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LIMITING THE FRANCHISOR'S POWER TO WITHHOLD CONSENT TO A TRANSFER BY THE FRANCHISEE

Jones operates a retail outlet for XYZ, Inc., under a franchise agreement. Jones, wishing to retire from business, finds a reputable businessman, Smith, who is willing to buy the franchise for 50,000 dollars, a price considered by both parties to be the fair market value of the franchise. Since the franchise agreement requires Jones to secure the consent of XYZ before making any transfer of the franchise, Jones notifies his franchisor of Smith's offer and requests consent for the transfer. After informing Jones that his request to transfer will be duly considered, XYZ informs Brown that it has a franchise which he might purchase for 25,000 dollars. Brown, realizing his good fortune, agrees to purchase the franchise. Thereafter, XYZ informs Jones that it will not consent to his proposed transfer to Smith, but would be willing to permit the transfer of the franchise to Brown for 25,000 dollars. XYZ realizes that the less Brown pays for the franchise, the more Brown will have for further investments in the franchise. In turn, the franchise will become more profitable both for the franchisor and for the new franchisee.

This fact situation illustrates a serious problem in the franchisor-franchisee relationship. The franchisee usually has a sizable investment in the business. This investment, however, may be jeopardized if the franchisor retains control over any subsequent transfer of the franchise. Indeed, most franchise agreements contain such a "consent to transfer" clause.¹ Although not inherently unfair, such clauses have resulted in serious problems because of the lack of standards governing their use.

FRANCHISES AND THE NEED FOR CONTROLS

Basically, a franchise is a license from the owner of a trademark or trade name permitting another to sell a product or service under that name or mark.² The Lanham Act,³ which permits such licensing,

1. H. BROWN, *FRANCHISING: TRAP FOR THE TRUSTING* 25 (1969) [hereinafter cited as BROWN].

2. H. KURSH, *THE FRANCHISE BOOM* 4 (1968).

3. 15 U.S.C. § 1051 *et seq.* (1970).

requires that the licensee be a "related person or company."⁴ To be considered "related," the licensee must be controlled by the licensor with respect to the nature and quality of the goods and services on which the trademark is used.⁵ It is insufficient for the licensor merely to reserve the right to control the quality and use of the goods and services. The franchisor has the affirmative duty of exercising, in a reasonable manner,⁶ those controls which will guarantee that third parties will receive goods or services of the quality which they have learned to associate with that trademark.⁷ Thus, the franchisor is mandated by the Act to maintain some degree of control over his franchisee.

The policy behind the Lanham Act also serves to justify the consent clause. The franchisor should have the power to reject any prospective transferee who is not competent to protect the franchisor's trademark and investment. Nevertheless, the control exerted by the consent clause bears heavily on the rights of the franchisee. For example, a donut shop franchisee is required to purchase equipment which can only be used to make donuts.⁸ Therefore, if the franchisee wishes to convey the business but cannot obtain the franchisor's consent, his only realistic option is to continue in business under the franchisor's trademark. Since most franchise agreements contain a covenant not to compete,⁹ the franchisee will be unable to utilize the equipment in a nonfranchised enterprise. Even if specialized equipment is not involved, the franchisee is unable to sell the business in which he has invested a great deal of time and money.¹⁰ This note explores various judicial and legislative approaches which might be employed, in the consent clause context, to balance the interests of franchisors and franchisees.

JUDICIAL POSSIBILITIES

The only reported case in which a consent clause has been directly considered is *Bidwell v. Long*.¹¹ In that case, the Appellate Division of

4. 15 U.S.C. § 1055 (1970).

5. 15 U.S.C. § 1127 (1970).

6. *Dawn Donut Co., Inc. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 367 (2d Cir. 1959); *R.C.W., Supervisor, Inc. v. Cuban Tobacco Co.*, 220 F. Supp. 453, 461 (S.D.N.Y. 1963).

7. Axelrod, *Franchising—Changing Legal Skirmish Lines or Armageddon*, 26 BUS. L. REV. 699 (1971) [hereinafter cited as Axelrod].

8. See R. ROSENBERG, *PROFITS FROM FRANCHISING* 260 (1969).

9. *Id.* at 108, 251.

10. The two situations where he may not recoup money invested in the franchise are: (1) when the franchisor makes a blanket denial, refusing to consider any prospective transferee; (2) when the franchisor refuses transfer to the only prospective transferee in the market.

