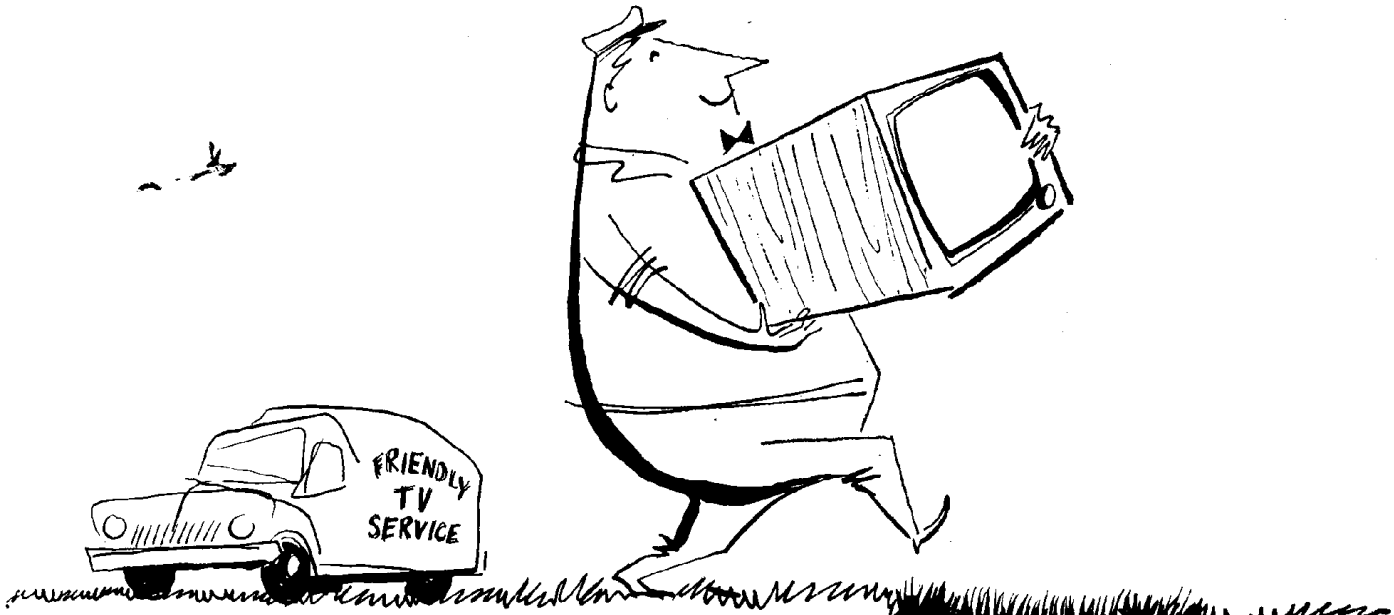

LEGAL PITFALLS

What can you do when you finish a service job and the owner tells you to charge it?

The answer to this and other questions appears below.

By LEO T. PARKER*

SERVICE technicians engaged regularly in servicing TV sets and other electrical appliances are confronted daily with legal problems that could add up annually to a substantial sum of money.

For example, recently I received an interesting letter from Mr. W. C. White, who owns and operates a TV service shop. He says in part: "Yesterday I went on a call to a private home to service a TV set. I had had no previous business with this home owner. After I had made proper repairs on the set, including putting in two new tubes, I made out a bill for $18.50 and handed it to the home owner. He told me to 'charge it.' I told him that I operate strictly on the cash basis and have no charge accounts. He said I should have told him that before I started to work on his set, and that if I had told him that I operated on a cash basis he would have told me that he would not pay the bill until 90 days. I did not know what to do, so I told him to pay me in 90 days. Maybe he will pay me and maybe he won't, as I have no credit approval on him. What do you suggest that I do in cases of this kind?"

The answer is: The higher courts very consistently hold that unless the testimony shows conclusively that before a serviceman rendered services, or a seller delivered merchandise to a purchaser, an agreement was made whereby the serviceman or seller agreed to extend credit, cash payment is implied.

For illustration, in Zeff v. Harvey Company, ***815 Pac. (2d) 371,*** it was shown that a service technician took a cutomer's note for certain equipment, when the latter told the service technician that he could not pay cash.

In subsequent litigation, the higher court held that a note is not cash payment.

