

Conflict of Laws--Lex Loci Delicti Held Applicable as to Availability of Defense of Charitable Immunity, Regardless of Law of Place Where Charity Organized (Kaufman v. American Youth Hostels, Inc., 6 A.D.2d 223 (2d Dep't 1958))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1958) "Conflict of Laws--Lex Loci Delicti Held Applicable as to Availability of Defense of Charitable Immunity, Regardless of Law of Place Where Charity Organized (Kaufman v. American Youth Hostels, Inc., 6 A.D.2d 223 (2d Dep't 1958))," *St. John's Law Review*: Vol. 33 : No. 1 , Article 12.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol33/iss1/12>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

vidual citizens would instigate prosecution. However, it should also be noted that the false-impression doctrine is broad enough to include a very large percentage of current discount-offering ads. Since widespread prosecution seems impractical, the force of the doctrine will probably be applied in a few isolated cases as a deterrent to other violators.



CONFLICT OF LAWS—LEX LOCI DELICTI HELD APPLICABLE AS TO AVAILABILITY OF DEFENSE OF CHARITABLE IMMUNITY, REGARDLESS OF LAW OF PLACE WHERE CHARITY ORGANIZED.—Plaintiff brought this action for the wrongful death of his fifteen-year-old daughter. Decedent fell to her death while on a tour in Oregon conducted by defendant, a charitable organization incorporated under the laws of New York. One of the affirmative defenses¹ pleaded by defendant was that of charitable immunity from tort liability, under the decisional law of Oregon. The lower court granted a motion to strike the defense.² The Appellate Division modified³ the ruling by upholding the validity of this defense, *holding* that the *lex loci delicti* controls as to the availability of the defense of charitable immunity and not the law of the state where the charity was organized. *Kaufman v. American Youth Hostels, Inc.*, 6 A.D.2d 223, 177 N.Y.S.2d 587, *motion for leave to appeal granted*, 6 A.D.2d 1016, 178 N.Y.S.2d 623 (2d Dep't 1958).

In general, the law of the place where a tort was committed is controlling,⁴ not only as to whether a cause of action arose *ab initio*,⁵ but also as to the availability of defenses,⁶ *e.g.*, charitable immunity. There is, however, an exception to this rule. Where a strong public policy of the place of the forum is in direct conflict with the law of the place of commission of the tort, that public policy must prevail.⁷

¹ Another defense, involving a covenant not to sue, was set up in the answer, but is not treated here.

² *Kaufman v. American Youth Hostels, Inc.*, 174 N.Y.S.2d 580 (Sup. Ct. 1957).

³ The ruling of the Supreme Court as to the defense of charitable immunity was reversed; as to the covenant not to sue, affirmed.

⁴ *Accord*, *Conklin v. Canadian-Colonial Airways, Inc.*, 266 N.Y. 244, 248, 194 N.E. 692, 694 (1935). See RESTATEMENT, CONFLICT OF LAWS § 166, comment *b*, § 377 (1934); GOODRICH, CONFLICT OF LAWS § 95, at 267 (3d ed. 1949).

⁵ See *Salimoff & Co. v. Standard Oil Co.*, 262 N.Y. 220, 226, 186 N.E. 679, 682 (1933).

⁶ STUMBERG, CONFLICT OF LAWS 188-89 (2d ed. 1951). *Cf.* *Fitzpatrick v. International Ry.*, 252 N.Y. 127, 169 N.E. 112 (1929).

⁷ *Jewtraw v. Hartford Acc. & Indem. Co.*, 280 App. Div. 150, 153, 112 N.Y.S.2d 727, 731 (1952); *Allison v. Mennonite Publications Bd.*, 123 F. Supp.

Oregon law grants to charitable institutions immunity from tort liability.⁸ First established in the courts of England,⁹ the doctrine was adopted in Oregon in 1912.¹⁰ A recent attempt to abrogate it proved fruitless¹¹ due to the solid body of decisional law on which the immunity rests.¹² The foundation of the doctrine has been traced to the public policy of the state, and Oregon's highest court has said that nothing short of legislation can change it.¹³ In New York, the rule of charitable immunity was at first adopted,¹⁴ but had been so narrowed in interpretation and riddled with exceptions as to have long since been rendered weak and difficult of precise application.¹⁵ In the recent case of *Bing v. Thunig*,¹⁶ it was completely discarded. Therefore, the law of Oregon and New York is in direct conflict as to the availability of charitable immunity as a defense to a tort action.

