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Tort Liability of Charitable Institutions

Maurice M. Tulchinsky

TORT LIABILITY OF CHARITABLE INSTITUTIONS

There is much confusion and apparent conflict among the cases passing on the question of the liability of a charitable corporation for the negligence or torts of its officers, nurses, physicians and employees.

Preliminarily, it may promote the discussion if we were to make an analysis of the legal principles inextricably connected with the basic inquiry of this note.

It may be stated as a general rule, that the master or principal is liable to third persons for the torts of the servant or agent, even though the conduct of the servant, or agent, was without the participation, consent, or knowledge of the master or principal, provided the breach of duty arose from the scope of employment, and was not a wilful departure from it.

Private corporations are, in general, liable for injuries arising from the negligence of their agents or officers, in the course of their employment, in the same manner and to the same extent as private individuals; for it is a settled maxim of the law, founded upon the highest obligations of social duty, that everyone shall so use his own, and so prosecute his lawful business, as not, by his negligence, or want of care, to injure others; and he cannot divest himself of this obligation by committing its control to another.

So, municipal corporations are liable for injuries to third persons resulting from the negligence of subordinate officers and agents, acting under their authority and direction in the construction of public improvements belonging to such corporations.[1] But municipal corporations are not liable for negligent acts of their officers or agents while in the discharge of their political or governmental functions as branches of the state or sovereign power.[2]

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1 City of Kokomo v. Loy, 185 Ind. 18, 112 N. E. 994 (1916).
2 City of Kokomo v. Loy, *op. cit. supra* note 1.

Coming to the specific question as to what are charitable corporations or institutions, it may be advisable to enumerate in a general way some of the tests for determining whether a corporation is charitable or not. The only true test of the nature of an institution is its origin and objects. Charitable corporations are such as are constituted for the perpetual distribution of the free alms of the founders of them, to such purposes as they have directed. Of this description are hospitals for the maintenance of the poor, sick or impotent, and schools or colleges for the promoting of piety and learning. Since the discussion will be devoted mainly to the specific question of the exemption of charitable corporations from liability for negligence of their agents and employees, we must not fail to know that, as a general rule, "A corporation, the object of which is to provide a general hospital for sick and insane persons, having no capital stock nor provision for making dividends or profits, deriving its funds mainly from public and private charity, and holding them in trust for the object of sustaining the hospital, conducting its affairs for the purpose of administering to the comfort of the sick, without expectation or right on the part of those immediately interested in the corporation to receive compensation for their own benefit, is a public charitable institution." [3] And the fact that a corporation, established for the maintenance of a public hospital, by its rules requires of its patients payment for their board according to their circumstances and the accommodation they receive, that no person has individually a right to demand admission, and that the trustees of the hospital determine who are to be received, does not render it a public charity. Where it is determined that the institution is

3 McDonald v. Massachusetts General Hospital, 120 Mass. 432, 21 Am. Rep. 529 (1876) (headnote, 21 Am. Rep. 529). Accord: McInerny v. St. Luke's Hospital Ass'n of Duluth, 122 Minn. 10, 141 N. W. 837, 46 L. R. A. (N. S.) 548 (1913); Stonaker v. Big Sisters Hospital, 116 Cal. App. 375, 2 Pac. (2d) 520 (1931); Higgons v. Pratt Institute, 45 Fed. (2d) 698 (C. C. A. 2nd, 1930); St. Vincent's Hospital v. Stine, 195 Ind. 350, 144 N. E. 537 (1924); Jordon v. Touro Infirmary, 123 So. 726 (La. App. 1922); Johnson v. City Hospital Co., 196 N. C. 610, 146 S. E. 573 (1929); Wallwork v. Nashville, 147 Tenn. 681, 251 S. W. 775 (1923).

a charitable institution and is otherwise held to be exempt from liability to beneficiaries, it has been held that the institution is not made liable by receiving pay from the injured patient or recipient of the institution's services; in other words, it does not affect the merits of the case one way or the other with regard to whether the patient is a "pay" patient or a "free" patient.