11. 14 App. Div. 2d 168, 218 N.Y.S.2d 108 (1961). Defendant, a Pepperidge

the New York Supreme Court stated, in dictum, that a licensor, whose franchise agreement contained a consent clause, was at least bound to entertain the licensee's application for transfer and "was not free to withhold approval capriciously or arbitrarily."¹² Such a result seems desirable, but *Bidwell* laid no theoretical groundwork for it. There are three possible judicial solutions to the consent clause problem.

Initially, the franchisor-franchisee relationship can be characterized as a "hybrid" fiduciary one. Secondly, a standard of reasonableness could be read into the consent clause when another standard is not specifically stated. Finally, franchisor control could be restricted under an antitrust analysis.

Fiduciary Relationship

Certain characteristics peculiar to the franchising system indicate that the franchisor-franchisee relationship may be of a fiduciary nature. One of these characteristics is the great disparity in the bargaining position and expertise of the parties.¹³ The Utah Supreme Court, in *Seegmiller v. Western Men, Inc.*,¹⁴ described this disparity:

[Franchise contracts] are almost always drawn up by the franchiser and are presented to a dealer or agent for acceptance and signature, rather than for negotiation as to terms. They also invariably provide for ample protection to the rights of the franchiser. . . .¹⁵

Trust, an essential element of any fiduciary relationship,¹⁶ is clearly present in the franchisor-franchisee relationship.

The franchisor inculcates the franchisee with the necessity of being taught, guided, and controlled not only during the initial training period, but throughout the existence of the

Farm franchisee, contracted with plaintiff to transfer his interest in the franchise to plaintiff. Defendant later advised plaintiff that he would not go through with the sale. Defendant argued that he was not liable since his franchise agreement with Pepperidge Farm stated that any sale of the franchise without the written approval of Pepperidge Farm was void. The court held, however, that the provision of the franchise agreement was for the benefit of Pepperidge Farm and afforded no defense to the action and, consequently, awarded specific performance of the contract and depreciation damages.

12. *Id.* at 169, 218 N.Y.S.2d at 110.

13. In those instances where the franchisee has been highly successful, it is possible that he might be able to wield considerably more bargaining power than in the normal situation.

14. 20 Utah 2d 352, 437 P.2d 892 (1968).

15. *Id.* at 353-54, 437 P.2d at 894.

16. *See, e.g.,* *Broomfield v. Kosow*, 349 Mass. 749, 212 N.E.2d 556 (1965).

franchise. The franchisor controls the site, commissary purchases, purchases from other vendors, method of business operations, labor practices, quality control, merchandising and even record keeping. This control is buttressed by the contractual requirement that the franchisee must obey the commands of the Operating Manual.¹⁷

Under such an arrangement, the franchisee has no choice but to repose trust and confidence in the franchisor.

In the Canadian case of *Jirna Ltd. v. Mister Donut of Canada Ltd.*,¹⁸ the court held that the franchisor-franchisee association constituted a fiduciary relationship. The court stated:

[I]t appears to me that the close association of the franchisor and the franchisee in this case has created what must be construed as a fiduciary relationship and that the actions of the defendant constitute what can best be described as "constructive fraud."¹⁹

Since *Jirna* is a Canadian decision, it has minimal precedential value. Nevertheless, the reasoning of that court should apply in a matter of first impression in this country since several relationships closely resembling a franchise have been held by American courts to be of a fiduciary nature. These include agencies,²⁰ joint ventures²¹ and partnerships.²²

In *Nichols v. Arthur Murray, Inc.*,²³ the court recognized the similarity between an agency and a franchise relationship. The *Nichols* court held that when the franchisor's restrictions greatly exceed those required to protect the trademark, the franchisor is, in effect, the operator of the business. Accordingly, it was held that an agency relationship existed between the franchisor and the franchisee.²⁴ Declarations in the

17. BROWN, *supra* note 1, at 41.

18. 13 D.L.R.3d 645 (Ont. High Ct. J. 1970). Defendant franchisor had made representations to plaintiff franchisee that as a member of the franchise system, plaintiff would enjoy "the benefits of volume purchasing." When plaintiff discovered that defendant was accumulating secret profits because of the volume buying, it brought the action for an accounting. The court held that because of the fiduciary relationship, it was improper for defendant to seek and obtain, without any disclosure to plaintiff, "secret commissions or profits arising out of the purchase of supplies by the franchisees." *Id.* at 657. A constructive trust was imposed to prevent unjust enrichment, and the plaintiff was awarded an accounting.

