GOOD SAMARITAN LAWS—GOOD OR BAD?

By WILLIAM WHEELER BRYAN*

In March of 1962 the General Assembly of Georgia passed a "Good Samaritan Statute." It is the purpose of this comment to examine that statute and similar statutes in order to determine the present status of liability in regard to one who rendered aid in an emergency when there is no duty upon him to act.

JUDICIAL HISTORY

It is recognized law that for a plaintiff to recover in a tort action for negligence, there must be a right on the part of the plaintiff, a duty owed by the defendant to the particular plaintiff, a breach of that duty by the defendant, and harm as the result of the breach of duty.[1] Duty has been defined as " . . . that which the law requires to be done or forborne to a determinate person, or to the public at large, being correlative to a right vested in such person, or in the public."[2] The breach of duty is the failure to come up to the "standard of conduct"[3] imposed on the defendant by the relation between the defendant and plaintiff. Lord Esher said, and it is applicable to our law, "(T)he question of liability for negligence cannot asise at all until it is established that the man who has been negligent owed some duty to the person who seeks to make his liable for his negligence. . . . A man is entitled to be as negligent as he pleases toward the whole world if he owes no duty to them."[4]

Therefore, the law places no liability on a person when there is no duty on that person to act, notwithstanding that person has the capacity to alleviate injury or further harm to an endangered or injured person.[5] The law ordinarily does not undertake to dictate to the public its morals or humanistic duty.[6] This is the legal situation to which the term "Good

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1. PROSSER, TORTS §35 p. 165 (2d ed. 1955). Accord: 38 AM. JUR. *Negligence* §11 nn. 15, 16, 17, 18, 19 (1941); Western Union Tel. Co. v. State, 82 Md. 293, 33 A. 763 (1896); 38 AM. JUR. *Negligence* §§12, 14 (1941); 65 C.J.S. *Negligence* §2 p. 324 (1950).
2. Smith v. Clark Hardware Co., 100 Ga. 163, 28 S.E. 73 (1897).
3. PROSSER, TORTS 165, 191-199 (2d ed. 1955).
4. LeLievre v. Gould, [1893] 1 Q. B. 491, 497.
5. 38 AM. JUR. *Negligence* §16 (1941); 65 C.J.S. *Negligence* §4 (1950); Fickers v. Southern Cotton Oil Co., 40 Ga. App. 841, 151 S.E. 688 (1930); Phillips v. Roy-Jean, Inc., 84 Ga. App. 38, 65 S.E.2d 617 (1951).
6. Furthermore, it has been held that " . . . if a defendant owes a plaintiff no duty, then refusal to act is not negligence." Lelenko v. Gimbel Bros. 158 Misc. 904, 287 N.Y.S. 134, *aff'd*, 247 App. Div. 867, 287 N.Y.S. 136 (1936). Note, 35 MICH. L. REV. 503 (1936). See also Palsgraf v. L. I. R. R. Co., 248 N.Y. 339, 162 N.E. 99 (1928).

Samaritan Doctrine"[7] has been applied. Morals and a general benevolent attitude toward humanity may move a person who is unconnected with an incident to go to the aid of the injured. But the law imposes on such a person no legal duty or obligation to do so, and the injured has no basis for legal complaint against the person who fails to so assist.[8]

One who owes no duty to act who, nevertheless undertakes to assist, assumes a duty and acquires a legal obligation to assist with due care " . . . and to exercise some degree of care and skill in the performance of what he has undertaken; [and], for non-performance [of the assumed duty and acquired legal obligation of care and skill] an action lies."[9] The voluntary rendering of aid, so as to take control of the situation, subjects the volunteer to a duty and this duty places him in a position to be held liable for failure to use reasonable care in rendering aid.[10]

7. Luke 10:30-37. The Good Samaritan will be remembered as the person who assisted the stranger after the priest and Levite had passed by.

