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damages sought did not exceed the amount of the policy, recovery should be allowed. The court denied recovery, holding that insurance does not create a cause of action in and of itself.

It was held in *Lusk v. Lusk*,⁴⁶ that where the parent is protected by insurance, there is no reason for applying the immunity rule. The court cited *Dunlap v. Dunlap*⁴⁷ with approval, and said:

There is no reason for applying the rule in the instant case. This action is not unfriendly as between the daughter and her father. A recovery by her is no loss to him. In fact, their interests unite in favor of her recovery. . . . There is no filial recrimination and no pitting of the daughter against the father in this case. No strained family relations will follow. On the contrary, the daughter must honor the father for attempting to provide compensation against her misfortune. Family harmony is assured instead of disrupted. A wrong is righted instead of "privileged."⁴⁸

Although the arguments of the courts which have accepted the view that insurance precludes application of the immunity rule are sound, most courts are adamant in denying recovery, holding that it is a matter for the legislature.

CONCLUSION

Since the adoption of the immunity rule, only one clearcut exception to the rule has developed—in the case of a wilful tort.⁴⁹ In recent years, however, there has been a trend toward abrogating the rule in cases where the tort is committed in the business or vocational capacity of the parent,⁵⁰ where one of the parties is dead,⁵¹ or where there is liability insurance involved.⁵² Whether this trend will grow and finally overshadow the rule remains to be seen. It seems reasonable to assume that in the future, the more progressive courts will allow suits between parents and children in all cases where the family tranquility will not be disturbed.

⁴⁶ 113 W. Va. 17, 166 S.E. 538 (1932).

⁴⁷ 84 N.H. 352, 150 Atl. 905 (1930).

⁴⁸ *Lusk v. Lusk*, 113 W. Va. 17, 19, 166 S.E. 538, 539 (1932).

⁴⁹ Authority cited note 26, *supra*.

⁵¹ Authority cited notes 35, 36, *supra*.

⁵⁰ Authority cited note 25, *supra*.

⁵² Authority cited note 40, *supra*.

SOCIETIES REQUIRING NO BELIEF IN GOD ALLOWED TO SHARE IN RELIGIOUS TAX EXEMPTIONS

When a court undertakes to define religion, its decision raises questions of importance in the area of freedom of religion and separation of Church and State. For the most part, the courts in the past have stated that "religion" suggests the concept of a Supreme Being, a Governor of the Universe. However, this generally accepted concept in American jurisprudence has just come under severe attack.

Two recent cases¹ involve the right of certain organizations to enjoy exemptions from taxation. The issue in each case was whether an organization, the tenets of which did not include a belief in a Deity, could be called "religious" within the meaning of tax exemption provisions.² Both cases held that a belief in a Deity is not essential for tax exemption under laws exempting religious organizations. The impact of these two decisions can best be illustrated by examining in retrospect judicial definitions of "religion."

CLASSICAL DEFINITION OF RELIGION REQUIRES A BELIEF IN A GOD

Most cases offering a definition of religion have inserted a belief in a Supreme Being as an essential element. The most notable of these cases, is *Davis v. Beason*³ decided in 1890 by the United States Supreme Court. It was there held that freedom of religion guaranteed by the United States Constitution did not protect the advocacy of polygamy by members of the Mormon Church.

[T]he term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.⁴

This has been generally accepted as the legal definition of religion. A few cases are herein presented to indicate the influence of this 1890 decision.

In a prosecution for fortune telling through alleged communication with departed spirits, an Oklahoma court, in 1922,⁵ based its definition of religion on the above quotation. Here "religion" was explained as the reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. This includes all forms of belief in the existence of a Deity exercising power over human beings by the imposition of rules of conduct based upon future rewards and punishments.

The question of whether statutes requiring public school pupils to

¹ *Fellowship of Humanity v. County of Alameda*, Cal. App., 315 P. 2d 394 (1957); *Washington Ethical Society v. District of Columbia*, 249 F. 2d 127 (App. D.C., 1957).

² Cal. Const. Art. 13 § 1½: "All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said building, when the same are used solely and exclusively for religious worship . . . shall be free from taxation."

D.C. Code, Title 47 § 801a: "The real property exempt from taxation in the District of Columbia shall be the following and none other:

"(m) Churches, including buildings and structures reasonably necessary and usual in the performance of the activities of the church. A church building is one primarily and regularly used by its congregation for public religious worship.