This higher court also held that there can be no substitute for cash, and, if a contract or agreement for service fails to clearly state that credit is extended, cash is always implied. In other words, unless the service technician clearly and distinctly agrees to credit or time payment, cash must be paid by the customer.

Furthermore, the service technician is not obligated to inform his customer before **he** does the work that cash must be paid.

Therefore, where a home owner refused to pay cash after a service technician has repaired his TV set, the technician can do one of two things: First, he may at once sue the home owner for the amount due and positively recover a court judgment against

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the home owner for this amount. Second, he may at once remove from the repaired TV set all the new tubes and like appliances that he installed and then later sue the home owner and recover a court judgment for the labor and service call.

In Havas ***v. Ray Landy, 276 Pac (2d)*** 727, the testimony showed that an appliance was taken to a service shop for necessary repairs. The appliance was not fully paid for. On completion of the repairs, the service technician retained possession of the appliance because his bill remained unpaid.

The higher court held that the service technician could remove the newly installed parts from the appliance before the holder of the conditional contract could repossess it. The court held that the conditional vendor was not entitled to the parts which had been installed in the appliance by the repairman.

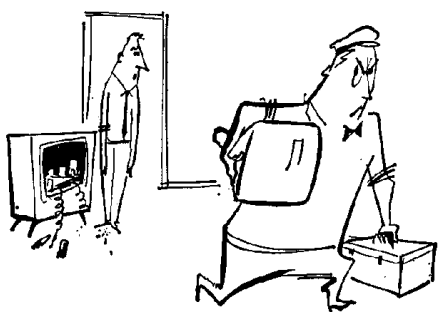
For comparison, see ***Clarke v. John***son, ***187 P. 510.*** Here a service technician installed parts and repairs in a mortgaged appliance. The court held that the conditional seller who later repossessed the appliance must pay the repairman for the new parts and labor.

Reasonable bill is collectable

Another important point of law was brought up to the writer recently by the owner and operator of a TV service establishment. He explained that in many instances the owner of a TV set will order repairs without inquiring the cost. Then, when the bill is presented, the home owner refuses payment on the grounds that the charges are too high and that he did not agree to pay such a high bill.

Modern higher courts consistently hold that if a home owner or appliance owner wants to limit his expenditures for a repair job, he is obligated to have the service technician make a price or bid before the work is started. If the owner of the TV set or other appliance does not strictly follow this established rule of law and allows the service technician to do the repair work, the owner becomes automatically obligated to pay the "reasonable" cost of the repairs. What is meant by the term "reasonable" is that price which other technicians of "like" experience, reputation, and dependability would have charged to do the same job.

For instance, in a late case a litigant named Crawford owns an appliance store in a high-class location. He rendered a bill to a customer for $280.50



"He may at once remove. . . ."

". . . the reasonable cost.. ."

for a repair job. The customer refused to pay the bill. Crawford sued the customer who had, as a witness, a man who owned a repair shop located in a disrespectable and cheap neighborhood. This witness testified that he would have done the same repair job for $125.

The higher court held that the home owner must pay Crawford's $280.50 bill because the testimony showed that other proprietors of repair shops in better-class, respectable neighborhoods considered Crawford's $280.50 bill reasonable.

This higher court explained that men located in cheap neighborhoods naturally will do service and repair work for less money than those in better or high-class neighborhoods where rent is higher and probably service technicians are paid higher wages.

Jury will decide

Here is another interesting legal question : "Recently a service technician went into a home and after inspecting a TV set told the home owner that he could put it in good condition for $87.50. The TV owner told him to go ahead with the job. When the technician finished the job, the owner of the set refused to pay $87.50, saying that he understood the service technician to say that he would do the job for $27.50. The auestion is what can the service technician do to collect this $87.50?"

The answer is: He should file suit against this home owner and let the jury decide the ease. The jury will listen to all testimony and decide whose testimony is truthful and render its verdict accordingly.

Bad check is no payment

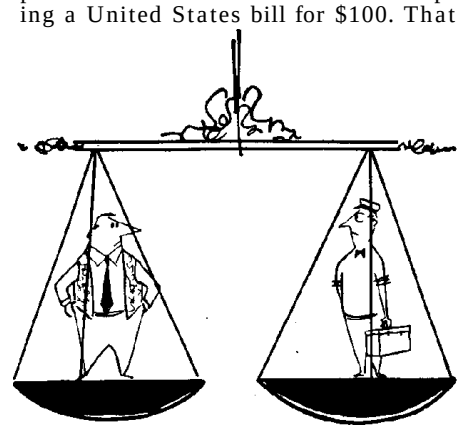
Some time ago I talked personally with a man named Wilson who is the owner and operator of a TV repair shop that employs about 26 service technicians. He told me that a few days ago a customer gave a bank check in payment for a repair job, demanding a receipt stating that the account was "paid in full." Later the check was returned from the bank marked "insufficient funds." Wilson said the bill remains unpaid because the customer states that he cannot be compelled to pay because he has ***in*** his possession the receipt showing that the bill was paid in full.

