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American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
1. Generally

8 Am Jur 2d Automobiles and Highway Traffic § 402

§ 402 Generally; unavoidable accidents

The doctrine of unavoidable or inevitable accident relieves a person of liability, so long as the person invoking the doctrine shows that he or she was in no way to blame for the happening.[n1] For example, when a driver has employed all reasonable precaution to avoid an accident and the sudden act of a child creates an emergency rendering it impossible for the motorist to avoid striking the child, the accident is considered unavoidable and the motorist is not liable.[n2] Moreover, where the driver of an automobile suffers an unforeseeable illness which causes him or her to suddenly lose consciousness and control of the automobile, the driver's loss of control is not negligent, and the driver is not liable for any damages caused by the out-of-control automobile.[n3] The mere fact that an accident occurs which results in personal injury, death, or property damages does not warrant a recovery against the owner or operator of the vehicle unless it is shown that the injury or damage was caused by the negligence of the operator.[n4] If a motorist has exercised ordinary care as required by law (or the highest degree of care as may be required) and has nevertheless inflicted injury on another, the accident is said to be inevitable, for which no liability attaches.[n5]

Definition: A collision is unavoidable where the motorist is faced with an emergency situation and was not driving in reckless manner or otherwise acting negligently, and reacts reasonably to the situation.[n6] An unavoidable or inevitable accident is such an occurrence as, under the circumstances and conditions, could not have been foreseen or anticipated in the exercise of ordinary care;[n7] or an accident that happens from natural causes, without negligence or fault on either side;[n8] or an event not proximately caused by the negligence of any party to it.[n9]

The mere fact that as to a motorist a collision might have been inevitable or unavoidable at the time of its occurrence will not entitle that motorist to the protection of the doctrine of unavoidable accident if the situation thus brought about was the result of the motorist's own negligence.[n10]

Practice Tip: Instruction on unavoidable accident is most often used to inquire about the causal effect of some physical condition or circumstance such as fog, snow, sleet, wet or slick pavement, or obstruction of view, or to resolve a case involving a very young child who is legally incapable of negligence; such an instruction should not be submitted in other circumstances because of the risk that the jury will be misled or confused by the perception that the instruction represents a separate issue distinct from the general principles of negligence.[n11]

FOOTNOTES:

n1 Davis v. Smith, 796 So. 2d 765 (La. Ct. App. 2d Cir. 2001), writ denied, 807 So. 2d 250 (La. 2002).

n2 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007).

n3 Halligan v. Broun, 285 Ga. App. 226, 645 S.E.2d 581 (2007).

n4 Smith v. Johnson, 282 So. 2d 178 (Fla. Dist. Ct. App. 2d Dist. 1973).

n5 Smeby v. Williams, 862 So. 2d 381 (La. Ct. App. 2d Cir. 2003).

n6 Rocourt v. Kelly, 239 A.D.2d 483, 657 N.Y.S.2d 759 (2d Dep't 1997).

n7 Gregory v. Lynch, 271 N.C. 198, 155 S.E.2d 488 (1967).

n8 Kasper Instruments, Inc. v. Maurice, 394 So. 2d 1125 (Fla. Dist. Ct. App. 4th Dist. 1981).

n9 Friday v. Spears, 975 S.W.2d 699 (Tex. App. Texarkana 1998).

n10 Tolbert v. Fireman's Fund Ins. Co., 719 So. 2d 738 (La. Ct. App. 3d Cir. 1998).

n11 Friday v. Spears, 975 S.W.2d 699 (Tex. App. Texarkana 1998).

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1302 (Collision between vehicles -- Unforeseeable collision of third party's vehicle with that of defendant)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
1. Generally

8 Am Jur 2d Automobiles and Highway Traffic § 403

§ 403 Motor vehicle as dangerous instrumentality

The rules of law applicable to dangerous instrumentalities [n1] do not apply to motor vehicles. [n2] Thus, motor vehicles, including automobiles, [n3] at least when in proper repair, [n4] are not such dangerous instrumentalities as to render the owners thereof ipso facto liable, without regard to negligence, for injuries resulting from their operation. A trailer being pulled by the driver's truck is also not a dangerous instrumentality. [n5]

In some jurisdictions automobiles have been referred to as dangerous instrumentalities when in operation on the public ways, [n6] not in the sense of imposing absolute liability upon owners or operators for injuries caused thereby to others, but in the sense that a high degree of care must be exercised by those operating them. [n7] This "high degree"of care may be regarded as ordinary care under the circumstances, the fact that the instrumentality used is an automobile constituting one of the circumstances. [n8]

FOOTNOTES:

n1 Am. Jur. 2d, Negligence §§ 295 to 408.

n2 Fisher v. Fletcher, 191 Ind. 529, 133 N.E. 834, 22 A.L.R. 1392 (1922).

n3 State v. Adkins, 40 Ohio App. 2d 473, 69 Ohio Op. 2d 416, 320 N.E.2d 308 (7th Dist. Columbiana County 1973).

As to the owner's liability for entrusting his or her car, as a dangerous instrumentality, to another, see §§ 614, 617.

n4 Gossett v. Van Egmond, 176 Or. 134, 155 P.2d 304 (1945).

As to vehicles in the hands of incompetent or inexperienced drivers as dangerous instrumentalities, see § 617.

n5 Halenda v. Habitat for Humanity Intern., Inc., 125 F. Supp. 2d 1361 (S.D. Fla. 2000), aff'd, 245 F.3d 794 (11th Cir. 2000) (applying Florida law).

n6 Petitte v. Welch, 167 So. 2d 20 (Fla. Dist. Ct. App. 3d Dist. 1964).

n7 McNear v. Pacific Greyhound Lines, 63 Cal. App. 2d 11, 146 P.2d 34 (1st Dist. 1944).

n8 Whicker v. Crescent Auto Co., 20 Cal. App. 2d 240, 66 P.2d 749 (1st Dist. 1937).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
1. Generally

8 Am Jur 2d Automobiles and Highway Traffic § 404

§ 404 What law governs determination of liability; traditional rule of "lex loci delecti"

The traditional rule which has determined the law applicable in suits for negligence in the event of a conflict between the rules of different jurisdictions, is that of "lex loci delecti" -- that one's liability for negligence is governed by the law of the state where the accident occurred.[n1] This rule still prevails in many jurisdictions with respect to one's liability for negligence in the operation of a motor vehicle,[n2] even where the place of the negligent act or omission causing the accident occurs in another state.[n3] At least under one state's choice of law standards for diversity actions, when the passenger and the driver are domiciled in different states, normally, the applicable rule of decision will be that of the state where the accident occurred, but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants.[n4] Moreover, where the state in which the injury was sustained has no interest in defeating the additional security provided to the injured person by the application of a statute from the state where the tortfeasor resides, and where the public policy of the two states with respect to the compensation of innocent victims in automobile accidents is similar, enforcement of the statute will not offend the public policy of the state where the accident occurred.[n5]

Under the lex loci delicti rule, where the issue is the choice between the law of the state where the allegedly wrongful act or omission took place, and the state where the injury or death was inflicted, the general rule is that the state of the tort is the state where the injury or death was inflicted.[n6]

Illustration: The law of the state where the automobile accident occurred, rather than the state where the victim and tortfeasor resided, governs the right to recover for loss of consortium and loss of services and, therefore, governs the liability of the tortfeasor's insurer, and the domicile of the parties and the registration of the automobiles in the other state does not rebut the presumption of lex loci delicti.[n7]

Jurisdictions applying this traditional rule have recognized two exceptions to its application: first, the law of the forum is applied to procedural matters; and second, the law of the forum is controlling whenever the law of the place of the wrong is contrary to an extraordinarily strong public policy of the forum state.[n8] Thus, in cases arising out of negligence in the operation of motor vehicles, the law of the forum is applied with respect to procedural matters.[n9]

FOOTNOTES:

n1 Am. Jur. 2d, Conflict of Laws § 125.

n2 Fitzgerald v. Austin, 715 So. 2d 795 (Ala. Civ. App. 1997).

n3 Fitzgerald v. Austin, 715 So. 2d 795 (Ala. Civ. App. 1997).

n4 Tkaczevski v. Ryder Truck Rental, Inc., 22 F. Supp. 2d 169 (S.D. N.Y. 1998) (applying New York law).

n5 Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998) (applying Maryland law).

n6 Strogoff v. Motor Sales Co., 302 Mass. 345, 18 N.E.2d 1016 (1939).

n7 State Farm Mut. Auto. Ins. Co. v. Brazzle ex rel. Estate of Jackson, 2002-Ohio-1931, 2002 WL 471180 (Ohio Ct. App. 1st Dist. Hamilton County 2002).

n8 Am. Jur. 2d, Conflict of Laws § 127.

n9 Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944, 42 A.L.R.2d 1162 (1953).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
1. Generally

8 Am Jur 2d Automobiles and Highway Traffic § 405

§ 405 Analysis of contacts, interests, and other factors as determining applicable law

Dissatisfaction with the mechanical application of the lex loci delicti doctrine[n1] led, in some jurisdictions, to the adoption of a rule of flexibility whereby a forum court may apply the substantive laws of a state other than the locus delicti when it finds that such state has the significant interest in the outcome of the litigation, or the most significant contacts with its subject matter.[n2] Thus, some courts have adopted the "most significant relationship"approach[n3] to the problem of choice of law in actions for negligence arising out of the operation of motor vehicles.[n4] Others have adopted a "governmental interests"[n5] approach.[n6]

FOOTNOTES:

n1 As to the lex loci delicti doctrine, see § 404.

n2 Am. Jur. 2d, Conflict of Laws §§ 127 to 134.

n3 Am. Jur. 2d, Conflict of Laws § 128.

n4 Cates v. Creamer, 431 F.3d 456 (5th Cir. 2005), cert. denied, 127 S. Ct. 219, 166 L. Ed. 2d 146 (U.S. 2006) (applying Texas law); Fanselow v. Rice, 213 F. Supp. 2d 1077 (D. Neb. 2002) (applying Nebraska law); Crowell v. Clay Hyder Trucking Lines, Inc., 700 So. 2d 120 (Fla. Dist. Ct. App. 2d Dist. 1997); Edwards v. McKee, 2003 OK CIV APP 59, 76 P.3d 73 (Div. 3 2003); Leonard v. Reed, 62 Pa. D. & C.4th 166, 2003 WL 22358437 (C.P. 2003); Amiot v. Ames, 166 Vt. 288, 693 A.2d 675 (1997); State Farm Mut. Auto. Ins. Co. v. Gillette, 2002 WI 31, 251 Wis. 2d 561, 641 N.W.2d 662 (2002).

