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Landlord and Tenant--Constitutional Law--Retaliatory Evictions

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domicile) were without jurisdiction to grant guardianship over the person of an infant who survived the death of his father in whose custody he had been given by a decree of divorce. Here it appeared that the infant's mother was at the time a resident of Texas, and the domicile of the infant became, on the death of his father, identified with the domicile of his mother.[34] In neither of these cases was there a remarriage of the widow, as in the *ziady* case. They are, therefore, seemingly reconcilable with the *Lamar* decision. One Texas case, however, involved the problem of such a remarriage.[35] The Texas Supreme Court decided that a widow does not lose the power to change the domicile of her children simply by remarrying.[36] That case is not directly in point with the present case because there was no divorce involved, but it is difficult to see how that would alter the result, at least as it affects the child's domicile.

It may be questioned whether the court in *ziady* was forced to make the sweeping declaration that in determining diversity of citizenship the issue of domicile is a matter for federal common law. Nevertheless it would seemingly be desirable to have one rule, or one set of rules, to determine the jurisdiction of all federal courts in such cases. What form these might take is of course conjectural, and knowledge of this must await the cases which will create such rules.

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Landlord and Tenant—Constitutional Law—Retaliatory Evictions

In March 1965, Mrs. Edwards rented housing property from Nathan Habib on a monthly basis. Shortly thereafter, she complained to the Department of Licenses and Inspections of certain violations of the sanitary code which her landlord had failed to alleviate. During the subsequent inspection, forty violations were discovered, and Habib was ordered to correct them. Habib then gave Mrs. Edwards the necessary 30-day statutory notice to vacate and when she refused, he instituted action and obtained a default judgment for possession of the premises. The tenant moved to re-

[34] *In re* Guardianship of Skinner, 230 Iowa 1016, 300 N.W. 1 (1941).
[35] Wheeler v. Hollis, 19 Tex. 522 (1857).
[36] *Id.*

open the judgment alleging excusable neglect for the default and raising the defense that the notice to quit was given in retaliation for her complaint to the housing authorities. The Court of General Sessions set aside the default judgment and concluded that a retaliatory motive, if proved, would constitute a defense. However, the trial court found such a retaliatory motive irrelevant and directed a verdict for the landlord. The District of Columbia Court of Appeals affirmed, and Mrs. Edwards appealed to the United States Circuit Court of Appeals for the District of Columbia. *Held,* reversed.[1] Where a state court, in accordance with its law, enforces the right of a landlord to evict a tenant, such enforcement is "state action" which must not enfringe upon the tenant's right to seek redress for his grievances. Consequently, although a landlord may evict for any legal reason, or for no reason at all, he may not evict in retaliation to a tenant's report of housing code violations. *Edwards v. Habib,* 397 F.2d 687 (D.C. Cir. 1968).

Traditionally, a landlord, whether public or private, could evict a tenant arbitrarily—for any reason or for no reason at all. In *United States v. Blumenthal*[2] it was held that the United States government, while acting in a proprietary rather than a governmental capacity, has the same absolute right as any other landlord to terminate a tenancy from month-to-month and recover possession of the leased premises without being required to give any reason for its action. The fact that the landlord did not evict other tenants holding similar property was immaterial.[3]

With the increase in urban population, the landlord's bargaining power has been strengthened considerably—if tenants are to rent at all, they are often forced to rent substandard housing.[4] Thus, public policy has demanded that sanitation and safety standards be enacted

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[1] Wright J., in the majority opinion, discussed the constitutional relevance of this case (which shall be the only consideration of this comment) in parts I and II of the decision, but ultimately decided the case on statutory construction: "The notion that the effectiveness of remedial legislation will be inhibited if those reporting violations of it can legally be intimidated is so fundamental that a presumption against the legality of such intimidation can be inferred as inherent in the legislation even if it not expressed in the statute itself." Edwards v. Habib, 397 F.2d 687, 701 (D.C. Cir. 1968). The dissent in the case suggested that the prohibition of retaliatory evictions was a subject of Congressional legislation, not court action.

[2] United States v. Blumenthal, 315 F.2d 351 (3rd Cir. 1963).

[3] *Id.* at 353.

[4] Note, *Landlord and Tenant—Retaliatory Evictions,* 3 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 193, 205 (196).

[5] *Washington, D. C., Housing Regulations* § 2101 (1955); D.C. CODE § 5-701 (1967).

to protect the welfare of the tenants in crowded urban areas.[5] The housing regulations in the instant case were promulgated by the District Commissioners in recognition of the fact that unsafe and unsanitary housing conditions are "deterious to the health, safety, welfare and morals of the community and its inhabitants." In addition to this, it should be noted that perhaps denying a tenant the right to inform the government of violations of these standards may be a denial of his first amendment right to petition the government for his grievances.[6] One court has prohibited arbitrary evictions in public housing.[7] However, some public authorities have been restricted by the court only when they give a specific reason for the eviction.[8] To counter this tendency, some housing codes allow continued occupancy unless violations of specific standards are shown.[9] In *Thorpe v. Housing Authority of The City of Durham*[10] a woman was given notice that her lease had been terminated immediately following her election as president of a tenants' organization. The Supreme Court was not faced with deciding whether such retaliatory conduct was a violation of her constitutional rights because the Department of Housing and Urban Development prescribed a method for public housing evictions in a circular pending the appeal. The circular requires that public landlords follow a procedure before evicting a tenant: (1) give tenants reasons for the eviction; (2) give tenants an opportunity to reply; and (3) keep records of the reasons for the evictions and of any conferences held with the evicted tenant.[11]

Retaliatory evictions, which heretofore have been unpermitted in public housing projects,[12] may also be prohibited in the private sector. To understand this extension of the tenant's protected rights it is necessary to briefly discuss the concept of "state action" as presented in the *Edwards'* case.[13] For an eviction to be denied on the ground that plaintiff was denied her first amendment right.

to report violations of law and to petition the government for

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[6] Note, *Landlord and Tenant—Retaliatory Evictions,* 3 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 193, 195 n.9 (196).

