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Legal Status of Injured Churchgoer in suit Against Bishop; Aliens and Sponsor's Affidavits of Support

RECENT DECISIONS AND DEVELOPMENTS

Legal Status of Injured Churchgoer in Suit Against Bishop

The problem whether a churchgoer is an "invitee" and may therefore recover from his church for injuries negligently caused on church property has received various interpretations by the courts. In the recent Florida case of *McNulty v. Hurley*,[1] plaintiff-churchgoer brought suit against her Bishop for injuries suffered when she fell to the ground after being pushed from behind by a crowd while leaving church. The court dismissed the complaint for failure to state a cause of action, reasoning that a person who attends a religious service does so for his own convenience, pleasure, or benefit and is at best a licensee to whom is owed the duty only of refraining from wanton negligence or wilful misconduct.

Courts have approached the legal status of an injured churchgoer in three distinct ways:[2]

(1) By making the doctrine of charitable immunity applicable to religious societies and churches.[3]

(2) By using the "economic benefit" test which requires some benefit to pass to the occupier from the entrant before the latter can be classified as an "invitee."

(3) By applying the "invitation" test which gives an entrant the status of "invitee" even without a benefit to the occupier if an invitation to enter can be found from the nature and use of the premises.

Where the charitable immunity doctrine has been applied to churches, the courts have generally required a finding that the plaintiff was a spiritual beneficiary of the church before barring recovery[4] and some courts have found a plaintiff to be a spiritual beneficiary even where he was not a member of the church.[5] However, in recent years the tendency has been away from the use of this doctrine with the result that only ten states grant complete immunity,[6] while eighteen

[1] 97 So. 2d 185 (1957).

[2] An occupier of land must keep the premises in a reasonably safe condition for the invitee. Messner v. Webb's City, Inc., – Fla. –, 62 So.2d 66 (1952); RESTATEMENT, TORTS § 343, comment *a* (1934).
In the case of a licensee the occupier of land is only required to refrain from wanton negligence or wilful misconduct and to warn of any defect, not ordinarily noticeable, of which he knows. Any active operations must be carried on with reasonable care for his protection. City of Boca Raton v. Mattef, – Fla. –, 91 So.2d 644 (1956); PROSSER, TORTS § 77 (2d ed. 1955); RESTATEMENT, TORTS § 342 (1934).

[3] Glaser v. Congregational Kehillath Israel, 263 Mass. 435, 161 N.E. 619 (1928); Bianchi v. South Park Presbyterian Church, 123 N.J.L. 325, 8 A.2d 567 (1939); Burgie v. Muench, 65 Ohio App. 176, 29 N.E. 2d 439 (1940).

[4] *Ibid.* See also Cullen v. Schmit, 139 Ohio St. 194, 39 N.E. 2d 146 (1952). Other courts have held spiritual benefit to be too difficult of determination to support charitable immunity. Foster v. Roman Catholic Diocese, 116 Vt. 124, 70 A.2d 230 (1950).

[5] Bianchi v. South Park Presbyterian Church, note 3 *supra;* Burgie v. Muench, note 3 *supra.*

[6] Complete Immunity:
Arkansas – Fordyce v. Women's Christian Nat'l Library Ass'n, 79 Ark. 550, 96 S.W. 155 (1906). See Arkansas Valley Co-op. Rural Electric Co. v. Elkins, 200 Ark. 883, 141 S.W.2d 538 (1940);

states have a rule of partial immunity[7] and twenty states no longer apply or have never applied this doctrine.[8]

Arkansas Midland R.R. v. Pearson, 98 Ark. 339, 135 S.W. 917 (1911).

Kentucky – Averbach v. YMCA, 250 Ky. 34, 61 S.W. 2d 1066 (1933).

Maine – Jensen v. Maine Eye & Ear Infirmary, 107 Me. 408, 78 Atl. 898 (1910).

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

Massachusetts – (Excepting torts committed in the course of noncharitable activities). Roosen v. Peter Bent Brigham Hospital, 235 Mass. 66, 126 N.E. 392 (1920).

