perform in an exhibition for profit, under a contract by which the musician has authority to play whatever compositions are in accordance with her judgment appropriate and fitting, must be held responsible for all that is done by the musician. By giving her that authority the employer acquiesces in and ratifies whatever she does. If under his contract he has parted with the right to exercise this control over her actions, without making inquiry as to what she intends to play, he yet must be deemed to have taken part, and to have given her general authority to perform copyright compositions." *Harms et al. v. Cohen* (D. C. E. D. Pa. 1922) 279 F. 276. See also *M. Witmark & Sons v. Pastime Amusement Co.* (D. C. E. D. S. C. 1924) 298 F. 470.

When scrutinized closely it is apparent that the above passage, in effect, says that when the employer parts with the right to control the actions of the independent contractor he is deemed to have given general authority for the commission of torts, thus disregarding all of the immunities which have come to be considered incidents of the employer—independent contractor relationship. For copyright infringement purposes, then, there is no distinction between the master—servant and employer—independent contractor relationship.

The result reached in the main case is not inequitable, but rather desirable. In view of the general practice in agency cases we might rather expect the decision to be on the ground that the orchestra leader was not truly an independent contractor than on the ground that defendant profited from the music, however much more realistic the latter ground may be. In many cases involving small jobs it is found more expedient and equitable to consider what are technically independent contractors as servants, and thus to render employers liable for their torts. In some cases where this is not done a very inequitable result is reached. In an Arkansas case defendant physicians owned and operated a hospital. They had an X-ray department but defendants, knowing nothing of X-rays placed an expert in charge. Through the negligence and incompetence of an employee of the department plaintiff was burned severely. Defendants were held not liable because the wrongdoer was an independent contractor (on the general theory that physicians occupy this position). *Runyan v. Goodrum* (1921) 147 Ark. 481, 228 S. W. 397. Obviously this is an extreme case but it raises the question as to the desirability, in all cases, of exempting the employer from liability for the torts of his independent contractor.

There is no logical ground for distinction between the copyright cases and those of other business situations in which the independent contractor is involved. We are not ready to discard the law of independent contractor as it has grown up; yet these cases are suggestive of a possible survey of the whole field with a view to effecting changes of policy in those situations in which the results reached under the general rule are unsatisfactory.

B. L. W., '31.

CHARITIES—LIABILITY IN TORT—EFFECT OF LIABILITY INSURANCE.—Plaintiff was injured as the result of a fall upon ice on the sidewalk of a building owned by defendant, a charitable corporation. Evidence that defend-

ant held a policy of insurance covering such accidents was excluded, and a verdict directed for defendant. *Held,* the carrying of insurance did not deprive defendant of the exemption from tort liability enjoyed by charitable corporations. *Eleanor Enman v. Trustees of Boston University* (1930) 170 N. E. 43.

Charitable organizations are exempt from liability for some classes of torts in almost all jurisdictions. 5 R. C. L. 374-379; 11 C. J. 374-378. Three reasons for this immunity have been advanced: first, that it is a matter of public policy that charity funds should not go to tort claims; second, that the funds are impressed with a trust for charitable purposes, from which they cannot be diverted; and third, that persons entering charitable institutions waive their recourse for torts committed. *Williams' Adm'x v. Church Home for Females and Infirmary for Sick* (1928) 223 Ky. 355, 3 S. W. (2d) 753. The third reason applies only to cases of inmates of institutions, but the first and second cover the whole subject, and may be applied to the principal case. The fundamental consideration is public policy.