8. 38 AM. JUR. *Negligence* §160 p. 658 n. 4 (1941). "One is under no legal duty to respond to cries for help from a person clinging to an overturned canoe in deep water." Osterlind v. Hill, 263 Mass. 73, 160 N.E. 301 (1928); also WINDFIELD, CASES ON THE LAW OF TORTS 404 (4th ed. 1948): "No ordinary bystander is under a duty to attempt the rescue of a child from drowning in what he knows to be shallow water." Contra: Bohlen, *The Moral Duty to aid others as a basis of tort liability*, 56 U. PA. L. REV. 217 (1908); Bohlen, *The Moral Duty to aid others as a basis of tort liability*, 56 U. PA. L. REV. 289, 334-337 (1908). "Judicial reluctance to require positive action was a concommitant of the individualistic premises inherent in the common law; not only was a person considered capable of taking care of himself, but the imposition of criminal or civil liability for the purposes of encouraging beneficient action or redistributing loss seemed an unwarranted limitation on personal freedom." Note, 52 COLUM. L. REV. 631, 632 (1952); PROSSER, TORTS §18, 184-185 (2d ed. 1955). Many foreign states have statutes which impose a duty upon persons to aid others in peril. R.S.F.S.R. PEN. CODE art. 156 (1), art. 157, and art. 158 as amended May 10, 1937 for the STATUTES OF THE SOVIET UNION, and DUTCH CODE art. 450 ( ). For an excellent discussion on the foreign statutes see note, 52 COLUM. L. REV. 631 (1952). Also many of the United States have statutes that require a person involved in an automobile accident to stop and render aid. See for example: GA. CODE ANN. §§68-1619, 68-1621 (1933); ILL. ANN. STAT. ch. 95½ §133-143 (1958); LA. REV. STAT. tit. 32 §414 (d) (1950); KAN. REV. STAT. ch. 189 §580 (1949); VA. ANN. CODE §46.1-176 (1950); WY. STAT. ANN. §31-218 (1957); PA. STAT. ANN. tit. 75-1027 (1960); MICH. LAWS ANN. §257-617-619 (1957); MD. CODE ANN. art. 66½ §199-204 (1957); MISS. CODE ANN. §§8161-8172 (1942); WIS. STAT. ch. 346 §67 (1957).

9. 38 AM. JUR. *Negligence* §17 p. 659 (1941). Accord: Northwest Airlines, Inc. v. Glenn L. Martin Co., 224 F.2d 120 (6th Cir. 1955), *rehearing denied*, 229 F.2d 434 (1955), *cert. denied*, 350 U.S. 937, 76 S.Ct. 308, 100 L.Ed. 846 (1956); Haralson v. Jones Truck Lines, 223 Ark. 813, 270 S.W.2d 892 (1954); 65 C.J.S. *Negligence* §58 p. 551 (1941); Schedler v. Wagner, 37 Wash.2d 612, 225 P.2d 213, rehearing denied, 230 P.2d 600 (1951); Owl Drug Co. v. Crandall, 52 Ariz. 322, 80 P.2d 952 (1938); Clare v. State, 195 Misc. 581, 89 N.Y.S.2d 132 (1949). However, some jurisdictions have held the person who volunteers his assistance responsible for the same duty of care as one who is under a legal obligation to render care and assistance. 65 C.J.S. *Negligence* §58 p. 552 (1941); Gates v. Chesapeake and O. Ry. Co., 185 Ky. 24, 213 S.W. 564 (1919).

10. PROSSER, TORTS §38 p. 186 (2d ed. 1955). See generally: Slater v. Illinois Cent. R.R. Co., 209 F. 480 (C.C. Tenn. 1911); Yazoo and M.V.R. Co. v. LeFlar, 168 Miss. 255, 150 So. 220 (1913); Thomas v. Williams, 105 Ga. App. 321, 326, 124 S.E.2d 409, 413 (1962), which states that the general rule is that " . . . a per-

The basic reason for the imposition of this liability on one who owes no duty, but who acts, is that (1) there is an express negligent action on the part of the volunteer which harms the plaintiff, (2) or the act of the volunteer causes the plaintiff to believe that the danger to him has passed or (3) the act of the volunteer has caused others who possibly could have helped not to do so in reliance upon the assistance given by the volunteer.[11] Thus a person who goes to the assistance of an injured or endangered person, to whom he orginally owed no duty, acquires a potential liability which other persons, by virtue of their inaction, do not.

Some jurisdictions have placed an added prerequisite to the basic requirement of liability of the person rendering or attempting to render aid to an injured or endangered party. The person who volunteers such aid must, by his expressed actions, have made the situation of the injured person *worse* than it was before the aid was volunteered.[12] The Restatment of Torts states in Section 324:

> One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge; (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.

