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Torts—Hospital Immunity from Tort Liability

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Hospital Immunity from Tort Liability

Nonproprietary hospitals in New York always have been exempted from tort liability to patients for the professional acts of doctors and nurses.[28] This rule holds true regardless of whether the professional person is a full-time hospital employee or an independent contractor, merely performing an isolated medical act therein.[29]

The *raison d'etre* for this rule is grounded in two concepts. The first is the institution's charitable nature, precluding it from making a profit, though patients may pay it sums for room, board and services.[30] The institution theoretically would be liable to extinction, were it required to satisfy tort claims from money needed for its existence. Further, courts have regarded patients' payments to the hospital as additional gifts to help the hospital carry on the charity;[31] the non-paying patient is deemed to have waived impliedly any tort claim in accepting the care and treatment of the charity.[32]

The second reason is that there is no respondeat superior relationship between the institution and the professionals performing medical services there, since the latter are deemed independent contractors. They are liable to patients as individuals, but they cannot impose derivative liability on the institution.[33]

As a result of this rule, patients seeking recovery from such institutions have had to make their claim in contract, alleging the hospital violated some agreed upon obligation to them and the breach should be submitted to the jury as a question of fact.[34]

The case of *Berg v. New York Society For the Relief of The Ruptured and Crippled*[35] portends the overthrow of the rule. In dicta in the Court's opinion, Judge Desmond discussed the two reasons for the exemption. Dismissing the first as "unrealistic at least as to paying patients", he deemed it virtually aban-

28. *Schloendorff v. Society of N. Y. Hosp.*, 211 N. Y. 125, 105 N. E. 92 (1914).
29. See note 28, *supra*.
30. *People ex rel. Soc'y of N. Y. Hosp. v. Purdy*, 126 N. Y. 679, 28 N. E. 249 (1891).
31. *Hodern v. Salvation Army*, 199 N. Y. 233, 92 N. E. 626 (1910); *Collins v. New York Post Graduate Medical School and Hosp.*, 59 App. Div. 63, 69 N. Y. Supp. 106 (2d Dep't 1901); *Cunningham v. Sheltering Arms*, 135 App. Div. 178, 118 N. Y. Supp. 1033 (1st Dep't 1909).
32. See note 31 *supra*.
33. *Schloendorff v. Society of N. Y. Hosp.*, 211 N. Y. 125, 105 N. E. 92 (1914).
34. *Ward v. St. Vincent's Hosp.*, 39 App Div. 624, 57 N. Y. Supp. 784 (1st Dep't 1899); *Roche v. St. John's Riverside Hosp.*, 96 Misc. 289, 160 N. Y. Supp. 401 (Sup. Ct. 1916), *aff'd*, 176 App. Div. 885, 161 N. Y. Supp. 1143 (2d Dep't 1916).
35. 1 N. Y. 2d 499, 136 N. E. 2d 523 (1956). The Court unanimously held defendant hospital liable for plaintiff's injury, resulting from a blood test performed by defendant's non-professional technician. The Court deemed the act, performed by one with only four to six weeks' training, a "medical" one, but not of the character performed by doctors and nurses.

doned today. As to the second, he raised the question whether it reasonably could be applied any longer to professionals who are full-time hospital staff members, as opposed to outsiders called in to treat an individual patient.

He pictured the present-day hospital as the employer of countless professional persons, who live permanently in its walls — a purveyor of "medical services" to paying patients. The hospital staff controls the care of its patients to a great degree and generally renders the services exclusively.

In holding this case as outside the rule, he concluded by questioning, "What reason compels us to say that of all employees working in their employers' businesses . . . the only ones for whom the employers can escape liability are the employees of hospitals?"

It would seem that the Court's holding points to at least a partial overthrow of the old rule. When the proper case comes before the Court, its holding at that time may well result in the loss of hospital's immunity from acts of permanently-employed professional personnel. Most probably, the result of its holding will be the application of traditional Agency principles of derivative liability to nonproprietary hospitals.

Pleading Elements of Negligence

Negligence is the failure to exercise the care required by law.[36] No action will lie in negligence unless there is a duty on defendant's part as to plaintiff, and there is a breach of this duty with resultant injury to him.[37] There must be a foreseeable plaintiff,[38] and the negligence charged must be the proximate cause of the injury received.[39] All these points must be alleged and proved in order for the plaintiff to recover.[40]

In *Howard Stores Corp. v. Pope*[41] the plaintiffs, tenant and owners of a Manhattan building damaged by fire caused by inflammable materials used on the floor, brought an action against three defendants — the manufacturer, the seller, and the contractor who applied the materials to the plaintiff's floor. The seller moved to dismiss the complaint as to him. Special Term denied the motion and stated that sufficient causal connection had been alleged and that the complaint was good. The Court of Appeals, reversing the Appellate Division,[42] held the complaint sufficient.

36. *Tedla v. Ellman,* 280 N. Y. 124, 130, 19 N. E. 2d 787 (1939).
37. *Kimbar v. Estis,* 1 N. Y. 2d 399, 135 N. E. 2d 708 (1956).
38. *Palsgraf v. Long Island R.R. Co.,* 248 N. Y. 339, 162 N. E. 99 (1928).
39. *Williams v. State,* 308 N. Y. 548, 127 N. E. 2d 545 (1955).
40. RESTATEMENT, TORTS §281 (1934).
41. 1 N. Y. 2d 110, 134 N. E. 2d 63 (1956).
42. 1 A. D. 2d 659, 146 N. Y. S. 2d 363 (1st Dep't 1955).