The question is whether the public policy which is held to exempt charitable corporations from tort liability applies to a case where the corporation carries liability insurance. Where insurance is carried to indemnify its losses, allowing recovery will not deplete its funds. The reason for the rule having failed, it would seem that the rule is not applicable to the situation. But the other two cases which have directly decided the point have agreed with the principal case. *Levy v. Superior Court* (1925) 74 Cal. App. 171, 239 Pac. 1100; *Williams' Adm'x v. Church Home for Females and Infirmary for Sick,* above. Their argument is as follows: a charitable corporation is exempt from liability for torts. This institution has contracted with an insurance company that the latter should compensate it for any losses it sustains because of certain torts. But this contract cannot make it liable for torts for which it was not liable before. From this it follows that since the insurance company has assumed no risk of loss, the contract is of no effect. The fallacy of this position is obvious. Using a general rule as the starting point of reasoning, it decides that there can be no exception to the rule. But if the basis of the rule—the policy that charitable funds should not be depleted—is considered, it is clear that an exception to the rule of exemption from liability should exist in cases where insurance is carried.

The results of the application of the general rule of exemption from liability have been so varied and there are so many glosses and exceptions in many jurisdictions that it is apparent that courts are doubting the policy which has been so often stated. New Hampshire has held liability in all cases. *Hewett v. Woman's Hospital Aid Ass'n* (1906) 73 N. H. 556, 64 Atl. 190. When most charitable institutions were both small and poor, there may have been good reason to exempt them from tort liability; but with large institutions, adequately supplied with funds and run just as businesses are run, a modern public policy would require that individuals be protected from the negligence of charities rather than charities from the relatively

infrequent suits of individuals. The rule of exemption was not adopted with such institutions in mind. Neither was it contemplated that insurance could be successfully used to preserve charitable funds from damage claims. As times passes, it becomes increasingly difficult to justify the application of the rule to any circumstances, and no justification whatever exists in cases where insurance is carried. J. A. G., '31.

CONSTITUTIONAL LAW—COURTS—POWER OVER ADMISSIONS TO BAR.—An applicant to the bar had passed the educational test, but the board of bar examiners refused to grant him a certificate of good moral character. On application, the Supreme Court admitted him to practice despite the failure to obtain the required certificate, on the ground that it believed his character to be good. *Brydonjack v. State Bar of California* (Cal. 1929) 281 Pac. 1018. The court declared that its decision was not necessarily contrary to the statute creating the board, but the real issue was as to the legislature's power to regulate the bar.

Since attorneys are officers of the court, the power to admit applicants to practice is judicial and not legislative. But decisions generally concede that the legislature may, in the exercise of its police power, prescribe reasonable rules and regulations for admission to the bar. 6 C. J. 571, 2. With this as a basis, it has usually been held that compliance with statutory requirements does not make the practice of law a matter of right and that courts may impose additional requirements upon applicants. *Olmsted's Case* (1928) 292 Pa. 98, 140 Atl. 634; *In re Peters* (1927) 221 App. Div. 607, 225 N. Y. S. 144, *aff'd* 250 N. Y. 595, 166 N. E. 337; *In re Platz* (1913) 42 Utah 439, 132 Pac. 390. The only case which directly opposes this doctrine is *In re Applicants for License to Practice Law* (1906) 143 N. C. 1, 55 S. E. 635, in which two judges dissented.

The question raised by the principal case, however, is not whether courts may impose additional requirements, but whether they may admit attorneys to practice in spite of their failure to comply with existing statutory requirements. The only other case in which the question has been directly raised is *In re Bowers* (1918) 138 Tenn. 662, 200 S. W. 821, in which the court stated: "The question for determination now is whether upon exceptions to the board's report, this court will go into evidence and determine for itself contrary to the recommendations of the board that the applicant should be admitted to practice. It seems to us that the mere statement of the proposition is its own answer. . . The certificate of the board is the only thing which the Legislature intended that we should consider, and when the board refuses to make a certificate, or, as in this case, certifies that the applicant is an unfit person to be admitted to the practice, that ends the matter in the absence of allegation and proof of fraud, corruption, or oppression on the part of the board."

The police-power theory of the legislature's control over bar admissions is that the legal profession can be regulated just as other professions and businesses. But the legislature, under the police power, can regulate no business, profession, or occupation unless a reasonable necessity exists. 6