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Article 6

Torts - Liability of Charitable Institutions

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RECENT DECISIONS

Torts — Liability of Charitable Institutions — Plaintiff brought an action of tort against defendant, a private corporation organized solely for charitable and religious purposes, to recover for injuries sustained in a fall on ice which had formed on a public sidewalk allegedly as a result of the negligent construction and maintenance of the church premises. Defendant's answer claimed immunity from all liability, and the trial court overruled plaintiff's demurrer to the answer. *Held:* decree overruling demurrer reversed. The fact that the defendant is a privately conducted religious and charitable institution does not entitle it to any exemption or immunity from liability for injury caused by negligence. Such a charity is not entitled to immunity either under the trust fund theory, beneficiary theory, or under the doctrine of *respondeat superior. Foster v. Roman Catholic Diocese of Vermont, 70 A. (2d) 230, (N.H., 1950).*

Since an early English case in 1846[1] which held a charitable organization cannot be held liable for the payment of tort claims there have been numerous theories advanced as basis for this immunity. Some place is upon the ground of public policy; others upon the ground that since the funds of the institution are impressed with a trust for charitable purposes they cannot be diverted to other uses; others on a repudiation of the doctrine of *respondeat superior;* and still others upon the ground of an implied waiver on the part of voluntary recipients of the charity of any claim for damages.

Relative to the theory that public policy will deny recovery to an injured plaintiff the courts imply that since charitable organizations are supported by the benevolent and their energies are devoted to the sick and needy a tort claim would not only discourage these institutions but would destroy them.[2] In 1910, the court of Maine[3] maintained a charitable hospital is not liable for the negligence of its nurses in permitting a patient to fall from a window. This was on the theory that if a charitable organization would often be in litigation they would "ultimately cease or become greatly impaired in their usefulness." On the same ground recovery was denied to a patient who was burnt by a nurse while administering an anesthetic;[4] or died because of the negligence of a nurse;[5] or was injured by a gallery falling in a public hall.[6]

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[1] Feoffees of Heriot's Hospital v. Ross, 12C.&F. 507, 8 Eng. Rep. 1508 (1846).
[2] 10 Am. Jur. sec. 147; Prosser on Torts, sec. 108, p. 1082.
[3] Jensen v. Maine Eye & Ear Infirmary, 107 Me. 408, 78 A. 898 (1910).
[4] Lindler v. Columbia Hospital, 98 S.C. 25, 81 S.E. 512 (1914).
[5] Weston's Adm'x. v. Hospital of St. Vincent of Paul, 131 Va. 587, 107 S.E. 785, 23 A.L.R. 907 (1921).
[6] Vermillion v. Woman's College of Due West, 104 S.C. 197, 88 S.E. 649, 14 A.L.R. 590 (1916).

Cases answer this argument by maintaining while the public has an interest in the maintenance of a public charity, it also has an interest that the service be performed carefully.[7]

Another theory of no liability is based upon a repudiation of the doctrine of *respondeat superior*. This is followed by the Wisconsin court[8] which holds that charitable hospitals are not liable to their patients for negligence of employees selected with due care whether these patients are paying or free. Theories advanced to defeat this vicarious liability are that the charity derives no gain or benefit from the services rendered;[9] or that the charity cannot direct the treatment of patients by skilled physicians as masters may ordinarily direct their servants;[10] or that now the rule is so firmly established that it is beyond question that the beneficiary can recover from the benefactor.[11] However the doctrine of *respondeat superior* has been followed by some jurisdictions on the theory that a patient who is willing to pay and does pay can recover inasmuch as there was a contract for taking proper care of the patient.[12]

Another theory advanced denying liability is the trust fund doctrine. The rationale of this doctrine as applied to charitable institutions maintains that trust funds created for charitable purposes should not be diverted therefrom to pay damages arising from torts of servants, for such purposes were never intended by the donors.[13] Some courts have attacked the logic of this theory, pointing out that other trust funds are not exempt from liability incurred in administering the trust,[14] and that the doctrine has been so weakened that it does not have much practical application or importance.[15]

Some jurisdictions have relied on the theory that the recipient of the benefits of charity accepts them as they are given, assumes the risk of negligence, and by implication agrees to "waive" the liability and

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[7] Glavin v. Rhode Island Hospital, 12 R.I. 411, 34 Am. Rep. 675 (1879); Geiger v. Simpsom Methodist-Episcopal Church of Minneapolis, 174 Minn. 389, 219 N.W. 463, 62 A.L.R. 716 (1928); Sheehan v. North Country Community Hospital, 273 N.Y. 163, 7 N.E. (2d) 28 (1937).