Under this section several jurisdictions have held that for a person to be held liable after having rendered aid when there was no original duty to do so he must " . . . put the other in a worse position than he was in before the actor attempted to aid him."[13] Section 323 of the Restatement of Torts applies when assistance is given to persons who are not helpless and are able to aid themselves, while Section 324 applies to rendering assistance to persons who are helpless and are not adequately able to care for themselves. Section 323 says no one is liable for discontinuing aid " . . . if he does not thereby leave the injured in a worse

son has no legal duty to assist another human being who is in danger. However, where some special relation exists between the parties, social policy may justify the imposition of a duty to assist or rescue one in peril." See also PROSSER, TORTS §38 p. 184 (2d ed. 1955).

11. PROSSER, TORTS §38 p. 187 (2d ed. 1955).
12. RESTATEMENT, TORTS §324 (1938).
13. Erie R.R. Co. v. Stewart, 40 F.2d 855 (6th Cir. 1930); Kudrynski v. Uhryn, 89 N.H. 400, 200 A. 416 (1938); Podespik v. Worcester Consol. St. R.R. Co., 216 Mass. 213, 103 N.E. 638 (1913); Slater v. Illinois Cent. R.R., 209 Fed. 480 (M.D. Tenn. 1911); Durham v. Village of Canister, 303 N.Y. 489, 104 N.E.2d 872 (1852). See annot., 5 A.L.R. 513 (1920); annot., 120 A.L.R. 1525 (1939); 38 AM. JUR. *Negligence* § 17 p. 660 (1941). *But compare*: Griswold v. Boston and M.R.R., 183 Mass. 434, 437, 67 N.E. 354, 356 (1903).

position than he was in when the services were begun."[14] Section 324 says that one is liable for discontinuing such aid when such is being rendered to one helpless and inadequate to care for himself. In the final analysis both sections say that the discontinuance of assistance, when such places the injured in a worse position, will render the volunteer liable for negligence.

STATUTES CONSTRUED

Statutes have been enacted by various legislatures throughout the United States to relieve such a "Good Samaritan" from liability. In 1962 the General Assembly of Georgia enacted the following provision:

> Any person, including those licensed to practice medicine and surgery pursuant to the provisions of this chapter [Chapter 84 of the Code of Georgia], and including any person licensed to render services ancillary thereto, who in good faith renders emergency care at the scene of an accident or emergency to the scene of an accident or emergency to the victim or victims thereof without making any charge therefor, shall not be liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.[15]

Since there have been no cases construing the above statute, it is necessary that it be discussed in terms of possible construction. It will be noted that the statute is directed to "(A)ny person" and, therefore, is not limited in its applicability to any particular class, group or profession. It does state that included in these "persons" are those " . . . licensed to practice medicine and surgery pursuant to the provisions of this chapter" [Chapter 84 of the Code of Georgia] and goes on to include " . . . persons licensed to render services ancillary thereto . . . "[16] Thus the statute is not limited in its effect to only physicians and surgeons, as many statutes of this nature do,[17] but provides protection to "any person" who gratitutiously renders the assistance. It would seem that the purpose of the clause stating that licensed physicians and surgeons, and other ancillary persons are included in the protection of the statute, is to provide them with an unequivocal exemption. Problems could arise, however, when the phrase " . . . . those persons licensed to

14. RESTATEMENT, TORTS §324 (1938).
15. Ga. Laws 1962, p. 534, GA. CODE ANN. §84-930 (1933).
16. *Ibid.*
17. Neb. Laws c. 110, p. 348 (1961); Cal. Bus & Prof. Code §2141 pp. 208-209 (1961); Okla. Stat. Ann. tit. 59 §518 p. ___ (1961); Mass Gen. Laws Ann. ch. 112 §12B p. 20 (Vol. 4 Supp. 1962). See the discussion on this subject in Note, 41 NEB. L. REV. 609 (1962); Note, 51 CALIF. L. REV. 816 (1963); 69 Case and Com. No. 2 13-18 (Mar.-Ap. 1964).

render service ancillary thereto . . . " is construed. Apparently this applies to ambulance drivers and assistants, nurses, technicians and other professional like personnel who have occasion to render aid in connection with their jobs. Regardless of the construction of this phrase such persons should be exempt due to the all incompassing introductory provision of "any person."