Quite obviously, Wilson can easily win a favorable court judgment against this customer. All he need do is file a suit and at the trial show the unpaid bank check to the court, which will immediately hold the "paid in full" receipt void and with no legal value. At the same time, the court will render a judgment against the customer in favor of Wilson for the full amount of the repair bill plus court costs.

At this **same** meeting Wilson asked me whether he can sue a customer and recover a court judgment for a TV repair bill on which he issued a "paid in full" receipt, but part of which the customer paid with a counterfeit bill.

The answer to this question is: Yes, under ordinary circumstances, Wilson can sue and the court will issue a judgment against the customer who paid the repair bill with counterfeit money. This is so because-generally speaking-payment with counterfeit money is not a valid payment. However, this is not so in all instances, as the following anecdote will show:

A man named White is said to have registered in a hotel, and to have deposited in the hotel safe for safekeeping a United States bill for $100. That



"The jury will decide."

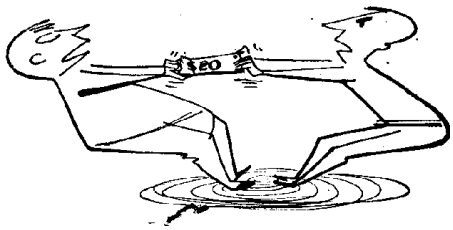
day the hotel proprietor used the $100 bill to pay a long overdue debt to a real estate broker, who in turn used the bill to pay off an overdue debt owed to a TV service technician. The latter was pleased with the settlement and, thereupon, used the $100 bill to pay the balance he owed a funeral director. The latter gave the bill to one Ellis who had furnished services to the funeral director. Then Ellis, in response to urgent requests for payment of past due debts he owed to the hotel, gave the hotel proprietor the $100 bill. The hotel proprietor immediately placed it in the safe.

A few days later White requested delivery of his previously deposited $100 bill. The hotel proprietor produced the bill from the safe and gave it to White who thereupon lighted a match to it, saying that it was counterfeit.

The important point is that the counterfeit bill was satisfactorily used to ***pay*** off valid debts, and everybody connected with the transactions was satisfied and happy.

How good a witness?

Another rather unique legal problem was presented very recently by an



". . . and refused to give it.. ."

acquaintance. He said that when he goes into a home on a service call he is alone, whereas the home owner has members of his family who may be used as witnesses in future litigation and legal controversies. He wants to know what chance he has to win a suit for $68.50 he now has on his hands against a TV set owner. The owner says he has witnesses to prove that the service technician told him that he would do the job for $39.50 because of **past** favors the set owner had rendered the technician.

Obviously, such a case is farfetched and hardly worth this space for consideration. Nevertheless, it borders on an unusual case where a TV repairman was making change in the home of a customer. He laid a $20 bill on the TV. Later the home owner picked up the $20 and refused to give it to the technician, saying that he, the home owner, had put it on top of the TV set.

All these unusual and unsatisfactory occurrences breed personal combat. However, it is advisable in such cases to present the facts to a jury, who will listen to all testimony and render a verdict in favor of the litigant whose testimony it believes to be true. The jury may make its own decision, irrespective of faked testimony intended to favor the owner of the TV set. In other words, the jury may believe or disbelieve a part or all the testimony given by the TV set's owner and his witnesses, who contest a repair bill. The courts give little or no weight or consideration to testimony of relatives or close friends of a litigant. This holds whether the suit involves payment for service, merchandise or in suits for damages by injured persons. Generally speaking, if a customer fails to introduce witnesses before the court to prove that the service technician promised to do a job for less than the amount for which he sued, the jury will decide the verdict in favor of the service technician.

For example, in Reeves *v. Child, 194 Pac.* (2d) 919, a workman sued a home owner to recover a bill amounting to $372.41. The property owner testified that the man had orally promised to do the job for considerably less than the $372.41. On the other hand, the workman testified that his oral agreement was to complete the job for about $375.

