COMPENSATION

Occupational Twist

When an employee suffers an injury while on the job, he is entitled to financial compensation. But just when is he on the job? Or rather, when is he off it? Rarely, suggested the appellate division of the New York State Supreme Court last week, as it upheld a $55-a-week State Workmen's Compensation Board award to the widow of a man who died after a company dinner. William Chorley had been one of Koerner Ford, Inc.'s leading salesmen in the spring of 1964, which meant that he and his sales team ate steaks while the losers ate beans. It also meant conviviality and music, which prompted Chorley to do the twist. Four hours later he died of a heart attack. "Doing the twist involves strenuous exertion," understated the compensation board. And since the party and merrymaking were "in culmination of a competitive sales campaign," the injury was suffered "in the course of his employment."

PROFESSIONAL ETHICS

Lies & Lawyers

In a provocative lecture last January, George Washington University Law Professor Monroe Freedman posed three ethical riddles for 45 lawyers preparing for criminal practice in Washington, D.C. Asked Freedman:

▶ "Is it proper to cross-examine for the purpose of discrediting the reliability or the credibility of an adverse witness whom you know to be telling the truth?"

▶ "Is it proper to put on the stand a witness who you know will commit perjury?"

▶ "Is it proper to give your client legal advice when you have reason to believe that the knowledge will tempt him to commit perjury?"

The answer to all the questions, said Freedman, is yes. As it happened, a Washington Post reporter was in the classroom. The story he filed said that the professor had advocated perjury; it was a story that shocked three local federal judges whom Freedman had previously criticized in his capacity as head of Washington's Civil Liberties Union. The judges requested the local Bar Association's grievance committee to investigate Freedman for "unethical conduct"—a preliminary move to possible disbarment.

Deep Conflict. Freedman's case has since become a legal *cause célèbre* across the country. For one thing, it raises a problem in academic freedom: Can a law professor be disbarred for what he preaches in a private classroom as opposed to what he practices in a public courtroom? To Freedman's academic superiors, the answer is clear. Freedman, 38, has just been promoted to full professor and given a raise. Meanwhile, the grievance committee has exonerated him by a vote of 8 to 1. That does not mean that Freedman is out of trouble. The committee report was referred to Federal Judge William B. Jones, who has the power to recommend court action. For two months, Jones has remained silent, and Freedman could still be disbarred.

To defend himself, Freedman is publishing his lecture in the forthcoming *Michigan Law Review*. He was not prescribing perjury, he says, he was merely discussing conflicts in the U.S. adversary system. In theory, that system produces truth and justice by pitting lawyers in a contest before neutral judges and juries. The defense lawyer is torn between his role as a truth-seeking officer of the court and his duty to fight as hard as possible for his client.

WALTER BENNETT

CRITIC FREEDMAN
Caught between canons.

Regardless of his actual guilt, notes Freedman, the U.S. defendant is presumed innocent until the prosecution proves him guilty beyond a reasonable doubt. As a result, the defendant may remain silent—while the jury scrutinizes his lawyer's every word for any hint of doubt as to his client's innocence. In this situation, says Freedman, the lawyer's moral dilemma is compounded by the American Bar Association's 1908 Canons of Ethics. While Canon 22 requires "candor" toward the court, Canon 37 tells the lawyer "to preserve his client's confidences," and Canon 15 commands his "entire devotion to the interest of the client." As Freedman sees it, the moral margin winds up on the side of deception.

Charity & Perjury. The law professor suggests a hypothetical case: "The accused has admitted to you, in response to your assurance of confidentiality, that he is guilty. However, he insists upon taking the stand to protest his innocence." Should the lawyer permit such perjury? Yes, says Freedman. Despite the presumption of innocence, most jurors tend to presume guilt in a defendant who shuns the stand. To keep him off "will most seriously prejudice his case." The lawyer may quit the case, of course, but he may also have to tell the judge his reason—in effect, declare his client guilty. Thus, says Freedman, morality may sometimes require perjury.