In connection with the construction of this statute as well as similar statutes, there may arise a question as to who is covered by the provision extending to persons licensed to practice pursuant to a certain state provision setting out the rules and regulations governing the licensing of physicians, surgeons and other such persons. Since such "Good Samaritan" statutes apply only to physicians, surgeons and others licensed in the particular state covered by the statute, a person licensed to practice in another state can not claim exemption from liability under a "Good Samaritan" statute which is applicable only to licensed physicians, surgeons and other such persons. Therefore, an out-of-state physician, although licensed to practice in his own state, would be held liable under the law applicable to persons who volunteer aid. He would not be exempt from liability under the "Good Samaritan" statute unless such a statute was applicable to "any persons" as is the Georgia statute. Such an out-of-state licensed physician would undoubtedly be held on the theory that a stranger to a situation owes no duty to give emergency aid but if he attempts to give, or does give, aid to an injured person he then assumes a legal duty to give aid with due care and skill. This situation was narrowly avoided by a physician and county medical examiner in the Virgin Islands. Dr. Robert S. Thorpe of Hyannis, Massachusetts was vacationing in the Virgin Islands and responded to a call for aid to a person accidentally electrocuted. Dr. Thorpe first applied mouth-to-mouth resuscitation and then external heart massage both of which failed to produce a favorable effect on the injured man. Dr. Thorpe then performed a thoractomy (incision cut into the chest so as to expose the heart) and massaged the heart internally. However, this produced no better results and the man died. Dr. Thrope was faced with a charge of practicing medicine without a license and possible homicide charges. Fortunately the former charge was dropped and the latter extinguished when the coroner declared the death undetermined as to the cause and concluded in his dual capacity as municipal judge that the victim died due to a combination of circumstances for which no one could be held criminally responsible due to an unavoidable accident.[18] Thus, it seems

18. Schwartz and Everberg, *Liability of Medical Assault and Battery*, MED. TRIAL TECH. Q. 139-46 (1963 Annual); See Okla. Stat. Ann. tit. 59 §492 (1961), for a statute which satisfies this problem. See further Cal. Bus & Prof. Code Ann. §2144 pp. 208-209 (1961).

advisable that a "Good Samaritan" statute should not limit itself to only persons licensed to practice in the adopting state but should include persons duly licensed by any of the several states.

There is another objection to this statute in that it limits the exemption from liability to events occurring only at the scene of the accident or emergency. It would seem that such exemption should extend from the time the volunteer assumed control of the situation by his overt act at the scene of the accident or emergency until the injured person is capable of caring for himself, or someone competent assumes control of the situation from the volunteer.[19] As will be noted below in reviewing similar statutes of other states, several relieve the volunteer from liability both at the scene of the accident and in providing further assistance to such injured persons.

It is further noted that the Georgia statute as well as most other similar statutes exempt the physician or surgeon from liability only when such emergency aid is rendered gratuitously or " . . . without making any charge therefor . . . " However, many doctors feel that there should always be some charges, even if nominal, for services rendered so that there will be no implication that such services are worthless or so that an implication of negligence will not arise from the lack of a charge.[20] This appears to be another complication, arising in the application of this type statute, that apparently was not considered when the Good Samaritan laws were enacted.

There are many variations in the statutes enacted by the different states on this subject. Some states limit the exemption from liability to only physicians and surgeons and/or nurses licensed to practice in that particular state[21] while other states extend the coverage to physicians,