n5 Am. Jur. 2d, Conflict of Laws §§ 129 to 131.

n6 Erny v. Estate of Merola, 171 N.J. 86, 792 A.2d 1208 (2002).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
2. Indemnity Funds for Losses Caused by Uninsured or Unknown Motorists
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 406

§ 406 Generally

In order to protect persons who sustain losses inflicted by financially irresponsible or unknown owners and operators of motor vehicles, or who have no other source of compensation, some states have enacted statutes creating a fund out of which uncollectable judgments obtained against uninsured motorists can be satisfied, or out of which losses caused by unknown motorists can be reimbursed.[n1] Such a trust fund for victims of motor-vehicle accidents involving uninsured and hit-and-run motorists, is remedial in nature and acts as a substitute for the kind of protection a liability insurance policy would provide.[n2] The fund is not intended to replace or serve as an insurance policy or to make every claimant whole, and the intention is to provide some basic measure of relief in order to forestall the possible hardship attendant upon a claimant's absorption of the entire economic loss occasioned by the accident.[n3] Trust fund statutes are within the police power of the state and are not violative of the due process clause of the Constitution.[n4] The fund may be supported by assessments upon uninsured motor vehicle owners and upon insurance companies, its primary purpose being to eliminate the evil which springs from the negligent operation of motor vehicles by uninsured persons.[n5]

Benefits under a state assigned claims plan need not be limited to injuries sustained in an area where the courts of the state have jurisdiction, but rather may include and encompass all of the area within the United States and even Canada, including Indian reservations.[n6]

FOOTNOTES:

n1 McNeill v. Maryland Auto. Ins. Fund, 2007 WL 1934716 (Md. Ct. Spec. App. 2007); Caballero v. Martinez, 186 N.J. 548, 897 A.2d 1026 (2006); Garcia v. Motor Vehicle Accident Indemnification Corp., 6 Misc. 3d 194, 787 N.Y.S.2d 818 (Sup 2004); Kiker v. Pennsylvania Financial Responsibility Assigned Claims Plan, 742 A.2d 1082 (Pa. Super. Ct. 1999).

As to "uninsured motorist"coverage under automobile insurance policies, see Am. Jur. 2d, Automobile Insurance §§ 35 to 44; 311 to 326; 460 to 503.

n2 Caballero v. Martinez, 186 N.J. 548, 897 A.2d 1026 (2006).

n3 Wyche v. Unsatisfied Claim and Judgment Fund of State, 383 N.J. Super. 554, 892 A.2d 761 (App. Div. 2006).

n4 Lascari v. Iannaci, 56 N.J. 317, 266 A.2d 299 (1970).

n5 Petition of Casanova, 36 Misc. 2d 489, 232 N.Y.S.2d 713 (Sup 1962).

n6 State ex rel. Moug v. North Dakota Auto. Assigned Claims Plan, 341 N.W.2d 623 (N.D. 1983).

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A. In General
2. Indemnity Funds for Losses Caused by Uninsured or Unknown Motorists
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 407

§ 407 Type of accident or occurrence which will give rise to fund liability

Generally, an unsatisfied judgment fund statute should be construed in the light of its purposes, but should be narrowly construed because it creates a cause of action where none existed before.[n1] With respect to the question whether a fund is analogous to insurance coverage, so as to make the compensability of a claim against the fund dependent on whether the same claim would be covered by the minimum or usual insurance policy in the state, the cases are not harmonious.[n2]

The provisions of unsatisfied judgment fund statutes allowing recovery from the fund for a cause of action against a person whose identity is unascertainable are not analogous to penal statutes dealing with hit-and-run drivers; hence, the fact that the tortfeasor's conduct does not constitute the criminal offense of hit-and-run driving does not necessarily preclude the claimant from recovering from such funds.[n3]

In some states no recovery is allowable from the fund for injuries caused by persons whose identity is unascertainable, unless the unidentifiable person's motor vehicle physically contacted the claimant or the vehicle which he or she was occupying, thus preventing recovery from the fund for injuries received when the unidentifiable person's vehicle hit another vehicle, causing it to strike the claimant.[n4] Also, where a person may recover from a fund only for accidents, no recovery may be had for injuries caused by uninsured motorist who is convicted of assault for striking the person with the vehicle, because the driver's conviction necessarily included a finding of intent, thus negating a finding that it was an accident.[n5]

In a wrongful death action seeking recovery under the fund, the presumption of the driver's negligence arises where the circumstances of the accident are unknown because the victim is unable to testify, there were no known witnesses to the accident, the driver is unidentified and not suable and the driver's failure to comply with statutory obligations to stop, give information and aid, and make a report, caused the loss of evidence which compliance would have provided.[n6]

FOOTNOTES:

n1 Petition of Portman, 33 Misc. 2d 385, 225 N.Y.S.2d 560 (Sup 1962).

n2 Lascari v. Iannaci, 56 N.J. 317, 266 A.2d 299 (1970).

n3 Shaw v. Motor Vehicle Acc. Indemnification Corp., 24 Misc. 2d 466, 199 N.Y.S.2d 689 (Sup 1960).

n4 Petition of Portman, 33 Misc. 2d 385, 225 N.Y.S.2d 560 (Sup 1962).

n5 Valle v. Blackwell, 173 A.D.2d 390, 570 N.Y.S.2d 21 (1st Dep't 1991).

n6 Johnson v. Austin, 406 Mich. 420, 280 N.W.2d 9 (1979).

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Type of accident or occurrence which will give rise to liability under unsatisfied claim and judgment fund statute, 7 A.L.R.3d 822

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a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 408

§ 408 Necessity and sufficiency of efforts to recover from other sources

Recourse to an indemnity fund's duty of defense and indemnification is a remedy of final resort, not an alternative remedy.[n1] It is thus typically required that in the case of an unknown tortfeasor, the claimant exhaust all reasonable efforts to ascertain the tortfeasor's identity before bringing an action directly against an indemnity fund.[n2] The cases determining what are[n3] and what are not[n4] reasonable efforts to identify the tortfeasor do not offer a universally applicable rule as to what efforts are sufficient. Advertising for information about the occurrence,[n5] investigation by the police,[n6] and personal inquiry[n7] have all been deemed sufficient, either singly or some in combination with other efforts, but the reasonableness of any effort or combination of efforts is so dependent upon the circumstances that it cannot be said that any particular effort is universally sufficient.[n8] Futhermore, a prior verdict or a conclusive showing that the identity of the tortfeasor cannot be established is not required of the claimant.[n9] However, it has also been held that an assigned claims plan claimant does not have a duty to exercise good faith efforts to identify a tortfeasor and to obtain all vehicle information from a tortfeasor, before the claimant can recover benefits from the plan; a good faith effort to protect the plan's subrogation rights may be all that is required.[n10]

If a clue toward the identity of an unknown tortfeasor ripens into a healthy suspicion, a separate action must be first brought against the suspect without joining the fund as a codefendant.[n11] Thus, it has been held that a pedestrian who learned the possible identity of the owner of a vehicle that injured her in a hit-and-run accident has to first exhaust her remedies against the possible owner and its insurer before seeking relief from a state motor vehicle accident indemnification corporation, and until such exhaustion, her claims against the indemnification fund are premature.[n12] However, it has also been held under such state statute that the statutory obligation on the victim of a hit-and-run accident to make reasonable efforts to ascertain the identity of the tortfeasor before seeking recovery from the motor vehicle accident indemnification corporation does not require a prior verdict or a conclusive showing that the identity of the tortfeasor cannot be established.[n13] Indeed, the motor vehicle accident indemnification corporation may be joined as a party defendant provided that the petitioner made all reasonable efforts to ascertain the identity of the vehicle and its owner and operator, and demonstrated that the identity of the operator, who was operating the vehicle without the owner's consent, cannot be established.[n14]

FOOTNOTES:

n1 Mejia v. Santos, 10 Misc. 3d 831, 805 N.Y.S.2d 269 (Sup 2005).

n2 In re Paulino, 196 Misc. 2d 887, 768 N.Y.S.2d 130 (N.Y. City Civ. Ct. 2003).

n3 Giles v. Gassert, 23 N.J. 22, 127 A.2d 161 (1956).

n4 Chocko v. Motor Vehicle Acc. Indemnification Corp., 20 A.D.2d 728, 248 N.Y.S.2d 170 (2d Dep't 1964).

n5 Serkes v. Parsekian, 73 N.J. Super. 344, 179 A.2d 785 (Law Div. 1962).

n6 Johnson v. Unsatisfied Claim and Judgment Fund Bd., 262 Md. 90, 277 A.2d 5 (1971).

n7 Jones v. Unsatisfied Claim and Judgment Fund Bd., 261 Md. 62, 273 A.2d 418 (1971).

n8 Jones v. Unsatisfied Claim and Judgment Fund Bd., 261 Md. 62, 273 A.2d 418 (1971).

n9 Daniel, In re, 181 Misc. 2d 941, 694 N.Y.S.2d 913 (N.Y. City Civ. Ct. 1999).

n10 Kiker v. Pennsylvania Financial Responsibility Assigned Claims Plan, 742 A.2d 1082 (Pa. Super. Ct. 1999).

n11 McGainey v. Cable, 65 N.J. Super. 202, 167 A.2d 405 (App. Div. 1961).

n12 Hauswirth v. American Home Assur. Co., 244 A.D.2d 528, 664 N.Y.S.2d 466 (2d Dep't 1997).

n13 Daniel, In re, 181 Misc. 2d 941, 694 N.Y.S.2d 913 (N.Y. City Civ. Ct. 1999).

n14 Vil v. Motor Vehicle Acc. Indemnification Corp., 304 A.D.2d 588, 757 N.Y.S.2d 591 (2d Dep't 2003).