Even worse is the dilemma of whether to give sound legal advice that may well tempt the defendant to give false testimony. When the accused confides his guilt in the 1959 bestseller *Anatomy of a Murder*, for example, his lawyer replies: "If the facts are as you have stated them so far, you have no defense, and you will be most likely electrocuted. On the other hand, if you acted in a blind rage, there is a possibility of saving your life. Think it over, and we will talk about it tomorrow." Is this unethical? Even though perjury may result, says Freedman, "the client is entitled to know this information and to make his own decision as to whether to act upon it."

To Washington's U.S. Attorney David G. Bress, who has written a short rebuttal to Freedman's law-review article, the professor's opinions totally overlook the command of Canon 5, requiring a defense lawyer to use "all fair and honorable means." To Bress, "This can only mean defending without the use of known perjury." In a letter to the Washington grievance committee, on the other hand, University of Pennsylvania Law Professor Anthony Amsterdam defended Freedman's original lecture as "a probing and responsible attempt to answer difficult and intensely practical problems created by our adversary system." Thus far, says Amsterdam, the organized U.S. bar has offered no better answers than "vaporous platitudes called canons of ethics which have somewhat less usefulness as guides to lawyers in the predicaments of the real world than do valentine cards as guides to heart surgeons in the operating room."

TORTS

What's in a Name

They tell the story about New York Banker Otto Kahn. It seems he was being chauffeured to work one day when he spotted a tailor's shop displaying the proud sign MAX KAHN, COUSIN OF OTTO KAHN. Enraged, the financier stopped the car, roared into the store and ordered Non-Relative Max to take the sign down forthwith. "Yes, sir," said Max timidly. Next day, Kahn drove by again and was greeted with a new

sign: MAX KAHN, FORMERLY COUSIN OF OTTO KAHN.

Max was obviously trying to crease a few extra pants on the strength of a name to which he had no right. What of the man whose name really is the same as that of someone more famous? Is he entitled to use his own name for his business? The common-law right allows a man to use his own name as long as he does not use it to defraud the public. But a recent ruling in California suggests that the right may be dwindling. The owners of Tarantino's, a well-known restaurant on San Francisco's Fisherman's Wharf, brought suit against Joseph Tarantino and his family, asking that they be enjoined from using their surname on the restaurant that they were operating near Lake Tahoe. A trial court found for Joe Tarantino and his family; there was no persuasive proof of intent to defraud the public.

The Third District Court of Appeals reversed the decision. Wrote Judge Fred R. Pierce: "Our reversal is upon the grounds that plaintiff's widely advertised name and well-known senior use of the name had given it a 'secondary' meaning and that junior use of even a family name will be enjoined when public deception inevitably results."

In show-business circles, that same rule has long been unofficially enforced. English Actor Jimmy Stewart chose to change his name to Stewart Granger because of a well-known American in the same trade. Now he would have to make the change as a matter of law. In fact, the names in question need not even be exactly the same. Similarity will suffice. Even so, the owner of the Chevron gas station on West Third Street in Los Angeles is not worried. Though he displays his name on a huge sign, Linden Johnson figures that the other fellow is too busy to sue.

CRIMINAL JUSTICE

Cash for Good Samaritans

In San Diego one night last fall, Stock Clerk Clifford G. Miller Jr. captured a neighborhood prowler, suffered a fractured hand in the scuffle, and lost $612.15 in pay and medical expenses. The cost of Miller's unusual willingness to become actively involved in the process of law enforcement was partly offset by medical and disability insurance, but he was still left $269.60 in the hole.

Last week Miller became the first American ever to be compensated by a Good Samaritan statute—a pioneering law enacted by California last summer to indemnify citizens who suffer injuries or damages while trying to prevent crimes or capture criminals. California Controller Alan Cranston mailed Miller a check for $269.60. "No one expects the new law to change human nature," said Cranston, a leader in getting the law passed. "But I believe it is a big step in helping to create an atmosphere all too lacking in our modern society."