19. 38 AM. JUR. *Negligence* §17 p. 660 (1941).
20. MEDICAL ECONOMICS 110, 114 (Sept. 23, 1963).
21. MONT. REV. CODE 17-410 §2, ch. 93 (Supp. 1963); ME. REV. STAT. ANN. c. 66 §9-A (2 Me. Supp. 1961); Burns Ind. Stat. §63, 1361 (2 Burns Supp. 1963, Vol. II part 2); Md. Ann. Code art. 43-149A (Supp. 1963); Utah Code Ann. §58-12-23 (6 Supp. 1963); Wy. Stat. Ann. §33-343.1 (8 Supp. 1963); Va. Code §54-276.9 (7 Supp. 1962); Mass. Gen. Laws Ann. ch. 112 §12B (4 Supp. 1962); Neb. Laws c. 110 p. 348 (1961); Cal. Bus & Prof. Code Ann. §2144 pp. 208-209 (1961). See Notes of Decisions, Cal. Bus & Prof. Code Ann. §2144 pp. 208-209 (1961), for an annotation of this statute citing cases deciding whether certain circumstances were emergencies and whether this statute was applicable. Some of the principal cases cited in this annotation are: People v. Lee Wah, 71 Cal. 80, 11 P. 851 (1886); People v. Collins, 4 Cal. App. 2d 86, 40 P.2d 452. (1935), Rilcoff v. State Board of Medical Examiners, 90 Cal. App. 2d 603, 203 P.2d 844 (1949); and Newhouse v. Osteopathic Examiners 159 Cal. App. 2d 728, 324 P.2d 687 (1958). CONN. REV. STAT. §52-557 (b) (9 Supp. 1963) (immunity did not extend to acts or omissions constituting gross, willful or wanton negligence); N. MEX. STAT. §12-12-3 (3 Supp. 1963) (§12-12-4 defines an emergency); N. D. CENT. CODE ANN. §43-17-37 (This statute takes a different approach and states that "any physician or surgeon . . . who in good faith renders emergency care at the scene of the emergency shall be expected to render only such emergency care as in his judgment is at the time indicated."

surgeons and nurses licensed to practice by any of the United States.[22] Still other statutes grant a complete exemption to *any persons.*[23] Also several of the states limit the exemption to only acts *at the scene or place of the accident or emergency*[24] while others provide an exemption at the scene and in providing transportation to a point for further medical treatment.[25] Furthermore, several of the statutes provide an exemption only for acts done *with reasonable care*[26] while others provide that the exemption will not extend to acts or omissions of *gross negligence*[27] or *willful and wanton acts or omissions.*[28] Thus appears the wide variance in the statutes of the different states and the necessity that each statute will have to be construed by the courts of the several states so as to best carry out the legislative intent, the public policy and the justice of the individual cases. It is regrettable that there is such a wide variance in the statutes for it imposes upon each individual the responsibility of knowing what the statute in each state contains and whether or not it is applicable to him.[29]

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22. 12 PA. STAT. §§1641-42, Laws 1963 Reg. Sess. p. 625.
23. Ga. Laws 1962, p. 534; GA. CODE ANN. §84-930 (1933); OHIO REV. CODE §2305.23 (Supp. 1963); TENN. CODE ANN. §63-622 (11 Supp. 1963, p. 70); TEX. LAWS, c. 317, p. 681 (1961); ARK. STAT. ANN. §72-624 (6A Supp. 1963) [Section 3 of Acts 1963, No. 63 provided that an emergency existed in regard to the inequitable application of the prior laws and provided that this act began effect immediately due the existence of an emergency.]
24. MONT. REV. CODE, *supra* n. 20; OHIO REV. CODE, *ibid.* (Limits exemption to emergencies outside a " . . . place having proper medical equipment . . . "); ME. REV. STAT. ANN., *supra* n. 20; BURNS IND. STAT., *supra* n. 20; UTAH CODE ANN., *supra* n. 20; WY. STAT. ANN., *supra* n. 20; VA. CODE, *supra* n. 20 (limits the exemption for civil liability to the scene of a highway accident); TENN. CODE ANN., *ibid* (limits the exemption to the scene of the accident and/or disaster); MASS. GEN. LAWS ANN., *supra* n. 20 (limits the exemption to the scene of a motor vehicle accident); TEX. LAWS, *ibid* (limits the exemption to scene of emergency or for failure " . . . to provide for further medical treatment . . . "); CAL. BUS & PROF. CODE ANN., *supra* n. 20. N. MEX. STAT., *supra* n. 20.
25. MISS. CODE ANN. tit. 32 §8893.5 (6A Miss. Supp. 1962).
26. *Ibid.*
27. BURNS IND. STAT., *supra* n. 20; MD. CODE ANN., *supra* n. 20; TENN. CODE ANN., *supra* n. 22.
28. MONT. REV. CODE, *supra* n. 20; OHIO REV. CODE, *supra* n. 22; BURNS IND. STAT. *supra* n. 20; TEX. LAWS, *supra* n. 22.
29. Governor Otto Kerner of Illinois vetoed the Illinois statute which would have been generally compared to the statutes of the other states stating " . . . that the state's courts would take into consideration all the circumstances and not permit unfair treatment of a physician who had responded to such an emergency." AM. MED. NEWS 12 (Oct. 14, 1963). The lack of litigation in this field is the strongest argument given for the lack of need for such statutes. Howard Hassard, LL.B., executive director of the California Medical Association and its legal counsel said in MED. ECONOMICS 110, 114 (Sept. 23, 1963):

