Wrongful termination

One of the great strengths of the system of Common Law which the United States inherited from England in the Colonial Period was its adaptability to changing conditions. Just as the Common Law had adapted to the changes in the English economy from an agricultural to a manufacturing and commercial state, it is adapting once again, in the area of wrongful termination, to changes in the United States economy.

Doctrine of Employment at Will

Most employment relations begin with expectations of success and harmony; not with thoughts of defeat and discord. When the courts analyze the employer/employee relationship, seldom do the parties discuss how the relationship will be terminated. In the latter part of the nineteenth century, the courts developed the doctrine of Employment at Will to fill this gap. The courts ruled that in the absence of a specific agreement, either party was free to terminate the relationship at any time without notice and without any reason or explanation. Given the climate of the time, the doctrine of Employment at Will may well be what most employers and employees would have expected, and the courts may also have believed that American industry needed this flexibility to develop.  

Whatever its limitations, the doctrine of Employment at Will is simple and easy to follow. A lawyer can easily predict the result in any case, and if predictability is a premium for the legal system, the rule has a lot to recommend it. Difficult issues, where the rule appears to result in unjust decisions, are justified because predictability requires some sacrifice. Eventually, however, in at least sixty percent of the states, the sacrifice became too great and the courts developed inroads into the doctrine.  

To understand the development of the inroads into the Employment at Will doctrine, we have to keep certain things about the judicial system in mind. First, legislatures make laws and courts merely interpret them. Courts are not supposed to make law. Among other things, this usually means that when a court makes a decision about what the law is, the decision must take effect immediately. When a legislature enacts a law, it can specify that the law will take effect at some future date to give people a chance to prepare for it. For example, when the courts first began to make inroads in the doctrine of Employment at Will, employers believed that they had the right to terminate at will. When the courts decided there were restrictions on that right, employers become liable for discharging employees, even though, at the time of discharge, they believed in good faith they had the right to do it.
Obligations and limitations imposed on Employment at Will

As society became more and more complex, it began to impose additional obligations and limitations on the employee/employer relationship. For example, Congress protected the employee's right to unionize. Congress realized that there would be no right to unionize if employers could fire, "without cause," employees who attempted to unionize. State legislatures enacted workmen's compensation laws to compensate workers for injuries suffered on the job. The plan would not work if employers could fire, "without cause," employees who filed claims. Congress and state legislatures began to see more and more situations where society had interests to be protected that encroached on the employer's freedom to fire employees at will.

The first judicial decision to find a limitation on the doctrine of Employment at Will was a California case, Petermann v. International Brotherhood of Teamsters, Local 396.¹ In this case, an employee was discharged for refusing to give false answers to a legislative committee. When he sued his employer, the trial court dismissed the case.

Under the doctrine of Employment at Will, why bother to reinstate employees? No matter how outrageous the employer's actions, if the employer had the absolute freedom to discharge the employee immediately, the employee could be fired for no particular reason. The California Appellate Court recognized that the doctrine of Employment at Will had come into direct conflict with the public's interest and held that an employer's right to discharge an employee "may be limited by statute or by considerations of public policy."²

Exceptions to Employment at Will

While the categories are not altogether clear nor separate, there appear to be four areas where the courts may recognize exceptions to the Employment at Will rule: (1) public policy, (2) good faith, (3) contract, and (4) wrongful discharge.

Public policy

As in the California case, legislatures have established areas where employees must be protected to carry out basic concerns of society. These areas include prohibition against discrimination because of race, sex, religion or national origin and discrimination because of age. How could society prohibit discrimination in these areas if after securing employment the protected employee could be immediately discharged "without cause"? In addition, there are certain demands society makes on employees that may require that the employer's interest come second. In some states, employees cannot be discharged because of jury service or testifying at trials or hearings. In these areas, the doctrine of Employment at Will came into direct conflict with public policies and the doctrine of Employment at Will had to yield.

