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Quarterly Synopsis of Florida Cases

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QUARTERLY SYNOPSIS OF FLORIDA CASES*

BANK ACCOUNTS. *Tenants by the Entireties.* A signature card had been signed at the bank with words creating an estate by the entireties. All money on deposit had belonged to the husband, and the wife did not exercise any control over the funds. In an action for an accounting against her husband's estate for property acquired by the husband individually from allegedly joint funds, it was held that merely changing a bank account from an individual to a joint account does not create a tenancy by the entireties. There must be clear evidence that the parties had intended to create a tenancy by the entireties.¹

BANKRUPTCY. *Discharge of Tort Claims.* The Bankruptcy Act exempts from discharge debts arising from willful and malicious injuries to the person of another.² Failure to charge a jury on the issue of punitive damages is not indicative of a lack of malice so as to permit discharge of a tort claim in bankruptcy proceedings.³

BUSINESS ASSOCIATIONS. *Partnerships: Inactive Partners.* A partner who has curtailed his activity in the partnership because of prolonged illness to a point below that contemplated at the time of the formation of the business association is not entitled to his normal share of the accrued profits from new accounts during the period of diminished activity. However, profits from accounts which require no further work and which were secured prior to the period of diminished activity must be distributed in accordance with the partnership agreement.⁴

Fictitious Name Statute. In a case of first impression, the supreme court ruled that the usual form of partnership name, consisting merely of the surname of the parties without their initials or first names, joined by an "& or and" is not an assumed or fictitious name⁵ requiring registration under the statute.⁶

*The Synopsis covers cases decided by the Florida Supreme Court (excluding memorandum and other opinions not considered of sufficient importance to note) set out in 91 So.2d 165 through 93 So.2d 488. In addition, federal cases of general import in Florida have been included.

This issue of the Quarterly Synopsis was written by Edgar Lewis and edited by Bertha Freidus.

1. *Winters v. Parks*, 91 So.2d 649 (Fla. 1956).
2. 11 U.S.C. § 35a (2).
3. *O'Brien v. Howell*, 92 So.2d 608 (Fla. 1957).
4. *Davis v. Spengler*, 93 So.2d 348 (Fla. 1957).
5. *Cruse v. Wilson*, 92 So.2d 270 (Fla. 1957).
6. FLA. STAT. § 865.09 (1955).

CONSTITUTIONAL LAW. *Equal Protection: Admission to State University.* Even though the United States Supreme Court issued an order providing that there is no reason for delay in the admission of a Negro to the Law School of the University of Florida, the Florida Supreme Court, in order to prevent possible serious public disturbances which might result, is not deprived of its discretionary power of determining the date of issuing a writ of mandamus compelling such admission.⁷

Equal Protection: Registration Requirements. A statute which enumerated special requirements of applicants for registration as real estate brokers from Sarasota County⁸ was a denial of equal protection of the laws under the United States Constitution. Statutory classification by counties or otherwise that imposes different registration requirements on citizens of the same states engaged in the same occupation with no conceivable just basis for distinction is invalid⁹.

Due Process: Fair Return. A company which does not have an exclusive franchise but does have the express or implied consent to furnish water to the inhabitants of a municipality must be given a fair return by local rate-fixing ordinances.¹⁰

CIVIL PROCEDURE. *Declaratory Judgments.* The fact that a controversy has not matured may not always be essential to maintaining an action under the declaratory judgments statute.¹¹ The procedure may be employed when one anticipates irreparable mischief and harm to one's business.¹²

Diversity of Citizenship. The federal courts have no jurisdiction in actions brought by the Florida State Turnpike Authority against non-resident defendants, since the Authority is an arm of the state and is not a "citizen" within the "diversity concept."¹³

Judgments: Counter-affidavits. On plaintiff's motion for summary judgment in a paternity proceeding, defendant filed counter-affidavits denying the allegations. Later, when plaintiff sought to take defendant's deposition, defendant, asserting his privilege against self-incrimination, refused to answer questions. Motions to strike the affidavit and for summary judgment were granted. Held: an affidavit may not be stricken for failure to respond to questions on the basis of privilege, since this has the effect of abrogating the privilege. The filing of a counter-affidavit does not constitute a waiver of