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West's Key Number Digest, Automobiles [westkey]251.1, 251.9
Necessity and sufficiency of claimant's efforts to recover from other sources as prerequisite of participation in indemnity fund for losses caused by uninsured or unknown motorists, 7 A.L.R.3d 851

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8 Am Jur 2d Automobiles and Highway Traffic § 409

§ 409 Deductions from awards of sums collectible from other sources

Under a provision, found in some unsatisfied claim and judgment fund statues, requiring the deduction from fund payments of any benefits received by the claimant from anyone other than the judgment debtor, insurance payments are deductible even though the policy was not issued to the claimant.[n1] Benefits received by the claimant under disability insurance,[n2] health and accident insurance,[n3] medical insurance covering doctor's fees,[n4] hospitalization insurance, and the medical payments clause of automobile insurance,[n5] are deductible under this type of provision, as are wages voluntarily paid to a claimant by the claimant's employer during the period when he or she was out of work as a result of accident-caused injuries.[n6] Additionally, Medicaid benefits may be considered "accident and health benefits"within the meaning of a statute reducing benefits from a financial responsibility assigned claims plan by the amount of accident and health benefits.[n7]

Under another type of provision, requiring the deduction from fund payments of sums collected from any source in payment of the judgment, insurance payments are not deductible; thus, worker's compensation awards are not deductible under such a provision.[n8] On the other hand, where a catastrophic loss benefits continuation fund, which had paid an injured employee's medical bills, is unaware that the injury sustained by the employee was work related and did not know that she later filed an application for workers' compensation benefits, the workers' compensation statute governing subrogation cannot bar the fund's subsequent claim against the employer's workers' compensation carrier for subrogation.[n9]

Nothing in one state's assigned claims law allowing no-fault benefits payable through the plan to be reduced to the extent that benefits covering the same loss are payable by another source completely relieves the assigned claim insurer, which is the insurer of last resort, of responsibility to continue to make payments to the insured.[n10]

Recovery from the fund in excess of worker's compensation payments has been allowed where the injured party had no uninsured motorist coverage and was injured while operating a vehicle in the course of his or her employment.[n11]

If a state fund, which upon an automobile insurer's insolvency assumes the insurer's policy obligations owed to the insured to cover liability to an injured passenger, in fact denies coverage, then the injured passenger effectively has no other recourse and may proceed with a claim against the motor vehicle accident indemnification corporation.[n12]

An assigned claims plan may have subrogation rights against insured joint tortfeasors.[n13]

A state motor vehicle accident indemnification corporation is not entitled to an offset, against its statutory liability limits, in the amount of the injured pedestrian's settlement with the insured defendants, who are exonerated of any responsibility for the accident.[n14]

FOOTNOTES:

n1 Holmberg v. Aten, 68 N.J. Super. 73, 171 A.2d 667 (App. Div. 1961).

n2 Vartanian v. Motor Vehicle Acc. Indemnification Corp., 54 Misc. 2d 983, 283 N.Y.S.2d 762 (Sup 1967).

n3 Cooper v. Currigan, 59 Mich. App. 354, 229 N.W.2d 451 (1975).

n4 Dixon v. Gassert, 26 N.J. 1, 138 A.2d 14 (1958).

n5 Holmberg v. Aten, 68 N.J. Super. 73, 171 A.2d 667 (App. Div. 1961).

n6 Unger v. Kemmerer, 58 N.J. Super. 262, 156 A.2d 52 (Law Div. 1959).

n7 Com., Dept. of Public Welfare v. Pennsylvania Financial Responsibility Assigned Claims Plan, 731 A.2d 228 (Pa. Commw. Ct. 1999), aff'd, 560 Pa. 538, 746 A.2d 1107 (2000).

n8 Unsatisfied Claim and Judgment Fund Bd. v. Salvo, 231 Md. 262, 189 A.2d 638, 7 A.L.R.3d 832 (1963).

n9 Kaiser v. Old Republic Ins. Co., 1999 PA Super 271, 741 A.2d 748 (1999).

n10 Spencer v. Citizens Ins. Co., 239 Mich. App. 291, 608 N.W.2d 113 (2000).

n11 Mumma v. Pennsylvania Assigned Claims Plan, 331 Pa. Super. 205, 480 A.2d 316 (1984).

n12 Mejia v. Santos, 10 Misc. 3d 831, 805 N.Y.S.2d 269 (Sup 2005).

n13 McGee v. Pennsylvania Financial Responsibility Assigned Claim Plan, 1999 PA Super 38, 725 A.2d 1239 (1999).

n14 Garcia v. Motor Vehicle Accident Indemnification Corp., 6 Misc. 3d 194, 787 N.Y.S.2d 818 (Sup 2004).

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8 Am Jur 2d Automobiles and Highway Traffic § 410

§ 410 Generally

The benefits set up by a statutory unsatisfied judgment fund need not extend to all classes of claimants.[n1] An injured party must be eligible for benefits, which requires that the party not have any other available insurance covering its claim and that the accident is of a nature contemplated by the fund.[n2] The statute may preclude from recovery an uninsured claimant operating or using,[n3] or the owner of,[n4] an uninsured vehicle, and his or her spouse when a passenger in such vehicle.[n5] On the other hand, passengers are not excluded from recovering personal injury protection benefits from an unsatisfied claim and judgment fund simply because they were both passengers in a motor vehicle operated by an uninsured driver who was also a spouse or parent, where the passengers do not have a judgment against the uninsured driver.[n6] The statute may also preclude from recovery a person injured in an accident occurring outside the boundaries of the state,[n7] a person driving with a suspended or revoked license,[n8] or a pedestrian who did not have a no-fault policy and who was struck by a vehicle whose owner is not immune from liability.[n9] Moreover, to be entitled to claim uninsured motorist coverage in a hit-and-run case, a state statute providing for insurance coverage for victims of hit-and-run vehicles requires a claimant to prove that his or her injury arose out of physical contact with the motor vehicle.[n10] An unlicensed driver of a vehicle involved in a car crash is a "qualified person"for purposes of recovery of personal injury compensation from the fund.[n11] Also, the driver of uninsured vehicle that he or she does not own is qualified for recovery under the fund where he or she is a resident of the state and financially irresponsible.[n12] However, although the driver of an uninsured vehicle that she does not own is a "qualified person"entitled to first party benefits, as the operator of an uninsured motor vehicle she is nevertheless disqualified from commencing an action against the fund to recover for alleged personal injuries in the collision with an unidentified motorist.[n13] A passenger of the uninsured vehicle, on the other hand, is a "qualified person"under the Insurance Law who is not barred from commencing an action.[n14]

An automobile insurer's insolvency, in itself, does not render a policy "uncollectible,"nor the insured a "financially irresponsible motorist,"so as to invoke the duty of defense and possible indemnification by an indemification fund, since even though the insurer becomes insolvent after the collision for which coverage is sought, the policy survives and a different public fund may assume the policy obligations owed to the insured to cover his or her liability.[n15]

Practice Tip: Where the insurer becomes insolvent after the collision, the operative date for determining a fund's liability based on the lack of a collectible policy is sometime after the date of the collision, so as to invoke possible indemnification.[n16]

FOOTNOTES:

n1 Flores v. Motor Vehicle Acc. Indemnification Corp., 32 Misc. 2d 884, 225 N.Y.S.2d 481 (Sup 1962); Tschider v. Burtts, 149 N.W.2d 710 (N.D. 1967).

n2 Akita Medical Acupuncture, P.C. v. MVAIC, 14 Misc. 3d 405, 829 N.Y.S.2d 857 (Dist. Ct. 2006).

n3 In re Paulino, 196 Misc. 2d 887, 768 N.Y.S.2d 130 (N.Y. City Civ. Ct. 2003).

n4 Sanders v. Hunter, 253 N.J. Super. 666, 602 A.2d 809 (Law Div. 1991); Akita Medical Acupuncture, P.C. v. MVAIC, 14 Misc. 3d 405, 829 N.Y.S.2d 857 (Dist. Ct. 2006).

n5 Akita Medical Acupuncture, P.C. v. MVAIC, 14 Misc. 3d 405, 829 N.Y.S.2d 857 (Dist. Ct. 2006).

n6 Mena ex rel. Mena v. Unsatisfied Claim and Judgment Fund, 317 N.J. Super. 351, 722 A.2d 128 (App. Div. 1998).

n7 West v. Walker, 160 N.J. Super. 19, 388 A.2d 1268 (App. Div. 1978).

n8 Sanchez v. Jilani, 2006 WL 2873727 (N.J. Super. Ct. 2006).

n9 Gurley v. City of Philadelphia (City), 367 Pa. Super. 538, 533 A.2d 148 (1987) (wherein a city vehicle was involved).

n10 Kobeck v. Motor Vehicle Acc. Indemnification Corp., 16 Misc. 3d 592, 836 N.Y.S.2d 864 (Sup 2007).

n11 Sanchez v. Jilani, 2006 WL 2873727 (N.J. Super. Ct. 2006).

n12 In re Paulino, 196 Misc. 2d 887, 768 N.Y.S.2d 130 (N.Y. City Civ. Ct. 2003).

n13 In re Paulino, 196 Misc. 2d 887, 768 N.Y.S.2d 130 (N.Y. City Civ. Ct. 2003).

n14 In re Paulino, 196 Misc. 2d 887, 768 N.Y.S.2d 130 (N.Y. City Civ. Ct. 2003).

n15 Mejia v. Santos, 10 Misc. 3d 831, 805 N.Y.S.2d 269 (Sup 2005).

n16 Mejia v. Santos, 10 Misc. 3d 831, 805 N.Y.S.2d 269 (Sup 2005).

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§ 411 Construction of statutory terms upon which eligibility depends

In a number of cases the question arises whether claimant is a "resident"of the state,[n1] who is thus covered by the unsatisfied claim and judgment fund,[n2] or whether the claimant is the resident of a foreign jurisdiction which affords "recourse of substantially similar character"to the residents of the state within the coverage provisions of the applicable statute, some cases holding such recourse to be of substantially similar character,[n3] and some holding otherwise,[n4] depending upon the wording of the particular statutes. An undocumented alien's intent to remain in the state can satisfy the required intent to qualify as a "resident"within the meaning of statute providing that, in order to obtain relief from the fund, a claimant must be a "qualified person,"meaning that he or she must be a "resident"of the state; the fact that an undocumented alien may some day be forced to return to his or her homeland does not necessarily defeat the intent to remain.[n5]

FOOTNOTES:

n1 Caballero v. Martinez, 186 N.J. 548, 897 A.2d 1026 (2006).

n2 Caballero v. Martinez, 186 N.J. 548, 897 A.2d 1026 (2006).

n3 Grady v. Unsatisfied Claim and Judgment Fund Bd., 259 Md. 501, 270 A.2d 482 (1970).

n4 Tracey v. Unsatisfied Claim and Judgment Fund, 255 Md. 674, 259 A.2d 276 (1969).

n5 Caballero v. Martinez, 186 N.J. 548, 897 A.2d 1026 (2006).