Good faith

Concepts of good faith in contracts were being used to soften some of the harsher requirements of nineteenth century principles in other areas such as landlord/tenant. The New Hampshire Supreme Court wrote: "... the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment and the public's interest in maintaining a proper balance between the two. We hold that a termination by the employer of a contract of employment at will which is motivated by bad faith or malice or based on retaliation is not [in] the best interest of the economic system or the public good and constitutes a breach of the employment contract."³

An example of the requirement of good faith could be seen in a subsequent Massachusetts case, in which a salesman, paid partly by salary and partly by a bonus, claimed he was discharged so the employer could avoid paying the bonus. The highest court in Massachusetts held that the discharge must be tested by the good faith of the employer.⁴

Contract

In an effort to avoid the growth of unions, many employers voluntarily adopted some of the benefits that unions would provide. These included personnel policies or employment handbooks promising procedures that would be followed. Not surprisingly, the courts held these were contracts, and their enforcement again made inroads into Employment at Will.

Wrongful termination

Finally, an area had developed which expanded the area of public policy. It was recognized that sometimes employees had to perform their public duty in a way which their employer might not like. In addition to areas clearly identified by legislatures, courts began to recognize, largely on a case by case basis, other areas where it was inappropriate to permit the employer full freedom to fire employees. For example, the courts developed a category known as "whistle blowers," employees who had performed some beneficial public service, such as testifying regarding their employers' acts, which required society's protection and a reduction in the freedom given to employers under the Employment at Will doctrine.

These trends did not appear simultaneously in every state, nor for that matter did they arrive si-
multaneously in the same state. But over the last 20 years the need to temper an employer's freedom to discharge an employee have been increasingly recognized in many states.

CRNAs and wrongful termination

There have been two appellate court decisions in this area involving CRNAs. The first case involving a CRNA is not typical of wrongful termination cases. The nurse anesthetist was an employee of a CRNA group working at a hospital in Texas. The nurse anesthetist was employed under a one-year contract, not on an "at will" basis. Under the employment contract, the nurse anesthetist was an independent contractor who was to be responsible for his own taxes. After the second one-year contract was executed, the nurse anesthetist began appearing on various public programs advocating that people withhold their income taxes. Despite warnings that his comments were bringing disrepute to the practice, the nurse anesthetist persisted. The CRNA group was also advised by its accountant that if the nurse anesthetist did not pay his taxes, the CRNA group could be held responsible. Discussions between the nurse anesthetist and the CRNA group were unsuccessful and the discharged nurse anesthetist brought suit. The lawsuit was dismissed and the dismissal was upheld on appeal. However, this case is not whether the Court should impose "good faith" into a contract of employment but whether the termination was in good faith.  

The more recent case was decided in 1985 and arose in North Carolina. According to the decision, a nurse anesthetist had been recruited from another state with the assurance that she could only be discharged for incompetence. After a case was completed, the nurse anesthetist refused an anesthesiologist's order to administer an anesthetic in the belief it would harm the patient. The anesthesiologist administered the agent and the patient went into cardiac arrest, suffering brain damage. The nurse anesthetist claimed that she was told not to testify and not to reveal all that she knew in the suit brought by the injured patient. She nonetheless testified.  

Subsequently, the nurse anesthetist alleged that the administration, which she blamed in her testimony, became hostile toward her. Although no specific instances of job inadequacies were presented, her employment was terminated within four months after the suit against the hospital. The nurse anesthetist sued her employer on a variety of theories including a claim that there was a contract not to discharge her except for incompetence and that her discharge was a wrongful termination in violation of a public policy, that is, her giving truthful testimony in a civil trial. The trial court dismissed the nurse anesthetist's suit on the grounds that under North Carolina law, her employment was not for a fixed term and she could be discharged at any time with or without cause.

Wrongful termination determined by Court of Appeals

The Court of Appeals of North Carolina reversed the trial court decision and ordered the case to trial. The Court recognized the hospital's agreement not to discharge her except for incompetence and took precedence over the Employment at Will doctrine. Second, the Court of Appeals also recognized that there was a public policy involved in testifying truthfully, that employers should not be allowed to intimidate employees from testifying truthfully and that her termination was wrongful.  

The doctrine of wrongful termination is still in the process of developing and has not been adopted in all states. It represents an attempt by the courts to adapt to changing situations and to changes in the United States economy. It could be especially useful to CRNAs who often find themselves torn between loyalty to their employer and loyalty to their patient and to society.

REFERENCES

(4) 174 Cal. App. 2d at 188, 344 P. 2d at 27.