Coming to the specific question of the exemption of charitable corporations from liability for negligence of their officers, agents and employees, we find a great diversity of reasoning and adjudication in the numerous decisions in various states.

The modern weight of authority tends towards the holding that a charitable organization is not exempt from liability for injuries negligently inflicted upon strangers by its officers, agents and employees.[4]

The court in *Basabo v. Salvation Army*[5] says:

"This court is of the opinion that both upon reason and authority, so far as the cases directly apply to the case at bar, the defendant corporation, although it is a charitable corporation, is liable as any other corporation, for injuries to third persons caused by the negligence of its servants and agents in the care and management of its horses and teams while employed for its purposes, even though it is not shown or alleged that there has been any lack of care or diligence on the part of the defendant in the selection or retention of such servants or agents. We believe that public policy does not require any such exemption from liability as is claimed by the defendant in this case, but, on the contrary, that such exemption would be contrary to true public policy. We are clearly of the opinion that the true legal relation of master and servant existed between the defendant and the

4 Alabama Baptist Hospital Board v. Carter, 226 Ala. 109, 145 So. 443 (1932); Phoenix Assur. Co. v. Salvation Army, 83 Cal. App. 455, 256 Pac. 1106 (1927); Cohen v. General Hospital Soc. of Connecticut, 113 Conn. 188, 154 Atl. 435 (1931); Daniels v. Rahway Hospital (New Jersey), 160 Atl. 644 (N. J. 1932); Marble v. Nicholas Senn Hospital Ass'n of Omaha, 167 N. W. 208 (Neb. 1918); Kellogg v. Church Charity Foundation, 203 N. Y. 191, 96 N. E. 406, 38 L. R. A. (N. S.) 481 (1911); Sisters of Charity of Cincinnati v. Duvelius, 123 Ohio St. 52, 173 N. E. 737 (1930); Basabo v. Salvation Army, 35 R. I. 22, 85 Atl. 120, 42 L. R. A. (N. S.) 1144 (1912); Hospital of St. Vincent of Paul, v. Thompson, 81 S. E. 13, 51 L. R. A. (N. S.) 1025 (Va. 1914).

5 *Op. cit. supra* note 4.

drivers in its employ at the time of the alleged injury; and that, just as such a servant has the right to recover his stipulated wages for breach of his contract of service on the part of his master, so also would he be entitled to recover for injuries due to the negligence of master as in other cases of master and servant. It would, in our opinion, be manifestly unjust and contrary to public policy to hold that a person run over and injured on a public highway by a horse and wagon belonging to the defendant, and driven by the defendant's servant, through the negligent acts of such servants, would not be entitled to recover against the master, but could only recover against the negilgent servant, while a person injured under similar circumstances by the servant of an expressman, or the driver of a cab belonging to a livery man, would be allowed to recover against the master."

There are, however, cases holding contrary to the Rhode Island case on the liability of the charity toward strangers and which grant complete exemption to the charitable corporation.[6]

In *Foley v. Wesson Memorial Hospital*[7] the court held, "That a public charity conducting a hospital is not liable for negligence of its employees in driving its ambulance against a pedestrian. The court says it is forcibly urged by counsel that this exemption of a charitable institution from liability for negligence of its servants should not be extended to cases where the injury is inflicted on a stranger. But under the Massachusetts doctrine that these trust funds cannot be used to compensate wrongdoing committed by agents of those that minister the funds, there is no ground of distinction between liability to a patient and liability to a stranger. If, as a matter of public policy, there now should be a modification of the law of the commonwealth exempting charitable organ-