19. *Id.* at 654.

20. *Group Ass'n Plans, Inc. v. Colquhoun*, 292 F. Supp. 564 (D.D.C. 1968).

21. *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928).

22. *Clement v. Clement*, 436 Pa. 466, 260 A.2d 728 (1970).

23. 248 Cal. App. 2d 610, 56 Cal. Rptr. 728 (Dist. Ct. App. 1967).

24. *Id.* at 616-17, 56 Cal. Rptr. at 733.

Arthur Murray agreement respecting the nature of the relationship were deemed not to control.²⁵ The importance of this holding is made manifest by the fact that standard franchise agreements often contain a provision stating that "[n]othing herein contained shall be construed so as to create a partnership, joint venture, or agency between Franchisor and Franchisee. . . ."²⁶

Other arguments can be presented which might bring a franchise under the classification of a joint venture²⁷ or partnership.²⁸ However, courts need not torture such analogies. Franchising is unlike any other legal relationship.²⁹ It should, therefore, be recognized as a type of fiduciary relationship based on a set of characteristics peculiar to that system.

In light of the unique nature of the franchise relationship, imposition of traditional fiduciary duties would provide an incomplete solution to the consent clause problem. Under the traditional fiduciary doctrine, franchisors would be required to act in good faith while franchisees would not be similarly burdened. Such a situation could encourage franchisors to install their own managers in the various outlets, thereby destroying a system which provides the small investor with an opportunity to compete with corporate giants. A better solution, therefore, would be to establish a "hybrid" fiduciary relationship, one which imposes the duty of acting in good faith upon both parties.³⁰

25. *Id.* at 613, 56 Cal. Rptr. at 730.

26. PRACTISING LAW INSTITUTE, FRANCHISING: TODAY'S LEGAL & BUSINESS TRENDS 31 (1970).

27. As noted in C. HEWITT, AUTOMOBILE FRANCHISING AGREEMENTS 161 (1956) [hereinafter cited as HEWITT], some franchise agreements are of one year's duration. A joint venture is usually formed to carry out a specific venture which, upon completion, dissolves the relationship. H. HENN, LAW OF CORPORATIONS 77-78 (1970) [hereinafter cited as HENN]. The argument would therefore follow that such a franchise does not represent a continuing relationship but rather a series of one-year ventures. The breaks during ventures provide a franchisor the opportunity to evaluate his franchisee's performance before taking him on for another year.

28. The requirements for a partnership, as stated in HENN, *supra* note 27, at 46, are that there be an association of two or more persons carrying on a business (more than a single venture) as co-owners for profit. The problem with characterizing franchising as a partnership is illustrated by the Uniform Partnership Act: "Ownership involves the power of ultimate control." UNIFORM PARTNERSHIP ACT § 6(1), Comment. Accordingly, the franchisor could easily argue that he has so restricted the transfer of the franchise that the franchisee is not a co-owner and, thus, a partnership does not exist. However, J. CRANE, LAW OF PARTNERSHIP 143 (1968), states:

[A limited partnership] consists of (a) general partners, who manage the business . . . , and (b) limited partners, who take no part in management. . . .

From this description, there would be little difficulty in classifying the franchisor as a general partner and the franchisee as a limited partner.

29. HEWITT, *supra* note 27, at 195.

30. It might be argued that a termination clause (*see* text accompanying note

While the ordinary fiduciary relationship concentrates on the trust aspect alone, this hybrid relationship would be based on a set of characteristics unique to the franchising system. In addition to the disparity of bargaining power and trust relationships, this set of characteristics also includes conflict of interest,³¹ a requirement of trademark protection³² and certain equitable considerations.³³ This two-way fiduciary duty would both safeguard each party's economic interests and recognize that the franchise association is considerably more complex than a simple fiduciary relationship.

When a court establishes the existence of a fiduciary relationship, it should have full power to provide relief from all manifestations of self-preference.³⁴ The hybrid fiduciary relationship should have a similar effect. Accordingly, courts should be empowered to deny effect to any unfair restriction on the right of the franchisee to transfer his license.³⁵ A contract which states that consent to transfer may be arbitrarily withheld could constitute such an unfair restriction. In addition, the franchisor's unreasonable refusal to allow the transfer when his consent is required but no contractual provision is present could afford the franchisee similar grounds for judicial relief.