7. State ex. rel. Hawkins v. Board of Control, 92 So.2d 354 (Fla. 1957).

8. LAWS OF FLA. Ch. 31271 (1955).

9. Hollenbeck vs. State ex. rel. Myers, 91 So.2d 177 (Fla. 1956).

10. Village of Virginia Gardens v. Haven Water Co., Inc., 91 So.2d 181 (Fla. 1956).

11. FLA. STAT. § 87.01 (1955).

12. James v. Golson, 92 So.2d 180 (Fla. 1957).

13. Florida State Turnpike Authority v. Van Kirk, 146 F. Supp. 364 (N.D. Fla. 1956).

privilege. There is no provision in the Florida Rules of Civil Procedure for striking an affidavit, even one filed in bad faith.¹⁴

Judgments: Failure to Comply With a n Order of Court. Failure to comply with any court order may subject a disobedient claimant to dismissal upon motion by the adverse party,¹⁵ Such dismissal operates as res judicata.¹⁶

Limitation of Actions. An employee sued for damages resulting from contracting dermatitis caused by using chromates furnished by the employer for use in the course of employment. Once a party is put on notice that he has an occupational disease, the Statute of Limitations begins to run, even though he does not know the cause of the disease. This result is consistent with former opinions holding that the statute does not run until such time as he has knowledge of a disease.¹⁷

Mandamus: Purchase at Execution Sale. When corporate stock is sold in an execution sale in satisfaction of a judgment, the transfer officer of the corporation is treated as an officer of the court, and mandamus is the proper remedy to compel him to make the transfer on the books of the corporation.¹⁸

Pleadings: Proof of Issues Not Alleged. A broker sued to recover a commission for the sale of land. In the complaint he miscalculated the amount of commission due but was awarded the correct amount by the jury verdict. Following the federal rule,¹⁹ the court held the verdict was not erroneous since it is not the form of the prayer which determines the nature of the relief to be granted but the facts alleged and the issues and proof.²⁰

Probate Courts: Adjudication of Attorney's Fees. Although the probate court is a court of limited jurisdiction, it may adjudicate all matters incident to probate, including the determination of reasonable attorneys' fees for services rendered in the settlement of an estate.²¹

CRIMINAL LAW. *Habitual Offenders.* Defendant was indicted on three counts of narcotics violations and was subsequently convicted and sentenced under the habitual offender statutes.²² Although each count in an indictment is a crime, each crime must be regarded as a first offense within the meaning of this statute, since this statute contemplates the repetition of a crime after a conviction.²³ In another case defendant had been previously

14. *Jones v. Stoutenburgh*, 91 So.2d 299 (Fla. 1957).

15. Fla. R. of Civ. P. 1:35 (b) (1954).

16. *Hinchee v. Fisher*, 93 So.2d 351 (Fla. 1957).

17. *Seaboard Air Line R.R. Co. v. Ford*, 92 So.2d 160 (Fla. 1957). This seems a rather illogical position for the court to take. If an employee does not know the cause of the disease, can he know whether or not it is occupational? This will bar recovery if the disease has manifested itself so as to put the plaintiff on notice that he has some ailment.

18. *Berger v. Beyerle*, 93 So.2d 67 (Fla. 1957).

19. Fed. R. Civ. P. 8.

20. *Chasin v. Richey*, 91 So.2d 811 (Fla. 1956).

21. *In re Baxter's Estate*, 91 So.2d 316 (Fla. 1956).

22. FLA. STAT. § 398.22 (1955).

23. *Winstead v. State*, 91 So.2d 809 (Fla. 1956).

convicted in a federal district court of Florida for receiving stolen property and was sentenced to eighteen months imprisonment. He was subsequently indicted for concealment of stolen property and induced to plead guilty after the solicitor promised he would be paroled. The first conviction was known to the solicitor. After the parole had been in effect five years, he was indicted as a second offender. In reversing the conviction, the court stated that he would not have taken the risk of pleading guilty to the second offense when there were no witnesses to prove his guilt of that crime if there was any possibility of being later indicted as a second offender.²⁴

Insanity as a Bar to Punishment. When one is convicted of a crime and immediately thereafter adjudged incompetent and ordered confined to a mental institution, he may not be sentenced, even after his release from the institution, until adjudged to be sane. The presumption of insanity continues until a proper showing is made that sanity has returned.²⁵

