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STUDENT NOTES

UNIVERSITIES: THE NON-RESIDENCE FEE PROBLEM

Many state universities charge those they consider non-residents of the state an additional fee for their educational privileges. They base this fee on their definition of a resident; which definition is established by a rule that the student must have resided in the state one year previous to his original enrollment, to be considered a resident.

Assuming that the university has the power to make reasonable rules applicable to those seeking admission, the problem arises as to whether the result of such rules, as made, can be called reasonable.

The result of the rule requiring a year's residence in the state prior to the student's original enrollment, is that thereafter no matter how long he lives in the state, even a lifetime, if he had not lived in the state one year *previous* to his original application, he could never become a resident of that state insofar as the university is concerned. To make this doubly sure many universities have passed another rule which provides that no student shall become a resident, in regard to fees, during his sojourn in the University as a student. This means that although it would be possible for the student during his college life to become a resident of the state for every other purpose, he could not, because of this rule, become a resident for the purpose of claiming resident privileges in the matter of fees.

The University of Kentucky has such rules. If an applicant for admission has not resided in the state one year *previous* to his original enrollment, he is permanently classed as a non-resident and subjected to the payment of an additional fee. The following hypothetical case, which is typical, is one which, it is contended, challenges the reasonableness of such rules.

An adult student comes to the University of Kentucky from out of state and pays the non-resident fee at the time of his original enrollment. The student then lives in Kentucky for one year, going to school. On registering for his second school year, he seeks to enter the University as a resident of Kentucky, claiming that he is domiciled in the state and is therefore a citizen of the state and entitled to admission on the same basis as any other citizen. Although, as will be shown, the student may now actually reside in the state and have his legal domicil there, and be a citizen of the state for every purpose, yet the University still classes him as a non-resident and he must pay an additional fee. Under such circumstances it is contended the University cannot lawfully exact this non-resident fee from the student, as it is an unreasonable discrimination against a citizen and therefore unconstitutional.

Section 332 of the Kentucky Statute provides "All persons born or naturalized in the United States and subject to the jurisdiction thereof, and who reside in the Commonwealth of Kentucky shall be deemed citizens thereof." Interpreted in the strictest sense, *reside* has generally been held to mean domicile,¹ therefore if the student fulfills the legal and technical requirements of domicile he is a citizen of the state in which he resides. Briefly the requirements of a domicile of choice are as follows:

"(1) A domicile of choice is a domicile acquired through the exercise of his own will, by a person who is legally capable of changing his domicile.

(2) To acquire a domicile of choice a person must establish a dwelling place with the intention of making it his home.

(3) The fact of physical presence at a dwelling place and the intention to make it a home must concur; if they do so, even for the moment, the change of domicile takes place.²

(4) To acquire a domicile of choice in a place a person must be physically present there; but a home in a particular building is not necessary for the acquisition of a domicile."³

As a citizen of Kentucky, the student contends that he is being discriminated against by being required to pay the non-resident fee while other citizens are allowed admission to the state tax supported institution on the payment of a lesser fee; that this discrimination is in violation of Section 1 of the 14th Amendment of the United States constitution and Section 3 of the Constitution of Kentucky. The latter provides that: "All men, . . . are equal; and no grant of exclusive, . . . privileges shall be made to any set of men, except in consideration of public services."

The above Section 3 of the Kentucky Constitution has been interpreted by the Court of Appeals of Kentucky in the cases of *Barker v. Crum*⁴ which is authority for the proposition that there can be no differences of fees between citizens for the same educational facilities at the State University, and the case of *Lee v. Hill*⁵ which provides that "all classes (of citizens) . . . alike are entitled to an equal share of the proceeds . . . of all state taxation for purposes of education"

If, therefore, the student can establish the fact that he does reside in the state, then he is perforce a citizen of the state and certainly, in the light of the two decisions previously mentioned, should be admitted to the State University on the same basis as other citizens who reside in the state. It is therefore with the legal and technical elements of domicile that the University ought to work in deciding

¹ *Elam v. Maggard*, 165 Ky. 733, 178 S. W. 1065 (1915); *Ex Parte Bullen*, 236 Ala. 56, 181 So. 498, 501 (1938); *In Re Edmundson*, 109 Pa. Super 472, 167 Atl. 502, 502 (1933); *Owens v. Stoval*, (Tex. Civ. App.) 64 S. W. (2d) 360, 362 (1933).

² *Restatement, Conflicts of Law* (1934) sec. 15.

³ *Id.* sec. 16.

⁴ *Barker v. Crum*, 177 Ky. 637, 198 S. W. 211 (1917).

⁵ *Lee v. Hill*, 83 Ky. 49 (1885).

whether a student should be charged a resident or non-resident fee, rather than the interpretation of arbitrary rules passed by a Board of Trustees, which cannot affect the law of domicil.

The only justification for the position of the University is that even if in fact the student is a citizen of the state then the so-called discrimination is a reasonable classification of citizens and therefore not unconstitutional. There would be excellent precedent for holding the University's rules as reasonable classification if all it did was require the student to reside one year in Kentucky, before he could gain a resident status for entrance requirements in the State University. The Supreme Court of California declared in *Bryan v. Regents of University of California*⁶ that the requirement of a tuition fee from citizens who have not resided in the state is a reasonable classification on the grounds that, ". . . the requirement that a student shall maintain a residence in the state of California during one taxation period (one year) as an evidence of the bona fides of his intention to remain a permanent resident of the state and that he is not temporarily residing within the state for the mere purpose of securing the advantages of the University, cannot be held to be an unreasonable exercise of discretion by the legislature or by the respondent." But the rule of the University of Kentucky provides that the one year's residence must be *before* he enters the University; which creates a classification that it is contended is far from reasonable, as, taken in conjunction with the other rule makes it impossible, during his college life, for the student in the case set out to become a resident or a citizen for purposes of sharing equal educational rights with other citizens in the matter of fees at the State University; which he has a right to do.⁷

In conclusion it would appear that *merely a one year's residence in the state* is probably a reasonable classification of citizens for resident entrance requirements to any state University and as a basis for a non-resident fee. But that the rules of the University of Kentucky, as they now stand, make the acquisition of a legal residence by the student after he gets to college impossible, which prevents him from enjoying the privileges of his citizenship in the state, based on his domicil in the state. For this reason, it is contended the rules are unconstitutional and unreasonable in their effect upon the classification of citizens of Kentucky, and should be abrogated; and all fees collected thereunder, being wrongfully collected, should be returned to the student.

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⁶ 188 Cal. 559, 205 Pac. 1071 (1922).

⁷ The question of the protest of fees paid by the student at the time of payment will not be taken up here, but generally, where a state authority has wrongfully collected fees, it has been held to be coercion, and protest has not been held necessary. See, Woodward, *The Law of Quasi Contracts* (1913) sec. 219; *Niedermeyer v. Curators of the University of Missouri*, 61 Mo. App. 654 (1895).