> Actually very few suits result from emergency care. But because suits have occurred—even though infrequently—doctors are hesitant to be Good Samaritans. Perhaps they're more reluctant than they should be in view of the relatively small risk of a suit.

It was stated in the following that even with diligent research no cases have been found which have received appellate court treatment resulting from emergency care given to victims in accident cases: Note, 51 CALIF. L. REV. 792 (1963); Kearney, *Why Doctors are Bad Samaritans,* READER'S DIGEST 88 (May 1963),

APPLICABLE FEDERAL LAW

The federal courts have applied the "Good Samaritan Doctrine" in actions coming under their jurisdiction by way of the Federal Tort Claims Act.[30] Prior to the adoption of the Good Samaritan doctrine it was stated in Indian Towing Company v. United States that:

> The Coast Guard need not undertake the lighthouse service but once it exercised its discretion to operate a light on Chandeleur Island and engendered reliance on the guidance afforded by the light, it was obligated to use due care to make certain that the light was kept in good working order. . . .[31]

Thus the federal courts adopted the rule which placed liability on someone only if that person took affirmative action to assist and placing no duty on one to go to the aid of another nor granting exemption to a person who did aid another. In United States v. Lawter[32] the Court of Appeals, Fifth Circuit, allowed recovery by a husband for the death of his wife who fell from a Coast Guard helicopter after the Coast Guard had assumed the rescue of the wife. The recovery was allowed not for a failure to act when there was no duty to act[33] but due to a negligently performed act. The Coast Guard had assumed the rescue and, having done so, failed to act with due care. The court said:[34]

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quoting Fred Field, Legal Counsel of the Los Angeles County Medical Association (since California Law went into effect); AM. MED. NEWS 12 (Oct. 14, 1963); Letters to P. I. & E. BULLETINS (Jan. 1964), N.A.C.C.A. Bar Association, from George E Hall of the A.M.A.'s legal department, and from Hall to former N.A.C.C.A. National Secretary Lion L. Wolfstone, Nov. 7, 1963: " . . . we have been unable to find any claim or court decision against physicians rendering service at the scene of an emergency." P. I. & E. BULLETIN 3 (Jan. 1964); AM. MED. NEWS 12 (Oct. 14, 1963). Other states which have just recently enacted Good Samaritan Laws are Alaska, Mich., N. H., N. J. and S. D. (S.D. Sess. Laws ch. 137 (1961)). The following eleven states failed to enact a Good Samaritan Law this past year: Ala., Colo., Fla., Idaho, Minn., N. Y., N. C., Ore., R. I., Wash. and W. Va. Averbach, *Good Samaritan Laws,* 69 CASE & COM. No. 2, pp. 13, 14 (1964). Therefore in the little over four years since the California Statute was enacted in Sept. 18, 1959, a total of forty of the fifty states of the United States have considered it necessary to enact or refuse to enact such laws.

30. FEDERAL TORT CLAIMS ACT, 60 Stat. 843 (1946), 28 U.S.C. §1346 (b) (1948).
31. 350 U.S. 61, 76 S.Ct. 122, 100 L.Ed. 48 (1955).
32. 219 F.2d 559 (5th Cir. 1955).
33. Although the United States has given the Coast Guard a statutory function which enables rescue and assistance, such legislation does not create a governmental duty of affirmative action to a person or vessel in distress. Frank v. U.S., 250 F.2d 179 (Cir. 1957), *cert. den.,* 356 U.S. 962, 78 S.Ct. 1000, 2 L.Ed.2d 1069 (1958). 14 U.S.C.A. ch. 5 §88 (b): "The Coast Guard may render aid to persons and protect and save property at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized." Note that the statute states " . . . *may* render aid . . . " and not *shall* or *will* or any other term which would place an affirmative duty to aid on the Coast Guard. (emphasis supplied).
34. 219 F.2d 559, 562 (5th Cir. 1955), citing 38 AM. JUR. *Negligence* §17 p. 659 (1941).