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c. Notice of Claim

8 Am Jur 2d Automobiles and Highway Traffic § 412

§ 412 Generally

The requirement that a claimant give notice of his or her intention to make a claim against the fund, found in many unsatisfied judgment fund statutes, is generally held to be a condition precedent to a statutory right.[n1] Strict compliance with the notice requirement is mandatory,[n2] its purpose being to afford a timely inquiry and thus to safeguard the fund against fraud and imposition.[n3] The plaintiff is thus not entitled to seek relief against the fund based on lack of insurance coverage for the vehicle where the plaintiff fails to notify the fund that the vehicle was uninsured within the prescribed time period from the date on which the plaintiff's attorney received notice that the vehicle was not insured by the insurer.[n4]

Under the statute of one jurisdiction, the notice-of-loss requirement is not applicable in that state in cases where an unknown tortfeasor is tentatively identified but a suit against the suspected tortfeasor fails for insufficiency of identifying evidence.[n5]

FOOTNOTES:

n1 Sain v. Forrest, 130 A.D.2d 733, 515 N.Y.S.2d 835 (2d Dep't 1987).

n2 D'Ambrogi v. Unsatisfied Claim and Judgment Fund Bd., 269 Md. 198, 305 A.2d 136 (1973).

n3 Mena ex rel. Mena v. Unsatisfied Claim and Judgment Fund, 317 N.J. Super. 351, 722 A.2d 128 (App. Div. 1998).

n4 Mejia v. Santos, 10 Misc. 3d 831, 805 N.Y.S.2d 269 (Sup 2005).

n5 Corrigan v. Gassert, 27 N.J. 227, 142 A.2d 209 (1958).

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8 Am Jur 2d Automobiles and Highway Traffic § 413

§ 413 Form and sufficiency of notice

The form of a notice of claim under an unsatisfied judgment fund statute is generally prescribed by the statute; however, strict adherence to the prescribed form is not generally required,[n1] particularly where the fund is not prejudiced by the failure to use the statutory form[n2] or where the plaintiff never receives any communication from the fund that her notice of intention to make a claim is deficient, though another party to the accident does receive such a notice.[n3] However, a notice given in the form of an accident report sent nominally to the director of motor vehicles, who also happens to be a member of the board that oversees the fund, has been held to be insufficient.[n4]

A conflict in the evidence with respect to timely notification of police of an accident which is the subject of a subsequent claim against an unsatisfied judgment fund should be resolved by the trier of fact.[n5] However, the issue of compliance with statutory notice provisions for filing a claim with the unsatisfied claim and judgment fund is for the court, not the jury, to decide.[n6]

FOOTNOTES:

n1 Russo v. Forrest, 52 N.J. Super. 233, 145 A.2d 339 (App. Div. 1958).

n2 Stacey v. Sankovich, 19 Mich. App. 688, 173 N.W.2d 225 (1969).

n3 Mena ex rel. Mena v. Unsatisfied Claim and Judgment Fund, 317 N.J. Super. 351, 722 A.2d 128 (App. Div. 1998).

n4 Schlenger v. Conti, 47 N.J. Super. 566, 136 A.2d 440 (App. Div. 1957).

n5 Francis v. Motor Vehicle Acc. Indemnification Corp., 41 A.D.2d 556, 340 N.Y.S.2d 2 (2d Dep't 1973).

n6 Quinchia v. Waddington, 166 N.J. Super. 247, 399 A.2d 679 (Law Div. 1979).

REFERENCE: West's Key Number Digest, Automobiles [westkey]146, 148, 150, 154, 159, 201(10), 206, 225, 229.5, 251.1 to 251.3, 251.6, 251.9
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§ 414 Who may give notice

In one jurisdiction, notice may be given by anyone on a claimant's behalf,[n1] and, in another jurisdiction, it has been suggested that notice given by another might subsequently be adopted by the claimant.[n2] However, the notice, by whomever given, must relate to the particular claimant.[n3] Thus, notices given on behalf of two occupants of a vehicle have been held not to satisfy the notice requirement as to the other occupants.[n4]

FOOTNOTES:

n1 Giles v. Gassert, 23 N.J. 22, 127 A.2d 161 (1956).

n2 Application of Sellars, 20 A.D.2d 350, 246 N.Y.S.2d 937 (1st Dep't 1964).

n3 Massey v. Foggie, 263 Md. 507, 283 A.2d 366 (1971).

n4 Massey v. Foggie, 263 Md. 507, 283 A.2d 366 (1971).

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§ 415 Proper recipient of notice

Accident reports sent "to the state"or to an officer in his or her capacity as head of a state agency responsible for safety who happened also to be an ex officio member of the board in charge of the fund are insufficient to establish notice to the fund.[n1]

A police report made at the scene just after a hit-and-run accident satisfies the notice-to-police component of one statutory provision governing notice of claims against a state motor vehicle accident indemnification corporation where a report to a police, peace, or judicial officer is made within 24 hours of the accident, and no further report to the police has to be made.[n2]

FOOTNOTES:

n1 Schlenger v. Conti, 47 N.J. Super. 566, 136 A.2d 440 (App. Div. 1957).

n2 Daniel, In re, 181 Misc. 2d 941, 694 N.Y.S.2d 913 (N.Y. City Civ. Ct. 1999).

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§ 416 Timeliness of notice

While generally the issue of the precise time at which a notice period under an unsatisfied judgment fund begins is governed by the provisions of the notice requirement as given in the fund statute, in particular circumstances, the time from which the notice period runs should be determined according to other statutes which bear more specifically on the particular cases; thus, in death cases, the time begins to run when a personal representative is appointed.[n1] In another jurisdiction, in cases involving minors, notice is deemed timely if given within the appropriate number of days after suit is filed against the tortfeasor.[n2] It has been held that a claimant who is a member of the Armed Forces is entitled to the protection of the Servicemembers Civil Relief Act as to the initiation of the notice period,[n3] although there is also authority to the contrary.[n4]

Assuming the plaintiff's submission of the claim to an insurer initially justified its delay in submitting the claim to the state fund, where the plaintiff fails to address, much less provide a reasonable justification for a three-and-a-half month delay between the time when the plaintiff's counsel advised the plaintiff that there was no coverage and the plaintiff's submission of the claim to the fund, the fund's motion for summary judgment was properly granted.[n5]

In those instances in which timely giving of notice is excused on the basis of some legal or physical disability,[n6] provision is sometimes made for the giving of notice within a reasonable time, or "as soon as practicable,"and, in determining what constitutes such time, each case depends on its own facts, and special reference should be made to whether persons exist who might reasonably be expected to give notice on the claimant's behalf.[n7]

FOOTNOTES:

n1 Application of Sellars, 20 A.D.2d 350, 246 N.Y.S.2d 937 (1st Dep't 1964).

n2 Trevorrow v. Boyer, 52 N.J. Super. 215, 145 A.2d 154 (Law Div. 1958).

n3 Murray v. Rogers, 78 N.J. Super. 163, 188 A.2d 47 (County Ct. 1962).

As to the Servicemembers Civil Relief Act, see Am. Jur. 2d, Military and Civil Defense §§ 327 to 370.

n4 Peters v. Unsatisfied Claim and Judgment Fund Bd., 271 Md. 304, 316 A.2d 803 (1974).

n5 NY Arthroscopy & Sports Medicine PLLC v. Motor Vehicle Acc. Indemnification Corp., 15 Misc. 3d 89, 836 N.Y.S.2d 753 (App. Term 2007).

n6 § 417.

n7 Unsatisfied Claim and Judgment Fund Bd. v. Mosley, 234 Md. 386, 199 A.2d 366 (1964); Becton v. Motor Vehicle Acc. Indemnification Corp., 35 A.D.2d 660, 314 N.Y.S.2d 521 (1st Dep't 1970), order aff'd, 29 N.Y.2d 942, 329 N.Y.S.2d 576, 280 N.E.2d 364 (1972).

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§ 417 Excuses for late filing

The fact that the lateness of notice has not prejudiced the fund may be relevant to whether a late notice will be accepted, [n1] but the absence of prejudice is not by and of itself determinative of whether late notice should be excused. [n2] In one jurisdiction, an excuse offered for late filing must be one specified in the statute. [n3]

Late notice is sometimes excused on grounds of a claimant's minority, [n4] either on a theory that the notice period does not begin to run until suit is brought on the minor's behalf [n5] or until a guardian ad litem is appointed, [n6] or on the basis that minority is a statutory excuse for late notice. [n7] However, a showing of minority does not compel acceptance of a late notice. [n8]

The test of physical disability to give notice, which is another excuse for late filing, [n9] is whether a claimant was disabled from attending to his or her affairs in general, [n10] or whether a claimant was mentally and emotionally adjusted to the responsibility in regard to giving notice. [n11] A disability in the early part of the notice period may satisfactorily establish the necessary disability. [n12]

A claimant is not foreclosed from having late notice excused merely because he or she was represented by counsel during the notice period. [n13] However, an attorney's lack of diligence does not excuse the client's failure to file claim within the required time. [n14]

FOOTNOTES:

n1 Bludders v. State Farm Mut. Ins. Co., 392 Mich. 804, 222 N.W.2d 303 (1974).

n2 Giacobbe v. Gassert, 29 N.J. 421, 149 A.2d 214 (1959).

n3 Grys v. Motor Vehicle Acc. Indemnification Corp., 14 A.D.2d 821, 220 N.Y.S.2d 653 (4th Dep't 1961).

n4 Mena ex rel. Mena v. Unsatisfied Claim and Judgment Fund, 317 N.J. Super. 351, 722 A.2d 128 (App. Div. 1998).

n5 Trevorrow v. Boyer, 52 N.J. Super. 215, 145 A.2d 154 (Law Div. 1958).

n6 Mena ex rel. Mena v. Unsatisfied Claim and Judgment Fund, 317 N.J. Super. 351, 722 A.2d 128 (App. Div. 1998).

n7 Ackey v. Bruneau, 14 A.D.2d 628, 218 N.Y.S.2d 863 (3d Dep't 1961).

n8 Sullivan v. Motor Vehicle Acc. Indemnification Corp., 18 Misc. 2d 961, 190 N.Y.S.2d 33 (Sup 1959), order aff'd, 11 A.D.2d 675, 202 N.Y.S.2d 414 (1st Dep't 1960), order aff'd, 11 N.Y.2d 705, 225 N.Y.S.2d 961, 181 N.E.2d 217 (1962).

n9 Tyler v. Commissioner of Motor Vehicles, 252 Md. 39, 248 A.2d 885 (1969).

n10 Mundey v. Unsatisfied Claim and Judgment Fund Bd., 233 Md. 169, 195 A.2d 720, 2 A.L.R.3d 755 (1963).

n11 Giacobbe v. Gassert, 29 N.J. 421, 149 A.2d 214 (1959).

n12 Holmes v. Motor Vehicle Acc. Indemnification Corp., 16 A.D.2d 1003, 229 N.Y.S.2d 335 (3d Dep't 1962).

n13 Gibson v. Motor Vehicle Acc. Indemnification Corp., 23 A.D.2d 562, 256 N.Y.S.2d 500 (2d Dep't 1965).

n14 DeJesus v. Motor Vehicle Acc. Indemnification Corp., 31 A.D.2d 917, 298 N.Y.S.2d 458 (1st Dep't 1969).