Missouri – Dille v. St. Luke's Hospital, 355 Mo. 436, 196 S.W. 2d 615 (1946).

Oregon – Gregory v. Salem General Hospital, 175 Ore. 464, 153 P. 2d 837 (1944).

Pennsylvania – (Excepting torts committed in the course of noncharitable activities). Bond v. Pittsburg, 368 Pa. 404, 84 A. 2d 328 (1951).

South Carolina – Vermillion v. Woman's College, 104 S.C. 197, 88 S.E. 649 (1916).

Wisconsin – (Excepting breach of a statutory duty). Morrison v. Henke, 165 Wis. 166, 160 N.W. 173 (1916).

[7] Partial Immunity – This depends upon the victim's status or the nature of the negligence charged or both, or ability to levy against the charitable trust:

Colorado – An action may be brought against a charitable institution, but a judgment cannot be levied on any of its property which is part of the charitable trust. O'Connor v. Boulder Colorado Sanitarium Ass'n, 105 Colo. 259, 96 P. 2d 835 (1939).

Connecticut – Cohen v. General Hospital Soc'y, 113 Conn. 188, 154 Atl. 435 (1931).

Georgia – Robertson v. Executive Comm. of Baptist Convention, 55 Ga. App. 469, 190 S.E. 432 (1937).

Illinois – An action may be brought against a charitable institution, but trust funds cannot be taken to satisfy a judgment. Moore v. Moyle, 405 Ill. 555, 92 N.E. 2d 81 (1950).

Indiana – Old Folks & Orphan Children's Home v. Roberts, 83 Ind. App. 546, 149 N.E. 188 (1925). See limitation in Winona Technical Institute v. Stolte, 173 Ind. 39, 89 N.E. 393 (1909).

Louisiana – Bougon v. Volunteers of America, 151 So. 797 (La. App. 1934).

Michigan – Bruce v. Central Methodist Episcopal Church, 147 Mich. 230, 110 N.W. 951 (1907).

Nebraska – Sibilia v. Paxton Memorial Hospital, 121 Neb. 860, 238 N.W. 751 (1931). See limitation in Marble v. Nicholas Senn Hospital Ass'n, 102 Neb. 343, 167 N.W. 208 (1918).

Nevada – Bruce v. YMCA, 51 Nev. 372, 277 Pac. 798 (1929).

New Jersey – Simmons v. Wiley Methodist Episcopal Church, 112 N.J.L. 129, 170 Atl. 237 (1934). *But see page 177 this Issue.*

North Carolina – Barden v. Atlantic Coast Line Ry., 152 N.C. 318, 67 S.E. 971 (1910).

Ohio – Esposito v. Henry H. Stambaugh Auditorium Ass'n, Inc., 49 Ohio L. Abs. 507, 77 N.E. 2d 111 (1946).

Tennessee – An action may be brought against a charitable institution, but judgment cannot be executed against property used for charitable purposes. McLeod v. St. Thomas Hospital, 170 Tenn. 423, 95 S.W. 2d 917 (1936).

Texas – St. Paul's Sanitarium v. Williamson, 164 S.W. 36 (Tex. Civ. App. 1914).

Virginia – Weston v. Hospital of St. Vincent, 131 Va. 587, 107 S.E. 785 (1921). See limitation in Hospital of St. Vincent v. Thompson, 116 Va. 101, 81 S.E. 13 (1914).

Washington – Lyon v. Tumwater Evangelical Free Church, 47 Wash. 2d 202, 287 P. 2d 128 (1955).

West Virginia – Roberts v. Ohio Valley General Hospital, 98 W. Va. 476, 127 S.E. 318 (1925).

Wyoming – Bishop Randall Hospital v. Hartley, 24 Wyo. 408, 160 Pac. 385 (1916).

[8] Total liability rejecting charitable immunity:

Arizona – Ray v. Tucson Medical Center, 72 Ariz. 22, 230 P. 2d 220 (1951).

California – Malloy v. Fong, 37 Cal. 2d 356, 232 P. 2d 241 (1951).

