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## TORTS — LIABILITY OF COUNTY CHARITY HOSPITAL TO PAYING PATIENT

Action by paying patient for injuries sustained through negligence of employee of county charity hospital. *Held*, defendant county is engaged in a governmental function and is immune from tort liability to any patient. *Thomas v. Board of County Comm'rs*, 92 A.2d 452 (Md. 1952).

The question of tort liability of municipally operated charity hospitals discloses two extreme views with a wide range of decisions between them.<sup>1</sup> This interim area is riddled with inconsistencies because of the diverse views taken as to the two defenses normally employed. The defendant municipality invariably invokes the defenses of (1) municipal immunity for governmental functions, and (2) the general principal of non-liability of a charitable institution.<sup>2</sup> The burden is upon the plaintiff to prove that the operation of the hospital is a proprietary function rather than governmental.<sup>3</sup> Of the courts declaring the operation of a hospital a governmental function, many say that as to a paying patient it is proprietary.<sup>4</sup> If a governmental function is found, there is no liability to any patient.<sup>5</sup> If it is held a proprietary function, plaintiff must still overcome the immunity of a charitable institution.<sup>6</sup> The vast majority holds that a charitable hospital is not liable to any patient for the negligence of its employees.<sup>7</sup> A minority makes an exception in the case of paying patients,<sup>8</sup> and in a few states any patient can recover for injuries due to negligence.<sup>9</sup> In one state, liability is imposed by statute.<sup>10</sup>

Maryland's law represents the extreme non-liability view. There the operation of a hospital is a governmental function, giving rise to complete immunity;<sup>11</sup> and the Maryland doctrine applicable to charitable institutions makes them immune from any liability for employee's torts under *respon-*

1. *E.g.*, *Tucker v. Mobile Insurance Ass'n*, 191 Ala. 572, 68 So. 4 (1915) (moderate view); *Suwannee County Hospital v. Golden*, 56 So.2d 911 (Fla. 1952) (extreme liability view); *Thomas v. Board of County Comm'rs*, 92 A.2d 452 (Md. 1952) (extreme immunity view).

2. *City of Miami v. Oates*, 152 Fla. 21, 10 So.2d 721 (1942).

3. *City of Brunswick v. Barrett*, 58 Ga. App. 792, 199 S.E. 901 (1938).

4. *City of Shawnee v. Roush*, 101 Okla. 60, 223 Pac. 354 (1923).

5. See 18 McQUILLIN, MUNICIPAL CORPORATIONS § 53.86 (3d ed. 1950).

6. *City of Miami v. Oates*, 152 Fla. 21, 10 So.2d 721 (1942); *Henderson v. Twin Falls County*, 56 Idaho 124, 50 P.2d 597 (1935).

7. *Howard v. South Baltimore General Hospital*, 191 Md. 617, 62 A.2d 574 (1948). For a discussion of the various theories advanced in support of non-liability see 5 FLA. L. REV. 213 (1951).

8. *Tucker v. Mobile Insurance Ass'n*, 191 Ala. 572, 68 So. 4 (1915); *Nicholson v. Good Samaritan Hospital*, 145 Fla. 360, 199 So. 344 (1940); *Mississippi Baptist Hospital v. Holmes*, 55 So.2d 142 (Miss. 1951); *Vanderbilt University v. Henderson*, 23 Tenn. App. 135, 127 S.W.2d 284 (1938).

9. *Ray v. Tuscon Medical Center*, 72 Ariz. 22, 230 P.2d 220 (1951); 5 FLA. L. REV. 213 (1951) and cases cited therein.

10. R. I. GEN. LAWS c. 213 (1901), as amended; R. I. GEN. LAWS c. 116, § 95 (1938).

11. *Thomas v. Board of County Comm'rs*, 92 A.2d 452 (Md. 1952); *Mayor and City Council of Baltimore v. State*, 173 Md. 267, 195 Atl. 571 (1937).

*deat superior*.<sup>12</sup> The extreme liability view is expressed by Florida, where the operation of a hospital is a proprietary function;<sup>13</sup> and the "charitable institutions" doctrine allows at least paying patients to recover, with indications that charity patients may be allowed recovery also.<sup>14</sup>

The rationale behind all of these decisions is grounded upon strong conflicting public policy considerations. The courts more inclined toward granting immunity feel that public tax money should not be subjected to payment of private claims, and that charitable gifts should not be discouraged. The numerical weight of authority would seem to still support this view.<sup>15</sup> However, it has met with almost uniform disapproval of the authorities, and in conformity with the modern tendency to extend the liability of municipalities, a steadily growing minority is granting recovery.<sup>16</sup> A strong point in favor of recovery is the fact that many hospitals now carry insurance against this type of claim.<sup>17</sup> Subjected to legal principals and present insurance practices, this view allowing recovery would seem to be more desirable. A basic theory of tort law is that one who performs an act affecting an individual, even though he does it gratuitously, must exercise reasonable care or be liable for the resulting injury.<sup>18</sup> It must be remembered that, in these cases, the plaintiff's person has been injured. He has suffered pain, and sometimes permanent disability, as a result of the culpable negligence of a hospital employee.<sup>19</sup> The best solution would be legislative action requiring municipal charity hospitals to carry insurance covering *all* patients.

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12. *Howard v. South Baltimore General Hospital*, 191 Md. 617, 62 A.2d 574 (1948).

13. *Suwanee County Hospital Corp. v. Golden*, 56 So.2d 911 (Fla. 1952); *City of Miami v. Oates*, 152 Fla. 21, 10 So.2d 721 (1942).

14. *Nicholson v. Good Samaritan Hospital*, 145 Fla. 360, 199 So. 344, 348, 349 (1940). Cases cited note 13 *supra*.

15. 18 McQUILLIN, MUNICIPAL CORPORATIONS § 53.86 (3d ed. 1950).

16. *Moats v. Sisters of Charity of Providence*, 13 A.R. 546 (D.C. Alaska 1952) (analyzed in 20 U.S.L. WEEK 2332 Jan. 24, 1952).

17. *Ray v. Tucson Medical Center*, 72 Ariz. 22, 230 P.2d 220 (1951); *Wendt v. Servite Fathers*, 332 Ill. App. 618, 76 N.E.2d 342 (1947).

18. PROSSER, TORTS 1079 (1941); 2 BOGERT, TRUSTS AND TRUSTEES 1243-4 (1935); HARPER, TORTS § 2940 (1933).

19. E.g., *City of Miami v. Oates*, 152 Fla. 21, 10 So.2d 721 (1942) where plaintiff was severely burned over the entire body as a result of gross negligence of hospital interne.