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§ 418 Time limit in case of disclaimer of liability by insurer

The notice period in case of a disclaimer of liability by a tortfeasor's insurance company, in one jurisdiction, commences when the fact of the disclaimer is brought home to the claimant or the claimant's attorney, [n1] but in another jurisdiction, notice sent to the attorney does not set the period in motion because the applicable statute requires the disclaimer to be sent to "affiant,"and that a disclaimer is not accomplished until notice of a judgment in favor of the insurer reaches the claimant. [n2] When considering the notice period in cases of disclaimer of liability, it is important to distinguish cases in which an insurance company merely advised a claimant that the supposed insurance was not in force at the time of the accident, since that case presents a situation to which the ordinary notice requirement applies. [n3]

The statutory notice of a claim provision requiring notice to be filed within 90 days of receipt by the claimant of notice from the insurer disclaiming coverage as a condition precedent to recovery from the fund does not apply to the insured's demand for arbitration under an uninsured motorist endorsement, where neither the endorsement nor the provisions of the policy as a whole specified any time within which to demand arbitration. [n4]

Where an automobile liability insurer disclaims coverage for the driver as a non-permissive user of the named insureds' vehicle, the accident victim who fails to file a notice of claim against the state automobile insurance fund within 180 days of the accident can still sue the fund to recover an unsatisfied judgment under the statute permitting suit, if the claimant files notice within 30 days after having received notice that the insurer disclaimed on the policy and thus removed or withdrew liability insurance coverage for the claim. [n5]

FOOTNOTES:

n1 Wharton v. Knox, 98 N.J. Super. 61, 236 A.2d 151 (App. Div. 1967).

n2 Application of Savoy, 232 N.Y.S.2d 396 (Sup 1962), order aff'd, 22 A.D.2d 855, 255 N.Y.S.2d 462 (2d Dep't 1964).

n3 Christian v. Motor Vehicle Acc. Indemnification Corp., 37 A.D.2d 567, 322 N.Y.S.2d 437 (2d Dep't 1971).

n4 In re St. Paul Fire & Marine Ins. Co. (Vanguard Systems Resources, Inc.), 152 A.D.2d 497, 544 N.Y.S.2d 133 (1st Dep't 1989).

n5 McNeill v. Maryland Auto. Ins. Fund, 927 A.2d 418 (Md. Ct. Spec. App. 2007).

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§ 419 Absolute time limit for late filing

A statute which provides that no application to excuse late notice may be filed after the expiration of a certain period deprives a court of power to excuse such notice when the absolute period has expired.[n1] This result occurs even where the claimant's failure to timely file a notice of claim was caused by erroneous information in a police accident report.[n2]

FOOTNOTES:

n1 Sampson v. Motor Vehicle Acc. Indemnification Corp., 55 A.D.2d 957, 391 N.Y.S.2d 158 (2d Dep't 1977).

n2 Smith v. Motor Vehicle Acc. Indemnification Corp., 74 A.D.2d 639, 425 N.Y.S.2d 42 (2d Dep't 1980).

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8 Am Jur 2d Automobiles and Highway Traffic § 420

§ 420 Generally

Negligence in cases involving motor vehicle accidents, as in negligence cases generally,[n1] is the failure to exercise ordinary or reasonable care so as to avoid injury to others.[n2] In most jurisdictions, the duty of the operator of a motor vehicle is to exercise ordinary, reasonable, or due care, that is, that degree of care and caution which an ordinarily careful or reasonable and prudent person would exercise under the same or similar circumstances,[n3] and this duty applies even on private property,[n4] though it has also been said that statutory standards of conduct for public streets and highways are not applicable to the driver of a motor vehicle in a private parking lot.[n5]

What is ordinary or reasonable care required of a motorist varies with and is dependent upon the place, circumstances, conditions, and surroundings,[n6] and what may be ordinary and reasonable care in the operation of a motor vehicle under some circumstances may be negligence under others.[n7] For example, extremely adverse driving conditions call for unusual caution on the part of motorists.[n8]

Observation: The standard of care to be applied to juvenile motorists is the same as that applied to adults.[n9]

In some cases motorists have been held required to exercise a high degree of care, but only in the sense that ordinary or reasonable care under some circumstances requires a high degree of care.[n10] In general, once a driver in the exercise of ordinary care knows or should know of another driver's negligence, he or she has a duty to exercise ordinary care to avoid the dangerous consequences of that negligence.[n11]

The operator of a motor vehicle may be required by statute to exercise the highest degree of care.[n12] Where a driver is required to exercise the highest degree of care, this is that degree of care that a very careful person would use under same or similar circumstances.[n13]

Each driver is charged under the law with remaining alert and following the vehicle in front of him or her at a safe distance.[n14]

Compliance with statutes and ordinances relating to vehicles and their operation is not all the law requires of a motorist, since they merely prescribe the minimum of prudent conduct; motorists must still exercise the care of the ordinarily prudent person under the circumstances.[n15] Moreover, a motorist may have a duty to maintain a vehicle in safe working condition.[n16]

Observation: A driver with a right of way has a corresponding duty to use reasonable care to avoid a collision.[n17] The fact that a motorist has the right of way does not relieve him or her of the duty to exercise due care,[n18] though possession of the right of way is a factor for the jury to take into account when determining whether the operator of a vehicle performed his or her duty of due care or was negligent.[n19]

FOOTNOTES:

n1 Am. Jur. 2d, Negligence § 5.

n2 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n3 St. Louis v. Dail, 178 F. Supp. 2d 520 (D. Md. 2001) (applying Maryland law); Hodder v. U.S., 328 F. Supp. 2d 335 (E.D. N.Y. 2004) (applying New York law); State v. Carter, 64 Conn. App. 631, 781 A.2d 376 (2001); Nelson v. State, 922 So. 2d 447 (Fla. Dist. Ct. App. 2d Dist. 2006); McKissick v. Giroux, 272 Ga. App. 499, 612 S.E.2d 827 (2005); Wilkerson v. Harvey, 814 N.E.2d 686 (Ind. Ct. App. 2004), transfer denied, 831 N.E.2d 738 (Ind. 2005); Henry v. Barlow, 901 So. 2d 1207 (La. Ct. App. 3d Cir. 2005); Com. v. Angelo Todesca Corp., 446 Mass. 128, 842 N.E.2d 930 (2006); Wise v. Pottorff, 987 S.W.2d 407 (Mo. Ct. App. W.D. 1999); Filippazzo v. Santiago, 277 A.D.2d 419, 716 N.Y.S.2d 710 (2d Dep't 2000); Campbell v. Ingram, 636 S.E.2d 847 (N.C. Ct. App. 2006), appeal withdrawn, 361 N.C. 351, 645 S.E.2d 79 (2007) and appeal withdrawn, 361 N.C. 351, 645 S.E.2d 79 (2007); Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006); Fuller v. Pacheco, 2001 OK CIV APP 39, 21 P.3d 74 (Div. 2 2001); Martini ex rel. Dussault v. State, 121 Wash. App. 150, 89 P.3d 250 (Div. 2 2004), review denied, 153 Wash. 2d 1023, 108 P.3d 133 (2005); Jones v. Schabron, 2005 WY 65, 113 P.3d 34 (Wyo. 2005).

As to the duty of care required in the operation of emergency vehicles, see §§ 945, 946.

n4 Albright v. Delta Regional Medical Center, 899 So. 2d 897 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005).

n5 Manley v. Wal-Mart Stores, Inc., 152 Ohio App. 3d 544, 2003-Ohio-1756, 789 N.E.2d 631 (5th Dist. Richland County 2003).

n6 Hodder v. U.S., 328 F. Supp. 2d 335 (E.D. N.Y. 2004) (applying New York law); Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n7 F E C News Co. v. Pearce, 58 So. 2d 843 (Fla. 1952).

n8 Hebert v. Lafayette Consolidated Government, 930 So. 2d 281 (La. Ct. App. 3d Cir. 2006).

n9 Nielsen v. Brown, 232 Or. 426, 374 P.2d 896 (1962); Powell v. Hartford Acc. & Indem. Co., 217 Tenn. 503, 398 S.W.2d 727 (1966).

n10 Virginia Ave. Coal Co. v. Bailey, 185 Tenn. 242, 205 S.W.2d 11 (1947).

n11 Rios v. Norsworthy, 266 Ga. App. 469, 597 S.E.2d 421 (2004).

n12 Baldwin v. U.S., 929 F. Supp. 1270 (E.D. Mo. 1996); Ryan v. Parker, 812 S.W.2d 190 (Mo. Ct. App. W.D. 1991).

n13 Crane v. Drake, 961 S.W.2d 897 (Mo. Ct. App. W.D. 1998).

n14 Clampitt v. D.J. Spencer Sales, 786 So. 2d 570 (Fla. 2001).

n15 Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576, 42 A.L.R.2d 1 (1953).

n16 Cox v. Stoughton Trailers, Inc., 837 N.E.2d 1075 (Ind. Ct. App. 2005).

n17 Mateiasevici v. Daccordo, 34 A.D.3d 651, 825 N.Y.S.2d 502 (2d Dep't 2006).

n18 Pickett v. Taylor, 178 W. Va. 805, 364 S.E.2d 818 (1987).

As to right of way, generally, see §§ 281 to 300.

n19 Mari v. Delong, 62 Mass. App. Ct. 87, 814 N.E.2d 1171 (2004).

