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## CASE DIGESTS

TORTS: Satisfaction of Judgment

*Theobald v. Kenney's Suburban House, Inc.*, 48 N.J. 203, 225 A.2d 10 (1966).

A car went out of control and came to rest partly on the plaintiff's property and partly on the street. A township police officer parked behind the car. As the plaintiff was standing between the first car and the police car, a car driven by one Conaty crashed into the rear of the police car, crushing the plaintiff. The plaintiff sued Conaty, and later named the driver of the first car, the policeman and the township as additional defendants. After settling with Conaty and the driver of the first car, the plaintiff had judgment against the policeman and the township. The plaintiff then brought the present suit against Kenney's on grounds that it too was responsible for his injuries in that it had sold liquor to Conaty when he was intoxicated. Kenney contended that the plaintiff could not sustain the action because the judgment against the policeman and the township had been paid and satisfied. The trial court agreed and gave judgment for Kenney's.

On appeal, *held*: affirmed.

In *Hackett v. Hyson*, 72 R.I. 132, 48 A.2d 353 (1946) the Rhode Island Supreme Court concluded that the 1939 Uniform Contribution Among Tortfeasors Act, adopted in that state, overturned the common law rule that the discharge of one joint tortfeasor by satisfaction of a judgment against him discharges all other joint tortfeasors. The court relied especially on section three of the 1939 Uniform Act, which provided: "The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors."

The plaintiff in *Theobald* pointed out that New Jersey also had a statute permitting contribution among joint tortfeasors and he insisted that this statute, like Rhode Island's, nullified the common law rule. The New Jersey Supreme Court rejected the plaintiff's argument and applied the common law rule. The court noted that although New Jersey had enacted a contribution statute, it did not adopt the 1939 Uniform Act and, further, that the highest court in Pennsylvania, another state which had passed the 1939 Uniform Act, had refused to follow the *Hackett* rationale. (*Hilbert v. Roth*, 395 Pa. 270, 149 A.2d 648 (1959)).

The 1939 UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT section three was revised in 1955. Section 3(e) of the revised act, in-

tended to replace section three of the 1939 Uniform Act, reads: "The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death *unless the judgment is satisfied*. The satisfaction of the judgment does not impair any right of contribution." 9 UNIFORM LAWS ANNOTATED § 3(e), at 128 (Supp. 1966) (emphasis added). A Commissioners' Note explains that revised section 3(e) "simply states the well established rule that the injured party in obtaining judgment against one joint tortfeasor does not thereby discharge the others, although there may, of course, be but one satisfaction of the claim." 9 UNIFORM LAWS ANNOTATED § 3, at 129 (Supp. 1966). Revised section 3(e) thus appears to be a direct disaffirmance of the *Hackett* holding. However only two states, Massachusetts and North Dakota, have adopted the 1955 revision of the 1939 Uniform Act. 9 UNIFORM LAWS ANNOTATED 123 (Supp. 1966).

Nebraska adheres to the common law rule that satisfaction of a judgment against one joint tortfeasor bars an action against another. *Hayes v. Payne Inv. Corp.*, 127 Neb. 24, 254 N.W. 684 (1934); *Irwin v. Jetter Brewing Co.*, 101 Neb. 409, 163 N.W. 470 (1917); *Bryant v. Reed*, 34 Neb. 720, 52 N.W. 694 (1892). However, settlement ahead of trial with one joint tortfeasor does not prevent the plaintiff from bringing an action against other joint tortfeasors unless the settlement terms so stipulate. *Fitzgerald v. Union Stockyards Co.*, 89 Neb. 393, 131 N.W. 612 (1911). The settlement operates only as a pro tanto bar to the plaintiff's subsequent recovery from other joint tortfeasors. *Fitzgerald v. Union Stockyards Co.*, 89 Neb. 393, 131 N.W. 612 (1911); *Tober v. Hampton*, 178 Neb. 858, 136 N.W.2d 194 (1965).

There is no statute in Nebraska allowing contribution among joint tortfeasors, and the Nebraska Supreme Court has held that such contribution is not permitted. *Tober v. Hampton*, 178 Neb. 858, 136 N.W.2d 194 (1965).

There are good policy reasons for the rule that satisfaction of a judgment against one tortfeasor bars a suit against another arising out of the same cause of action. Allowing the plaintiff to bring a series of suits against alleged tortfeasors would increase court congestion and give the plaintiff an unfair advantage over subsequent defendants in weeding the defects out of his case. The rule appears particularly sound in jurisdictions which permit liberal joinder of defendants.

## STATE AGENCIES: Waiver of Sovereign Immunity

*Stadler, Adm'rx. v. Curtis Gas, Inc.*, 182 Neb. 6, — N.W.2d — (1967).

Deceased was injured on May 20, 1965, in a gas explosion caused by a defective valve on a water heater in a residence leased by the deceased from the defendant, Board of Regents of the University of Nebraska. The deceased died on June 7, 1965, as a result of the injuries sustained in the explosion. The deceased's administratrix alleged that Curtis Gas, Inc. had notified the Board of Regents that the valve was defective but that each defendant had failed to repair the heater or notify the deceased of its defective condition; and that the Board of Regents was negligent in failing to keep the premises in a safe condition and in failing to warn the deceased of the defective valve. The Board of Regents is a direct agency of the state, but the plaintiff alleged that the Board of Regents was acting "beyond the scope of any governmental capacity for which it was created" in leasing the property to the deceased. Because of the proprietary nature, rather than the governmental nature of its act, the Board of Regents was allegedly subject to liability. The Board of Regents contended that it was an agency of the state and as such was immune from liability. A lower court sustained a general demurrer filed by the Board of Regents. On appeal, *held*: judgment reversed and remanded for further proceedings. The court reasoned that there was no relationship between the Board of Regents and the deceased other than that of landlord and tenant, and that the leasing of the property by the Board of Regents was in the same nature and capacity as that of private parties leasing dwelling houses for rent. It premised liability on the fact that the Board of Regents was engaged in a business as distinguished from a governmental operation.

The rule prior to this case seems to have imposed liability on agencies of the state government when these agencies were doing business as commercial enterprises. Thus, as long as the state agency, such as a public power district, engaged in a business or industrial activity over a period of time, then it was presumed to have waived immunity from liability as well as immunity from suit. *Sorensen v. Chimney Rock Pub. Power Dist.*, 138 Neb. 350, 293 N.W. 121 (1940); *Platte Valley Pub. Power & Ir. Dist. v. County of Lincoln*, 144 Neb. 584, 14 N.W.2d 202 (1944). These cases indicate that the agency had to be organized primarily for a commercial or business purpose as opposed to one which might incidentally engage in a proprietorship function. The rule in *Stadler* seems to extend liability to a state agency whenever it engages in business activity rather than in governmental activity, disregard-

ing the purposes for which the agency was organized. If this is so, then the court has gone a long way towards abolishing the ancient doctrine of "sovereign immunity." The case was remanded to determine whether there was any basis of liability on the part of the Board of Regents to the plaintiff.

Newton, J., White, C. J., and Carter, J., dissented on the ground that the abolishment of the sovereign immunity doctrine is a function of the legislature, and not of the judiciary.

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