"(n) Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training and missionary activities."

³ 133 U.S. 333 (1890).

⁴ *Ibid.*, at 342.

⁵ *McMasters v. State*, 21 Okl. Cr. 318, 207 P. 566 (1922).

salute the American flag were unconstitutional as an infringement upon the free exercise of religion was posed in the late thirties. In three suits brought by members of Jehovah's Witnesses,⁶ the state courts relied upon the definition in the *Davis* case in determining that such a statute was not in violation of the constitutional right to freedom of religion.

In addition to the *Davis* case and supporting opinions, a multitude of other decisions set religion to require the existence of a Supreme Being. An early case answered the question simply by posing another: "For what is *religion* but morality, with a sanction drawn from a future state of rewards and punishments?"⁷ This generally implied that a Supreme Being imposes the sanction.

A church brought action against the United States in 1892⁸ claiming that its hiring of an alien minister was not subject to the Alien Labor Act.⁹ The court traced the historical development of the use of the terms "God" and "religion," notably in constitutions of various states. Declaration of Rights of the Constitution of Maryland (1867) Articles 36 and 37:

Wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice. . . . Provided, he believes in the existence of God. . . . That no religious test ought ever to be required as a qualification for any office of profit or trust in this State other than a declaration of belief in the existence of God.

Constitution of Massachusetts (1780) Articles 2 and 3:

It is the right as well as the duty of all men in society publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. . . .

Constitution of Mississippi (1832) Sections 5 and 14:

No person who denies the being of a God, or a future state or rewards and punishments, shall hold any office in the civil department of this State. . . .

Constitution of Delaware Article 22 (required all officers, besides an oath of allegiance, to make and subscribe the following declaration):

I . . . do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore. . . .

Two years after the Massachusetts court's extensive historical tracing of religion in American government a Pennsylvania case¹⁰ restated this clas-

⁶ *Gabrielli v. Knickerbocker*, 12 Cal. 2d 85, 82 P. 2d 391 (1938); *People v. Sandstrom*, 3 N.Y.S. 2d 1006, 167 Misc. 436 (1938) reversed on other grounds, 279 N.Y. 523, 18 N.E. 2d 840 (1939); *Nicholls v. Mayor and School Committee of Lynn*, 297 Mass. 65, 7 N.E. 2d 577 (1937).

⁷ *McAlister v. Marshall*, Pa. 6 Bin. 338, 350 (1814).

⁸ *Holy Trinity Church v. United States*, 143 U.S. 457 (1892).

⁹ 23 Stat. 332, C. 164 (1885).

¹⁰ *In re Knights Estate*, 159 Pa. 500, 28 Atl. 303 (1894).

sical definition in saying that in all Christian countries the word "religion" is ordinarily understood to mean some system of faith resting on the idea of the existence of one God, the Creator and Ruler, to whom His creatures owe obedience and love.

An Illinois court, in deciding that reading the Bible and The Lord's Prayer in public schools violates freedom of religion, produced a simple addition in 1910 to the already mounting collection of legal expressions of what religion encompasses:

Religion has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience, and submission.¹¹

The very next year, the Supreme Court of Illinois decided a tax exemption case involving church property. Here the court expanded upon its definition of the previous year:

While religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this state it means the formal recognition of God as members of societies and associations.¹²

The oath of citizenship confronted the United States Supreme Court in 1931. Upon taking the oath, one MacIntosh would not swear to defend his country in time of war because of religious convictions. The court stated:

Religion obviously encompasses more than mere belief, faith, sentiment or opinion. By its very force it embraces human conduct expressive of the relation between man and God. This was clearly realized by Thomas Jefferson in the Act Establishing Religious Freedom in Virginia.¹³

The following year a New York court,¹⁴ when confronted with the problem of defining religion, said that it is a bond uniting man to God. Man's purpose is to render God worship due Him as source of all being and principle of the government of all things. As late as 1956¹⁵ the adjective "religious" was defined as meaning an apprehension, awareness or conviction of the existence of a Supreme Being controlling one's destiny.

¹¹ *People v. Board of Education of Dist. 24*, 245 Ill. 334, 340, 92 N.E. 251, 252 (1910).