[7] Rudder v. United States, 226 .2d 51, 53 (D.C. Cir. 1955).

[8] *Id.*

[9] *See, e.g.,* Resolution of Talladega, Alabama, May 29, 1968, in Lewis v. Housing Authority of Talladega, Alabama, 397 F.2d 178, 180, 181 (5th Cir. 1968).

[10] 386 U.S. 670 (1967).

[11] *Id.*

[12] *Id.*

[13] Edwards v. Habib, 397 F.2d 687, 691 (D.C. Cir. 1968).

> redress of grievances . . . she must show that the government is in some relevant sense responsible for inhibiting her right to petition for redress of grievances; she must show, in other words, the requisite "state action."

The "state action" concept traditionally involved an alleged denial of the fourteenth amendment's "equal protection" guarantees only where positive action by the state was taken;[14] this concept has been extended to include under "state action" more neutral conduct.[15] Also, the "state action" concept may be relevant where the freedoms of the first amendment are involved.[16] (For purposes of this discussion "state action" shall hereinafter refer only to the neutral action approach.) The concept has been carried over into areas that were earlier thought of as solely "individual action."[17] In *Shelley v. Kraemer,*[18] a state court's enforcement of racially restrictive covenants made in agreements between private parties was held to constitute "state action."[19] In *Reitman v. Mulkey,*[20] the Supreme Court held that discrimination in the housing market under a constitutional amendment[21] allowing landlords arbitrary discretion in selecting tenants as a matter of right was "a significant state involvement in private discriminations . . . [that would] amount to unconstitutional state action."[22] It has been held that a public housing authority may not discriminate arbitrarily between persons and classes in leasing its premises.[23] Furthermore, in *Chicago Housing Authority v. Blackman,*[24] the court decided that a public housing

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[14] Civil Rights Cases, 109 U.S. 3 (1883).

[15] Shelley v. Kraemer, 334 U.S. 1 (1948).

[16] Marsh v. State of Alabama, 326 U.S. 501 (1946).

[17] Evans v. Newton, 382 U.S. 296 (1966) (where a private body is to perform the governmental function of managing a park); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) (private body leasing state-owned property from the government); Simkins v. Moses H. Cone Memorial Hosp., 323 F.2d 959 (4th Cir. 1963) (privately-owned hospital receiving federal and state assistance in the planning and financing of construction).

[18] 334 U.S. 1 (1948).

[19] The "state action" concept of *Shelley* includes the District of Columbia and every territory of the United States. Hurd v. Hodge, 334 U.S. 24, 31 (1948). However, it has been suggested that perhaps the *Shelley* doctrine of "state action" should not be carried over to the District of Columbia, and further, that the constitutional issue should not have been raised to begin with. Note, *Landlord and Tenant—Retaliatory Evictions,* 3 HARV. CIV. LIB.—CIV. RIGHTS L. REV. 193, 196 n.12 (196).

[20] 387 U.S. 369 (1967).

[21] CAL. CONST. art. I, § 26.

[22] *Id.* at 375.

[23] Housing Authority v. Cordova, 130 Cal. App. 2d 883, 279 P.2d 215, 216 (1955).

[24] 4 Ill. 2d 319, 122 N.W.2d 522 (1954).

authority could not discriminate arbitrarily against existing tenants in their right to continue occupancy. Finally, in *Edwards*, (employing the constitutional arguments of Judge Wright's opinion, without having to resort to his discussion of statutory construction) the prevention of public retaliatory evictions may be extended to the private sector under the *Shelley* doctrine. Therefore, the action instituted by the landlord to evict the tenant must not hinder her constitutionally protected right to petition the government for grievances.[25]

Possibly, this decision will seriously hamper the rights of the landlord in private action. How far it will extend is difficult to predict. However, under present holdings, the right of the individual to seek redress for his grievances is a fundamental first amendment right which outweighs the right of a retaliating landlord to evict tenants. This decision concerns only one of the many options open to a property owner. Property may be leased, sold, rented, built upon, or used for any legal purpose. The holding of this case concerns only rental property; therefore, in reality, the change may not be as drastic as it may first seem. Notwithstanding the protection afforded by this case, the landlord may resort to other effective means of retaliation—the raising of rent or subsequent evictions of the tenant for trivial violations of skillfully written leases. Nonetheless, the holding in the *Edwards'* case, at least to some degree, allows the tenant to strive for better housing conditions without the fear of eviction for his actions.

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Gift Taxes—Valuation of Right to Income Under §2503(b)

In 1961, Leonard Rosen and his brother Julius created separate trusts for their children consisting of several thousand shares of Gulf American common stock. The entire net income of each trust was payable to the named beneficiary no less frequently than annually. The corpus of the Leonard Rosen trust was to be distributed to each beneficiary in two payments upon the beneficiaries reaching the ages of twenty-five and thirty years. The corpus of the Julius Rosen trust was to be distributed in three installments to

[25] Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968).