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NOTES

Tort Immunity of Charities in Ohio

WHETHER, OR TO what extent, private charitable institutions shall be immune from liability for damages arising from the commission of torts by their employees, solely because such institutions are organized for charitable purposes, is a problem which has been the subject of considerable litigation in the United States in the past fifty years.[1] The problem has not yet been fully resolved, despite the unanimity of the text writers on the subject.[2]

To attempt to reconcile the decisions in the United States would be futile; the courts in the various jurisdictions have reached diametrically opposite conclusions upon similar facts. Justice Rutledge, after analyzing the cases involving the immunity of charitable institutions, said:

> The cases are almost riotous with dissent. Reasons are even more varied than results. They indicate something wrong at the beginning or

[1] Ray v. Tucson Medical Center, 72 Ariz. 22, 230 P.2d 220 (1951); Perry v. House of Refuge, 63 Md. 20 (1885); McDonald v. Massachusetts General Hospital, 120 Mass. 432 (1876); Sheehan v. North Country Community Hospital, 273 N.Y. 163, 7 N.E.2d 28 (1937); Rudy v. Lakeside Hospital, 115 Ohio St. 539, 155 N.E. 126 (1926); Gable v. Sisters of St. Francis, 227 Pa. 254, 75 Atl. 1087 (1910). See also cases collected in Note, 25 A.L.R.2d 29 (1952).

[2] The text writers have demonstrated the logical bareness of refusing to apply the same rules of tort liability to both charitable and non-charitable institutions. The logical basis of the doctrine will, therefore, not be labored here. See 2A BOGERT, TRUSTS AND TRUSTEES § 401 (1953); PROSSER, TORTS 1079 *et. seq.* (1949); 3 SCOTT, TRUSTS § 402 (1939); Comment, 14 U. OF DETROIT L.J. 74 (1951); 49 MICH. L. REV. 148 (1950); 13 OHIO ST. L.J. 291 (1952).