Manslaughter. To avoid colliding with the rear end of a school bus which had stopped suddenly in front of him, the defendant swerved his large truck around the bus and into the opposite lane, thereby colliding with an oncoming vehicle and causing the death of its operator. This conduct evinced a reckless disregard for human life and was sufficient to justify a conviction of manslaughter.²⁶

Perjury. False testimony must have some weight and reference to the determination of an issue which is before the court to be the basis for a conviction of perjury.²⁷

Procedure. In cases involving homicides or other crimes which have varying degrees, it is necessary to charge the jury concerning all lesser included offenses.²⁸

Rape. The gravamen of the offense of rape is penetration. That the sperm cells found within the victim must be identified as those of the accused would make proof of rape impossible.²⁹

Revocation of Driver's License. A party convicted of drunken driving by a municipal judge is subject to revocation of his license. Such revocation is not double punishment for a single offense. The action is not within the discretion of the judge, since it is mandatorily imposed by the statute³⁰ and

24. *Ard v. State*, 91 So.2d 166 (Fla. 1956).

25. *Perkins v. Mayo*, 92 So.2d 641 (Fla. 1957).

26. *Lester v. State*, 92 So.2d 534 (Fla. 1957).

27. *Smith v. State*, 92 So.2d 411 (Fla. 1957).

28. *Killen v. State*, 92 So.2d 825 (Fla. 1957).

29. *Thomas v. State*, 92 So.2d 621 (Fla. 1957). The court also added in the opinion that the fact that twenty-three Negroes and only one white man were sentenced to die for conviction of rape over a twenty year period in Florida does not prove any discrimination against Negroes. It only shows more Negroes were tried and convicted of rape than white defendants.

30. FLA. STAT. § 322.26 (1955).

is regarded as any other administrative action following conviction for certain offenses.³¹

Search and Seizure. A deputy sheriff stopped defendant's automobile after watching it swerve badly on the road. He noticed the back was heavily laden. Prior to making any search of the contents, defendant admitted he was carrying moonshine. Acquittal of the traffic charge will not invalidate the search, since the admission in the officer's presence that defendant is committing a crime authorizes a search to be made.³²

CRIMINAL PROCEDURE. *Appeal: Requirement of a Bond.* In a case of first instance, it was held that the right to appeal a conviction is not a natural right but is one created by law. The requirement of a bond before an appeal can be perfected is mandatory, not directory, and does not contravene the Florida Constitution.³³

DIVORCE. *Appeal: Subsequent Marriage.* In a suit for divorce by a wife, the decree awarded her alimony and attorney's fees, and the husband appealed. He remarried during the pendency of the appeal. He had assigned as error the final decree, alimony and the attorney's fees. His marriage estops his assignment of error as to the judgment, but he has not waived his rights concerning alimony, attorney's fees, or property settlement.³⁴

Ex Parte Proceedings. After a final decree of divorce had been granted the wife, she wrote letters to the chancellor declaring she had not been a bona fide resident when the divorce was obtained. The circuit court, on its own motion, vacated the decree of divorce and the husband appealed. In reversing, the supreme court held the proceeding wholly irregular. Ex parte proceedings may not form the basis for disturbing a decree entered at the conclusion of a regularly instituted suit.³⁵

Full Faith and Credit: Estoppel by Judgment. A wife obtained a separate maintenance decree in New Jersey on grounds of desertion. The husband moved to vacate the judgment and thereby became subject to jurisdiction of the court and bound by this final decree. The husband is estopped from relitigating the issue of fault in a Florida divorce action but not from seeking a divorce on other grounds.³⁶

Payment of Alimony After Death. A final decree of divorce providing alimony be paid the wife until her death or remarriage is enforceable against a deceased husband's estate.³⁷

31. *Smith v. City of Gainesville*, 93 So.2d 105 (Fla. 1957).

32. *Brown v. State*, 91 So.2d 175 (Fla. 1956).

33. *Austin v. Town of Oviedo*, 92 So.2d 648 (Fla. 1957).

34. *Weatherford v. Weatherford*, 91 So.2d 179 (Fla. 1956).

35. *Hoffman v. Hoffman*, 92 So.2d 524 (Fla. 1957).

