

# Louisiana Law Review

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Volume 35 | Number 2

*The Work of the Louisiana Appellate Courts for the*

*1973-1974 Term: A Symposium*

*Winter 1975*

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## Private Law: Torts

William E. Crawford

*Louisiana State University Law Center*

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### Repository Citation

William E. Crawford, *Private Law: Torts*, 35 La. L. Rev. (1975)

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## TORTS

William E. Crawford\*

## CHARITABLE IMMUNITY ABOLISHED

In *Garlington v. Kingsley*,<sup>1</sup> the Louisiana supreme court abolished the doctrine of charitable immunity without condition or exception. The court held that "charitable institutions are not immune from suit in tort and that injured parties proceeding against such institutions need not plead or establish those circumstances which some courts have recognized in the past as exceptions to the so-called rule of charitable immunity."<sup>2</sup> It is unnecessary to detail the history of the doctrine of charitable immunity in this state or to analyze the jurisprudence applying the doctrine, since that has been done thoroughly in an excellent article by Gary L. Boland in the *Louisiana Bar Journal*.<sup>3</sup>

## EXECUTIVE OFFICER LIABILITY

In *Canter v. Koehring Co.*,<sup>4</sup> the Louisiana supreme court summed up the law of so-called executive officer liability. The court stated that a person is liable as an executive officer if he is an "officer, agent, or employee of an employer or principal" and is liable to a third party, even a co-employee, for injuries caused as a result of the "breach of a duty imposed by the employer or principal upon the executive officer."<sup>5</sup>

In *Canter*, decedent was killed while working for a contractor who was erecting a chemical plant for a company which had agreed to provide all labor and equipment necessary to build the plant, including engineering services and the specifications and instructions required to execute the work properly. The death occurred when a crane with a load limit of fifty tons broke while lifting a load of fifty-three tons. The court found that the company had undertaken the duty to furnish the contractor with information as to the weight loads to be lifted by the crane. Further, the company had delegated that responsibility to five of its engineers, who were consequently held liable to decedent's survivors for their negligence.

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\*Professor of Law, Louisiana State University.

1. 289 So. 2d 88 (La. 1974).

2. *Id.* at 93.

3. Boland, *The Abolition of the Doctrine of Charitable Immunity in Louisiana—Garlington v. Kingsley*, 21 LA. B.J. 253 (1974).

4. 283 So. 2d 716 (La. 1973).

5. *Id.* at 718.

Two of the four criteria listed by the court for imposing individual liability<sup>6</sup> upon executive officers are relevant in analyzing what duty is breached when such officers are found liable under Civil Code article 2315:

1. The principal or employer owes a duty of care to the third person (which in this sense includes a co-employee), breach of which has caused the damage for which recovery is sought.
2. This duty is delegated by the principal or employer to the defendant.<sup>7</sup>

The exposure to financial loss thus thrust upon employees of corporations and other business entities smacks of unfairness. Although, by virtue of the negligence of its employee, the company may negligently cause injury to another of its employees, the pocketbook of the company is protected by the workmen's compensation statutory limitation on damages. The negligent employee, on the other hand, is liable for breach of the same duty borne by the entity, but he has a much slimmer pocketbook and no limitation of liability, unless he happens to be fortunate enough to live in those higher echelons covered by company liability policies.<sup>8</sup>

Another disturbing implication of this theory of liability is that the injured workman may now recover fully in tort under circumstances intended to be covered by workmen's compensation, thus undermining the policy purposes for the limited liability imposed by those statutes. To prevent the full brunt of the risk from being placed on those least able to bear it, Louisiana should join the growing list of states which have enacted statutory immunities among co-employees.<sup>9</sup>

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6. The opinion correctly points out that employee liability under the theory in *Canter* differs from that which the employee may suffer as the result of violation of some duty resting upon him alone. *Id.* at 722 n.7.

7. *Id.* at 721.

8. See *The Work of the Louisiana Appellate Courts for the 1973-1974 Term—Insurance*, 35 LA. L. REV. 415, 419 (1975).

9. See Comment, 33 LA. L. REV. 325, 332 (1973). For a list of states which have adopted statutory immunity see *id.* at 333 n.44.