Delaware – Durney v. St. Francis Hospital, 46 Del. 350, 83 A. 2d 753 (1951).

Iowa – Haynes v. Presbyterian Hospital Ass'n, 241 Iowa 1269, 45 N.W. 2d 151 (1950).

Kansas – Noel v. Menninger Foundation, 175 Kan. 751, 267 P. 2d 934 (1954).

Minnesota – Mulliner v. Evangelischer Diakonniessenverein, 144 Minn. 392, 175 N.W. 699 (1920).

New Hampshire – Welch v. Frisbie Memorial Hospital, 90 N.H. 337, 9 A. 2d 761 (1939).

New York – Bing v. Thunig, 2 N. Y. 2d 656, 143 N.E. 2d 3 (1957).

North Dakota – Rickbeil v. Grafton Deaconess Hospital, 74 N.D. 525, 23 N.W. 2d 247 (1946).

Rhode Island – Glavin v. Rhode Island Hospital, 12 R.I. 411, 34 Am. Rep. 675 (1879).

Vermont – Foster v. Roman Catholic Diocese, 116 Vt. 124, 70 A.2d 230 (1950).

The legal definition of an invitee depends upon whether the "invitation" test or the "economic benefit" test is used. Under the "invitation" test, the mere invitation of the occupier, expressed or implied from his conduct, or from the arrangement of the premises, is sufficient to classify the entrant an invitee.[9] Since no benefit to the occupier is necessary under this theory, the churchgoer would appear to be an invitee.[10] Thus, for example, in a Missouri case[11] where the plaintiff was knocked down and injured by a crowd leaving church (as in the instant case), the court held her to be an invitee. This invitation has been declared by Oklahoma to be limited to particular areas of the church.[12]

Under the "economic benefit" test, on the other hand, the inference of an invitation from the conduct of the occupier or from the character of the building itself is not sufficient. To acquire invitee status, some advantage must be shown to result to the owner or occupier because of the entrance.[13]

The standard used in the present case is the "economic benefit" test. In the view of the court, "economic benefit" to the occupier is necessary to create invitee status rather than mere invitation based on the arrangement of the premises. The court admits that a church invites all to enter and worship but since the benefit goes to the entrant and not to the church such an invitation is not sufficient for the "economic benefit" test.[14] The opinion states:

> One of the concepts of all religious beliefs known to us is that participation in religious activities is for the benefit of the mortals who participate therein. . . . The plaintiff in this case . . . can [not] . . . in good faith, contend that she went to mass for the benefit of Jesus Christ or the defendant. . . .[15]

Tend to reject charitable immunity:

Alabama – Tucker v. Mobile Infirmary Ass'n, 191 Ala. 572, 68 So. 4 (1915).

Florida – Nicholson v. Good Samaritan Hospital, 145 Fla. 360, 199 So. 344 (1940).

Idaho – Wheat v. Idaho Falls Latter Day Saints Hospital, 78 Idaho 60, 297 P. 2d 1041 (1956).

Mississippi – Mississippi Baptist Hospital v. Holmes, 214 Miss. 906, 55 So. 2d 142 (1951), *aff'd,* 56 So. 2d 709 (1952).

Oklahoma – Gable v. Salvation Army, 186 Okla. 687, 100 P. 2d 244 (1940). See also Sisters of Sorrowful Mother v. Zeidler, 183 Okla. 454, 82 P. 2d 996 (1938).

Utah – Sessions v. Thomas D. Dee Memorial Hospital Ass'n, 94 Utah 460, 78 P.2d 645 (1938). See also Brigham Young University v. Lillywhite, 118 F.2d 836 (10th Cir.), *cert. denied,* 314 U.S. 638 (1941).

States which have never passed on the doctrine: Montana, New Mexico and South Dakota.

[9] See St. Louis, I. M. & S. Ry. v. Dooley, 77 Ark. 561, 92 S.W. 789 (1906); Guilford v. Yale University, 128 Conn. 449, 23 A.2d 917 (1942); Sulhoff v. Everett, 235 Iowa 396, 16 N.W. 2d 737 (1944).