36. *Field v. Field*, 91 So.2d 640 (Fla. 1956).

37. *Johnson v. Every*, 93 So.2d 390 (Fla. 1957).

EMPLOYMENT AGENCIES. An agency which hires its own workers and supplies them where they are needed, paying the workers and being responsible for the work they produce for the other businesses, is not a private employment agency and therefore not subject to the control and supervision of the Florida Industrial Commission.³⁸

EQUITY. Adverse Interest of Counsel. A motion to show cause contained an allegation that the movant's attorney, who was associated with the plaintiff in a similar business, had an adverse interest in the litigation. Such allegations was sufficient to raise the issue of fraud and to set aside a final summary decree for the plaintiff.³⁹

Burden of Loss. A party, though innocent in all other respects, must bear the burden of the loss when she created the circumstances which permitted a friend to whom she loaned stocks to defraud not only herself but other innocent parties through wrongful manipulation of the stocks.⁴⁰

EVIDENCE. Expert Witnesses. Appellant was charged with poisoning her husband. The only testimony relative to the identity of the poison was given by a doctor who based his opinion of the poison used upon the findings of another doctor who was not called as a witness. Expert testimony based upon the findings of another is not competent to prove the identity of the poison.⁴¹

Prima Facie Case. Possession of lottery tickets creates a prima facie case and sufficiently lays the predicate for the introduction of the confession of the accused.⁴²

Privileged Reports. Defendant filed a counterclaim in an action for an accounting. Any objections he might have had to the introduction into evidence of a privileged report⁴³ are waived when he relies upon it in support of his own counterclaim.⁴⁴

GRAND JURIES. Interim Reports. The supreme court reiterated the long-standing rule that grand juries may not publish reports detrimental to the best interests of individuals named in the report without a proper recommendation for their suspension from office or for their indictment in proper judicial proceedings.⁴⁵

38. Florida Industrial Comm. v. Manpower, Inc. of Miami, 91 So.2d 197 (Fla. 1956).

39. Daytona Enterprises, Inc. v. Wagner, 91 So.2d 171 (Fla. 1956).

40. Niccolis v. Jennings, 92 So.2d 829 (Fla. 1957).

41. Patterson v. State, 92 So.2d 804 (Fla. 1957).

42. Brown v. State, 91 So.2d 620 (Fla. 1956).

43. FLA. STAT. § 473.15 (1955) . . . all information obtained by certified public accountants and public accountants in their professional capacity concerning the business and affairs of clients shall be deemed privileged communications

44. Savino v. Luciano, 92 So.2d 817 (Fla. 1957).

45. State v. Interim Report of Grand Jury, 93 So.2d 99 (Fla. 1957).

An individual has the right to have his name expunged from an interim report if it contains innuendos not based upon substantial facts which cause him great public humiliation and result in irreparable injury to his professional career.⁴⁶

INSURANCE. *Indemnity Bonds.* A bond provided that recovery could be had only upon a conclusive showing of fraud or dishonesty. Indemnitor did not argue the requirement of a conclusive showing. Only the ordinary quantum of proof was offered. Yet, where the evidence shows any acts evincing a want of integrity and an intentional breach of trust, recovery on a bond will be allowed.⁴⁷

Liability for an Additional Insured. School property which was insured was subsequently put up for sale to the highest bidder. After the high bid was received, the property was destroyed by fire. It was held that the buyer and the School Board owned the property jointly and the Company was liable for the full extent of the loss under a valued property clause, the buyer being treated merely as an additional insured.⁴⁸

Special Burglary Policies. Where the Company insured the contents of insured's safe under a special burglary policy requiring as a condition precedent to recovery that the safe must contain visible marks of forcible entry, and the safe is feloniously removed from the premises and is not found, recovery will be denied. Courts will not speculate as to the fact that the safe would contain the required visible marks when subsequently opened by the felons.⁴⁹

INTERNAL REVENUE. *Forfeiture of Property.* Where one uses a vehicle for the purpose of receiving illegal wagers, and no federal wagering occupational tax has been paid, the statute prohibiting possession of any property intended for use in violating the internal revenue laws⁵⁰ authorizes a seizure and subsequent forfeiture of the vehicle.⁵¹

LABOR RELATIONS. *Right to Picket.* The Union picked a hotel for recognition of the Union as the bargaining agent of the hotel employees, although less than 20% of the employees were members of the organization. The majority of the picketing was conducted in a disorderly manner by members of the union who were not employed by appellant. Abusive

46. *State v. Wright*, 93 So.2d 104 (Fla. 1957).

