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Torts—Abolition of Doctrine of Charitable Immunities

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did not have notice or could not be charged with notice of the fact that the condition subsequent had been broken.[13]

The rule in this case should not be extended to apply to a brief use of the property inconsistent with the conditions in the deed, followed by resumption of a proper use. In such a situation the grantee should not be able to successfully contend that the power to terminate for any future use inconsistent with the particular condition has been lost.[14] However, the grantee might successfully argue that the grantor should not be allowed to exercise his power to terminate with respect to the prior occurrence of the condition.

TORTS

Abolition of Doctrine of Charitable Immunities. The doctrine of charitable immunity in Washington appears to have been finally abolished by two recent decisions of the Washington Supreme Court. In *Friend v. Cove Methodist Chuch, Inc.*, 65 Wash. Dec.2d 155, 396 P.2d 546 (1964), plaintiffs attended a smorgasbord dinner at defendant's church as "invited members of the public."[1] Directed to a certain door as leading to the kitchen, plaintiff wife opened the door and was severely injured when she fell into an open furnace pit. In the second decision, *Herbert v. Corporation of Catholic Archbishop*, 65 Wash. Dec.2d 165, 396 P.2d 552 (1964), plaintiff attended a Rosary service and was injured when she tripped over a low wire fence. Each plaintiff brought action for personal injuries, alleging negligent maintenance of defendant's premises. The cause of action was dismissed by the trial court in *Friend*, and summary judgment for defendant was granted in *Herbert*. In successive en banc decisions on appeal, *held:* A religious charity may be sued by a non-paying patron for injuries sustained as a result of the charity's negligence, and the defense of charitable immunity from tort liability is abolished.

[13] With respect to adverse possession, the statute of limitations does not begin to run against an adverse possessor until a possession meets all the elements of adversity under the statute. In Washington adverse possession must be open and notorious. Slater v. Murphy, 55 Wn.2d 892, 339 P.2d 457 (1959). The word "notorious" means that for possession to be adverse, it must be such as to give actual or constructive notice of its existence to the land owner. Certainly it is enough if the owner has actual knowledge of the fact. This is not necessary, however, if the acts of possession are such as to charge a reasonable man in the owner's position with notice of adverse possession. Stoebuck, *The Law of Adverse Possession in Washington*, 35 WASH. L. REV. 53, 72 (1960).

[14] See, *e.g.*, Richie v. Kansas, N. & D. R.R., 55 Kan. 36, 39 Pac. 718 (1895); Annot., 39 A.L.R.2d 1116 (1955).

[1] 65 Wash. Dec.2d at 155, 396 P.2d at 547.

A Washington charitable corporation was first held to be immune from liability for the negligence of its servants in *Richardson v. Carbon Hill Coal Co.*[2] This judicially created doctrine appeared to have been judicially abolished in *Pierce v. Yakima Valley Memorial Hosp. Ass'n,*[3] in which the court held that a paying patient in a charitable hospital could recover for an employee's negligence. The court in *Pierce,* sitting en banc, stated its position as follows: "It is our conclusion that there is today no factual justification for [charitable] immunity... and that principles of law, logic, and intrinsic justice demand that the mantle of immunity be withdrawn."[4] Two years later, in the departmental decision of *Lyons v. Tumwater Evangelical Free Church,*[5] the Washington court retreated from its position, holding that charitable immunity still applied to non-financial religious activity. The *Pierce* decision was distinguished: "[T]he *Pierce* case... did not reject the rule of charitable immunity, but merely modified it.... We do not wish to extend the above holding to apply to a non-profit, religious organization which transports children, without charge...."[6] In 1961 the Washington court extended the *Lyons* rationale to a financial, but non-profit, religious activity.[7]

With the decisions in the two principal cases the Washington Supreme Court has done what most authorities[8] thought had been done by *Pierce.* Though no explicit statement in the *Friend* opinion so indicates, a possibility existed under the facts that the church was engaged in a profit-seeking venture.[9] The facts of the *Herbert* case, on the other hand, contain no suggestion whatever of financial benefit to the defendant. Thus it would appear that these combined decisions abolish the "financial" distinction adopted by the court in *Lyons.*

