The Flügeladjutant Revisited

In a recent case (Pevsner v. Comr. 49 LW 2299), the manager of a boutique that sells exclusively clothes and accessories designed by Yves St. Laurent, and who was required to wear YSL clothes at work, claimed a business expense deduction for the cost of the clothing. She maintained that although her employer did not prohibit her from wearing the clothes outside of work, she never did so because they were inconsistent with her simple, everyday life style and because she wanted the clothes to last longer.

Section 666.1 of the Internal Revenue Code establishes that the cost of clothing is deductible as a business expense only if the clothing (1) is of a type specifically required as a condition of employment, (2) is not adaptable to general use as ordinary clothing, and (3) is not so worn. The Tax Court, reasoning that the clothing was not suitable to the private life style of the taxpayer, upheld her claim. On an appeal by the Commissioner of Internal Revenue, however, the U.S. Court of Appeals for the Fifth Circuit, applying an objective test, reversed the Tax Court's decision and disallowed the deduction.

This case prompted a Law School alumnus to initiate the following exchange of letters, which we offer our readers as examples of the legal mind at work.

This leaves only:

The adjutant(fugel) was glum.
His tax was a very large sum.
He cried "Damn and Hell."
"I hate YSL.
"I'll sue, and I'll quote Wally Blum!"

Yours respectfully,
Bob

Charles Ephraim ('51) to Professor Blum, November 25, 1980, re: Kharasch on Blum

Dear Wally:

I respectfully dissent from the opinions expressed in Bob Kharasch’s letter to you of November 21. Not all of

Robert N. Kharasch ('51) to Professor Walter J. Blum, November 21, 1980, re: taxation of flugeladjutants (perhaps spelled flugleadjutants)

Dear Professor Blum:

An education at the University of Chicago is held out as preparing one for life in general. A legal education at the Law School is similarly tendered as preparing one for life as a lawyer. Still, a student is not entitled to assume positive guidance in every detail of his future career.

Notwithstanding this limitation, 49 LW 2299 (enclosed) reports a Fifth Circuit decision in Pevsner v. United States, where the facts are precisely those you laid out in your course in taxation some 30 years ago. If memory serves, your problem was whether an imperial aide who hated opera could be taxed on the value of admission to performances he attended and suffered through.

So, in Pevsner, the hapless boutique manager was forced to buy $20,000 a year of Yves St. Laurent clothing, all inappropriate to her "simple life style." (I think I know this woman.) Held: no deduction.

I submit that one (or all) of the following must be true: (a) The boutique manager is a transvestite flugeladjutant (or flugleadjutant?). (b) The boutique manager is a student of Professor W. Blum. (c) The boutique manager is Professor W. Blum. (d) The entire lawsuit was cooked up to serve as a footnote to Professor Yves St. Blum’s forthcoming text: “The Uneasy Case for Progressive Designer Jeans.”
us of the class of '51 have lost our memories or legal acumen. The case of Pevsner v. Commissioner, 49 LW 2299, is inconsistent neither with your teachings nor with those of Henry Simon (from whom, if recollection serves me correctly, the Flugeladjutant example came).

In the Flugeladjutant case the issue was whether to attribute taxable income to the opera hater. In Pevsner, the lady was seeking allowance of a business deduction from otherwise taxable income. The cases would only be comparable if the YSL clothing had been supplied free by the boutique and only for use while working. Obviously, both the boutique (which could have reduced her annual compensation by as much as $20,000) and the lady were not advised by one of your good students. However, even that approach may not be successful if the lady continues with her incredible tale that one of the reasons for not wearing the clothes outside her work was because "she wanted the clothes to last longer." As any "smart" woman knows, YSL clothes go out of fashion before they wear out.

Accordingly,

Clothes the lady wears in the store
Have nothing to do with Herr Blum.
If her lawyer had not been so dumb
She'd be richer than ever before.

Personal regards,
Chuck

The Honorable Abner J. Mikva ('51) to Professor Blum, November 25, 1980, re: taxation of Flugeladjutants and the attack on circuit judges

Dear Professor Blum:

I am in receipt of a copy of a letter from a former student of yours concerning the well-known case of Pevsner v. Commissioner (hereinafter called the Commissioner case). Your former student attacks the clear objectivity of the case because he is a well-known speed reader who missed the crucial sentence in the case. The court makes clear that it denied the deduction because there was "no concrete . . . in . . . the . . . clothing purchased as a condition of employment." Certainly someone growing up in Chicago should have understood the important distinction that the court was drawing between casual clothing and clothing really necessary to do a job. With that distinction in mind, the case is easily reconciled with that of the Flugeladjutant who did not like Italian operas.

To sum up my view on the Commissioner case, I would say:

The senior partner was wrong to lament
That the judges were slightly dement.
Where they drew the line,
A deduction was fine
If Laurent made shoes of cement.

Sincerely,
Ab Mikva

P.S. Wouldn't you think lawyers would have something better to do than go around reading advance sheets?

Professor Blum to Judge Mikva and Messrs. Kharasch and Ephraim, December 3, 1980, re: the Flugeladjutant revisited

Dear Former Students:

My resources have been much enriched by your efforts to bring the Flugeladjutant analysis to bear on the Pevsner situation. I first became interested in Flugeladjutants when drinking National Premium beer in 1939 with Henry Simons in Hanley's Tavern on 55th Street near Harper (where later, by the way, I first met my spouse); and that interest was greatly enhanced in the late 1940s when Harry Kalven (who was then experiencing some difficulties regarding his veteran's benefits) learned that the reigning Flugel at the Fifth Army Headquarters (then located at 51st Street and Hyde Park Boulevard) was named Flugel (so help me!). The two of us often wondered aloud whether he was indeed addressed as "Adjutant Flugel."