Reasonableness Standard

Judicial imposition of a reasonableness standard could also serve to rectify the consent clause problem. Again, there is a lack of judicial precedent for such a standard in the consent clause context. However, courts have imposed a reasonableness standard in cases dealing with franchise termination clauses.

36 *infra*) provides adequate relief for the franchisor whose franchise acts in bad faith. Thus, the argument might go, the imposition of a fiduciary duty upon the franchisee is unnecessary. However, the termination is of little help when the franchisor wishes to retain his franchisee or cannot, merely by termination, undo the harm caused by the franchisee. In short, the various forms of relief available to the franchisor for a franchisee's breach of fiduciary duty provide more flexibility than a mere termination clause.

31. A conflict of interest arises when a franchisee wishes to transfer. The franchisor's interest in having a transferee buy for the lowest possible price conflicts with the franchisee's interest in getting the maximum return on his investment. Resolution of this conflict in favor of the franchisor is currently assured through his exercise of the consent clause prerogative.

32. See notes 3-7 *supra*.

33. A man who has invested a great deal of time and money in establishing a franchise should, as a matter of fairness, be given an opportunity to secure an adequate return on his investment when he desires to terminate or transfer the franchise. This element is particularly important to one who has made a lifetime of the franchise system expecting that he will be treated fairly upon retirement.

34. Brown, *Franchising: A Fiduciary Relationship*, 49 TEX. L. REV. 650, 670 (1971) [hereinafter cited as *Franchising*].

35. *Id.*

The *Seegmiller* case concerned an employment agency contract which permitted the franchisor to terminate the agreement on sixty days' written notice. The agreement, however, failed to specify whether termination had to be for cause. Although the court found the particular termination to be justified, it noted:

[W]hen parties enter into a contract of this character, and there is no express provision that it may be cancelled without cause, it seems fair and reasonable to assume that both parties entered into the arrangement in good faith, intending that if the service is performed in a satisfactory manner it will not be cancelled arbitrarily.³⁶

The normal understanding is that the franchisee will make a sizable commitment of time and money to develop and establish the franchise. The franchisor, however, will also benefit from this investment. In such circumstances, therefore, the *Seegmiller* court thought it clearly unreasonable for the franchisor to terminate the contract arbitrarily, thereby compelling the dealer to lose his investment.

This view of termination clauses seems equally applicable to consent clauses. If there is no provision in the contract which states that consent to transfer may be withheld arbitrarily, it seems "fair and reasonable" to assume the parties contracted in good faith and intended that any denial of consent to transfer be reasonable and for cause. It is no less unfair for the franchisee to make a substantial commitment to the franchise and then have his request to transfer to a satisfactory third party refused than it is to have the franchise unreasonably terminated after such a commitment. In either situation, the franchisee may be denied a fair return on his investment.

The reasonableness approach avoids the doctrine-creating device of the fiduciary analysis. However, it does not lend itself to the situation where an arbitrary standard of consent is provided in the contract.³⁷

36. 20 Utah 2d at 354, 437 P.2d at 894 (footnote omitted).

37. Even in the face of the freedom of contract doctrine, it seems incredible that a court would allow the franchisor to withhold consent on a mere whim. Yet, in the area of landlord-tenant it is generally accepted that unless prohibited by the terms of the lease a lessor may arbitrarily withhold consent to assignment of the lease by the lessee. *See Segre v. Ring*, 103 N.H. 278, 170 A.2d 265 (1961). Reference to a lease in the context of a consent clause is appropriate in light of the similarity of franchisor and lessor interests. In the franchise agreement, the basis for franchisor control is trademark protection; in a lease, the basis is protection of leased property. In both situations, the other contracting party is presumably chosen because of financial position and personality traits which the franchisor or lessor considers desirable. Although an application of *Seegmiller* would appear to require reasonableness when there is no arbitrary standard imposed by the terms of the franchise agreement, the

Antitrust Approach

A third possible solution to consent clause abuses was originally presented by ex-FTC Commissioner Mary Gardiner Jones:

On the basis of the Schwinn approach, it could be argued that when a franchisor refuses to allow a reasonable transfer of the entire license (that is, a transfer of the use of trade marks, processes, and good will to other franchisees) this may amount to unlawful restraint.³⁸