47. *Glens Falls Indemnity Co. v. National Floor & Supply Co.*, 239 F.2d 412 (5th Cir. 1956).

48. *National Fire Ins. Co. v. Board of Public Instruction* 239 F.2d 370 (5th Cir. 1956). FLA. STAT. §§ 631.04, 631.05, 92.33 (1955).

49. *Moore v. General Casualty Co. of America*, 91 So.2d 341 (Fla. 1954).

50. 26 U.S.C. § 7302 (1954).

51. *United States v. General Motors Acceptance Corp.*, 239 F.2d 102 (5th Cir. 1956).

language was hurled at patrons and non-union employees. In a confusing decision the court established that picketing contemplates a labor dispute between employer and employees.⁵² Only employees, under the conditions presented here, could establish picket lines after they had adhered to certain requirements set forth in an earlier opinion.⁵³

MECHANICS' LIENS. *Joint Adventures.* A business agreement providing that one party has exclusive control of the transaction and containing no provision for bearing losses cannot be termed a joint adventure. A party contributing time, labor, and materials to such a transaction will be entitled to a mechanics' lien or an equitable lien for the reasonable value of services rendered.⁵⁴

MUNICIPAL CORPORATIONS. *Revenue Bonds.* On appeal from a decree validating an issue of municipal sewer revenue bonds, it was held that a town may supplement the pledge of sewer revenue bonds with a pledge of a portion of income from cigarette taxes levied by ordinance pursuant to the Florida Statutes.⁵⁵

Right to Control Solicitation. An ordinance prohibiting female employees from fraternizing with customers for the purpose of soliciting drinks in an establishment selling intoxicating liquors is constitutional. It is a proper exercise of the police power of the state designed to correct the evils emanating from the uncontrolled activities of "B-girls." That part of the ordinance forbidding an employee of a liquor establishment from drinking liquor in the place of his employ is unconstitutional since it denies to the employee equal protection of the laws.⁵⁶

Zoning Ordinances. An optionee of property sought change in a zoning ordinance, which change was granted by the city commission on the condition that a contract between private parties would be executed. Such an ordinance is indefinite and uncertain. Zoning regulations must not be bottomed upon private arrangements,⁵⁷ since this could destroy the effectiveness of a comprehensive zoning plan.

NEGLIGENCE. *Contributory Negligence.* Plaintiffs drove their car into a standing railroad car that blocked the crossing. The lower court entered judgment n.o.v. based on the fact that plaintiffs were driving their automobile using dimmed lights rather than the bright or upper beam lights and were therefore guilty of contributory negligence. In re-

52. *Fontainebleau Hotel Corp. v. Hotel Employees Union*, 92 So.2d 415 (Fla. 1957). This case is noted in 11 *MIAMI L.Q.* 534 (1957).

53. *Sax Enterprises v. Hotel Employees Union*, 80 So.2d 602 (Fla. 1955).

54. *Green v. Putnam*, 93 So.2d 378 (Fla. 1957).

55. *FLA. STAT. c.210* (1955). *State v. Town of De Funiak Springs*, 91 So.2d 169 (Fla. 1956).

56. *City of Miami v. Kayfetz*, 92 So.2d 798 (Fla. 1957).

57. *Hartnett v. Austin*, 93 So.2d 86 (Fla. 1957).

versing the decision, the supreme court held that it was for the jury to determine whether or not plaintiffs were contributorily negligent and that the trial judge erred in granting a judgment notwithstanding the verdict.⁵⁸

A party will be adjudged contributorily negligent and recovery will be barred when he is aware of a foreign substance⁵⁹ on the sidewalk, or a defect in construction in the sidewalk,⁶⁰ and proceeds to walk thereon.