[8] Morrison v. Henke, 165 Wis. 166, 230 N.W. 708 (1917); Schau v. Morgan, 241 Wis. 334, 6 N.W. (2d) 212 (1942).

[9] Farrigan v. Pevear, 193 Mass. 147, 78 N.E. 855 (1906); Hearns v. Waterbury Hospital, 66 Conn. 88, 33 A. 595 (1895); Bachman v. Y.M.C.A., 179 Wis. 178, 191 N.W. 751 (1923).

[10] Union P. R. Co. v. Artist, 9 C.C.A. 14, 19 U.S. App. 612, 60 Fed. 365 (1894).

[11] Cunningham v. Sheltering Arms, 135 App. Div. 178, 119 N.Y. Supp. 1033 (1909).

[12] Tucker v. Mobile Infirmary Asso., 191 Ala. 572, 68 So. 4 (1915); Morton v. Savannah Hospital, 148 Mass. 438, 96 S.E. 887 (1918).

[13] Roosen v. Peter Bent Bringham Hospital, 235 Mass. 66, 126 N.E. 392, 14 A.L.R. 563 (1920); Adams v. University Hospital, 122 Mo. App. 675, 99 S.W. 453 (1907).

[14] Prosser on Torts, sec. 108, p. 1081.

[15] Geiger v. Simpson Methodist-Episcopal Church of Minneapolis, 174 Minn. 389, 219 N.W. 463, 62 A.L.R. 716 (1928).

assert no tort claim against his benefactor.[16] However, Neil, Ch. J., in *Gamble v. Vanderbilt University*[17] says:

> "There are cases from time to time occurring, and not altogether infrequent, to which it is, as it seems to us, impossible to apply it—patients conveyed to hospitals in demented condition, persons temporarily unconscious from injuries and who require immediate surgical and other attention, those who are so debilitated by disease to have no power of understanding the terms of a contract, children too young to understand the meaning of a contract, or to make or be bound by one in any form, or even to understand the nature of the work to be done for them. How can such persons be held to waive a right of action which the law gives them? How can they be held to have agreed to an exemption?"

Some courts refuse to recognize any of these doctrines and hold a charitable institution liable if negligent.[18] Courts generally impose liability where a stranger is injured by defendant's agents,[19] or to a servant,[20] or to a business visitor,[21] or if a safe place statute is applicable.[22]

JOHN D. STEIN

Torts — Communist not Slander per se — Plaintiff, business manager for a labor union, brought action for slander. The complaint alleged the defendants said, "He, Plaintiff, is a dirty low down Communist, that Mr. Krumholz, Plaintiff, and the union are a bunch of Communists, and that Mr. Krumholz is a dirty Communist." Defendants moved for dismissal on the grounds that the complaint was legally insufficient, and did not state a cause of action. *Held:* The New York Supreme Court, Special Term, ruled that calling a person a Communist was not slander per se and could not be maintained in the absence of allegations that plaintiff suffered damage through injury to his business or property. The complaint was dismissed with leave to amend. It was necessary to plead that the statements made referred to or concerned the plaintiff in his business for the words to be actionable per

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[16] Mikota v. Sisters of Mercy, 183 Iowa 1378, 168 N.W. 219 (1918); Burdell v. St. Luke's Hospital, 37 Cal. App. 310, 173 P. 1008 (1918).
[17] 138 Tenn. 616, 200 S.W. 510 (1917).
[18] Basabo v. Salvation Army, 35 R.I. 22, 85 A. 120, 14 A.L.R. 576 (1912).
[19] Marble v. Nicholas Senn Hospital Asso., 102 Neb. 343, 167 N.W. 208 (1918); Simmon v. Wiley M. E. Church, 112 N.J.L. 129, 170 A. 237 (1934).
[20] Hordern v. Salvation Army, 199 N.Y. 233, 92 N.E. 626 (1910).
[21] Cohen v. General Hospital Soc. of Connecticut, 113 Conn. 188, 154 A. 435 (1931).
[22] Wilson v. Evangelical Luthern Church, 202 Wis. 111, 230 N.W. 708 (1930); Wis. Stat. (1947) sec. 101.06 provides: ". . . Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair, or maintain such place of employment or public building . . . as to render the same safe."