Torts -- Liability of Charitable Institutions for Negligence

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the Bureau of Internal Revenue felt the latter to be the better view, whether the fruit is severed from the realty or not. The Bureau’s failure to treat the unsevered crop as part of the realty raises the second difficulty: whether “realty” should be given equal weight with the other requirements of Section 117(j). Since a sale or exchange of property must be characterized as a sale of real, or depreciable, property held for six months, and then considered in the light of the Code’s negative requirements, it is obvious that all portions of the section must be given equal consideration before the sale can be considered as a capital gain or loss. Once accepted as of equal weight, the definition of real property must be sought in the general law, since the Internal Revenue Code does not define it. The general rule, with which Florida is in accord, is that unsevered fruit is part of, and passes with, the realty.

The instant case follows the general rule regarding unsevered fruit on realty, thus supporting the “purpose for which held” interpretation of the word “primarily.” However, the court reinforces its characterization of real property, by viewing real property as a state-created right which the Federal Government may tax. It is on this basis that the court specifically refuses to enforce I.T. 3815, and holds that a single sale of land and fruit trees with immature, unsevered fruit is not such a sale of “property held primarily for sale” in the ordinary course of business.” There is left, however, for future determination, the problem of whether mature, unsevered fruit, sold as a package with land and trees, is also to be considered a single sale, a problem which could be of considerable interest to citizens of Florida.

TORTS—LIABILITY OF CHARITABLE INSTITUTIONS FOR NEGLIGENCE

Plaintiff, a paying patient in defendant corporation’s non-profit hospital was injured through the negligence of nurses employed by the hospital. Plaintiff brought an action for damages. Held, that an incorporated charity

8. I.T. 3815, 1946-2 CUM. BULL. 30. Administrative rulings are interpretations by the Bureau or the Treasury Department of tax law in the United States Code and Treasury Regulations. Of these rulings, only Treasury Decisions (T.D.) are binding as precedent. Treasury Regulations, and the Instructions on the tax blanks, are the only legally binding constructions of tax law interpreted by the Treasury Department.

9. See Crane v. Comm’t, 331 U.S. 1, 6 (1946).

10. 1 WILLISTON, LAW GOVERNING SALE OF GOODS, § 61 (Rev. ed. 1948).

11. Adams v. Adams, 158 Fla. 173, 28 So.2d 254 (1946) (fruit on the trees of homestead land went to widow as part of the realty).

12. The Commissioner may appeal to the United States Supreme Court or file a notice of acquiescence or non-acquiescence. Further than that, the Treasury Department is not required to adhere to other than United States Supreme Court decisions. However, within each district, federal court decisions are precedent.

13. Supra note 8.

14. This court found that petitioner’s business was that of growing fruit to maturity and selling such fruit as distinguished from buying and selling groves. 94 F. Supp. 206, 211.
should respond for its torts as do private individuals and business corporations. *Haynes v. Presbyterian Hospital Ass'n*, 45 N.W.2d 151 (Iowa 1950).

The general rule as to tort liability is that all persons or entities are liable for torts committed by them or by their employees within the scope of their employment.¹ Charitable institutions,² however, have been held to be immune from liability. The extent of the immunity and the reasons therefor have varied among the courts in a welter of conflicting decisions.³ In some jurisdictions immunity has been held complete and absolute⁴ while in others charitable institutions have been held immune only to the extent of their trust funds.⁵ Many courts have distinguished between strangers and patients, allowing immunity only in case of the latter.⁶ Some have held that charitable institutions are liable to paying patients and still others have indicated that liability should be absolute.⁷ Connecticut has held charities liable only when there has been negligence in the selection or retention of their employees.⁸

The holdings in favor of immunity have been based primarily upon four theories, to-wit: the trust fund theory, the non-applicability of respondeat superior to charitable institutions theory, the implied waiver theory, and the public policy theory. The trust fund theory, which had its genesis in 1846,⁹ was based upon an English dictum¹⁰ which had already been repudiated¹¹ in England. This theory is that trust funds could not be used for the payment of tort claims, since to do so would be to thwart the purposes of the donor and discourage charity. The second theory is that respondeat superior does not apply to charities since they receive no

5. Moore v. Moyle, 405 Ill. 555, 92 N.E.2d 81 (1950); Baptist Memorial Hospital v. Couillens, 176 Tenn. 306, 140 S.W.2d 1088 (1940).
7. Tucker v. Mobile Infirmary Ass’n, 191 Ala. 572, 68 So. 4 (1915); Nicholson v. Good Samaritan Hospital, 145 Fla. 360, 199 So. 344 (1940).
10. McDonald v. Massachusetts General Hospital, 120 Mass. 432 (1876).
profit from the acts of their employees. The third theory is that one who accepts the benefits of a charity, thereby waives his right to sue it for its torts. The public policy theory is that it is better for the community and the public in general that the individual bear his loss rather than that the institution should be liable in damages.