6 Fordyce v. Woman's Christian Nat. Library Ass'n, 75 Ark. 550, 96 S. W. 155, 7 L. R. A. (N. S.) 485 (1906); Jackson v. Atlanta Goodwill Industries, 167 S. E. 702 (Ga. 1933); Simon v. Pelouze, 263 Ill. App. 177 (1931); Webb v. Vought, 127 Kan. 799, 275 Pac. 170 (1929); Foley v. Wesson Memorial Hospital, 246 Mass. 363, 141 N. E. 113 (1923); Loeffler v. Trustees of Sheppard & Enoch Pratt Hospital, 130 Md. 265, 100 Atl. 301, L. R. A. 1917D, 967 (1917); Fire Ins. Patrol v. Boyd, 120 Pa. St. 624, 15 Atl. 553, 1 L. R. A. 417 (1888); Gamble v. Vanderbilt University, 138 Tenn. 616, 200 S. W. 510, L. R. A. 1918C, 875 (1918); Bachman v. Young Women's Christian Ass'n, 179 Wis. 178, 191 N. W. 751, 30 A. L. R. 448 (1922).

7 *Op. cit. supra* note 6.

izations from liability for negligence of its servants, such change must be made by the legislature."

In our opinion it seems that the better view is expressed by the majority of cases, which hold that a charity is not exempt from liability for injuries negligently inflicted upon strangers. The modern tendency of the law is to shift the burden from the innocent victims to the community at large. The better recent cases hold that charitable institutions, public and private, are on the same basis as other corporations and individuals as to the liability for *negligence to those who are not beneficiaries of the charities*. For the considerations of public policy that preclude a patient in a charitable hospital from recovering compensation for the negligence of a servant when due care has been exercised in the servant's selection do not preclude a stranger from recovering compensation for damages caused by such negligence. The court in *Sisters of Charity v. Duvelius*[8] said:

"No valid reason is apparent for granting immunity to a charitable institution for the negligence of its servants, and for placing the entire responsibility for an injury upon innocent third persons and their families. Charitable institutions are frequently conducted upon a large scale, with all modern conveniences and appliances of a highly complicated nature, which enormously increase the risk of injury to operatives and strangers, and any doctrine of complete exemption would lead to carelessness, neglect, and injury to both person and property. While such institutions should be encouraged, and those who are charitably inclined should likewise be encouraged to support them, this encouragement should not be carried to the point where injustice will be done to others."

Coming next to the question of the tort liability of charitable institutions for injuries to its own agents or employees through negligence in the performance of some duty owing to them, we find a great diversity of reasoning and adjudication in the numerous decisions in various states. One line of cases, apparently the greater number, holds that these organizations are not exempt from such liability to its own hired

8 *Op. cit. supra* note 4.

servants and employees.[9] In the *McInerny v. St. Luke's Hospital Association*[10] it was held that the failure of a charitable association to fulfil the duty imposed upon a master to cover or guard dangerous parts of machinery, which duty was absolute and nondelegable rendered it liable to its servants and employees who were injured in consequence of neglect to comply with the provisions of the statute; the court saying if public policy requires that such associations be excluded from the operation of the statute, it should be so declared by the legislatures, and not by the dictum of the courts. The court further says that, under the modern trend of judicial opinion, a failure to discharge a nondelegable duty creates, in the absence of express statutory exemption, a liability on the part of associations of this kind; and the court in reaching a conclusion of liability says:

"Our view is that the duty created by law for the protection of servants is absolute, and no employers should be exempt therefrom, except by action of the legislature. No public good can come from permitting one charitable corporation, by the failure of a duty imposed by law, to maim and disfigure its servants and employees, when depending upon the nature of the injury, their future welfare must of necessity be looked after by some other charitable association, public or private, or by already overburdened or poverty striken relatives and friends. No such situation should be brought about by an arbitrary rule of immunity from liability, applicable only to one class of persons, unless deemed by the legislature necessary to the existence and life of charitable associations"

On the other hand, however, another line of cases holds the charitable organizations are wholly exempt from liability for such negligence towards its own agents and employees.[11]

