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Tort Liability - Charitable Institutions

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occur after the term of governor has been commenced. The decision in *State* v. *Whitman,* 10 Cal. 38 upholds this viewpoint.

The Supreme Court's decision was not based entirely on the exact wording of the constitution and of the statutes. "It is extremely important in the interpretation of constitutional provisions," the court says, "that we avoid determinations based purely on technical or verbal argument and that we seek to discover the true spirit and intent of the provisions examined." Thus, where a constitutional clause presents reasonable ground for difference it must be interpreted in a sense which will bring out the meaning intended by those who adopted the clause.

This case is especially interesting not only because its decision is vital to so many people but also because, being without precedent, its decision is based chiefly upon interpretation rather than citation and upon argumentation rather than quotation—a situation rarely encountered at the present time.

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Tort Liability — Charitable Corporations.—Plaintiff brought an action against the Young Mens' Christian Association of Chicago for injuries sustained while the plaintiff was a guest in the defendant's hotel, alleging the negligent operation of an elevator in which he was a passenger. In the trial court the defendant moved to strike the complaint, which motion was granted. The decision of both the Superior Court of Cook County and of the Illinois Supreme Court was based upon the fact that the defendant was a charitable corporation and as such was not liable for personal injuries caused by the negligence of its servants or agents, although the injured party paid for its service. *Saffron* v. *Y.M.C.A. of Chicago,* 45 N.E. (2d) 555 (Ill. App. 1942).

Generally a charitable corporation has been defined by the courts as one operated primarily for the benefit of the public rather than for private gain, but which is not a direct agent of the government. The fact that the institution receives payment for its services from its beneficiaries does not affect its charitable character so long as the fees are for the purpose of enabling it to carry out its charitable purposes and are not for private profit.

A number of the states seem to hold charitable corporations liable almost as though they were operating for private profit, and the question of tort-liability is no different than in the case of any other corporation. However the great weight of authority cannot be said to favor such a rule and in many of the states a charitable corporation enjoys an immunity as to wrongs as to certain classes of persons that a corporation generally does not possess. The conflict among the various

states is due largely to the variety of theories upon which the decisions are based.

Many of the courts have based their opinions upon the so-called doctrine of public policy, giving as their reason that such institutions are inspired and supported by benevolence, and devote their assets and energies to the relief for which the corporation was created; and that common welfare demands that they be encouraged and held exempt from liability for tort; that to do otherwise would result in discouraging those inclined to contribute to charities and apply the funds especially contributed for a public charitable purpose to objects not contemplated by the donors, namely, to damage suits. In *Vermillion* v. *Womens' College of Due West,* 10 S.C. 197, 88 S.E. 649 (1916), it was said that the state is most deeply interested in the preservation of public charities, and the questions of public policy must be determined upon the consideration of what on the whole will best promote the general welfare. Substantially similar was the ruling in *Fordyce* v. *Womens' Christian Library Asociation,* 79 Ark. 550, 96 S.W. 155 (1906).

This public policy theory has been disapproved in a number of cases. In *Bruce* v. *Central Methodist Episcopal Church,* 147 Mich. 230, 110 N.W. 951 (1907), the defendant church was held liable for injuries to an employee of a contractor under a contract for decorating its church building, the injury having been caused by the negligence of the agents of the defendants in furnishing a defective scaffolding.

Closely connected with the public policy theory is the doctrine of a trust fund upon which many of the earlier cases based their decisions. Under the doctrine it was determined that a charity fund could not be used to compensate injured persons because such compensation would tend to divert the fund to purposes not intended by the donors, and because it would frustrate the purposes of the creators of the fund. Generally this doctrine has been repudiated in the United States; it is said in 13 Ruling Case Law, p. 945, Sec. 9:

> "In answer to this argument, however, it has been said that while the public has an interest in the maintenance of a great public charity, it also has an interest in obliging every person and corporation which undertakes the performance of a duty to perform it carefully, and to that extent, therefore, it has an interest against exempting any person and any such corporation from liability for its negligence, and that moreover, it is solely for the legislature, and not for the courts, to say that the former interest is so supreme that the latter must be sacrificed to it."