These theories of immunity have all been subject to severe criticism. By the weight of authority a charity is held liable to strangers; it is held liable to beneficiaries when the institution has been negligent in the selection or retention of its employees. Followed to its logical conclusion the trust fund theory would permit no exceptions. The trust fund should be exempt from liability for negligence in all cases or none. Thus, reason the courts, the trust fund theory loses its merit for the exceptions to the theory are in reality denials of that doctrine. The second theory of immunity has been discredited by decisions holding that the factor of pecuniary gain is not essential to the application of the respondeat superior rule. The position of the incorporated charity appears no different from that of a Good Samaritan who negligently injures the one he attempts to aid. The implied waiver theory has been attacked as a legal fiction for it is inapplicable to strangers, infants, insane persons and one who enters a hospital while unconscious. Negligent treatment, even to a needy patient, by an institution holding itself out to give skilled service, is not charity. The public policy theory of immunity has also been repudiated. Public policy is not static but changes as the times and prospectives change. The hospital of today has developed into an enormous business, the purchase of liability insurance has become prevalent and the state has assumed part of the burden of treating the indigent. What may have been sound public policy when hospitals were small and the good of society demanded their encouragement is not necessarily good today. The courts holding eleemosynaries liable also argue affirmatively that liability fosters care, that no conception of justice demands immunity of charities and that to deny recovery to a person injured

13. E.g., Nicholson v. Good Samaritan Hospital, supra note 7; see Gable v. Salvation Army, 186 Okla. 657, 659, 100 P.2d 244, 246, rehearing denied (1940).
15. See Tucker v. Mobile Infirmary Ass'n, supra note 7, at 582.
16. See Nicholson v. Good Samaritan Hospital, supra note 7, at 365.
17. See Bruce v. Young Men's Christian Ass'n, 51 Nev. 372, 387, 277 Pac. 798, 802 (1929).
18. Bruce v. Central Methodist-Episcopal Church, supra note 6; Basabo v. Salvation Army, supra note 6.
22. See Andrews v. Young Men's Christian Ass'n, supra note 3, at 382.
23. Id. at 412.
through the negligence of one charity is apt to place the burden of aid upon another charity or cause the injured to become a public charge.  

The court in the instant case overruled two Iowa cases which approved of immunity, thereby allying itself with the courts favoring liability and furthering this trend. With the reasons for allowing immunity no longer existent, it is not for the court but for the legislature, if they are of the opinion that public policy still demands a limitation of the liability of charitable institutions, to grant immunity.  

It is submitted that the decision in the instant case, in the absence of declaratory legislation, will permit holdings by the Iowa courts in favor of the person for whom the charity of a charitable hospital is in reality intended—the non-paying patient.

TORTS—LIMITATIONS AND EXCEPTIONS TO RECOVERY UNDER THE FEDERAL TORT CLAIMS ACT

Plaintiffs sought to recover under the Federal Tort Claims Act for damage to property resulting from dynamite blasting operations of the United States in deepening a channel of the Mississippi River for navigational purposes. Held, in sustaining defendant's motion to dismiss, that dynamiting was part of a discretionary plan of the army engineers and within an exception to the Federal Tort Claims Act. Boyce v. United States, 93 F. Supp. 866 (S.D. Iowa 1950).

Substantially, the Federal Tort Claims Act is a waiver of governmental immunity in tort restricted only by enumerated exceptions including that exception, herein disputed, which precludes recovery against the government for discretionary acts. Liability can never be predicated upon the abuse of such discretion, but only upon a breach of those ministerial duties wherein no room for speculation or judgment is permitted. The apparent difficulty is that no yardstick has ever been presented for establishing a criterion which would clearly determine at what point it may be said that a particular part of a discretionary plan becomes so insignificant or elementary as to be classified "ministerial."

25. See Nicholson v. Good Samaritan Hospital, supra note 7, at 373; 2 BOGERT, TRUSTS AND TRUSTEES, § 401.  
27. Glavin v. Rhode Island Hospital, 12 R.I. 411, 435 (1879); Rickbeil v. Grafton Deaconess Hospital, 74 N.D. 525, 23 N.W.2d 247, 260 reviewing denied (1946).