Where there is substantial evidence to support the view that plaintiff had a right to expect an area to be free of obstructions, and he walks through an unfamiliar area at night and is injured in a fall over an obstruction, summary judgment may not be granted on the issue of contributory negligence, since it cannot be said that as a matter of law he proceeded at his own peril.⁶¹

Guest Statute. Excessive speed, which is only evidence of failure to use slight care, is not sufficient to show gross negligence required for recovery under the "guest statute." A judge may not properly withdraw the case from the jury and direct a verdict based solely on a showing of excessive speed.⁶²

Licensee: Wrongful Death. A municipality sought reversal of a judgment in a suit for wrongful death. Decedent had offered to paint the town name on a water tower, and his offer was conditionally approved by the city council provided the city attorney would first draft a contract. Prior to the drafting of a contract, decedent undertook to paint the sign on his own volition and was killed in falling from the tower. In reversing the lower court, it was held that he was a mere licensee and the town was only under a duty not to injure him willfully and was not obligated to make any provisions for his safety.⁶³

NEWSPAPERS. *Legal Notices.* A newspaper may qualify to publish legal notices within the constructive service statute⁶⁴ if it is one of general circulation available to the general public. This rule applies even though there is only limited circulation in that section of the city where the parties concerned reside.⁶⁵

REAL PROPERTY. *Oral Agreements Not to Partition.* Where parents had created a tenancy in common with the right of survivorship

58. *Hutton v. Atlantic Coastline R.R. Co.*, 92 So.2d 528 (Fla. 1957).

59. *Dewar v. City of Miami*, 93 So.2d 58 (Fla. 1957).

60. *Chambers v. Southern Wholesale, Inc.*, 92 So.2d 188 (Fla. 1957). This case is noted in 11 *MIAMI L.Q.* 536 (1957).

61. *Delany v. Breeding's Homestead Drug Co.*, 93 So.2d 116 (Fla. 1957).

62. *FLA. STAT.*, § 320.59 (1955).

63. *Cadore v. Karp*, 91 So.2d 806 (Fla. 1957).

64. *City of Boca Raton v. Mattef*, 91 So.2d 644 (Fla. 1956).

65. *FLA. STAT.*, c. 49 (1955).

66. *Johnson v. Taggart*, 92 So.2d 606 (Fla. 1957).

between themselves and their son and his wife, the court found an implied agreement not to partition by virtue of the estate created. The partial performance of the parties removed the agreement from the Statute of Frauds, and a request for partition by the son was denied.⁶⁷

Property of Alleged Marriage. A man held some property in his own name and other property jointly with his alleged wife. He had furnished all the consideration for the property which was jointly owned. The wife's administrator failed to prove the existence of a valid common law marriage. Her estate is entitled to a share of the jointly owned property, since they held this as tenants in common, but property owned individually by the man remains in his estate.⁶⁸

SALES. Negligence of Purchaser. A purchaser of property was advised by her attorney to have a survey of the property made before purchase. At the suggestion of the vendor that she save money, the purchaser failed to have any survey taken. The vendor had no intention of deceiving the purchaser and had made no representations as to the boundaries of the land. The purchaser's lack of reasonable diligence precludes rescission when an encroachment on the property is subsequently found.⁶⁹

Quantum Meruit. A buyer may deny the purchase price of goods notwithstanding their acceptance and use by him when the exigencies of the situation afford no other alternative. He must, however, pay the value of the use on a quantum meruit basis.⁷⁰

TAXATION. Homestead Exemption. Appellees became owners of a building in September, 1953, and assignees of a 99 year lease with an option to buy the lot. In July, 1954, they exercised the option to purchase and claimed homestead exemption, alleging that they held equitable title on January 1st, 1954, the date on which one must own property to qualify for the exemption. The claim was founded on 2 theories: (1) a lease with an option to purchase is greater than a leasehold estate (2) when the option was exercised, equitable ownership dated from the acquisition of the option. In a case of first impression, the court rejected these contentions on the basis that the option could not transform the leasehold into a greater estate, and the option became a contract of sale only on the date of its exercise.⁷¹

Sales Tax. Appellant was a manufacturer and installer of concrete pilings used in construction work. It received payment from its customers on a lump sum basis, which amount included the cost of the pilings and

67. *Condrey v. Condrey*, 92 So.2d 423 (Fla. 1957).

68. *Cannova v. Carran*, 92 So.2d 614 (Fla. 1957).