[10] Green v. Church of Immaculate Conception, 248 App. Div. 757, 288 N. Y. Supp. 769 (2d Dep't 1936) (mem. opinion); Davis v. Central Congregational Soc'y, 129 Mass. 367, 37 Am. Rep. 368 (1880); Weigel v. Reintjes, 154 S.W. 2d 412 (Missouri 1941). See Fernquist v. San Francisco Presbytery, 313 P. 2d 192 (Cal. 1957).

[11] Weigel v. Reintjes, note 10 *supra.*

[12] ". . . [F]rom the very nature of religious services and functions . . . there usually exists an express or implied invitation to all persons to enter church premises, nevertheless, such an invitation . . . is necessarily limited to such parts of the premises as reasonably appear to have been designed, adapted and prepared for the accommodation of such persons. . . ." Keck v. Woodring, 201 Okl. 665, 201 P.2d 1133, 1135 (1948). See also Weiss v. Chevera Sward Bussach Ahrih, 279 App. Div. 664, 107 N.Y.S.2d 895 (2d Dep't 1951) (mem. opinion).

[13] Bennett v. Railroad Co., 102 U.S. 577 (1880); Cowart v. Meeks, 131 Tex. 36, 111 S.W. 2d 1105 (1938); RESTATEMENT, TORTS § 332 (1934). A person who is classified as a licensee under the "economic benefit" test might very well be an invitee under the "invitation" test.

[14] McNulty v. Hurley, 97 So. 2d 185, 188 (Fla. 1957).

[15] *Ibid.*

Moreover, contributing to the church does not, in the court's opinion, change the plaintiff's status as beneficiary because ". . . we who give material things to assist in the work of our chosen religious belief receive by so doing."[16] Since the benefit is to the plaintiff and not to the church, she is a licensee rather than an invitee and cannot recover in the absence of wanton negligence or wilful misconduct.

With the growing rejection of the doctrine of immunity of charitable organizations from tort liability,[17] the question whether a churchgoer is an invitee or licensee is likely to receive greater consideration. Because of the uncertainty presently existing as to liability in this area, it is submitted that pastors provide protection against such possible liability through adequate insurance.[18]

Aliens and Sponsors' Affidavits of Support

In the recent case of *Department of Mental Hygiene of the State of California v. Renel*,[1] an agency of the State of California sued defendants for expenses incurred caring for an immigrant alien who had become a public charge. The plaintiff contended that an affidavit of support, given by the defendants to assist the alien's admission into the country, constituted a contract with the United States, upon which the state could sue as a third-party beneficiary. The New York City Court dismissed the complaint on its merits holding that the affiants assumed only a moral obligation, which was legally unenforceable.

Aliens likely to become public charges are denied admission to the United States.[2] While this has been substantially the effect of immigration laws enacted since 1882,[3] no statutory provision has specified the exact type of evidence an alien must submit to show he is not a member of this excluded class.[4]

The initial determination of admissibility is made by the local consular officer in the country from which the alien seeks to emigrate, upon his application for a visa. In the usual case, on the question of becoming a public charge, the consular officer requires evidence that the applicant has or will have (1) sufficient funds in the United States, or (2) adequate income-producing

[16] *Id.* at 189.

[17] See President and Dir. of Georgetown College v. Hughes, 130 F. 2d 810 (D.C. Cir. 1942); Bing v. Thunig, 2 N.Y. 2d 656, 143 N.E. 2d 3 (1957); Lokar v. Church of the Sacred Heart, 24 N.J. 549, 133 A. 2d 12, 17 (1957) (dissenting opinion); 2 HARPER AND JAMES, TORTS 1667-68 (1956); Thornton & McNiece, *Torts*, 32 N.Y.U.L. REV. 312, 327-28 (1957).

[18] Roman Catholics are required by Canon Law to obtain permission from the Bishop before suing the Catholic Church. See CODEX IURIS CANONICI, Can. 120; *cf.* BOUSCAREN AND ELLIS, CANON LAW A TEXT AND COMMENTARY 102 (3d rev. ed. 1957). See also Lokar v. Church of the Sacred Heart, *supra* note 17, at 16.