It might be argued that a valid distinction between types of charities can still be made. This distinction seems remote, however, as the court stated in *Friend* that, "The reasons given in [*Pierce*] ... apply no less to churches, colleges, and other charities than to hospitals."[10] Hopefully, it may now be stated with certainty that Washington has joined

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[2] 6 Wash. 52, 32 Pac. 1012 (1893).
[3] 43 Wn.2d 162, 260 P.2d 765 (1953).
[4] *Id.* at 178, 260 P.2d at 774.
[5] 47 Wn.2d 202, 287 P.2d 128 (1955). See Comment, 31 WASH. L. REV. 287 (1956).
[6] *Id.* at 204, 287 P.2d at 130.
[7] Pederson v. Immanuel Lutheran Church, 57 Wn.2d 576, 358 P.2d 549 (1961), 37 WASH. L. REV. 242 (1962).
[8] *E.g.,* 2 HARPER & JAMES, TORTS § 29.17 at 1671-72 (1956); PROSSER, TORTS § 109 at n. 85 (2d ed. 1955).
[9] Brief for Appellant, pp. 5-6.
[10] 65 Wash. Dec.2d at 159, 396 P.2d at 550.

the twenty-two states which have completely repudiated charitable immunity,[11] a trend universally applauded by writers in the field.[12] Barring legislative reversal,[13] Washington will presumably remain there.

Intentional Interference With Contractual Relationship—Malicious Interference With Attorney-Client Relationship. The Washington Supreme court recently decided a case having personal as well as professional interest to the legal profession. Plaintiff, an attorney, was requested by a widow to make arrangements whereby she could continue her deceased husband's business, and initiated probate of the husband's estate. Defendants, tax consultants and certified public accountants, were later retained by the widow to perform the estate's tax work. At defendant's urging, the widow selected another attorney from a list furnished by defendants and terminated plaintiff's employment. Plaintiff, upon inquiry, was informed by defendants that they hired and fired attorneys for their clients. Plaintiff sued for damages in the amount of his expectable attorney's fees, alleging that defendants had intentionally interfered with his employment contract. On appeal from a judgment for plaintiff, *held:* The defense of privilege is not available to a third party who maliciously interferes with a contract terminable at will. *Calbom v. Knudtzon,* 65 Wash. Dec.2d 137, 396 P.2d 148 (1964).

Intentional interference in the contract rights of others is an actionable tort in Washington.[1] The tort consists of an intentional act, committed with knowledge of the plaintiff's economic interest, which interferes with an existing valid contractual relationship or business expectancy of the plaintiff, and causes damage to the plaintiff.[2] The interference may be privileged, however, if its purpose is protection of

[11] See 2 HARPER & JAMES, TORTS 1671 (1956); PROSSER, TORTS § 127 at 1023 (3rd ed. 1964).

[12] *E.g.,* 2 HARPER & JAMES, TORTS § 29.17; PROSSER, TORTS § 127; Spencer, *Ray v. Tucson Medical Center: A Reappraisal of Tort Liability of Charities,* 24 ROCKY MT. L. REV. 71 (1951).

[13] See N.J. REV. STAT. §§ 2A:53A-7-11 (Supp. 1962); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Peck, *The Role of the Courts and Legislatures in the Reform of Tort Law,* 48 MINN. L. REV. 265, 288 (1963).

[1] Titus v. Tacoma Smeltermen's Union, 62 Wn.2d 461, 383 P.2d 504 (1963); Hein v. Chrysler Corp., 45 Wn.2d 586, 277 P.2d 504 (1954); Sears v. International Bhd. of Teamsters, 8 Wn.2d 447, 112 P.2d 850 (1941); Porter v. King County Medical Society, 186 Wash. 410, 58 P.2d 367 (1936); Pacific Typesetting Co. v. International Typographical Union, 125 Wash. 273, 216 Pac. 358 (1923); Seidell v. Taylor, 86 Wash. 645, 151 Pac. 41 (1915); Jones v. Leslie, 61 Wash. 107, 112 Pac. 81 (1910).

[2] RESTATEMENT, TORTS § 766 (1939). See 65 Wash. Dec.2d at 142, 396 P.2d at 151.