 508, 47 A.2d 372 (1946).

7. Brecher v. Brown, 235 Iowa 627, 17 N.W.2d 377 (1945); Tawney v. Mutual System of Maryland, 186 Md. 508, 47 A.2d 372 (1946).

8. Freudenthal v. Espey, 45 Colo. 488, 102 Pac. 280 (1909); Federated Mutual Implement & Hardware Insurance Co. v. Erickson, 252 Iowa 1208, 110 N.W.2d 264 (1961).

9. Burdine v. Brooks, 206 Ga. 12, 55 S.E.2d 605 (1949); Rowe v. Toon, 185 Iowa 848, 169 N.W. 38 (1918).

10. Bauer v. Sawyer, 8 Ill. 2d 351, 134 N.E.2d 329 (1956).

11. 153 Tex. 363, 269 S.W.2d 798 (1933).

12. **Ibid.**

part of the state.[13] No consideration was given to the possibility that this period might extend well beyond the death of the plaintiff or his withdrawal from the competitive practice of medicine. In at least one case the latter possibilities have been held sufficient to invalidate a contract containing such a covenant.[14]

North Dakota holds every contract in the restraint of business void with exceptions of contracts involving the sale of goodwill or dissolution of partnership.[15] In the only case in point the covenant fell within neither of the two exceptions and was therefore void.[16]

In the above-mentioned case of *Lewis v. Krueger, Hutchinson and Overton Clinic*,[17] the defendant in error asked for an injunction to enjoy violation of a restrictive covenant. If the rule of strict construction had been followed, the injunction would have been denied, but instead the court took it upon themselves to revise the contract and grant the injunction. It is submitted that normally this should be outside the functions of the court.

Therefore, the better rule would seem to be that of strict construction, as quite often when injunctive relief is granted, there appears to be an infringement of private rights in regard to free trade. Since these rights are basic to our economic system of free enterprise, they must be preserved.

JOHN D. HOVEY

UNAUTHORIZED PRACTICE OF LAW — REAL ESTATE BROKERS — INCIDENT-TO-BUSINESS — The defendant, Ford Hoffman Realty, was charged with advising a client that it was competent and qualified to draft and prepare all the necessary contracts, deeds, bills of sale and other instruments necessary to the transaction; that the sellers permitted the defendants to handle the transaction, including drafting of certain instruments affecting the title to the real property, and that $8.00

13. Storer v. Brock, 351 Ill. 643, 184 N.E. 868 (1933).
14. Rakestraw v. Lanier, 104 Ga. 188, 30 S.E. 735 (1898).
15. N.D. Cent. Code § 9-08-06 (1961).
16. Olson v. Swendiman, 62 N.D. 649, 244 N.W. 870 (1932).
17. 153 Tex. 363, 269 S.W.2d 798 (1933).