In my early encounters with the famous Kleinwachter Flugeladjutant conundrum, I assumed the key to the problem was buried in the fact that attending the opera was not a necessity of life. You might think that the Pevsner puzzle is different not only because she bought the clothes, whereas the Flugeladjutant was taken to the opera by his "employer," but also because clothes are a necessity rather than a discretionary consumption item. Perhaps you would be right in making this latter observation about our society, although I submit that, today, in some quarters clothes are not regarded as necessary at all.

Anyhow, in understanding the Flugeladjutant dilemma, the point seems to cut the other way. Recent sociological research seems to confirm that in old Vienna, when the Flugeladjutant was at the height of his career, being seen at the opera was ranked as a necessity—second to no other. Indeed, many a knowing native went without his Kaffee mit Schlag or his dobisch Torte in order to afford being present at a performance of Der Rosenkavalier.

All this is to suggest that, in the old days, Herr Flugeladjutant and Ms. Pevsner would have been considered by the tax pundits to be in equivalent circumstances. Thus if the Flugeladjutant had been put upon to buy his own ticket to the opera, he would have been denied a tax deduction no matter how much he detested Strauss schmaltz!

In a word:

Though for Flugeladjutants in the glorious years
The opera was the place to be seen,
In modern Dallas the relevant question is—
Does the end always justify the jean?

Sincerely,
Walter Blum

Dean Gerhard Casper to Messrs. Blum, Ephraim, and Kharasch and Judge Mikva, December 4, 1980, in re: their learned discussion of a subtle tax problem

Gentlemen:

Copies of your correspondence concerning the Pevsner puzzle (as distinguished from the Pevsner sculpture which
is located in Loch Levi in front of the Law School Library) have just come to my attention. Your exchanges reminded me of the famous definition of metaphysics—hunting for a nonexistent black cat in a dark room and catching it.

I am writing you in my official capacity as Dean because, frankly, I am shocked by the fact that distinguished graduates of the Law School, as well as a named professor at the Law School, do not know how to spell. There is no such thing as a "Fugeladjutant" (Kharasch and Mikva), "Flugeladjutant" (Kharasch's alternative spelling), "flugeladjutant" (Ephraim), or "Fugeladjutant" (Blum). As so often, Professor Blum comes closest to the truth, but he too misses. The correct spelling is Flügeladjutant. If your typewriters do not have an umlaut, the two dots could easily have been filled in by hand. It is also an accepted convention to use the quote sign (Flügeladjutant), or replace the umlaut by an e following the u (Flugeladjutant).

For the first time I am glad that President Gray appointed a native German speaker as Dean of The Law School because otherwise your errors would have gone uncorrected.

Sincerely,

Gerhard Casper

Ex Parte Blum

The Bailiff:

Oyez! Sound this High Court's bugle!
The Court will now proceed to fugle (i.e., to motion, signal, wave).
Sit down! Be still! Shut up! Behave!

The Court:

Listen up! We'll give you learned quotes,
A seamless web with sharp footnotes,
A fine display of courtly capers.
(We've even read the parties' papers.)

Dean Casper claims a German source
And auf Deutsch, two dots, of course.
While appellees, a plain sort,
Would plead in English in this Court.

The Dean:

Is das nicht ein fugeladj.? 
Nein! das ist ein Flügeladj.
Ein flugeladj.?
Nein! Flügeladj.!

I cite the ancient Flügelrecht
As versified by Berchtold Brecht.
Its famous song was "Mack the Flügel"
By Heldentenor Barney Gügel.

Herr Brecht, take note, was Old High German,
And war is Hell, or so said Sherman.
And let me tell you, it is Hell
To find our students just can't spell.

For the '51 Appellees
(Ephraim on the brief):

Be pleased the Court, in English prose,
What Webster says, that's how it goes.
Great Webster says you spell it fugle.
Or maybe flugel (but see fugle).

So gaze not on the Flügelfrau.
Plain fugle's happiness enow.
Stick to the plain old Anglo-Saxon.
That's what the IRS must tax on.

The Court:

This court its views will now deliver
(You well may say, that ain't chopped liver).
We hold that in judicial eye
To fugle is a verb (v.i.).

From fugle verb comes fugler noun.
To fugle, you wave up and down,
If fugleadj. or fugleman
(Let others fugle if they can).

So, Good Dean Casper, here's a wrench
Before this bar (not flügelbench),
Our brother Mikva's always right,
We buy from Kharasch Webster's cite.¹

Our bosoms swell with U.S. pride,
And the writ to umlaut is: denied.

Respectfully submitted,
Robert N. Kharasch

P.S. If there is any reply to this I will opine on fugu (see note 1).

Fugu,
RNK

¹fu'gler (fū'g'ler), n. Something serving as a model or sign.
fu'gu (fū'gū), n. [Jap.] A species of the fish Tetraodon, certain parts of which contain a poison. Japan.
²Flügelhorn (flü'gel-hōrn), n. [G.] Music. a A keyed bugle.
b A brass-wind instrument with cupped mouthpiece, similar to the saxhorn. The B-flat Flügelhorn often replaces some of the B-flat cornets in large bands.