In the case of *Downes* v. *Harper Hospital,* 110 Mich. 555, 60 N.W. 42 (1894), it was held that a corporation organized and maintained for no private gain, but for the purpose of care and medical treatment

of the sick and to that end to manage a trust fund created for that purpose, cannot be made liable for injuries sustained by a patient by reason of the negligent acts of its managers and employees. Here the decision was based upon an implied contract with the person injured that he would assume the risk of such torts as may be committed by the charitable institution whose benefits he was receiving. Both in the *Bruce* case supra, and in *Basabo* v. *Salvation Army,* 35 R.I. 22, 85 Atl. 120 (1912), the plaintiff was not a beneficiary of the trust administered by the defendant, but was an employee of the defendant's contractor or of the defendant itself.

Also charitable corporations have been held liable for injuries to their employees, since they are not the recipients of the benefits of the charity. *Hughes* v. *President and Directors of Georgetown College,* 33 F. Supp. 867 (D.C. D.C., 1940).

The administrator of the estate of a beneficiary of a charitable institution, organized solely for public benefit, recovered damages for the negligence of a nurse when a patient, in a delirium, jumped from a second story window and was killed. The court based its decision on the theory that immunity to the charitable institution for the tort of its servant would compel the person injured to contribute the amount of his loss to the charity against his will, and that this could not be regarded as socially desirable nor consistent with sound policy, especially in view of the hardship which would result to the widow and children in such a case. *Mulliner* v. *Evangelischer Kiakenneissenverein of Minn. Dist. of German Evangelical Synod of North America,* 144 Minn. 392, 175 N.W. 699 (1920).

In *Daniels* v. *Rahway Hospital,* 10 N.J. Misc. 585, 160 Atl. 644 (1932), the plaintiff, in driving his automobile upon a public highway, was a complete stranger to the charity. He was involved in a collision with the driver of the defendant's ambulance and the defendant's agent was found to have been negligent. The court, in awarding damages, felt that no one, no matter how elevated his motive or how humane his purpose should be permitted to set up and operate the machinery of his charitable organization with impunity to injure by negligence those unconcerned in and unrelated to that which the donor brought into being.

The doctrine perhaps most generally recognized by the courts is the implied-waiver doctrine, that is, waiver by acceptance of benefits; this doctrine applies only to the beneficiaries of charitable institutions. In the case of *Morrison* v. *Henke,* 165 Wis. 166, 160 N.W. 173 (1917), the Wisconsin court based its decision upon the doctrine that a hospital performs a quasi-governmental function, and for that reason the doctrine or respondeat superior does not apply. The court in deciding the case of *Bachman* v. *Y.W.C.A.,* 179 Wis. 178, 191 N.W. 751 (1922),

followed the *Morrison* case, supra, and was of the opinion that because of the purposes, nature, and functions of the Y.W.C.A., master and employer of the negligent employee, the liability for the accident must rest on the negligent individual where it primarily belongs. In effect, the Wisconsin cases hold that the doctrine of immunity of a public charitable institution from liability to a beneficiary within its walls from the negligent acts of its servants, under the principle of respondeat superior, is applicable as well to one who is a stranger not receiving the services or benefits from the institution. In its firm holding to immunity, the Wisconsin court goes so far as to exempt the charitable institution from liability even in the negligent selection of its employees. In the case of *Schumacher* v. *Evangelical Deaconess Society of Wisconsin,* 218 Wis. 169, 260 N.W. 476 (1935), the court reasoned that since a charitable hospital is exempt from liability for the negligent acts of its employees committed upon its patients, it should also be exempt from liability for negligence of its managing officers in selecting such incompetent employees. Some courts have held that although the liability of the charity for all torts of its agents cannot be upheld, it is liable if there is negligence in the selection of such agents and employees. This is directly in conflict with the *Schumacher* case supra. In that case the court said,

> "Precisely the same reason lies for the exemption in both cases, and it lies precisely to the same extent."

It would appear therefore that in Wisconsin there is immunity of charitable institutions under all circumstances. However, there is an exception where the charitable institution has failed to comply with the statute requiring the maintenance of a safe public building for employees and frequenters. Sec. 101.01, 101.06, Wis. Stat. (1941). The above statutes were held to be applicable to religious corporations regulating liability to one attending a church luncheon who was injured on an unlighted stairway. *Wilson* v. *Evangelical Lutheran Church of Reformation of Milwaukee,* 202 Wis. 111, 230 N.W. 708 (1930). The state of Minnesota having a similar statute, sustained the liability of the charitable association for injury caused by contact with machinery not guarded as required by statute. *McIverny* v. *St. Luke's Hospital Association,* 122 Minn. 10, 141 N.W. 837 (1913).

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