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Infancy, Statutes of Fraud and Limitations

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A forum for the expression of readers' views on:

MORALITY IN LEGAL PRACTICE

The editors of THE CATHOLIC LAWYER have long recognized the tremendous need for full discussion and examination by lawyers of certain moral problems which constantly arise in everyday legal practice. As stated by the editors in the first issue of THE CATHOLIC LAWYER:

The religious education of the average Catholic attorney is not nearly so extensive as his legal training and hardly equips him with the knowledge and skill necessary for any independent research in matters with serious moral and religious implications. Yet an opinion will be expected of him which he cannot form unaided — and help in this field is difficult to obtain.

If the problem is a moral one he may turn to a Catholic priest for an explanation of the moral principles involved. But the difficulty may lie in the application of these principles to an intricate question of law. If the solution depends upon a knowledge of procedure, for instance, it may be extremely difficult for the attorney to explain the problem to a priest untrained in the common law.¹

Aware of the necessity for this general inquiry among lawyers as a preliminary to an effective solution of many such moral problems, THE CATHOLIC LAWYER, commencing with this issue, is inaugurating this new section which is intended as a forum for such considerations.

In this issue and in each succeeding issue, this section will set forth a factual problem dealing with some phase of law familiar to most practitioners. The problem will pose moral as well as legal issues. Readers are requested to comment upon the proper course of action to be taken in resolving such issues and to forward their comments to the editors. A subsequent issue will contain a compilation of such observations coupled with tentative solutions offered by qualified experts. It is hoped that by this process a true, working integration may be commenced of the science of law with ethics and moral theology — particularly in those areas where presently much knowledge is as yet unformulated.

The initial problem is set forth on the next page, with an appropriate title denoting the general area of law it concerns.

¹Tinnelly, *The Catholic Lawyer — An Idea and a Program*, 1 CATHOLIC LAWYER 3 (January 1955).

INFANCY, STATUTES OF FRAUDS AND LIMITATIONS

Mary Smith, 20 year old secretary, has signed an agreement obligating her to buy a 1956 car on conditional sale from the White Co. The payment terms are reasonable and well within her ability to meet, but she now seeks to avoid further obligation because she is anxious to return the '56 model and get a '57 convertible.

a) She seeks your aid in this matter. Would you plead infancy on these facts knowing it is the sole defense?

b) Mary's father, who has retained you at an annual retainer of \$5,000, covering all family matters, asks you to act for his daughter. Would you plead infancy on these facts knowing it is the sole defense?

Presume that Mary, when she reached 21 still without a car, orally agreed to purchase a second hand sedan from her friend, Jane, for \$500. Jane's car was sound, and Mary could have afforded it but she was again tempted by the convertible, and since Jane had not delivered as yet, Mary used the \$500 as down payment on the new car. Mary then publicly accused Jane of stealing the sedan and refused to go through with the agreement. Jane lost her job as a result of the false accusation. Two years later Jane brings suit on the agreement and Mary asks you to defend. She also asks you to defend a claim in slander against her which has been filed by Jane. Mary admits that she lied about Jane stealing but she feels that the one-year statute of limitations applicable to slander actions in the particular state is a protection to her and should be pleaded. The applicable Statute of Frauds section in the particular state makes unenforceable oral contracts for the sale of goods of the value of \$50.00 or more.

c) Would you plead the Statute of Frauds and the statute of limitations on these facts, knowing they are the sole defenses?

d) In the event that the agreement had been in writing, but more than six years had elapsed since its breach, on these facts, would you plead the six-year statute of limitations applicable to contract actions in the particular state, knowing it is the sole defense?

e) In the event Mary dies while these claims are pending, as administrator of Mary's estate would you honor the claims of White Co. and Jane or would you set up the defenses of Infancy against White Co. and the Statute of Frauds and the statute of limitations against Jane's claims?