

Louisiana Law Review

Volume 30 | Number 2

*The Work of the Louisiana Appellate Courts for the
1968-1969 Term: A Symposium*
February 1970

Private Law: Mandate

Milton M. Harrison

Repository Citation

Milton M. Harrison, *Private Law: Mandate*, 30 La. L. Rev. (1970)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol30/iss2/9>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

MANDATE

*Milton M. Harrison**

The case of *Blanchard v. Ogima*¹ involved the question of the vicarious liability of a principal for the negligence of his agent in causing physical harm. Although the supreme court affirmed the judgments of the district court and court of appeal,² the case is significant because the opinion distinguishes between the basis of liability of a principal for the physical harms of his agent and of a master for the harms of his servant.

Justice Barham, in his excellent opinion for the court, refuses to accept the conclusion of the court of appeal that the relationship of principal and agent establishes that the principal will be liable for the physical harms of the agent, if the agent were acting within the "scope of his authority." The opinion explains that the liability of an employer-master for the torts of his employee-servant is based on the provision of article 2320³ of the Civil Code and that the title "of mandate" is not applicable.⁴ It is pointed out further that the two relationships—master-servant and principal-agent—have been incorrectly used interchangeably by courts.⁵

In *Weinhardt v. Weinhardt*⁶ the facts indicated that the gratuitous mandatory's decisions in handling the principal's estate were "unwise and ill-advised" and the principal would be in much better financial situation had the mandatory made no attempt at administration whatever. The court properly interpreted the Civil Code as providing that in "cases of a gratuitous mandatory liability can only be predicated upon a lack of 'good intentions'."⁷

* Professor of Law, Louisiana State University.

1. 253 La. 34, 215 So.2d 902 (1968).

2. See *Blanchard v. Ogima*, 200 So.2d 374 (La. App. 4th Cir. 1967).

3. LA. CIV. CODE art. 2320:

"Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.

"Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence.

"In the above cases, responsibility only attaches when the masters or employers, teachers or artisans, might have prevented the act which caused the damage, and have not done it."

4. *Blanchard v. Ogima*, 253 La. 34, 38, 215 So.2d 902, 904 (1968).

5. *Id.* at 39 n.4, 215 So.2d at 905 n.4.

6. 214 So.2d 254 (La. App. 4th Cir. 1968).

7. *Id.* at 259. See LA. CIV. CODE arts. 3003, 3006.