[1] 8 M.2d 615, 167 N.Y.S.2d 22 (City Ct. 1957).

[2] Immigration and Nationality Act § 212(a)(15), 66 STAT. 183, 8 U.S.C. § 1182(15) (1952).

[3] 22 STAT. 214 (1882); 39 STAT. 874 (1917), as amended, 43 STAT. 153 (1924), 66 STAT. 163, 8 U.S.C. § 1101 (1952).

[4] The immigrant must state: ". . . whether or not he is a member of any class of individuals excluded from admission into the United States." Immigration and Nationality Act § 222(a), 66 STAT. 193, 8 U.S.C. § 1202 (a) (1952). *But see* Refugee Relief Act § 7(a), 67 STAT. 403 (1953), 50 U.S.C. § 1971e (Supp. IV, 1957), which provides: ". . . no visa shall be issued to any alien under this Act unless an assurance [is given] . . . that such alien, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such alien and the members of such alien's family who shall accompany such alien . . . will not become public charges. . . . Each assurance shall be a personal obligation of the individual citizen or citizens giving or submitting such assurance." *Ibid.*

employment awaiting him, or (3) friends and/or relatives assuring his support by submission of an affidavit.[5] No prescribed form is used for this affidavit,[6] nor is there usually an investigation of the affiants.[7] Generally, the affiant's statement contains information on resources, obligations and arrangements made for the immigrant's support.[8]

The *Renel* case appears to present the first clear judicial holding on the legal unenforceability of the affiant's obligation. That the affiant assumes only a moral obligation has been acknowledged in prior decisions by dictum or inference.[9]

The fact that the statement signed by the affiant reads like a contract is meaningless. No administrative official could properly impose contract liability on any person signing such an agreement, unless such a contract was within the purview of the statute or enabling act,[10] through which the governmental administrator derives his authority.[11] The evident lack of contractual intent on the part of the State Department in exacting the affidavit of support sustains the decision of the court.

If an enforceable legal obligation was contemplated by the Immigration and Naturalization Act, it seems reasonable that the statute would have prescribed well-defined limitations concerning the amount of money deemed necessary to have available, the duration of time during which the agreement would be in effect, and other pertinent conditions.[12]

A case with reasoning seemingly contradictory to that of the instant case is *Scimone v. Weaver*[13] decided subsequent to the *Renel* case. There an alien was held bound by the statement signed by her and her sponsor that she would be housed without displacing some other person. The alien came to live with her sponsoring relatives in the lower apartment of a two-family house owned by them. A year and a half later, she purchased a one-half interest therein, and sought to oust the tenant in the upper apartment so that she might herself occupy it. The court denied her application for a certificate of eviction citing her agreement not to displace other persons.

However the two cases are readily distinguishable. Each party entered the country

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[5] AUERBACH, IMMIGRATION LAWS OF THE UNITED STATES 174 (1955).

[6] *Id.* at 175.

[7] S. REP. No. 1515, 81st Cong., 2d Sess. 347 (1950).

[8] AUERBACH, *op. cit. supra* note 5, at 175.

[9] See, *e.g.*, United States *ex rel.* De Sousa v. Day, 22 F.2d 472, 474 (2d Cir. 1927); United States *ex rel.* Smith v. Curran, 12 F.2d 636, 638 (2d Cir. 1926). The exclusion of people likely to become public charges has been widely extended to include among others: a minor whose father would be liable for his support only during minority, Lam Fung Yen v. Frick, 233 Fed. 393 (6th Cir.), *cert. denied,* 242 U.S. 642 (1916); one whom it may be necessary to support at public expense by reason of insanity, disease or idiocy. Wallis v. United States *ex rel.* Mannara, 273 Fed. 509 (2d Cir. 1921).

[10] Immigration Act, 1917, 39 STAT. 874, as amended, 43 STAT. 153 (1924).