SUPPLEMENT:

Cases

In cases involving allegations of driver negligence, Kansas employs a "reasonably prudent driver" standard to determine whether a driver acted negligently in operating a vehicle. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

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8 Am Jur 2d Automobiles and Highway Traffic § 421

§ 421 Duty to keep vehicle under control

Generally, the operator of a motor vehicle has the duty of keeping it under control at all times so as to avoid collision or contact with vehicles, pedestrians, and other persons properly using the highway.[n1] A motor vehicle is under control if it can be stopped quickly[n2] or with a reasonable degree of celerity, which does not mean instantly under any and all circumstances.[n3] Another view is that the test of having a motor vehicle under control is the ability to avoid colliding with another who is using the highway and exercising proper care and caution on his or her own part.[n4]

A motorist's duty to keep his or her vehicle under control increases during periods of low visibility.[n5]

FOOTNOTES:

n1 Hodder v. U.S., 328 F. Supp. 2d 335 (E.D. N.Y. 2004) (applying New York law); McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006); Fielder v. Magnolia Beverage Co., 757 So. 2d 925 (Miss. 1999).

n2 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n3 Carruthers v. Campbell, 195 Iowa 390, 192 N.W. 138, 28 A.L.R. 949 (1923).

N4 Pike Taxi Co. v. Patterson, 258 Ala. 508, 63 So. 2d 599 (1952); Warren v. Bostock, 170 Neb. 203, 102 N.W.2d 55 (1960).

As to requirement that motorists drive at a speed which will enable them to stop within the assured clear distance ahead, see §§ 764, 765.

n5 Kimble v. East Baton Rouge Parish, 673 So. 2d 682 (La. Ct. App. 1st Cir. 1996).

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8 Am Jur 2d Automobiles and Highway Traffic § 422

§ 422 Duty to anticipate presence of others; lookout

The driver must maintain an adequate, reasonable, or careful lookout for other vehicles and hazards.[n1] The degree of care which an operator of a motor vehicle must exercise is exercised in the light of all present conditions and those reasonably to be anticipated.[n2]

A driver has the duty to take notice of an obvious danger and to take reasonable steps to avoid an accident or injury to persons or property after he or she has knowledge of the danger.[n3] However, a motorist may generally assume that the road is safe for travel and he or she is not required to anticipate unexpected obstructions in his or her lane of traffic which are, under the circumstances, difficult to discover.[n4] The duty to keep a proper lookout and use reasonable care thus does not require a motorist to do the impossible to avoid a collision.[n5]

The driver must be specially watchful in anticipation of the presence of others at places where other vehicles are constantly passing, and where persons are likely to be crossing, or places where people are likely to fail to observe an approaching vehicle.[n6] The failure to keep a proper lookout for persons and objects in the line to be traversed constitutes negligence,[n7] and the driver may be held liable for the consequences of this breach of duty.[n8]

FOOTNOTES:

n1 Athridge v. Iglesias, 950 F. Supp. 1187 (D.D.C. 1996), aff'd, 1997 WL 404854 (D.C. Cir. 1997); Hodder v. U.S., 328 F. Supp. 2d 335 (E.D. N.Y. 2004) (applying New York law); Hamblin v. U.S., 327 F. Supp. 2d 315 (D. Vt. 2004) (applying Vermont law); State v. Carter, 64 Conn. App. 631, 781 A.2d 376 (2001); McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006); Turner v. Lyons, 867 So. 2d 13 (La. Ct. App. 4th Cir. 2004), writ denied, 872 So. 2d 530 (La. 2004); Fielder v. Magnolia Beverage Co., 757 So. 2d 925 (Miss. 1999); Gage v. Raffensperger, 234 A.D.2d 751, 651 N.Y.S.2d 214 (3d Dep't 1996); Jones v. Schabron, 2005 WY 65, 113 P.3d 34 (Wyo. 2005).

n2 Jones v. Schabron, 2005 WY 65, 113 P.3d 34 (Wyo. 2005).

n3 Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006).

n4 Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006).

n5 McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006).

n6 Williams v. Wachovia Bank & Trust Co., 292 N.C. 416, 233 S.E.2d 589 (1977).

n7 Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461 (1952).

n8 Brown v. Clark Equipment Co., 62 Haw. 530, 62 Haw. 689, 618 P.2d 267 (1980).

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8 Am Jur 2d Automobiles and Highway Traffic § 423

§ 423 Assuming that others will exercise due care

Motorists and passengers have the right to assume that other motorists will exercise reasonable care and caution under the circumstances or will obey the law.[n1]

Caution: However, at least one case has stated that a driver has no right to assume that other drivers are exercising reasonable care on the highway by obeying the rules of the road.[n2]

A motorist is not bound to anticipate negligence by another motorist,[n3] or to anticipate the possibility that another driver will disobey the law[n4] or unexpectedly violate traffic regulations and create a dangerous situation,[n5] in the absence of knowledge acquired by the use of ordinary care.[n6] A motorist upon a highway regularly used by the public is thus not required to anticipate extraordinary hazards.[n7]

A motorist's right to assume that others will obey the law or exercise reasonable care is therefore only valid until the motorist knows, or in the exercise of due care should have known, otherwise.[n8] A driver has a duty to drive defensively from the time the driver witnesses the negligent operation of another vehicle or notices other hazards posing the potential for resulting damage; that duty may include the duty to slow down or otherwise avoid risks posed by a vehicle ahead.[n9]

FOOTNOTES:

n1 Acree v. Hartford South Inc., 724 So. 2d 183 (Fla. Dist. Ct. App. 5th Dist. 1999); Lee v. Davis, 864 So. 2d 780 (La. Ct. App. 5th Cir. 2003); Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999); Hurd v. Flores, 221 S.W.3d 14 (Tenn. Ct. App. 2006), appeal denied, (Nov. 6, 2006).

n2 Smith v. Angell, 122 Idaho 25, 830 P.2d 1163 (1992).

n3 Wise v. Pottorff, 987 S.W.2d 407 (Mo. Ct. App. W.D. 1999); Long v. Harris, 137 N.C. App. 461, 528 S.E.2d 633 (2000).

As to whether a motorist injured due to the operation of a motor vehicle can be regarded as contributorily or comparatively negligent by reason of his or her failing to anticipate that another motorist would act in a negligent manner, see § 951.

n4 City of South Lake Tahoe v. Superior Court (Markham), 62 Cal. App. 4th 971, 73 Cal. Rptr. 2d 146 (3d Dist. 1998); Long v. Harris, 137 N.C. App. 461, 528 S.E.2d 633 (2000).

n5 Rios v. Norsworthy, 266 Ga. App. 469, 597 S.E.2d 421 (2004).

n6 Rios v. Norsworthy, 266 Ga. App. 469, 597 S.E.2d 421 (2004).

n7 McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006).

n8 Graber v. City of Ankeny, 616 N.W.2d 633 (Iowa 2000); Wise v. Pottorff, 987 S.W.2d 407 (Mo. Ct. App. W.D. 1999); Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

n9 United Services Auto. Ass'n v. Craft, 862 So. 2d 353 (La. Ct. App. 2d Cir. 2003).

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8 Am Jur 2d Automobiles and Highway Traffic § 424

§ 424 Conduct in emergencies

The general principle of the law of negligence that a person placed in a position of sudden emergency other than by his or her own negligence is not held to the same degree of care and prudence as one who has time for deliberation[n1] applies in cases involving motor vehicle accidents, so that under the "emergency doctrine,"when a person is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation, or consideration, he or she will not be held liable upon a finding that he or she took reasonable and prudent action in the emergency context.[n2] Such person is thus not obligated to exercise his or her best judgment[n3] nor is he or she required to possess the same coolness and judgment as when there is no imminent peril,[n4] since any error in the driver's judgment is insufficient to constitute negligence.[n5] A person in a sudden emergency who fails to act in the most judicious manner is not guilty of negligence if he or she exercises the degree of care which would be exercised by a reasonably prudent person in like circumstances.[n6] Moreover, a driver confronted with a sudden or unexpected event should not be subject to liability simply because another perhaps more prudent course of action was available.[n7] In cases where a car crosses over the double line and a collision occurs almost instantaneously, the driver in the oncoming proper lane cannot be considered negligently responsible for any part of the accident.[n8]

However, the mere fact that a motorist finds him- or herself in an emergency does not automatically relieve the motorist of the obligation to use ordinary care,[n9] and a party may still be found negligent if the acts in response to the emergency are found to be unreasonable.[n10] Thus, when a driver is confronted with a sudden emergency, he or she is not held to the same standard of care that would otherwise be expected, but neither is he or she excused from acting in a reasonable and prudent manner.[n11] The sudden-emergency doctrine thus modifies the negligence standard of reasonable conduct by allowing a sudden occurrence to be taken into account as one circumstance determining what conduct is reasonable.[n12]

The sudden-emergency doctrine is applicable in cases involving rear-end collisions when the defendant's negligent actions are a result of emergency conditions, but not when the defendant's actions prior to the emergency are negligent.[n13] A duty to swerve or to take other evasive action arises when the driver knows or should know of the likelihood of a collision.[n14]

The emergency must have been brought about by some agency over which the motorist had no control,[n15] and not by the motorist's own negligence or wrongful conduct.[n16] The blinding effect of the sun's rays on a driver, however, is a common and expected situation, and the sudden-emergency doctrine does not apply to excuse the negligent conduct of a driver who strikes a bicyclist.[n17]

The application of the sudden-emergency doctrine requires factual determinations concerning whether a driver was confronted with imminent peril and whether there was sufficient time to consider and weigh the circumstances in order to take action to avoid an impending danger.[n18]

FOOTNOTES:

n1 Am. Jur. 2d, Negligence § 198.

n2 McClintic v. Hesse, 151 P.3d 611 (Colo. Ct. App. 2006), cert. granted, 2007 WL 439058 (Colo. 2007); Wheeler v. Strunk, 728 N.W.2d 851 (Iowa Ct. App. 2007); Ward v. Cox, 38 A.D.3d 313, 831 N.Y.S.2d 406 (1st Dep't 2007).