The principal case is apparently contrary to the only prior authority in New York. In *Heinemann v. Jewish Agricultural Soc'y*,¹⁷ plaintiff was injured while in a vehicle owned and operated by defendant, a charitable organization incorporated under the laws of New York. The injury occurred in New Jersey, which, at that time, granted charitable immunity from tort liability. The court held that

23, 25 (W.D. Pa. 1954). See also Paulsen and Govern, "Public Policy" in the Conflict of Laws, 56 COLUM. L. REV. 969 (1956). Cf. *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 120 N.E. 198 (1918).

⁸ *Ackerman v. Physicians & Surgeons Hosp.*, 207 Ore. 646, 288 P.2d 1064 (1955), *rev'd on other grounds on rehearing*, 207 Ore. 646, 298 P.2d 1026 (1956); *Landgraver v. Emanuel Lutheran Charity Bd.*, 203 Ore. 489, 280 P.2d 301 (1955).

⁹ *Feoffees of Heriot's Hosp. v. Ross*, 12 Cl. & Fin. 507, 8 Eng. Rep. 1508 (1846). This doctrine was later repudiated, however, in the English case of *Mersey Docks Trustees v. Gibbs*, 11 H.L. 686, 11 Eng. Rep. 1500 (1866). See also Note, *Immunity of Charitable Institutions to Tort Liability: an Eroding Defense*, 5 DUKE B.J. 51 (1955).

¹⁰ *Hill v. President & Trustees of Tualatin Acad. & Pac. Univ.*, 61 Ore. 190, 121 Pac. 901 (1912).

¹¹ See *Landgraver v. Emanuel Lutheran Charity Bd.*, *supra* note 8.

¹² See, e.g., *Ackerman v. Physicians & Surgeons Hosp.*, *supra* note 8; *Landgraver v. Emanuel Lutheran Charity Bd.*, *supra* note 8; *Gregory v. Salem Gen. Hosp.*, 175 Ore. 464, 153 P.2d 837 (1944); *Hamilton v. Corvallis Gen. Hosp. Ass'n*, 146 Ore. 168, 30 P.2d 9 (1934); *O'Neill v. Odd Fellows Home*, 89 Ore. 382, 174 Pac. 148 (1918); *Hill v. President & Trustees of Tualatin Acad. & Pac. Univ.*, *supra* note 10.

¹³ *Landgraver v. Emanuel Lutheran Charity Bd.*, *supra* note 8.

¹⁴ *Collins v. New York Post Graduate Med. School*, 59 App. Div. 63, 69 N.Y. Supp. 106 (2d Dep't 1901); *Joel v. Woman's Hosp.*, 89 Hun 73, 35 N.Y. Supp. 37 (Sup. Ct. 1895).

¹⁵ See, e.g., *Schloendorff v. Society of N.Y. Hosp.*, 211 N.Y. 125, 105 N.E. 92 (1914); *Hordern v. Salvation Army*, 199 N.Y. 233, 92 N.E. 626 (1910).

¹⁶ 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957), wherein the last vestige of charitable immunity in New York, i.e., the inapplicability of the doctrine of *respondet superior* to hospitals in the case of doctors and nurses, was eliminated.

¹⁷ 178 Misc. 897, 37 N.Y.S.2d 354 (Sup. Ct. 1942), *aff'd mem.*, 266 App. Div. 907, 43 N.Y.S.2d 746 (4th Dep't 1943).

the defendant could not avail itself of the defense of charitable immunity given by New Jersey law.¹⁸ The Supreme Court, in the *Kaufman* case, felt constrained to follow that decision.¹⁹ The Appellate Division, however, reversed, stating that the *Heinemann* case ". . . was decided upon reasoning which is not acceptable to us, and the case is probably distinguishable."²⁰

The conflict decided by the principal case has primarily arisen in the federal courts, since diversity of citizenship is generally involved. Federal cases in point,²¹ decided subsequent to the *Heinemann* case, answered the question as did the principal case, *i.e.*, charitable immunity was made available as a defense in cases where the corporation was foreign to the place of the tort and where the law of the place of the tort granted such immunity. This was so, regardless of the status of the law on charitable immunity in the state where the charity was organized.²² Concerning these cases, the Court, in the principal case, said: "The case [*Heinemann*] was decided in 1942, some years prior to, and therefore without the benefit of, the decisions in the *Hinman* [and] *Jeffrey* . . . cases. . . ." ²³

The *Heinemann* holding left New York law on this point nebulous and susceptible of misinterpretation and confusion.²⁴ The lower court, in the *Kaufman* case, interpreted the *Heinemann* case as refusing to apply the *lex loci delicti*.²⁵ However, the *Heinemann* case,

