Taxation—Exemption—Young Men's Christian Association Dormitory—[Massachusetts].—The Board of Assessors taxed a Young Men's Christian Association dormitory which occupied one-third of the Association's building, and operated at a profit. This profit was devoted to the purposes of the corporation which lost money on the building. The Board of Tax Appeals abated the tax, finding that the dominant purpose of the Association in maintaining the dormitory was benevolent and charitable. *Held*, the dormitory was exempt from taxation. *Springfield Young Men's Christian Association v. Board of Assessors*, 187 N.E. 104 (Mass. 1933).

Young Men's Christian Associations are generally exempt from taxation as charitable institutions. *Little v. City of Newburyport*, 210 Mass. 414, 96 N.E. 1032, Ann. Cas. 1912D 425 (1912); *Young Men's Christian Association of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921). They are not usually considered religious organizations. *Hamsher v. Hamsher*, 132 Ill. 273, 23 N.E. 1123 (1890); *Young Men's Christian Association v. New York*, 113 N.Y. 187, 21 N.E. 86 (1889); cf. *Commonwealth v. Young Men's Christian Association*, 116 Ky. 711, 76 S.W. 522, 25 Ky. L. Rep. 940, 105 Am. St. Rep. 234 (1903). Their dormitories are customarily exempt. *In re Syracuse Young Men's Christian Association*, 126 Misc. 431, 213 N.Y.S. 35 (1925); *Young Men's Christian Association's Appeal*, 15 D. & C. (Pa.) 421 (1930), even though a profit is made. *Young Women's Christian Association of Brooklyn v. New York*, 137 Misc. 321, 243 N.Y.S. 294, affd. 227 App. Div. 742, 236 N.Y.S. 926, affd. 254 N.Y. 558, 173 N.E. 865 (1928); *Commonwealth v. Lynchburg Young Men's Christian Association*, 115 Va. 748, 80 S.E. 589, 50 L.R.A. (N.S.) 1197 (1913).

The dominant use must be for charitable purposes. If part of a Young Men's Christian Association building is rented to independent businesses for profit, that part, at least, is taxable, even though the entire income is used for the association's purposes. *Young Men's Christian Association v. Douglas County*, 60 Neb. 642, 83 N.W. 924, 52 L.R.A. 123 (1900); *Young Men's Christian Association v. Keene*, 70 N.H. 223, 46 Atl. 186 (1900). Although the association operates the business itself, and applies all the profit to its aims, the business is not exempt when chiefly patronized by non-members. *Young Men's Christian Association v. New York*, 217 App. Div. 406, 216 N.Y.S. 248, affd. 245 N.Y. 562, 157 N.E. 858 (1926). Profit is always an element to be considered, but the fact that a profit is made does not determine that an institution is not charitable. *Congregational Sunday School & Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7, 90 Cent. L. Jour. 74 (1919) (corporation not for profit selling religious tracts was exempt although in some years a profit was made); *School of Domestic Arts and Science v. Carr*, 322 Ill. 562, 153 N.E. 669 (1926) (restaurant used as training school for waitresses and as outlet for products of cooking school held not taxable); *House of the Good Shepherd v. Board of Equalization*, 113 Neb. 489, 203 N.W. 632 (1925) (institution "to reform fallen women . . . . to accustom them to habits of industry and self-respect" ran a laundry and sewing business which was held exempt).

