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Stare Decisis - Liability of Municipal Corporations for Tort

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NOTE AND COMMENT

STARE DECISIS—LIABILITY OF MUNICIPAL CORPORATIONS FOR TORT.—Courts are charged with the duty of declaring the law. They are also required to decide cases. Either one of those functions might be performed with comparative ease if it were divorced from the other, but when the court is simultaneously obliged to do both, the difficulties are very apparent. To decide a case and at the same time to declare the law means that the court is required to generalize every legal proposition upon which it acts in making its decision. But judges are not omniscient. Who can so fully understand the logical implications and the latent possibilities of any rule of law that he can safely announce it as a perpetual guide for the future? This the judges are nevertheless expected to do, for if the law is to be available and certain, its rules must not only be fully formulated but consistently adhered to. The rule of *stare decisis* is a necessary judicial protection extended to the people.

But it is very obvious that the rule cannot be applied rigidly if the law is to keep pace with society as it changes its ideas of legal relations. More or less departure from precedent is constant and inevitable. The common law has for centuries effected such changes by “distinguishing” those cases which
ought not to be governed by the canonized rule. In some cases the courts
frankly announce their dissent from the old rule and state a new one. But
more frequently they accomplish the same result by "distinguishing" the case
before them from the case which announced the precedent. This preserves
the appearance of consistency, and at the same time introduces a "variable"
into the operation of the rule while preserving the rule itself with whatever
value it may possess. In this way the rule is "administered" with a view to
keeping its good features and eliminating its bad ones. Within limits the
courts are thus able to accomplish the useful and difficult task of shooting
so as to "hit it if it is a bear and miss it if it is a cow".

No rule has been "distinguished" away in more cases than the rule that
cities are not liable for torts arising out of the performance of governmental
functions. An interesting case has just been decided in Iowa. The city of
Sioux City purchased an automobile for its police department. One day the
authorized driver of the car was using it under the orders of his superior
to haul policemen to their beats in different parts of the city, and he neglig-
ently caused it to run into the car in which plaintiff's testate was riding,
resulting in her death. The court conceded the general rule and then suc-
cessfully avoided its effect by holding that the hauling of policemen to their
beats in an automobile was not necessary for the enforcement of peace and
order, but was only a convenience for the policemen; therefore the act was
not governmental but corporate, and the city was liable. Jones v. Sioux City
(Iowa, 1919), 170 N. W. 445.

The process of "distinguishing" as a substitute for overruling is one which
can be carried too far. At most it is a provisional evolutionary process, which
ought to be eventually followed by a restatement of the rule itself. If this
is not done the law becomes a mass of special instances buried in a jungle
of specious argument and logical subtlety. The "distinguishing" process should
only serve as a means for approximating the true rule. Employed for that
purpose it preserves to the common law the vital element of adaptability
which has always kept Anglo-Saxon legal conceptions responsive to the needs
of a constantly changing social order.

In the instance here referred to, it might be asked whether the distin-
guishing process was not carried far enough to justify the court which an-
nounced the decision in restating the rule in the interests of a broader justice.
The maritime law, which is operative in our country concurrently with the
common law, has been held to require no such limitation on municipal liabil-
ity as that here referred to. If a New York City fire-boat negligently rams a
vessel while going to a fire, the city is liable for the damage, while a New
York city fire-engine can negligently smash every vehicle on the street with
perfect impunity.—Workman v. New York City, 179 U. S. 552. And if a
Chicago city fire-boat while throwing water on a burning elevator carelessly
allows the spray to damage a neighboring vessel, the city is liable, although
if the water came from a fire-hydrant on shore the owner of the property
injured by it would be without a remedy. City of Chicago v. White Transpor-

In the Workman Case, supra, the Court, speaking through Justice White,
emphasizes the wrong and injustice which would result from a rule exempting a municipal owner of a fire-boat from answering in damages for injuries negligently done to private property, and confesses an unwillingness to countenance "the evil consequences growing from thus implanting in the maritime law the doctrine that wrong can be done with impunity". This revolt against the common law rule was vigorously assailed by four of the nine judges of the court in a long opinion based squarely on the doctrine of "stare decisis". But when the Chicago Case came up, seventeen years later, there was no effort made to reopen the question.

Legislation is inadequate as a corrective for the rule of stare decisis, and the courts should doubtless be constantly alive to the necessity of keeping the law flexible and also unencumbered with an unnecessary cloud of distinctions.

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