¹⁸ *Ibid.* The decision was based on the reasoning that *the defendant would not have been granted immunity under the law of New Jersey* for two reasons: 1. The basis of the doctrine of charitable immunity is the waiver theory, *i.e.*, the recipient of a charity waives his right to deplete the funds of the charity by claims for damages for torts committed arising out of the charitable operations of which he was a beneficiary. But since, in this instance, the relationship between plaintiff and defendant arose out of a contract made in New York, no waiver would be implied in the face thereof. 2. Defendant had not qualified itself to exercise its franchise in New Jersey by meeting the statutory requirements for such organizations and, therefore, would have been unable to claim charitable immunity in that state. *Id.* at 905, 37 N.Y.S.2d at 362.

¹⁹ *Kaufman v. American Youth Hostels, Inc.*, 174 N.Y.S.2d 580, 587 (Sup. Ct. 1957).

²⁰ 6 A.D.2d 223, 228, 177 N.Y.S.2d 587, 592 (2d Dep't 1958).

²¹ *Hinman v. Berkman*, 85 F. Supp. 2 (W.D. Mo. 1949). *Accord*, *Allison v. Mennonite Publications Bd.*, 123 F. Supp. 23 (W.D. Pa. 1954), distinguishable by reason of the fact that an intentional tort was involved. See *Jeffrey v. Whitworth College*, 128 F. Supp. 219 (E.D. Wash. 1955).

²² *Hinman v. Berkman*, *supra* note 21, at 3. See *Allison v. Mennonite Publications Bd.*, *supra* note 21, at 25.

²³ *Kaufman v. American Youth Hostels, Inc.*, 6 A.D.2d 223, 228, 177 N.Y.S.2d 587, 592 (2d Dep't 1958).

²⁴ See *Kaufman v. American Youth Hostels, Inc.*, 174 N.Y.S.2d 580, 587 (Sup. Ct. 1957), wherein the court felt constrained to follow *Heinemann* and not apply the *lex loci delicti*. Cf. *Jeffrey v. Whitworth College*, 128 F. Supp. 219, 225 (E.D. Wash. 1955), in which it seems that both the plaintiff's argument and the court's discussion appear to take the *Heinemann* case as a rejection of that same theory.

²⁵ See *Kaufman v. American Youth Hostels, Inc.*, *supra* note 24.

although seemingly a rejection of the *lex loci delicti* rule, does not actually conflict with it.²⁶

It is felt that the holding in the *Heinemann* case should be limited to the specific fact-situation there involved, and not be considered a leading authority in the general area of the applicability of the *lex loci delicti* rule. It is submitted that the principal case states the correct law on this point and clarifies the New York position. Hence, the *Kaufman* case should be the controlling New York case in situations calling for the application of the *lex loci delicti* rule to cases involving charitable immunity from tort liability.



TAXATION—DEDUCTION OF FINES AND PENALTIES HELD NOT PROPER BECAUSE FRUSTRATIVE OF STATE POLICIES.—Taxpayer sought to deduct as ordinary and necessary expenses¹ fines paid for violations of a Pennsylvania statute² prescribing maximum truck weights. It was commercially impracticable for taxpayer to comply with the statute. The Tax Court disallowed the deduction on the ground that it would frustrate sharply-defined state policy. The Court of Appeals affirmed. On certiorari, the United States Supreme Court held that allowing deduction of fines and penalties would frustrate state policies by mitigating their deterrent effect. *Tank Truck Rentals, Inc. v. Commissioner*, 356 U.S. 30 (1958).

In a companion case, the Court affirmed an order of the Court of Appeals reversing a Tax Court determination that amounts expended by a bookmaker for rent and salaries were not deductible since made in connection with illegal acts. The Court held that since gambling is recognized as a business for federal tax purposes, taxpayer's normal operating expenses are deductible.³ *Commissioner v. Sullivan*, 356 U.S. 27 (1958).

²⁶ See note 18 *supra*.

¹ The former version of § 162 of the Internal Revenue Code of 1954 provided that in computing net income there shall be allowed as deductions "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; . . . and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity." 56 STAT. 819 (1942).

² PA. STAT. ANN. tit. 75, § 453 (1953), as amended, PA. STAT. ANN. tit. 75, § 453 (Supp. 1957).

³ The Court distinguishes *Tank Truck Rentals*, stating that a deduction is permitted unless the allowance would avoid the *consequence* of violations of the law. *Commissioner v. Sullivan*, 356 U.S. 27, 29 (1958).