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9 Bruce v. Central M. E. Church, 147 Mich. 230, 110 N. W. 951, 10 L. R. A. (N. S.) 74 (1907); Geiger v. Simpson M. E. Church, 174 Minn. 389, 219 N. W. 463, 62 A. L. R. 716 (1928); Hewett v. Woman's Hospital Aid Ass'n, 73 N. H. 556, 64 Atl. 190, 7 L. R. A. (N. S.) 496 (1906); Hordern v. Salvation Army, 199 N. Y. 233, 92 N. E. 626, 32 L. R. A. (N. S.) 62, 139 Am. St. Rep. 889 (1910); Cowans v. N. C. Baptist Hospital, 197 N. C. 41, 147 S. E. 672 (1929); Lincoln Mem. Univ. v. Sutton, 163 Tenn. 298, 43 S. W. (2d) 195 (1931).

10 *Op. cit. supra* note 3.

11 Emery v. Jewish Hospital Ass'n, 193 Ky. 400, 236 S. W. 577 (1921); Farrigan v. Pevear, 193 Mass. 147, 78 N. E. 855, 7 L. R. A. (N. S.) 481, 118 Am. St. Rep. 484 (1906).

In *Farrigan v. Pevear*[12] the plaintiff, a servant of the defendant charitable corporation, was directed by his superior servant to work in a pit in close proximity to the exhaust from a gasoline engine by the fumes from which he was injured. The court ruled for no liability upon the ground that public officers are not liable for the misfeasance of their servants, saying:

"The reason for this rule is that acting for the benefit of the public solely in representing a public interest, whether by a municipality or by a public officer, does not involve such a peculiar interest as lies at the foundation of the doctrine of *respondeat superior*. While such officers may well be held liable for their personal negligence it would be unreasonable and harsh to hold them responsible for the negligence of their servants or agents. There would seem to be in principle no sound distinction between an action for negligence by which personal injuries have been received, directly instituted against the charity by the person injured, where its corporate form renders such procedure possible or expedient."

Our conclusion is that the corporations administering a charitable trust, like all other corporations, are and should be subject to the general laws of the land, and cannot, therefore, claim exemption from responsibility for the failure of the charitable corporation to discharge a nondelegable duty to its own agents and employees and such duty renders it liable to its agent and employees who are injured in consequence of such neglect.

We come now to the cases that deal with the question of the liability of charitable institutions for torts of agents where the person injured through the negligence of the agent or employee was a beneficiary or a recipient of the charity. The rule is well-settled that a person who receives an injury from acts of the servants of a charitable corporation, at a time when he is accepting the benefits of the charity, cannot recover for such injury, providing the corporation used due care in selecting its agents and employees.[13]

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12 *Op. cit. supra* note 11.

13 Stonaker v. Big Sisters Hospital, 116 Cal. App. 375, 2 Pac. (2d) 520 (1931); Morton v. Savannah Hospital, 148 Ga. 438, 96 S. E. 887 (1918); Nicholson v. Atchison T. & S. F. Hospital Ass'n, 97 Kan. 480, 155 Pac. 920 L. R. A. 1916D, 1029 (1916); Olander v. Johnson, 258 Ill. App. 89 (1930); St. Vincent's

It must be observed that, although the courts are all practically agreed upon the rule of law applicable, there is much disagreement as to the reason for the rule.

For example, some courts have based the rule of nonliability to a beneficiary upon the theory that the funds of charitable institutions are held in trust for charitable purposes, and may not be used or diverted to payment of damages arising from the wrongdoing of those who administer them.[14] Other courts predicate the rule of nonliability upon the theory of an implied agreement on the part of the beneficiary not to hold the charity liable for injuries which he may receive at the hands of the servants.[15] Other courts allow no recovery to the beneficiary upon the theory of the nonapplicability of the doctrine of *respondeat superior,* which doctrine is based upon the theory that the principal not only derives a benefit from the services of the employee or agent for whose negligence he is held liable but also exerts complete power of control over the activities of the employee; and, therefore the doctrine can have no application where the service of the employee is for the benefit of humanity, and not for the gain