[11] GELLHORN AND BYSE, ADMINISTRATIVE LAW 65 (1954); see A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935); Panama Refining Co. v. Ryan, 293 U.S. 388 (1935). *But see* American Power and Light Co. v. SEC, 329 U.S. 90 (1946); Bowles v. Willingham, 321 U.S. 503 (1944).

[12] The fact that there exists a statute, whereby the Attorney-General in his discretion may require the posting of a bond if it is felt that the alien is likely to become a public charge (Immigration and Nationality Act § 213, 66 STAT. 188, 8 U.S.C. § 1183 (1952)), would seem to indicate that the legislature realized the inability of the Act to prevent an alien from becoming a public charge or to provide a legally enforceable remedy therefor.

[13] – M.2d –, 169 N.Y.S.2d 470 (Sup. Ct. 1957).

under different immigration acts[14] imposing different obligations. Also, in the *Scimone* case the alien herself signed a statement agreeing to a prescribed course of conduct,[15] whereas in the *Renel* case the sponsor alone signed an affidavit guaranteeing certain obligations in relation to the alien.

The holding of the court strictly enforcing Scimone's agreement is more easily understood when we consider that the act under which she entered the country[16] was an emergency measure designed to admit refugees from Communist persecution, natural calamity, or military operation.[17] The visas authorized under this act were special non-quota visas apart from those regularly issued under the Immigration and Nationality Act and this, coupled with the then prevailing political atmosphere,[18] would tend to explain the court's decision.

Although the *Renel* decision seems to be a just one, it illustrates the difficulty encountered by consular officers in determining whether an immigrant is "likely to become a public charge." Aware of the legal inefficacy of sponsors' affidavits, the Senate Judiciary Committee has recommended that this requirement be discontinued.[19] The Committee has urged:

> . . . where the admissibility of an alien is questionable as one likely to become a public charge, the consular officer . . . [should] deny the issuance of a visa unless he is in receipt of notice . . . that a suitable bond or other undertaking has been given which provides a proper indemnity in case the alien becomes a public charge after entry.[20]

Inasmuch as the initial determination made by the consular officer as to the likelihood of an alien becoming a public charge is usually controlling in the matter, the requirement of having a bond posted for the alien will not, as the fear has been expressed, greatly diminish the number of aliens who might otherwise have been permitted to immigrate. Those deemed *not likely* to become public charges, if otherwise qualified, are granted a visa; whereas those deemed *likely* to become public charges are denied visas. Therefore the problem relative to the advisability of requiring an indemnification bond arises only in those borderline cases where it is questionable in which category the alien should be placed.

Where a bond is posted for one in this doubtful class, it will enhance his likelihood of being granted a visa. It will not in any way affect whether he does, in fact, become a public charge, but clearly it will relieve the state of the burden of support if he does. On the other hand, those for whom no bond is posted stand in identically the same position they would have stood, had there been no provision for a bond. To this extent the posting of a bond will facilitate the granting of visas to those who otherwise might not qualify.

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[14] *Renel:* Immigration Act, 1917, 39 STAT. 874, as amended, 43 STAT. 153 (1924), *Scimone:* Refugee Relief Act, 1953, 67 STAT. 400, as amended, 68 STAT. 1044 (1954), 50 U.S.C.A. App. § 1971 (1957).

[15] Refugee Relief Act, 1953, 67 STAT. 403, as amended, 68 STAT. 1044 (1954), 50 U.S.C.A. App. § 1971(e) (1957).

[16] Refugee Relief Act, 1953, 67 STAT. 400, as amended, 68 STAT. 1044 (1954), 50 U.S.C.A. App. § 1971 (1957).

[17] AUERBACH, IMMIGRATION LAWS OF THE UNITED STATES 259 (1955).

[18] The political atmosphere prevailing in 1953 was one reflecting apprehension over inroads made by subversive groups within the United States. Hostilities in Korea had just recently subsided and there were several legislative investigative bodies active in government, *e.g.*, McCarthy Committee, Jenner Committee, Velde Committee, et al.

[19] S. REP. No. 1515, 81st Cong., 2d Sess. 349 (1950).

[20] *Id.* at 349-50.