As to exceptions to the assured clear distance ahead rule in cases of sudden emergency, see § 765.

n3 Garcia v. Prado, 15 A.D.3d 347, 790 N.Y.S.2d 158 (2d Dep't 2005).

n4 Yates v. Shackelford, 336 Ill. App. 3d 796, 271 Ill. Dec. 112, 784 N.E.2d 330 (1st Dist. 2002).

n5 Caffery v. BJY Materials, Inc., 11 A.D.3d 649, 784 N.Y.S.2d 559 (2d Dep't 2004).

n6 Roth v. Connolly, 203 W. Va. 607, 509 S.E.2d 888 (1998).

n7 Carpinet v. Mitchell, 2004 PA Super 197, 853 A.2d 366 (2004), appeal denied, 586 Pa. 706, 889 A.2d 1212 (2005).

n8 Yates v. Shackelford, 336 Ill. App. 3d 796, 271 Ill. Dec. 112, 784 N.E.2d 330 (1st Dist. 2002); Williams v. Simpson, 36 A.D.3d 507, 829 N.Y.S.2d 51 (1st Dep't 2007).

n9 Warnke v. Essex, 217 Md. 183, 141 A.2d 728 (1958).

n10 Esposito v. Wright, 28 A.D.3d 1142, 814 N.Y.S.2d 430 (4th Dep't 2006).

n11 Vantran Industries, Inc. v. Ryder Truck Rental, Inc., 955 So. 2d 1118 (Fla. Dist. Ct. App. 1st Dist. 2006).

n12 Pinsker v. Fleming, 31 Conn. L. Rptr. 675, 2002 WL 853632 (Conn. Super. Ct. 2002).

n13 Jordan v. Sava, Inc., 222 S.W.3d 840 (Tex. App. Houston 1st Dist. 2007), reh'g overruled, (Apr. 12, 2007).

n14 Luallen v. Reid, 58 S.W.3d 50 (Mo. Ct. App. W.D. 2001).

n15 Thomson v. Littlefield, 319 Ark. 648, 893 S.W.2d 788 (1995).

n16 § 425.

n17 Vasconez v. Mills, 651 N.W.2d 48 (Iowa 2002).

n18 Manno v. Gutierrez, 934 So. 2d 112 (La. Ct. App. 1st Cir. 2006).

SUPPLEMENT:

Cases

"Emergency doctrine" relieves driver from liability if he was faced with emergency situation not of his own making and responded in manner that was reasonable and prudent in emergency context. Cahoon v. Frechette, 86 A.D.3d 774, 927 N.Y.S.2d 689 (3d Dep't 2011).

REFERENCE: West's Key Number Digest, Automobiles [westkey]146, 148, 150, 154, 159, 201(10), 206, 225, 229.5, 251.1 to 251.3, 251.6, 251.9
A.L.R. Index, Approaching Vehicle
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Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or Pass, 31 Am. Jur. Proof of Facts 3d 145
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
All-Terrain Vehicle Litigation, 38 Am. Jur. Trials 231
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
Am. Jur. Pleading and Practice Forms, Automobile Insurance § 215
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 276, 325, 772, 806, 1301, 1302, 1331, 1335, 1336, 1376, 1405, 1406, 1479 to 1488, 1591, 1599 to 1609
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
A. In General
3. General Duty of Care in Operation of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 425

§ 425 Emergency created by motorist's own negligence or wrongful conduct

The sudden emergency rule cannot be invoked by one whose own negligence or wrongful conduct created the emergency or gave rise to a situation of peril, [n1] such as by proceeding at a reckless or unlawful rate of speed or on the wrong side of the highway. [n2] The motorist is not, in such a case, made to assume responsibility for a mere error of judgment in failing to adopt the best means of escape from a sudden peril, but rather is held responsible for the original negligence which placed him or her in peril, if such negligence contributed measurably to the happening of the accident. [n3]

FOOTNOTES:

n1 Butgereit v. Enviro-Tech Environmental Services, Inc., 262 Ga. App. 754, 586 S.E.2d 430 (2003); Sobczak v. Vorholt, 640 S.E.2d 805 (N.C. Ct. App. 2007); Hatala v. Craft, 165 Ohio App. 3d 602, 2006-Ohio-789, 847 N.E.2d 501 (7th Dist. Mahoning County 2006); Com. v. Matroni, 2007 PA Super 110, 923 A.2d 444 (2007).

n2 Hill v. Peres, 136 Cal. App. 144, 28 P.2d 944 (1st Dist. 1934).

n3 Trautman v. New Rockford-Fessenden Co-op Transport Ass'n, 181 N.W.2d 754 (N.D. 1970).

REFERENCE: West's Key Number Digest, Automobiles [westkey]146, 148, 150, 154, 159, 201(10), 206, 225, 229.5, 251.1 to 251.3, 251.6, 251.9
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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 276, 325, 772, 806, 1301, 1302, 1331, 1335, 1336, 1376, 1405, 1406, 1479 to 1488, 1591, 1599 to 1609
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 426

§ 426 Proximate cause; generally

The established principle of the law of negligence that in order to impose liability for a negligent or wrongful act it must appear that such act was the proximate cause of the injury alleged to have resulted there from[n1] is fully applicable in cases involving motor vehicle accidents.[n2] In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of.[n3] Thus, negligence that is not a substantial contributing factor in the causation of the accident is not the proximate cause of an injury.[n4] The injuries or damages must have been those which might have been foreseen by a person of ordinary intelligence and prudence, although not necessarily in the precise form in which they occurred.[n5]

On the other hand, it has been held that a vehicle need not be the proximate cause of an injury before the vehicle's owner may be held vicariously liable under a state statute providing for the vicarious liability of a vehicle owner for negligence in the use or operation of the vehicle by a permissive user, where to require that the vehicle itself be the instrumentality or a proximate cause of a plaintiff's injury would tend to circumvent the statute's negligence requirement and unduly limit its intended beneficial purpose.[n6]

FOOTNOTES:

n1 As to proximate cause, generally, see Am. Jur. 2d, Negligence §§ 409 to 434.

n2 Matovich v. Rodgers, 784 N.E.2d 954 (Ind. Ct. App. 2003); Fleming v. Floyd, 2006 WL 2807173 (Miss. Ct. App. 2006), cert. granted, 959 So. 2d 1051 (Miss. 2007); Dubi v. Jericho Fire Dist., 22 A.D.3d 631, 803 N.Y.S.2d 103 (2d Dep't 2005); Oakes v. Wooten, 173 N.C. App. 506, 620 S.E.2d 39 (2005); Shupe v. Lingafelter, 192 S.W.3d 577 (Tex. 2006); Estate of Moses ex rel. Moses v. Southwestern Virginia Transit Management Co., Inc., 643 S.E.2d 156 (Va. 2007).

n3 Branstetter v. Gerdeman, 364 Mo. 1230, 274 S.W.2d 240 (1955).

n4 Salerno v. LaBarr, 159 Pa. Commw. 99, 632 A.2d 1002 (1993).

n5 Marshall Durbin, Inc. v. Tew, 362 So. 2d 601 (Miss. 1978).

n6 Argentina v. Emery World Wide Delivery Corp., 93 N.Y.2d 554, 693 N.Y.S.2d 493, 715 N.E.2d 495, 103 A.L.R.5th 685 (1999).

SUPPLEMENT:

Cases

Whether absence of a median barrier on stretch of interstate highway proximately caused collisions that occurred when vehicle hydroplaned, crossed over median, and struck two oncoming vehicles in which plaintiffs were riding was question for jury in negligence action against state Department of Transportation (DOT), where highway transportation engineer gave deposition testimony that it was feasible to install three-cable median barriers prior to date of accident, that such a barrier would have entrapped or redirected the tires of a car hitting it, and that he thought it was highly likely that the crossover would have been prevented. Giannini v. South Carolina Dept. of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Stolen Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 316, 705, 1357 to 1359, 1361
West's Key Number Digest, Automobiles [westkey]201(.5)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 705 (Proximate cause -- Negligence of defendant)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1357 (Instruction to jury -- Proximate cause defined)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1358 (Instruction to jury -- Proximate cause -- Defined -- Effect of concurrent negligence)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1359 (Instruction to jury -- Proximate cause -- Necessity of finding)

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 427

§ 427 Concurrent causes

There may be more than one proximate cause of an automobile accident.[n1] The general principle of negligence, that where an injury results from two separate and distinct acts of negligence committed by different persons operating concurrently (both of which are regarded as the proximate cause of the injury) recovery can be had against either or both tortfeasors[n2] is fully applicable in an action for injuries or damages resulting from the concurring negligence of two or more motorists.[n3] Moreover, a defendant cannot escape responsibility for negligence in operating a motor vehicle by showing that his or her joint tortfeasor was also responsible.[n4] Thus, the culpability of one driver does not disprove the culpability of another driver, in a negligence action brought by the occupant of a third vehicle, where both drivers could be culpable.[n5] For example, in a negligent entrustment claim, the owner's negligence must concur, as a part of the proximate cause, with the negligent conduct of the driver on account of his or her incompetency and recklessness.[n6]

It follows that in the case of concurring negligence of two persons, only one of whom is sued, the defendant's negligence need not be the sole proximate cause of the injury.[n7] Thus, a statute which imposes strict liability for injuries to innocent third parties caused by a vehicular pursuit requires that the actions of a law enforcement officer during a vehicular pursuit be merely a proximate cause of the damage, and not the sole proximate cause.[n8]

One who creates a distracting condition on a highway may be concurrently negligent with a motorist who, being distracted, runs into another.[n9] However, it has also been held that such a distracter is not liable to the plaintiff where the collision was an unforeseeable consequence of the distracter's action.[n10]

FOOTNOTES:

n1 Washington Metropolitan Area Transit Authority v. Seymour, 387 Md. 217, 874 A.2d 973 (2005); Heal v. Liszewski, 294 A.D.2d 911, 741 N.Y.S.2d 374 (4th Dep't 2002); Taylor v. Coats, 636 S.E.2d 581 (N.C. Ct. App. 2006); Kreidt v. Burlington Northern R.R., 2000 ND 150, 615 N.W.2d 153 (N.D. 2000).

n2 Am. Jur. 2d, Negligence § 515.

n3 Mitchell v. Hastings & Koch Enterprises, Inc., 38 Mass. App. Ct. 271, 647 N.E.2d 78 (1995); Patrick v. Alphin, 825 S.W.2d 11 (Mo. Ct. App. E.D. 1992).

n4 Layton v. Palmer, 309 S.W.2d 561, 66 A.L.R.2d 1242 (Mo. 1958).

n5 Whitehead v. Tobias, 7 S.W.3d 658 (Tex. App. Texarkana 1999).

n6 Butler v. Warren, 261 Ga. App. 375, 582 S.E.2d 530 (2003).

N7 Dorschel v. Tzomides, 214 Md. 341, 135 A.2d 417, 63 A.L.R.2d 1 (1957).

n8 Staley v. City of Omaha, 271 Neb. 543, 713 N.W.2d 457 (2006).

n9 Thompson v. White, 274 Ala. 413, 149 So. 2d 797 (1963).

n10 Blakely v. Johnson, 220 Ga. 572, 140 S.E.2d 857 (1965).