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Hospital v. Stine, 195 Ind. 350, 144 N. E. 537, 33 A. L. R. 1361 (1924); Bruce v. Y. M. C. A., 51 Nev. 372, 277 Pac. 789 (1929); Miss. Baptist Hospital v. Moore, 156 Miss. 676, 126 So. 465, 67 A. L. R. 1106 (1930); Hamburger v. Cornell University, 240 N. Y. 328, 148 N. E. 539 (1925); Sisters of Charity of Cincinnati v. Duvelius, 123 Ohio St. 52, 173 N. E. 737 (1930); Gitzhoffen v. Sisters of Holy Cross Hospital Ass'n, 32 Utah 46, 88 Pac. 69, 8 L. R. A. (N. S.) 1161 (1907); Warton v. Warner, 75 Wash. 490, 135 Pac. 235 (1913); Bishop Randall Hospital v. Hartley, 24 Wyo. 408, 160 Pac. 385, Ann. Cas. 1918E, 1172 (1916).

[14] Brown v. St. Luke's Hospital Ass'n, 274 Pac. 740 (1929); Ettlinger v. Trustees of Randolph-Macon College, 31 Fed. (2d) 869 (C. C. A. 4th, 1929); Parks v. Northwestern University, 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556 (1905); Emery v. Jewish Hospital Ass'n, 193 Ky. 400, 236 S. W. 577 (1921); Kidd v. Massachusetts Homeopathic Hospital, 237 Mass. 500, 130 N. E. 55 (1921); Greatrex v. Evangelical Deaconess Hospital, 261 Mich. 327, 246 N. W. 137, 86 A. L. R. 487 (1933); Adams v. University Hospital, 122 Mo. App. 675, 99 S. W. 453 (1907); Gable v. Sisters of St. Francis, 227 Pa. St. 254, 75 Atl. 1087, 136 Am. St. Rep. 879 (1910); Lincoln Memorial University v. Sutton, 163 Tenn. 298, 43 S. W. (2d) 195 (1931).

[15] Burdell v. St. Luke's Hospital, 37 Cal. App. 310, 173 Pac. 1008 (1918); Paterlini v. Memorial Hospital Ass'n, 232 Fed. 359 (C. C. A. 3rd, 1916); Mikota v. Sisters of Mercy, 183 Iowa 1378, 168 N. W. 219 (1918); Pepke v. Grace Hospital, 130 Mich. 493, 90 N. W. 278 (1902); Phillips v. Buffalo General Hospital, 239 N. Y. 188, 146 N. E. 199 (1924), *distinguished in* Sheehan v. North Country Community Hospital, 273 N. Y. 163, 7 N. E. (2d) 28 (1937).

of the institution which employs him; likewise, the true relation of master and servant does not exist between the institution and its medical staff because they are not under the absolute direction of the hospital, but they become and remain the servants of the patients so long as they are in attendance upon such patients.[16] Still other courts deny liability upon the broad ground of public policy, taking the view that, as the institution is engaged in work highly beneficial to the state, and to humanity, its funds ought not to be diverted from this important purpose to the payment of private claims for damages.[17]

All of these theories have to a greater or less extent entered into the formulation of law which has now become well-settled but not in my opinion too well-settled as to defy questioning and analysis. After a careful analysis of the opinions dealing with the tort liability of charitable institutions to its beneficiaries, we find that there are several distinct and well-grouped cases. In the first instance we frequently come across those cases in which a nurse or physician employed by the hospital negligently injures the patient, and invariably the verdict and judgment is in favor of the institution and against the party injured. I am convinced the rule of law is correct. In the first place nurses who are under the direction of the superintendent, or are under the direction of the hospital physicians or surgeons, are not, in general, the agents of the hospital in the true legal sense of the relation of mas-

16 Deming Ladies Hospital Ass'n v. Price, 276 Fed. 668 (C. C. A. 8th, 1921); Ratliffe v. Wesley Hospital and Nurses Training School, 135 Kan. 306, 10 Pac. (2d) 859 (1932); Jordan v. Touro Infirmary, 123 So. 726 (1922); Roberts v. Kirksville College of Osteopathy and Surgery, 16 S. W. (2d) 625 (Kansas City Ct. of App. Mo., 1929); Kellogg v. Church Charity Foundation, 128 App. Div. 214, 112 N. Y. S. 566 (1908); Betts v. Y. M. C. A., 83 Pa. Super. Ct. 545 (1924).