> For the uncontradicted evidence shows that the Coast Guard, pursuant to long established policy, affirmatively took over the rescue mission, excluding others therefrom, and thus not only placed the deceased in a worse position than when it took charge, but negligently brought about her death, and it is hornbook law that under such circumstances the law imposes an obligation upon everyone who attempts to do anything, even to injure him by the negligent performance of that which he has undertaken.

It is this case which denominates the theory as the "Good Samaritan Doctrine" and forms the basis of the federal rule. In *Frank v. United States*[35] the Court of Appeals failed to allow recovery in a Coast Guard rescue attempt holding that there was no evidence to show that the Coast Guard action worsened the decedent's plight and saying " . . . we have only a diligent rescue effort which proved ineffectual for lack of adequate equipment, preparation or personnel. [F]or such ineffectual effort a private salvor is not liable, [therefore] by parity of reasoning the United States also is relieved of liability in this case."[36] The first case that actually referred to this doctrine in the federal courts as the "Good Samaritan Doctrine" was *United States v. Gavagan*.[37] There the court allowed recovery for an unsuccessful attempt to rescue a crew of a vessel under the National Search and Rescue Plan.[38] In that case the court placed liability not on the failure of the rescue vessels to reach the vessel in distress but on the negligence of persons who were directing the whole operation from the shore.[39] Thus the federal courts established the requirements for holding one liable in spite of the Good Samaritan Doctrine, to wit:

(1) A situation where there was no duty owed to the person in peril,
(2) An assumption of a duty by volunteering to go to the aid of such persons in peril,
(3) Negligence in that attempt which places the person in peril in a condition worse than before the volunteer took charge.[40]

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35. 250 F.2d 178 (3rd Cir. 1957).
36. *Id.* at 180.
37. 280 F.2d 319 (5th Cir. 1960), *cert. denied*, 364 U.S. 933, 81 S.Ct. 379, 5 L.Ed. 365 (1961).
38. National Search and Rescue Plan (S.A.R.), March, 1956, by President's Air Coordinating Committee under the Civil Air Policy, May 1954.
39. 280 F.2d 319, 321 (5th Cir. 1960).
40. The United States Court of Appeals in United States v. Devane, 306 F.2d 182 (5th Cir. 1962), reversed and remanded a case which was an action for the death of a fishing vessel captain due to the failure of the District Court to make a finding with regard to whether or not the action by the Coast Guard worsened the condition of the captain. It should be noted for what weight due it that Judge Simpson concurred in the results of the Court of Appeals but not on the basis on which they placed their decision. Judge Simpson said that it was his

The Good Samaritan Doctrine will exempt from liability one who is subject to the three conditions above but who did not make the condition of the aided person worse than before the assistance was volunteered. Thus the federal courts have in essence adopted the view of the Restatement of Torts which requires a worsening of the situation before imposing liability. This would seem to be the most reasonable application of the doctrine.

CONCLUSION

The Good Samaritan Statutes have been attacked and criticized on several grounds. The attacks and criticisms are posited on the basis, that the statutes abolish a common law right, *i.e.,* the remedy for personal injury.[41] However, these same authors who attack and criticize the statutes state that other common law rights have been abolished under the public health and welfare doctrines[42] and the exercise of the state police powers.[43] As other such rights have been abolished under the above applications, it is just as appropriate *to limit,* not abolish, the common law right to a remedy for personal injury, when in practice such limitation directs its benefit toward the person whose right is limited.[44] Therefore, if one is injured and in need of assistance, is it not rational that such a person should relinquish part of his right to redress for such assistance? This author does not advocate a complete abolition of the common law right of redress for personal injury in emergency situations. It is merely suggested that such rights be limited so as to exempt from liability those persons, whether they be physicians, surgeons, or laymen, who, in good faith, render assistance to persons in an emergency where such assistance does not worsen the condition of the injured person.

