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Torts: State Liability for Torts of Convicts under State Tort Claims Act

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TORTS: STATE LIABILITY FOR TORTS OF CONVICTS UNDER STATE TORT CLAIMS ACT. It is a well-settled common law rule that in the absence of statutory or constitutional provision, a state cannot be sued in tort.[1] This note deals with an interesting case requiring interpretation of a statutory exception to the common law rule.

In 1951, the North Carolina legislature enacted the State Tort Claims Act.[2] This act empowered the State Industrial Commission to grant awards up to $8,000 for injuries to innocent third parties caused by the negligence of *employees* of any department, institution, or agency of the state within the scope of their employment.[3] The enactment of this act showed a legislative intent to apply some limitations to the doctrine of sovereign immunity, a principle which has defeated hapless claimants with monotonous regularity.

In *Alliance Co. v. State Hospital at Butner*,[4] the Supreme Court of North Carolina reversed a judgment for the plaintiff in the Superior Court, holding that the State Tort Claims Act was not intended to relieve claimants who were injured by the negligence of a prisoner acting within the scope of his authority in carrying out state activities under the orders of prison officials. An inmate of the Umstead Youth Center, an agency of the State of North Carolina,[5] while operating a state-owned vehicle in the performance of duties assigned to him by his superiors, was involved in an accident causing damage to the claimant. There was no dispute in the facts that the inmate was negligent and that there was no contributory negligence on the part of the claimant.

The only question resolved in the case was whether or not the inmate was a state employee within the scope of his employment at the time of the accident. The problem of who would be an *employee* under the act was recognized in an article[6] discussing the act, which stated:

> "A number of problems . . . will inevitably arise in the administration of the new law and will be resolved by judicial interpretation: . . . (2) Who is included in the meaning of the term *employee?*"[7] (Emphasis added.)

In rendering their decision, the Supreme Court discussed statutory interpretation, but relied heavily on the definition of the term employee in Webster's New International Dictionary, where an employee was defined as "one who works for wages or salary in the service of an employer."[8] The court also cited other cases[9] in support of their interpretation of the word "employee," and from these cases concluded that the relation of employer and employee is essentially contractual, and is to be determined by the rules governing the establishment of contracts. The cases cited, however, were proceedings under a workmen's compensation act, the facts of which were not analogous to the facts in the case under consideration. Workmen's compensation acts deal with liability to an employee. The act which is the subject of the litigation in the present case deals with liability to third parties. It would seem then, that in this case there is need for a more exhaustive definition of the term "employee." It is

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[1] 81 C.J.S. *States* 1137 § 130 (1953).
[2] N.S. SESS. LAWS 1951 c. 1059.
[3] The act provides: ". . . resulting from a negligent act of a State *employee*. . . ." (Emphasis added.)
[4] 241 N.C. 329, 85 S.E.2d 386 (1955).
[5] Authorized by N. C. SESS. LAWS 1949 c. 297.
[6] Note, 29 N.C.L. REV. 416 (1951).
[7] *Id.* at 420.
[8] See note 4 *supra* at 331, 85 S.E.2d at 389.
[9] Borders v. Cline, 212 N.C. 472, 193 S.E. 826 (1937); Hollowell v. North Carolina Department of Conservation and Development, 206 N.C. 206, 173 S.E. 603 (1934).

obvious that one employed is an employee. One authority in the field presents a convenient question and answer to the problem of the meaning of the term "employed":

> "Does 'employed' imply that there must be a hiring? It would seem so, but the Restatement . . . states the well established rule that *no compensation is necessary. Nor need there be a contract.*"[10] (Emphasis added.)

The Restatement has recognized this principle elsewhere, stating that a servant is:

> "(1) A person *employed* to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control."[11] (Emphasis added.)

Taking the term "employed" as interpreted by Mechem and the Restatement, how does this apply to a prisoner? A recent article,[12] in discussing denial of prisoners' claims under the Federal Tort Claims Act,[13] describes the status of a prisoner as follows:

> "Prison discipline means, conventionally, the regulation or attempt at regulation of all the details of the life of the prisoner by means of rules. The prisoner is permitted to do nothing except under the direction of officers of the prison."[14]

Therefore, it would seem that a better analysis of the word "employed" might not make it imperative to include the terms "wages," "contractual," or "hire." How, then, could this reasoning be applied so as to include prisoners within the meaning of the term "employee" under the State Tort Claims Act? Conceding strict interpretation of statutes waiving sovereign immunity,[15] could it be applied on public policy? Indeed, it has been done.[16] In *Washington v. State*,[17] where a convict was allowed recovery against the State of New York when injured by the negligence of a fellow inmate, the court said:

> "However, when the State undertakes to perform one of its functions through the medium of such inmates and directs them, as it did here, to perform certain duties, under immediate supervision of a State employee, then the State makes such inmates its agents and *employees* while in the performance of such duties, at least to the extent of rendering the State liable for their tortious acts in the performance of such duties."[18] (Emphasis added.)

And in *Robinson v. State*,[19] in an action by a convict for the state's negligence in failing to provide a reasonably safe place to work, the court said:

> ". . . though employed while confined in a penal institution of the State, the claimant stands on the same footing as any other *employee*. . . ."[20] (Emphasis added.)

The reasoning in the *Washington* and *Robinson* cases is in accord with the dissent in the case under consideration. In holding that the state should be liable for torts of its prisoners while performing duties authorized by the state, the dissenting judge

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[10] MECHAM, AGENCY § 280 (4th ed. 1952).
[11] RESTATEMENT, AGENCY § 220 (1933).
[12] Note, 63 YALE L.J. 418 (1954).
[13] 28 U.S.C. § 1346, 2671-80 (1948).
[14] See note 12, *supra* at 425 n. 53.
[15] Floyd v. North Carolina State Highway and Public Works Commission, 241 N.C. 461, 85 S.E.2d 703 (1955); Van Zuch v. U. S., 118 F.Supp. 468 (1954); Shew v. U. S., 116 F.Supp. 1 (1953); Sigmon v. U. S., 110 F.Supp. 906 (1953).
[16] Washington v. State, 277 App.Div. 1079, 100 N.Y.S.2d 620 (1950); Sullivan v. State, 257 App.Div. 893, 12 N.Y.S.2d 504 (1939); Wilson v. State Highway Commissioners, 174 Va. 82, 45 S.E.2d 746 (1939).
[17] 277 App.Div. 1079, 100 N.Y.S.2d 620 (1950).
[18] *Id.* at 1081, 100 N.Y.S.2d at 621.
[19] 242 App.Div. 94, 273 N.Y.S. 465 (1934).
[20] *Id.* at 98, 273 N.Y.S. at 468.