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Miscellaneous—Liability of Stepparent for Support under New York City Domestic Relations Court Act

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PATENT RIGHTS AWARDED TO EMPLOYEE ABSENT A CONTRARY AGREEMENT OR CUSTOM

When an employee is hired to invent, the patent to his invention belongs to his employer.[30] If the employment is general, with no direction to invent, the patent to the invention belongs to the employee.[31]

In *Cahill v. Regan*[32] the employee was told to use the employer's materials and equipment to develop an idea which the employee had already conceived. The Court of Appeals affirmed the lower courts in awarding the patent rights to the employee,[33] but a "shop right" was granted to the employer because his materials and equipment were used by the employee to invent a reusable ammunition can.[34]

The leading Federal case in this area involved an employee hired to test radio apparatus and methods in radio research work for the government. In distinguishing between an employment to invent and a general employment, the United States Supreme Court awarded the patent rights to the employee and a "shop right" to the government.[35]

New York has adopted the rule that an employer needs an express assignment of patent rights to an employee's invention before he can acquire them. The only exception allowed is an "employee hired to invent" situation.[36]

In 1949 a Federal case allowed an employer to acquire patent rights even though no express assignment existed and the employee was not hired to invent, on the basis of a custom in the business that employers received the patent rights. The employee knew of the custom but acquiesced in it.[37]

In the instant case the Court found no express assignment of patent rights and no prevailing custom existing in favor of the employer. Under these circumstances the Court properly followed the leading Federal and New York authority in awarding the patent rights to the employee.

LIABILITY OF STEPPARENT FOR SUPPORT UNDER NEW YORK CITY DOMESTIC RELATION COURT ACT SECTION 56-A

Defendant's stepchild had been committed to a school for delinquents, at a cost of forty-nine dollars a week to the City of New York. The Department of Welfare of the City of New York instituted proceedings against the child's father pursuant to Section 56-a of the Domestic Relations Court Act of the City of New York,[38] and the father was required to pay twenty-two dollars

30. Standard Parts Co. v. Peck, 264 U.S. 52 (1924).
31. United States v. Dubilier, 289 U.S. 178 (1933); Talbot v. Harrison, 240 App. Div. 957, 268 N.Y. Supp. 875 (1st Dep't 1933).
32. 5 N.Y.2d 292, 184 N.Y.S.2d 348 (1959).
33. 4 A.D.2d 328, 165 N.Y.S.2d 125 (2d Dep't 1957); 2 Misc. 2d 455, 153 N.Y.S.2d 768 (1956).
34. United States v. Dubilier, *supra* note 31.
35. *Ibid.*
36. Talbot v. Harrison, *supra* note 31.
37. Marshall v. Colgate Palmolive-Peet Co., 175 F.2d 215 (3d Cir. 1949).
38. Section 56-a of the Domestic Relations Court Act of the City of New York provides that where a child is committed to a public or private institution, the Department

and fifty cents per week for the child's support. The Department then sought to obtain the difference from the child's stepmother. The question in *Department of Welfare of The City of New York v. Siebel,*[39] is twofold. The first concerns the interpretation of Section 56-a, *i.e.,* whether the word "or," between "parents of the child" and "other person legally chargeable" was intended to mean only one or the other in the alternative, or was it intended in the conjunctive. The second is whether Section 101 of the Domestic Relations Court Act of the City of New York means that the liability of the defendant should be jointly secondarily liable with the mother and grandparents.[40] The Domestic Relations Court of the City of New York entered an order directing defendant to pay twenty dollars per month. This was reversed by the Appellate Division, which in turn was reversed by the Court of Appeals,

The words "and" and "or," when used in a statute may be synonymous. The substitution of one for the other is frequently resorted to in the interpretation of statutes when the evident intention of the legislature requires it.[41] It has already been held in a lower court decision that where the father cannot adequately support the children, the mother, if able, must help to do so.[42] The Court here followed the lead of *Wignall v. Wignall,*[43] holding that the word "or" must be construed to mean "and" to validate the intent of the legislature. The defendant was thus chargeable with the child's support where the father was only partly able to support the child.

As to whether defendant was secondarily liable with the mother and grandparents, or only liable after the aforementioned two, the Court held that the legislature intended the former.

Holding as it has, the Court gives effect to the obvious intention of the legislative branch to ease the burden on governmental welfare agencies by expanding actions for contribution from financially able members of the child's family. Whether they are such members by blood or by choice should not be significant in this matter, the relationship, however established, should control.

POWER OF APPELLATE DIVISION TO CONTROL ATTORNEY'S CONTINGENT FEES

Section 83 of the New York Judiciary Law provides: "That the Supreme Court shall have power and control over attorneys and counselors-at-law . . . and the Appellate Division . . . in each Department is authorized to censure, suspend from practice or remove . . . any attorney and counselor-at-law . . .

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of Welfare may investigate the parents of the child, or other persons legally chargeable to see if they are able to contribute in whole or in part the expense incurred by the City of New York for the maintenance of that child, and, if so, should institute a proceeding against them.

39. 6 N.Y.2d 536, 190 N.Y.S.2d 683 (1959).

40. Section 101 of the Domestic Relations Court Act of the City of New York sets out those who are legally liable for support. They are the father, and under certain conditions, the mother, grandparents, and stepparents.

41. People v. Rice, 138 N.Y. 151, 33 N.E. 846 (1893).

42. Wignall v. Wignall, 163 Misc. 910, 298 N.Y. Supp. 251 (Dom. Rel. Ct. 1937).

43. *Ibid.*