17 Lindler v. Columbia Hospital, 98 S. C. 25, 81 S. E. 512 (1914); Ettlinger v. Trustees of Randolph-Macon College, 31 Fed. (2) 869 (C. C. A. 4th, 1929); Butler v. Berry School, 27 Ga. App. 560, 109 S. E. 544 (1921); Emery v. Jewish Hospital Ass'n, 193 Ky. 400, 236 S. W. 577 (1921); Jensen v. Maine Eye and Ear Infirmary, 107 Me. 408, 78 Atl. 898, 33 L. R. A. (N. S.) 141 (1910); Duncan v. Nebraska Sanitarium & Benev. Ass'n, 92 Neb. 162, 137 N. W. 1120, 41 L. R. A. (N. S.) 973 (1912); Weston v. Hospital of St. Vincent, 131 Va. 587, 107 S. E. 785, 23 A. L. R. 907 (1921); Magnuson v. Swedish Hospital, 99 Wash. 399, 169 Pac. 828 (1918).

ter and servant, because as to the nature and manner of their services, they are not under the direction of the hospital, but they become and remain the agents of the patient so long as they are in attendance upon such patients. Likewise when a nurse is aiding and assisting the patient's physician in the operating room, the nurse is the agent of the doctor and not the servant of the hospital. Looking a bit further, we are confronted by opinions in which the patient is injured by the tort of a mere servant or employee functioning in that character. In a most recent opinion handed down by the Court of Appeals of New York[18] the court laid down a rule of law that sets a precedent that is fundamentally sound and judicially logical. The plaintiff, who had been a paying patient in a hospital of the defendant, a charitable corporation, was being removed in its ambulance to her home. Negligence of the driver brought the ambulance into collision with another vehicle, and the plaintiff suffered injuries. On these facts there is squarely presented for the first time the question whether a charitable institution (not in itself in default in the performance of any nondelegable duty) should be declared exempt from liability to a beneficiary for personal harm caused by the negligence of one acting as its mere servant or employee. The court, after due deliberation of all the equities, said that no conception of justice demands that an exception to the rule of *respondeat superior* be made in favor of the resources of a charity and against the person of a beneficiary *injured by the tort of a mere servant or employee functioning in that character.*

Underlying all the decisions, dealing with the subject matter at law, is the matter of public policy, and it is upon this and the lack of a true master and servant relationship that the rule of exemption may be said finally to rest. The theory that trust funds are not to be taken under execution for the torts of those who administer them rests, in the final analysis,

18 Sheehan v. North Country Community Hospital, 273 N. Y. 163, 7 N. E. (2d) 28 (1937).

upon the consideration of public policy, as does the holding that the rule of *respondeat superior* shall not apply to the nurses and physicians who are not, as a matter of fact, the agents of the charity, rests in the final analysis, upon the consideration that true legal relationship does not exist between the charity and the doctors and nurses.

But, resting upon public policy, the rule rests upon a sufficiently firm foundation. A policy of the law which prevents him who accepts the benefits of a charity from suing it for the torts of its agents and servants, and thus taking for his private use the funds which have been given for the benefit of humanity, which shields gifts made to charity from the hungry maw of litigation, and conserves them for purposes of the highest importance to the state, carries on its face its own justification, and, without the aid of metaphysical reasoning, commends itself to the wisdom of mankind.

This rule should be applied unequivocably, at least where one seeking to enforce liability against the charitable institution is one who has accepted benefits from it and has been injured by the negligence of a nurse or physician or anyone who was not functioning as a mere servant or employee.

Maurice M. Tulchinsky.

South Bend, Indiana.