Under the *Schwinn*³⁹ approach to unlawful restraint, a manufacturer parts with dominion over a product when he parts with title and risk. His efforts thereafter to restrict territory or persons to whom the product may be transferred constitute a per se violation of § 1 of the Sherman Act.⁴⁰

Commissioner Jones seems to have equated "entire license" with "product" and, therefore, concludes that the franchisor parts with "dominion" over the "entire license" when the franchise agreement is consummated. In support of this argument, it has been stated that a franchisee actually purchases a "package" for marketing a product or service.⁴¹ The "package," which may include a building, equipment, supplies and management services, might be said to constitute the "product" which the franchisor relinquishes when he transfers the franchise to the franchisee for consideration. This argument, however, ignores the fact that a substantial part of the license is the trademark and associated good will, to which the franchisor retains title.

While this antitrust approach might alleviate franchisor abuse of consent clauses, it could produce another equally serious problem. Commissioner Jones has stated that a violation would arise when "a franchisor refuses to allow a reasonable transfer." Unfortunately, this reasonableness standard does not follow from reliance on the *Schwinn* approach. Judicial implementation of a strict *Schwinn* approach would require a finding that the franchisor has violated the Sherman Act whenever he makes an effort to restrict the transfer of the franchise. There is no allowance for a reasonable refusal. This approach, therefore, would seem overly harsh since the franchisor is required to exercise control over the

landlord-tenant decisions indicate that courts would not be adverse to upholding an arbitrary standard should it appear in the agreement.

38. International Franchise Ass'n, Legal Bulletin 7, 1970.

39. United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

40. *Id.* at 382.

41. J. CURRY, PARTNERS FOR PROFIT 18 (1966) [hereinafter cited as CURRY].

quality and use of trademarked goods or services. In order to exercise such control, the franchisor must have the power to prevent transfers to incompetent or irresponsible transferees.

Commissioner Jones seems to be advocating a modified *Schwinn* approach which would permit the franchisor to withhold his consent reasonably. This antitrust approach would appear to have an advantage over both the *Seegmiller* and the hybrid fiduciary approach. By condemning all but reasonable restrictions on transfer, the franchisee would be afforded protection when the franchise agreement contains either an arbitrary standard of consent or no standard at all.

IMPLEMENTATION OF JUDICIAL POSSIBILITIES

All three judicial doctrines would require that the franchisor not unreasonably withhold his consent to transfer. The next duty facing the courts, therefore, will be the implementation of this reasonableness standard in a manner which gives due respect to the interests of both parties.

The most appropriate method of implementation would appear to entail a factual, case-by-case analysis rather than the establishment of an inflexible rule covering all situations.⁴² In each case, the defendant franchisor should bear the burden of showing the reasonableness of his refusal.⁴³ This method would place the burden on the party with first-hand knowledge of all the factors going into the decision. Such an arrangement might also encourage more franchisees to litigate their

42. It might be argued that the franchisee should be required to offer the franchise to the franchisor before anyone else, at the fair market value. If the franchisor refuses to buy, the franchisee may sell to whomever he wishes. Such an absolute rule would seem to insure reasonable refusals since the franchisee would get the fair market value if the franchisor refuses the transfer. It would also appear to protect the franchisor's interest since he can always buy if he doesn't trust his franchisee's ability to judge transferees. This inflexible rule ignores the situation where a perfectly competent businessman offers more than the generally accepted fair market value. Why should the franchisee have to suffer a loss by selling back to the franchisor at the fair market value, especially since the prospective transferee is capable of protecting the franchisor's interests? In fact, it is conceivable that the franchisor might buy the franchise back and then sell to the transferee for a considerable profit. If this rule were changed so that the franchisee would be required to give the franchisor the first opportunity to buy at a price equivalent to a bona fide offer made by a prospective transferee, the problem of concocted offers might arise. This rule would also be ill-suited for the situation where an incompetent businessman makes a bona fide offer for a price considerably in excess of the fair market value. Why should the franchisor, who now must buy the franchise to protect his trademark, have to pay an inflated price for the franchise?

43. This would be consistent with the characterization of the franchise relationship as fiduciary, for the party accused of securing an advantage for himself has the burden of proving he did not abuse the trust placed in him. *Brown v. Halbert*, 271 Cal. App. 2d 252, 76 Cal. Rptr. 781 (1969).

rights. Presently, franchisees are hesitant to sue because of the high costs of litigation and the uncertainty of their rights under the franchise agreement.⁴⁴ Requiring the franchisor to prove that his refusal was reasonable may provide sufficient impetus for franchisees to risk litigation in the belief that they have a good chance of success.

