

Martin v. Zihlerl

Virginia Supreme Court

January 14, 2005

This case involves the United States Supreme Court's decision in Lawrence v. Texas, where the Supreme Court invalidated a Texas statute forbidding certain sexual acts, and its effect on the Virginia doctrine, which disallows tort recovery while participating in an illegal activity.

The plaintiff engaged in fornication with her boyfriend and contracted herpes. Judge Markow ruled on demurrer that in doing this she was participating in an illegal act and therefore she could not recover, citing Zysk v. Zysk. In his opinion Lawrence did not of necessity strike down the Virginia statute forbidding fornication.

The Virginia Supreme Court reversed, holding that Lawrence did indeed invalidate the Virginia statute against fornication, and therefore the activity that the plaintiff and defendant were engaged in was not illegal and therefore she was not barred from proceeding.