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Editor's Note

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In recent times, a good deal of concern and attention has been directed at an alleged decline in professionalism among lawyers. While it is always difficult to assess objectively the validity of such charges, nonetheless, in the face of them, it behooves every thinking practitioner to indulge in some old fashioned self-reflection, and make a few subjective appraisals of personal goals and objectives. As an aid to this type of introspection, the REVIEW deems itself fortunate to be able to reprint the remarks of Justice Francis Bergan of the Appellate Division, Third Department, which are directed at the role of the lawyer both in the profession and the community.

Although general principles of tort liability have emerged in modern times, the traditional common law view of tort categories has remained dominant. The so-called prima facie tort theory has not gained wide application. With this issue, the REVIEW is pleased to offer a new look at this theory, particularly with reference to the Restatement of Torts, authored by one of our most distinguished alumni, Justice Philip Halpern of the Appellate Division, Third Department. As a judge, and former Professor of Law specializing in Torts, Justice Halpern is vitally concerned with the problems raised in his thesis and is able to bring to bear broad insight in their solution. His article sheds much light on a thorny area, and furnishes valuable guides for the formulation of Restatement, Second.

The "new liberalism" displayed by the Supreme Court of the United States in the 1956 Term has been the subject of much commentary in the popular press. Indeed, if one hoped to learn from press reports what the Court had done, he could probably take his pick from dozens of shades of meaning. In this atmosphere, an objective appraisal of the Court's work is clearly called for. Such an appraisal has been diligently compiled by Professor Roger Paul Peters of Notre Dame University, College of Law, and is presented herein under the title *The Supreme Court and the Spirit of 1957.* As a teacher of Constitutional Law, Professor Peters is particularly qualified to discern true Constitutional holdings and assess their importance in view of the spirit of our times.

In the last issue of Volume 6 of the REVIEW, Associate Professor Saul Touster of the University of Buffalo School of Law explored the New York experience regarding after-born children. The concluding part of Professor Touster's article, presented herein, compares the attempted solutions of other jurisdictions, and suggests the feasibility of a discretionary, family maintenance type of approach to the problem of pretermitted children.

Regular readers of the REVIEW will note the effects of our recent facial surgery as well as our "more weighty" treatment of the traditional summary of New York Court of Appeals opinions. Our new cover design was created by Mr. John Basil, a local advertising executive, to whom we owe deep thanks. Our new

policy of incorporating the entire Court of Appeals section in one issue springs from the desire to present a more accessible reference to the Court's work over the entire term.

Consideration of the Court's opinions of the past term reveals at least three cases worthy of especial note: In *Bing v. Thunig,* noted herein under the title of AGENCY: Hospital Liability, the Court has at long last overturned the rule of hospital immunity for the medical acts of its employees. This result had been foreseen in an earlier note at 6 BUFFALO L. REV. 227 (1957). In *Excelsior Pictures Corporation v. Regents of University,* noted under the heading of CONSTITUTIONAL LAW: Validity of Denial of License to Exhibit, the Court has effectively ruled that "obscenity" is the only acceptable grounds for denial of an exhibition license. In *A. S. Rampell, Inc. v. Hyster Co.,* noted under TORTS: Interference with at Will Contracts, the Court for the first time firmly established a cause of action for inducement to terminate at-will contracts where the means used were not in themselves unlawful. The opinion suggests an unexpressed application of the prima facie tort theory.

It is always interesting to examine the fate on appeal of previously noted cases, especially when someone else has written the note. Two important cases, noted in Volume 6, have reached the Supreme Court of the United States, and both merit a bit of the "I told you so" treatment. *Vanderbilt v. Vanderbilt,* 77 Sup. Ct. 1360 (1957), affirming the New York result, held that the right to support is a personal right which is not affected by an ex parte divorce decree of another state. The note at 6 BUFFALO L. REV. 188 (1957) suggested such a holding. *Kingsley Books v. Brown,* 77 Sup. Ct. 1325 (1957), held that the New York injunction against distribution of an indecent book was not violative of the Fourteenth Amendment as a prior censorship. The note at 6 BUFFALO L. REV. 155 (1957) indicated the ready availability of this approach.

Once again, the REVIEW is pleased to furnish the customary "box score" table of opinions of the term, for the amusement of those amateur psychologists who are thus able to categorize the individual judges, and for the informational value to our less gifted readers. It might be noted that the number of full opinions produced by the Court has again increased, and that the leading dissenters substantially retained their relative positions.