69. *Lo Frese v. Hayes*, 240 F.2d 277 (5th Cir. 1957).

70. *Sax Enterprises, Inc. v. David & Dash, Inc.*, 92 So.2d 421 (Fla. 1957).

71. *Gautier v. Lapof*, 91 So.2d 324 (Fla. 1956).

the installation. This was a sale in accordance with the sales tax statutes,⁷² and appellant was required to pay a tax on the lump sum, it being immaterial that the property produced was for the construction and improvement of real property.⁷³

Equipment purchased for use in plowing, planting, and cultivating the lands of others, and in harvesting their crops under a contract is not subject to sales tax.⁷⁴

TRUSTS. *Laches as a Bar to Action.* A widow alleged that her husband bought property in his name, although she furnished the consideration from her own separate funds. The court found that no constructive trust could be created, because she knew of the situation prior to the death of her husband and waited for twenty years before bringing any action. The equitable claims of a beneficiary of a constructive trust are subject to the application of the doctrine of laches.⁷⁵

UNEMPLOYMENT COMPENSATION. A partnership owned the stock of a corporation. Separate books were kept for the corporation, although the same employees were interchanged many times between the two business units. The partnership did not qualify as an employer of the corporate employees so as to be amenable to unemployment compensation claims, and the two businesses were not treated as a single unit, notwithstanding the stock ownership.⁷⁶

USURY. *Requirement of Intent.* In a suit to recover double the amount of allegedly usurious interest exacted in a loan, summary judgment was entered for the defendant. In reversing the judgment, the court stated that a violation of the usury statute⁷⁷ required a *willful* exaction of more interest than 10% per annum, and a jury trial is required on the issue of intent.⁷⁸

WILLS. *Widow's Share.* A testator provided that all taxes were to be paid out of the residue of his testamentary estate and deducted as an expense of administration of the estate. This required that the widow's testamentary share of the estate be calculated before deduction of estate taxes.⁷⁹

72. FLA. STAT. C. 212 (1955).

73. *Green v. Reed Construction Corp.*, 91 So.2d 634 (Fla. 1957).

74. *Starr v. Karst, Inc.*, 92 So.2d 519 (Fla. 1957).

75. *Wadlington v. Edwards*, 92 So.2d 629 (Fla. 1957).

76. *Pleus v. Vocelle*, 92 So.2d 604 (Fla. 1957).

77. FLA. STAT. § 687.03 (1955). It shall be usury and unlawful for any person . . . to enforce the collection of any sum of money . . . at a rate of interest greater than ten per cent per annum . . .

78. *Dezell v. King*, 91 So.2d 185 (Fla. 1957).

79. *In re Marshall's Estate*, 92 So.2d 185 (Fla. 1957).

WITNESSES. *Convicted Perjurers.* Plaintiff had not been allowed to testify in his own behalf after cross-examination revealed a prior conviction of perjury in another state. In a case of first instance, it was decided that one convicted of perjury in another state is not incompetent to testify in Florida. The statute⁸⁰ requires conviction of perjury in a Florida court. Similarly, conviction of perjury in a federal court will not disqualify a witness in a Florida proceedings, but evidence of prior convictions of perjury in any court is properly admissible as affecting his credibility as a witness.⁸¹

WORKMEN'S COMPENSATION. *Accidental Injury.* A roofer had suffered from a tubercular condition prior to his employment with the firm from which he now seeks compensation for an aggravation of that condition. The court held that prolonged exposure to any condition to which the general public is not exposed, which aggravates a previously existing ailment is an accidental injury under the workmen's compensation statutes.⁸²

Employee on Twenty-Four Hour Call. An employee who is required to be on twenty-four hour call, but who is not required to be at his place of employment at all times may not recover compensation for injuries occurring away from the employer's premises while on a mission of his own.⁸³

80. FLA. STAT. § 90.07 (1955) . . . a conviction of perjury shall make incompetent any person to testify in any court in this state, even if such person has been pardoned.

81. *Lefcourt v. Streit*, 91 So.2d 852 (Fla. 1956).

82. *Czepial v. Krohne Roofing Co.*, 93 So.2d 84 (Fla. 1957).

83. *Alan Wright Funeral Homes, Inc. v. Simpson*, 93 So.2d 375 (Fla. 1957).