¹² *People v. Deutsche Evangelisch Lutherische Jehovah Geneinde*, 249 Ill. 132, 136, 94 N.E. 162, 164 (1911).

¹³ *United States v. MacIntosh*, 283 U.S. 605, 612 (1931).

¹⁴ *Nikulnikoff v. Archbishop*, 255 N.Y.S. 653, 142 Misc. 894 (1932).

¹⁵ *Sunday School Bd. of Southern Baptist Convention v. McCue*, 179 Kan. 1, 293 P. 2d 234 (1956).

CONSCIENTIOUS OBJECTOR CASES OFFER BOTH CLASSICAL AND BROAD
CONSTRUCTION OF RELIGION

In the 1940 Selective Service Act a provision excused certain individuals from combat training and service if their religious convictions were opposed to such conduct.

Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. . . .¹⁶

As would be expected when the United States entered World War II the above provision was the subject of judicial interpretation. The problem was determining what Congress meant by "religious training and belief." For example, in *United States v. Kauten*,¹⁷ the Court of Appeals for the Second Circuit accepted a broad construction of the draft act provision—a construction which did not require a belief in a Deity to entitle the registrant to the exemption. Instead of trying to define religion the court expounded:

It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words.¹⁸

Three months later, in a habeas corpus proceeding before the same court,¹⁹ it was decided that the registrant need not trace his opposition to war to some religious belief or training. The existence of a conscientious scruple against war in any form was the basis of exemption. Here, opposition to war was based on general humanitarian concepts. The registrant was classified as a conscientious objector.

After the war, however, in *Berman v. United States*,²⁰ a humanist failed to qualify as a conscientious objector by "reasons of religious training and belief." The Ninth Circuit felt that the use of the word "religion" in the Selective Service Act was not intended to be inclusive of morals or of devotion to human welfare or of policy of government. Berman argued, in effect, that a person's philosophy of life or his political view point, to which his conscience directs him to adhere devotedly, or his devotion to human welfare, without the concept of deity, may be religious in nature. To which the court replied:

¹⁶ 50 U.S.C.A. § 5(g) Appendix § 305(g).

¹⁷ 133 F. 2d 703 (C.A. 2d 1943).

¹⁸ *Ibid.*, at 708.

¹⁹ *Phillips v. Downer*, 135 F. 2d 521 (C.A. 2d 1943).

²⁰ 156 F. 2d 377 (C.A. 9th, 1946).

There are those who have a philosophy of life, and who live up to it. There is evidence that this is so in regard to appellant. However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute.²¹

Congress has since adopted this view as set out in the *Berman* case. The 1948 Universal Military Training and Service Act expressly provided that religious training and belief

means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.²²

When the Ninth Circuit was called upon to decide a case under this 1948 Amendment it stated:

So it is evident that the definition which Congress introduced into the 1948 Amendment comports with the spirit in which "Religion" is understood generally, and the manner in which it has been defined by the courts. It is couched in terms of the relationship of the individual to a Supreme Being, and comports with the standard or accepted understanding of the meaning of "Religion" in American society.²³

BROAD CONSTRUCTION OF RELIGION REQUIRES NO BELIEF IN GOD

The broad construction of religion as set forth in *United States v. Kauten*²⁴ was not a new interpretation. In determining the validity of a gift to charity a California court, in 1881, felt that religion, in its primary sense as applied to moral questions, is only a duty to recall and obey restraining principles of conduct. "In such sense we suppose there is no atheist who will admit that he is without religion."²⁵

Again in 1896 a California court in determining a question involving Sunday closing laws expounded a very wide definition of religious belief.

Liberty of conscience and belief is preserved alike to the followers of Christ, to Buddhist and Mohammedan, to all who think that their tenets alone are illumined by the light of divine truth; but it is equally preserved to the skeptic, agnostic, atheist, and infidel, who says in his heart, "There is no God."²⁶

At the turn of the century, the Illinois Supreme Court refused tax exemption to church owned property because it was not solely used for

²¹ *Ibid.*, at 381.

²² 50 U.S.C.A. App. § 456(j).

²³ *George v. United States*, 196 F. 2d 445, 451 (C.A. 9th, 1952).

²⁴ Authority cited note 17 *supra*.

²⁵ *Estate of Hinckley*, 58 Cal. 457, 512 (1881).