The principal case is consistent with older Massachusetts decisions and similar cases in other jurisdictions. While the courts repeat with approval the rule requiring strict construction of exemption statutes, only a few, notably Missouri, have shown consistent restraint in granting exemptions. *St. Louis Lodge No. 9 v. Koeln*, 262 Mo. 444, 171 S.W. 329 (1914); *St. Louis Young Men's Christian Association v. Gehner*, 329 Mo. 1007, 47 S.W. (2d) 776, 81 A.L.R. 1449 (1932). Yet tax exemptions bid fair to become increasingly unpopular. Atkins, Tax Exemption—A Key to Tax Reduction, 9 Tax Magazine 19 (1931); Baker, Tax Exemption Statutes, 7 Tex. L. Rev. 50 (1928);

Stimson, Tax Exemption in Illinois, 11 Tax Magazine 17–20; 36–40 (933). This feeling is believed to have been reflected in some late decisions abolishing existing exemptions. *People ex rel. Thompson v. Dixon Masonic Building Assn.*, 348 Ill. 593, 181 N.E. 434 (1932), 6 So. Cal. L. Rev. 168 (1932), expressly overrules *People ex rel. Wagner v. Freeport Masonic Temple*, 347 Ill. 180, 179 N.E. 672 (1931), which held a masonic building exempt. A dissent in the *Dixon* case points out a long line of decisions *contra*. *Alpha Tau Omega Fraternity v. Board of County Commissioners*, 136 Kan. 675, 18 P. (2d) 573 (1933); 17 Minn. L. Rev. 678 (1933), held unconstitutional a statute exempting land and buildings used exclusively by college or university societies as literary halls or dormitories; but compare *Kappa Kappa Gamma House Assn. v. Pearcy*, 92 Kan. 1020, 142 Pac. 294, 52 L.R.A. (N.S.) 995 (1914), which is not cited in the *Alpha Tau Omega* case. Because of the state of tax collections and the oppressiveness of taxes, it is probable that in the future the courts will severely limit exemptions.

HUBERT C. MERRICK

Torts—Breach of a Criminal Statute as a Bar to Recovery—Interpretation of Licensing and Safety Acts—[South Dakota, Wisconsin].—Plaintiffs were towing a thirty-foot wide airplane on a public road in violation of a statute requiring a permit to do so. Driving in what the jury found to be a negligent manner, defendant crashed into the plane. When the jury turned in a verdict that the plaintiff was free from contributory negligence, the trial court entered judgment in plaintiff's favor. *Held*, judgment affirmed. *Harvison v. Herrick*, 248 N.W. 205 (S.D. 1933).

Plaintiff was riding on the front fender of an automobile in violation of a statute. The jury found the defendant negligent in driving his car against the car on which plaintiff was riding but found that breach of the statute, which the court considered "contributory negligence as a matter of law," had not "proximately contributed" to his damage, the court entering judgment on the verdict for the plaintiff. *Held*, judgment reversed. *Wiese v. Polzer*, 248 N.W. 112 (Wis. 1933).

The South Dakota decision is supported by the majority view in breach of licensing-statute cases. *Armstrong v. Sellers*, 18 Ala. 582, 62 So. 28 (1913); *Atlantic etc. R. v. Weir*, 63 Fla. 69, 58 So. 641 (1912); *Brown v. Shyne*, 242 N.Y. 176, 151 N.E. 197 (1926); *Southern Ry. v. Vaughn*, 118 Va. 692, 88 S.E. 305 (1916). In at least two such cases, however, courts have based liability on failure to comply with the licensing statutes. *Whipple v. Grandchamp*, 261 Mass. 40, 158 N.E. 270 (1927) and *Goodwin v. Rowe*, 67 Ore. 1, 135 Pac. 171 (1913). Although these cases involve breach of a statute as basis of liability, rather than defense, they are in point for the issue remains unchanged though the breach occurs on part of plaintiff rather than the defendant. *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920).

The proper way of deciding those cases is by application of the so called "legislative purpose" formula. As has been pointed out in 27 Ill. L. R. 318 (1932), this method depends more on the way courts think the statute should operate in particular cases than on what they believe the legislature actually had in mind in passing it. Courts usually regard licensing statutes as either revenue measures or sanctions to compel the effective organization of social activities.

This attitude seems justifiable in as much as these statutes do not, like most so-called safety statutes, establish a standard of conduct, the failure to observe which