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interpretation that the Court in United States v. Cavagin, 280 F.2d 319 (1961), did not adopt the "Good Samaritan docrine" but applied a rule of reasonable care.

41. 41 NEB. L. REV. 609, 610 (1962); 43 B.U.L. REV. 140-141 (1963); Note, 25 GA. B. J. 90 (1962).

42. 41 NEB. L. REV. 609, 610 (1962), citing the abolition of actions for alienation of affection, criminal conversation, seduction, and breach of contract to marry but justifying these abolitions of common law principals as not property rights or "fundamental rights" entitled to constitutional protection.

43. 43 B.U.L. REV. 140, 142 (1963).

44. 1 AM. JUR. *Actions* §15 p. 414 (1962): "Practical consideration must at times determine the bounds of correlative rights and duties and the point beyond which the courts will decline to impose legal liability." Actions between husband and wife, action against the state or its subdivisions without their consent, or actions which would disclose confidential matters as relates to the government, or client-counsel or patient-physician relations are based generally as contrary to public policy. See 1 AM. JUR. 2d *Actions* §50 p. 583 (1962); Totten v. United States, 92 U.S. 105, 23 L.Ed. 605 (1875). Public Policy also limits the individual's rights where monopolies are concerned (36 AM. JUR. *Monopolies* §3 (1941), Easements of Necessity (17 AM. JUR. *Easements* §58 p. 668 (1957), Liabilities of charitable institutions and Contracts (12 AM. JUR. *Contracts* §___ p. 666 (1938)).

The unstable status of the law applicable to this subject due either to the question of construction of "Good Samaritan Statutes" or to the lack of such statutes might easily lead one not to render assistance to another in the case of an emergency due to a fear of civil liability. Therefore, due to the wide variation in the terms used in the statutes of the various states and the persons to whom these statutes are applicable, it is possible that there is very little benefit derived from such statutes. Any person, physician, or surgeon, when confronted with the question of assistance or non assistance in an emergency situation can not know or can not be expected to recall each particular state's exemptions.[45] Dr. Donald N. Sweeny, Jr., a Detroit surgeon, made this statement concerning such statutes: "Personally, though, I don't think the new law is going to reduce the liability of doctors one bit."[46] (in reference to the Michigan Good Samaritan Law)

There appears to be great confusion, especially in the medical profession, concerning this problem, and most doctors feel that the necessary action on their part is to avoid rendering any assistance in any case of highway emergencies.[47] Changes in the law are heavily contemplated and the status quo is jealously guarded. Nevertheless, as in other situations where a change in the law is needed, a change has been made. Is not such preventative legislation justified and necessary in the face of our present society of automobiles, motor boats and other hazardous condions? Since a total of twenty-eight (28) states have Good Samaritan Laws, it rests upon the courts and attorneys to see that justice prevails in the interpretations and application of such laws. In this manner the physician and laymen alike will be protected when rendering emergency aid, and, at the same time, the rights of the person injured by such treatment, which is not in accordance with reasonable care *under the circumstances,* will be protected.

45. Note, 51 CALIF. L. REV. 816, 822 (1963).

46. MED. ECONOMICS 110, 126 (Sept. 23, 1963). Dr. Sweeny, at p. 126, gave this advise to doctors confronted with such a situation as to handling an accident case:

> Briefly, a doctor handling an accident case should inform the police that he's merely giving emergency care—that the patient should be taken to a hospital for further treatment and he should inform the patient or his family by registered mail that his service was first aid only and that the patient has been advised to seek further treatment as soon as possible. Thus the doctor would help the injured get proper care—and protect himself against a claim of either negligence or abandonment.

Note the referral notice recommended by the Los Angeles County Medical Association, in Kearney, *Why Doctors are Bad Samaritans,* READER'S DIGEST 88, 89 (May 1963).

47. *The Urge to Sue,* TIME 69 (Nov. 28, 1960); MED. ECONOMICS 110 (Sept. 23, 1963); MED. ECONOMICS 95 (Jan. 18, 1960); Note, 51 CALIF. L. REV. 816, 822, n. 44 (1963); Kearney, *Why Doctors are Bad Samaritans,* READER'S DIGEST 88 (May 1963).