Since the jury believed the workman's testimony, the court held him entitled to full recovery of this amount.

Quite obviously, all service technicians can avoid legal controversies over the price for repair work by having any stranger sign a printed agreement to pay a named price for work to be done on his television set or other appliance.

Law of minors

It is certain that a minor is not obligated on any ordinary contract or promise he makes. Hence, service or repair work for a minor is a financial loss unless the minor voluntarily pays the bill.

For illustration, in the late and leading case of *Doenges v.* **Gillen, 328** *Pac.* (2d) *1077,* the higher **court** said:

"An infant lacks capacity to make a firm and binding contract; in all such contracts lies the **inherent** weakness and condition that the infant may disaffirm the contract during his minority or within a reasonable time after reaching his majority. The right to disaffirm is not lost by reason of the fact that the infant has induced the making of the contract by deliberate misrepresentation of his age."

Law of mechanic's lien

A great deal of discussion has arisen from time to time over the legal ques-

". . . a minor is not obligated . . ."

tion: "If a conditional contract of sale of a TV set contains a clause to the effect that the conditional buyer will not encumber the set, does this render a service technician's lien void?"

The answer is no.

For example, in *Champu v. Consolidated* Finance *Corporation,* **98** *N. E. (2d)* 925, the testimony showed that a man named Barnett purchased an appliance, paying part cash. He signed a conditional sales contract which provided that Barnett would not attempt to sell or "encumber the appliance during the life of the contract."

Sometime later, Barnett ordered the equipment repaired at a service shop but he did not notify the finance company that it was being repaired. After the repairs were completed Barnett decided that the costs were more than he could pay, and he so notified the finance company.

In later litigation the higher court held that the technician could keep possession of the equipment to solve payment of his bill. The court said:

"The vendor, by entrusting the vendee (Barnett) with possession . . . impliedly clothed him with authority to contract for necessary repairs, so that such repairs were as though made by vendor's request or direction."

On the other hand, some higher courts have held that where a chattel mortgage or conditional sale contract **on a TV** set is properly recorded, a service technician has only a secondary lien to secure payment for his work. *[See Allied v. Shaney, 74 N.W. (2d)* 723; and *Lincoln v. Netter, 253 S.W. (2d)* **260.]**

An important point of law is that once a service *technician has* **given up possession** of a *set* on which money is due for repair work, his mechanic's lien is forfeited. In other words, the instant the owner takes his set out of possession of the service technician, the lien automatically becomes void.

Law of service guarantees

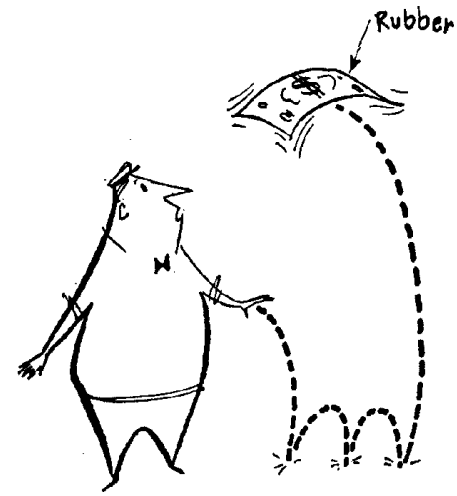
Modern higher courts consistently hold that after the purchaser of a TV set puts **it** in operation, the seller is bound by any and all reasonable provisions and guarantees relating to the service he has agreed to give. However, the courts will not permit any purchaser to impose on a seller, unless such imposition is clearly expressed in the contract.

For illustration, in one case a contract of sale contained a clause in which the seller "guarantees that **the** purchaser shall be satisfied."

Although **the** TV was reasonably good and worth the purchase price, the purchaser continually and at unreasonable frequency requested the seller to supply an unnecessary amount of service in adjusting, repairing and otherwise performing work on the set.

At last the seller refused to supply more service. Then the purchaser notified the seller that **he** was not satisfied, and since the seller had guaranteed "satisfaction" the purchaser demanded that the seller take back the set and refund the amount paid. He notified the seller that he would not make other monthly payments when they became due.

The seller filed suit and proved that the set had given reasonably good service, notwithstanding the complaints registered by the purchaser. In view of this testimony, the higher court ordered the purchaser to pay the balance due on the set. ***END***



", . . counterfeit money is not valid . . ."