²⁶ *Ex Parte Jentzsch*, 112 Cal. 468, 471, 44 Pac. 803, 803 (1896).

public worship.²⁷ The court construed "public worship" in light of the Illinois Constitution²⁸ guaranteeing absolute freedom of thought and faith whether orthodox, heterodox, Christian, Jewish, Catholic, Protestant, liberal, conservative, Calvinistic, Armenian, Unitarian or other religious belief, theology, or philosophy, and also the right of the free exercise and enjoyment of religious professions and worship of any variety or form. . . .²⁹

No mention was made to the relation of man to God.

TWO HUMANIST SOCIETIES DECLARED RELIGIOUS

By tracing the above decisions it is clearly shown that the courts have "run the gamut" in trying to develop a working definition of religion. Dictionaries abound with definitions giving support to each side of the argument. Scholars disagree. In the two Humanist Society cases³⁰ the issue was whether an organization, the tenets of which did not include a belief in a Deity, could be called "religious" within the meaning of tax exemption laws. Both the California and District of Columbia courts granted the tax exemption.

Naturally, before deciding this question the courts had to know exactly what a Humanist Society was. In exempting the Fellowship of Humanity the California court stated that the purpose of the Fellowship is

. . . to establish and maintain a free fellowship for the study of human relationships from the viewpoint of religion, education and sociology; establishment and the propagation and nurture of the ideals of brotherhood of man, and without any distinctive creed or religious formula; that a further purpose of plaintiff is to promulgate humanism by means of public meetings, lectures, programs, study classes, publishing and distributing literature and such other means as may be deemed practical for the dissemination of constructive and progressive thought.³¹

The court was quick to point out that there are many faiths commonly accepted as religious which do not recognize the concept of a Deity, as, for example, Taoism, Buddhism, and Confucianism. Particular attention was paid to Unitarianism:

One of the most respected groups to recognize the humanists as a religious group are the Unitarians. Unitarianism is generally accepted by most authorities as one of the recognized religions. Yet under Unitarian doctrine there is a peaceful coexistence of theists and humanists. A substantial part of the membership and clergy of the Unitarian Church are humanists.³²

²⁷ *In re Walker*, 200 Ill. 566, 66 N.E. 144 (1902).

²⁸ Ill. Const. Art. II § 3.

²⁹ Authority cited note 27 *supra* at 573 and 147.

³⁰ Authority cited note 1 *supra*.

³¹ *Fellowship of Humanity v. County of Alameda*, Cal. App., 315 P.2d 394 (1957).

³² *Ibid.*, at 405.

The next step was to consider the Fellowship of Humanity in light of the First Amendment to the United States Constitution.³³ This amendment does not restrict the government from legislating in this field. Every state and the District of Columbia has a constitutional or statutory provision exempting church property from taxation. If the exemption is limited to those who advocate theism, the humanists argue that such an interpretation encourages particular religious doctrines and thus violates the division between Church and State. The California court reasoned that if the state cannot constitutionally subsidize religion under the First Amendment, then it cannot limit tax exemptions to theistic religions.

The state, said the California court, has no power to determine the validity of religious beliefs. It must apply the purely objective test of whether or not the belief occupies the same place in the lives of its holders that orthodox beliefs occupy in the lives of believing majorities.

CONCLUSION

The *Fellowship of Humanity* and *Washington Ethical Society* cases accept a new legal definition of religion, at least in the field of taxation. In such a concept the test of belief or non-belief in a Supreme Being is not a factor. Religion simply includes

(1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment.³⁴

This test does not involve the determination of what the particular belief, dogma, or doctrine of members must be.

Two cases do not in themselves establish a trend, but it will be interesting to observe the influence, if any, of these cases in other jurisdictions.

³³ U.S. Const. Amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

³⁴ Authority cited note 31 supra at 406.

THE CONCEPT OF UNILATERAL CONTRACTS IN ILLINOIS

The name "unilateral" has been suggested for contracts executed on one side and executory on the other, or at least for such contracts of this class as are created by performing the act required for acceptance of the offer. Contracts of this class are distinguishable from others in the fact that in the other simple contracts the acceptance furnishes the consideration, leaving the performance executory on both sides; while in contracts of this class, the acceptance furnishes not only the consideration, but also the performance on one side. A distinctive name for a contract of this sort is undoubtedly to be desired; and the term "uni-