In attempting to determine whether or not the refusal was reasonable, the court may look to such factors as the proposed transferee's intelligence, motivation, education, mechanical aptitude, verbal skill, age, health, marital status, previous business experience and ability to take stress.⁴⁵ The court may then determine whether or not the potential transferee met the standard required by the franchisor as to each of these factors. If he does not, the court may question whether the standard required of the transferee as to each factor was necessary to protect a legitimate franchisor interest or whether the franchisor was simply trying to obtain a "super franchisee." From an evaluation of all these factors, the courts should be able to give substance to the nebulous term "reasonable." In making such a decision, the court could consider other factors, such as high motivation or an excellent business background, which would mitigate the effect of any unsatisfied requirements. In this manner, the term "reasonable" would take on added meaning.

A LEGISLATIVE SOLUTION

If the courts refuse to require that consent to transfer not be unreasonably withheld, Congress or the state legislatures could accomplish the same objective. In fact, Congress has already attempted to alleviate certain inequities in the franchise system.

The Federal Automobile Dealers Day-in-Court Act of 1956⁴⁶ was the first incident of legislative protection of franchises. The Act provides auto dealers with a cause of action for damages resulting from the manufacturer's failure "to act in good faith in performing or complying with any of the terms or provisions of the franchise."⁴⁷

Subsequent congressional attempts to remedy various franchise

44. *Franchising*, *supra* note 34, at 662-63.

45. *CURRY*, *supra* note 41, at 66.

46. 15 U.S.C. §§ 1221-25 (1970).

47. By referring to legislative history, the court in *Staten Island Motors, Inc. v. American Motors Sales Corp.*, 169 F.Supp. 378 (D.N.J. 1959), interpreted the Act so as to condemn only franchisor actions accompanied by coercion, intimidation or threats. Such an interpretation clearly limits the "good faith" standard. Accordingly, courts have been reluctant to hold auto franchisor refusals to transfer violative of the Act. *See, e.g.*, *Pierce Ford Sales, Inc. v. Ford Motor Co.*, 299 F.2d 425 (2d Cir.), *cert. denied*, 371 US. 829 (1962).

abuses have never been reported out of committee.⁴⁸ Paul Rand, former chairman of the FTC, has perhaps explained Congress' hesitancy to pass sweeping franchise reform bills:

The many varieties of franchise systems differ among themselves so widely that any attempt to state rules applicable to all franchise systems must either be so broad as to approach the meaningless or tailored with numerous qualifications in order to fit all varieties of franchises. It would be foolhardy for one to issue flat pronouncements declaring the state of the law as it pertains to franchise agreements.⁴⁹

However, legislation requiring that any denial of consent to transfer be reasonable, while admittedly broad, would give the courts power to develop their own criteria of reasonableness, thereby making such a broad requisite "meaningful" while eliminating the need for legislative tailoring of the law "with numerous qualifications."

While Massachusetts has enacted an automobile dealership statute⁵⁰ similar to the Day-in-Court Act, only Delaware has enacted legislation covering all franchise relationships.⁵¹ This Act, however, provides relief only when the franchisor either has failed to renew or has terminated the franchise in bad faith.⁵² If Delaware's lead is both followed and expanded, so as to cover consent clause abuses, judicial establishment of a reasonableness standard will be unnecessary.

While all the suggested judicial approaches to establishing such a standard have inherent theoretical or practical shortcomings, a statute need only require that consent to transfer not be unreasonably withheld. With the aid of such a statute, courts need only implement the law, instead of creating it.

F. JAMES HELMS

48. See H.R. 2818, 90th Cong., 1st Sess. (1967); S. 1967, 91st Cong., 1st Sess. (1969).

49. Axelrod, *supra* note 7, at 712, citing *Hearings on S. 2321 Before the Subcomm. on Antitrust & Monopoly of the Senate Judiciary Comm.*, 90th Cong., 2d Sess. (1967).

50. MASS. ANN. LAWS ch. 93B, § 1 *et seq.* (Supp. 1970).

51. DEL. CODE ANN. tit. 6, § 2551 *et seq.* (Supp. 1970).

52. DEL. CODE ANN. tit. 6, § 2553 (Supp. 1970).