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Trade Regulations: Boxing as Interstate Commerce

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pleting his business. The plaintiff could not be a business visitor if, at the time of her entrance, her husband was not in that category. The length of time that the husband consumed in waiting after buying the lottery ticket did not appear in the opinion. The court ruled, in upholding the directed verdict for the defendant, that there was no reasonable ground for a contrary verdict.

The law applied in this case is probably sound, but the court's definition of "unreasonable time" must forever remain a mystery. It is improbable that the husband, hence the plaintiff, could have been denied an invitation because of lack of mutuality or inducement, or because of the illegal act. The choice was between debatable law squarely applicable to the facts and a questionable application of undoubted law. The court chose the latter alternative.

ROBERT P. SMITH, JR.

TRADE REGULATION: BOXING AS INTERSTATE COMMERCE

United States v. International Boxing Club, 75 Sup. Ct. 259 (1955)

Defendants were engaged in the promotion of professional boxing matches in several states. The United States alleged that defendants' activities, including negotiation of contracts, leasing of arenas, sale of tickets, and sale of motion picture, broadcasting and telecasting rights, comprised interstate commerce and that these activities were carried on in such a manner as to violate the Sherman Act.[1] The district court granted defendants' motion to dismiss, and the case went to the Supreme Court on direct appeal under the Expediting Act.[2] HELD, defendants' activities constituted interstate commerce within the meaning of the Sherman Act. Judgment reversed, Justices Frankfurter and Minton dissenting.

Authority to regulate commerce among the several states is delegated to Congress by the Constitution.[3] The Sherman Act,[4] the pur-

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[1]26 STAT. 209 (1890), as amended, 15 U.S.C. §§1-7 (1952).
[2]32 STAT. 823 (1903), as amended, 15 U.S.C. §29 (1952).
[3]U.S. CONST. art. I, §8, cl. 3.
[4]26 STAT. 209 (1890), as amended, 15 U.S.C. §§1-7 (1952).

pose of which is to thwart monopolies in interstate commerce and suppress attempts to create them, was enacted under this authority.

The courts encounter difficulty in determining which activities are "interstate commerce." In early cases the meaning given the term was very narrow, and a trade or business was not classed as interstate commerce unless a substantial part of it was involved in the crossing of state lines. Thus insurance companies, for example, were initially held not to be engaged in interstate commerce.[5] More than thirty years ago it was held in *Federal Base Ball Club v. National League*[6] that the interstate activities engaged in by professional baseball clubs were merely incidental to their primary purpose of furnishing local entertainment and that professional baseball hence did not come within the purview of the Sherman Act. More recent cases tend toward a broader meaning of interstate commerce; touring stage plays,[7] sugar beet production,[8] wheat farming,[9] and insurance[10] have been held to be activities subject to regulation under the Sherman Act.

In keeping with this trend, the Court in the instant decision concluded that boxing may be interstate commerce. The Court noted that more than twenty-five per cent of defendants' revenues are derived from the sale of motion picture, broadcasting, and telecasting rights to the boxing contests promoted by them; all three of these media of communication have been held to be interstate commerce.[11]

In *Toolson v. New York Yankees, Inc.*,[12] the Court again exempted professional baseball from the operation of the Sherman Act. The decision was an application of the rule of stare decisis and was based solely on the authority of the *Federal Base Ball Club* case. In its per curiam opinion the Court noted that in the years that have passed since the rendering of the decision in the *Federal Base Ball Club* case Congress has had the ruling of that case under consideration but

[5]Hooper v. California, 155 U.S. 648 (1895); Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1868).

[6]259 U.S. 200 (1922).

[7]United States v. Shubert, 75 Sup. Ct. 277 (1955); Ring v. Spina, 148 F.2d 647 (2d Cir. 1945).

[8]Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219 (1948).

[9]Wickard v. Filburn, 317 U.S. 111 (1942).

[10]United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944).

[11]United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948); Federal Radio Comm'n v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266 (1933); Dumont Laboratories, Inc. v. Carroll, 184 F.2d 153 (3d Cir. 1950).

[12]346 U.S. 356 (1953).