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 316, 705, 1357 to 1359, 1361
West's Key Number Digest, Automobiles [westkey]201(8)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 316 (Chain rear-end collision -- Property damage to automobile)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 428

§ 428 Intervening causes

Generally, when the operator of a motor vehicle starts a chain of events by reason of his or her own negligence, he or she may be held responsible for all mishaps which are the proximate result of the unlawful conduct, notwithstanding there are other intervening causes contributing to the injury.[n1] Thus, when the acts of an operator of a motor vehicle give rise to a stream of events that culminate in an accident, such acts are the proximate cause of the accident even though an intervening cause contributes thereto.[n2] Moreover, the intervening negligent conduct of a third person will not relieve the original tortfeasor from liability or sever the causal link where such conduct was reasonably foreseeable.[n3]

When a new cause cooperates with the defendant's original negligent act in causing the injury, the original defendant remains a proximate cause of the injury, regardless of whether the new, concurring act was foreseeable.[n4] However, even though a motorist is negligent in the operation of a vehicle, he or she is not liable for injuries sustained by another which are occasioned by an intervening act or cause adequate of itself to bring about the injurious result,[n5] which breaks any causal connection between the motorist and the injury to the plaintiff.[n6]

Illustrations: Thus, a driver's intoxicated driving, which severs the causal connection between the plaintiffs' injuries and the actions of a first driver, is a superseding cause that is unforeseeable and breaks the causal chain, thus relieving the first intoxicated driver of liability.[n7] Moreover, a failure to maintain an assured clear distance may break the chain of causation related to an intoxicated driver's negligent driving, where the violation constitutes an independent, intervening act which absolves the intoxicated driver of liability for the collision between the plaintiff and a third driver.[n8]

FOOTNOTES:

n1 Stout v. Rutherford, 1959 OK 128, 341 P.2d 266 (Okla. 1959).

As to intervening causes, generally, see Am. Jur. 2d, Negligence §§ 555 to 673.

n2 Ferroggiaro v. Bowline, 153 Cal. App. 2d 759, 315 P.2d 446, 64 A.L.R.2d 1355 (1st Dist. 1957).

n3 Staelens v. Dobert, 318 F.3d 77 (1st Cir. 2003) (applying Massachusetts law); Knisley v. Bray, 2004-Ohio-4553, 2004 WL 1925698 (Ohio Ct. App. 10th Dist. Franklin County 2004), appeal not allowed, 104 Ohio St. 3d 1462, 2005-Ohio-204, 821 N.E.2d 578 (2005).

n4 J. Wigglesworth Co. v. Peeples, 985 S.W.2d 659 (Tex. App. Fort Worth 1999).

n5 Stout v. Rutherford, 1959 OK 128, 341 P.2d 266 (Okla. 1959).

n6 Thomas v. Deloatch, 45 N.C. App. 322, 263 S.E.2d 615 (1980); Wolf v. Friedman Steel Sales, Inc., 717 S.W.2d 669 (Tex. App. Texarkana 1986), writ refused n.r.e., (Nov. 19, 1986).

n7 Patterson v. Cabala, 2006 WL 2271319 (Mich. Ct. App. 2006), appeal denied, 477 Mich. 1124, 730 N.W.2d 249 (2007).

n8 Mitchell v. Kuchar, 2005-Ohio-3717, 2005 WL 1707000 (Ohio Ct. App. 8th Dist. Cuyahoga County 2005).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 429

§ 429 Criminal acts

In accordance with the general rule that an intervening criminal act breaks the chain of causation,[n1] an automobile owner's leaving the automobile open with the keys inside or in the ignition is not the proximate cause of injuries sustained when the automobile is stolen and hits a pedestrian or collides with another vehicle while being driven by the thief.[n2] Moreover, a police officer's decision, concerning the safest time and place to initiate a traffic stop, is not a proximate cause of an injury to the passenger in a fleeing vehicle which crashes into a house, because the driver's subsequent independent criminal act of fleeing the officer is independent of the officer's timing of the traffic stop and is adequate by itself to bring about the passenger's injury.[n3] However, if the criminal act of the third party is foreseeable, the original wrongdoer is not relieved of liability on the ground that the injury was caused by an intervening act.[n4] As stated by one court, in addition to asking whether a vehicle theft was foreseeable, one must ask whether it was reasonably foreseeable that the stolen vehicle would have been operated negligently or recklessly by the thief.[n5]

Where a thief acts unlawfully and steals the vehicle, the thief's negligent and unlawful driving of the vehicle after the theft constitutes an intervening act which supersedes the liability of the negligent owner of the vehicle.[n6]

Practice Tip: Facts relevant to the foreseeability of the theft of a motor vehicle in the context of keys being left in the automobile include whether the vehicle was parked in a high-crime area, whether similar crimes had occurred in the past in the area, and whether the area was a relatively unprotected public place.[n7]

FOOTNOTES:

n1 Am. Jur. 2d, Negligence § 631.

n2 Phillips v. Budget Rent-A-Car Systems, Inc., 372 Ill. App. 3d 155, 309 Ill. Dec. 468, 864 N.E.2d 709 (1st Dist. 2007); Bruck v. Thompson, 131 S.W.3d 764 (Ky. Ct. App. 2004); Humphrey v. Balsamo, 914 So. 2d 1217 (La. Ct. App. 2d Cir. 2005).

n3 Lefthand v. City of Okmulgee, 1998 OK 97, 968 P.2d 1224 (Okla. 1998), as corrected, (Oct. 29, 1998).

n4 Conklin v. Carroll, 865 So. 2d 597 (Fla. Dist. Ct. App. 2d Dist. 2004); Stephens v. Crowder Investments, Inc., 841 S.W.2d 947 (Tex. App. Waco 1992).

n5 Amaya v. Potter, 94 S.W.3d 856 (Tex. App. Eastland 2002).

n6 Southern Heritage Ins. Co. v. C.E. Frazier Const. Co., Inc., 809 So. 2d 668 (Miss. 2002).

n7 Simmons v. Flores, 838 S.W.2d 287 (Tex. App. Texarkana 1992), writ denied, (Jan. 20, 1993).

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 430

§ 430 Acts to avert injurious consequences, rescue imperiled person, or save property

Proximate cause is generally found where the person injured or killed following a motor vehicle accident was engaged in saving him- or herself personally from the accident[n1] or was attempting to rescue, aid,[n2] or warn[n3] others. The theory of proximate causation is likely to be upheld where the injuries or the death complained of resulted from an effort to aid the defendant.[n4]

As to the problem of proximate causation, there is little to distinguish a case in which the plaintiff's effort was made in respect of his or her own property and one in which his or her effort was directed to property of others.[n5] However, the cases show some tendency to deny that injuries sustained in the course of efforts made in respect of property involved in a motor vehicle accident are proximately attributable to the negligence causing the accident where they were inflicted by a vehicle passing or attempting to pass the scene of the accident.[n6]

FOOTNOTES:

n1 Hatch v. Smail, 249 Wis. 183, 23 N.W.2d 460, 166 A.L.R. 746 (1946).

n2 Blanchard v. Reliable Transfer Co., 71 Ga. App. 843, 32 S.E.2d 420 (1944).

n3 Marshall v. Nugent, 222 F.2d 604, 58 A.L.R.2d 251 (1st Cir. 1955).

n4 Britt v. Mangum, 261 N.C. 250, 134 S.E.2d 235, 4 A.L.R.3d 551 (1964).

n5 Hatch v. Smail, 249 Wis. 183, 23 N.W.2d 460, 166 A.L.R. 746 (1946).

n6 Hedgecock v. Orlosky, 220 Ind. 390, 44 N.E.2d 93 (1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 431

§ 431 Responsibility of operator of one vehicle for injuries immediately inflicted by another vehicle; generally

The operator of a motor vehicle so negligently operated as to place others in a position where they are injured by another motor vehicle operated by a third person may be liable therefore, where it can be said that such negligence was the proximate cause of such injuries. [n1]

The responsibility for injuries may be imposed upon the operator of a motor vehicle which is operated in such a negligent manner as to cause the injured person or his or her property to or collide with another vehicle, [n2] thereby causing injury to others or their property. Responsibility for injuries may also be imposed upon one who operates a motor vehicle in such a manner as negligently to push a second vehicle against the person or property of another. [n3]

In order to charge the operator of one motor vehicle for injuries immediately inflicted by another, the alleged negligence of the former must be shown to be a proximate cause of such injuries, otherwise there is no liability. [n4]

A police officer pursuing a fleeing suspect does not owe the suspect a duty to refrain from a high-speed chase that endangers the suspect's safety. [n5]

FOOTNOTES:

n1 Casey v. M. L. Pike & Son, Inc., 104 N.H. 521, 191 A.2d 533 (1963).

As to the liability of a driver of a private automobile for injury to an occupant struck by another vehicle after alighting, see § 548.

n2 Wilsey-Bennett Trucking Company v. Frost, 275 F.2d 144 (10th Cir. 1960).

n3 Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).

n4 Johnson v. Johnson, 171 So. 2d 710 (La. Ct. App. 4th Cir. 1965); Cuppy v. Bunch, 88 S.D. 22, 214 N.W.2d 786 (1974).

n5 Jackson v. Oliver, 204 Mich. App. 122, 514 N.W.2d 195 (1994).

As to the care required of police vehicles during emergencies, see §§ 945, 946.

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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Automobiles: liability of one fleeing police for injury resulting from collision of police vehicle with another, 51 A.L.R.3d 1226

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
B. Causation

8 Am Jur 2d Automobiles and Highway Traffic § 432

§ 432 Injuries inflicted, after one accident, by another vehicle in a following accident

Where a motor vehicle accident, caused by someone's negligence, has occurred, and after some time has elapsed, another motor vehicle approaches and causes injury to persons or damage to things in the vicinity of the first accident, the cases are not in agreement as to whether the negligence causing the first accident can be deemed to have continued to operate as a proximate cause of the second accident so as to render the person responsible for the first also at least jointly responsible for the second; some courts hold both tortfeasors liable,[n1] while other courts hold that the subsequent negligence initiates a new chain of causation not traceable to the first defendant's negligence.[n2] The test whether the negligence of a subsequently approaching motorist can be regarded as insulating that causing the first accident is whether the second motorist had become aware of a potential danger created by the negligence of the first motorist, and then, by an independent act of negligence, caused the injuries in suit; if so, the second motorist alone will be liable, but if his or her negligence consisted only in failing to observe the dangerous situation, the original negligence will continue as an effective cause.[n3]

Negligence on the part of the driver in the original accident who is able to remove his vehicle from the roadway is not a proximate cause of the injuries of another driver who manages to stop his vehicle behind the vehicles involved in the accident, but who is latter injured when other vehicles hit a vehicle behind him, injuring him.[n4]

Foreseeability generally determines whether the negligence of a subsequently approaching motorist can be considered as an intervening cause rather than a merely concurring cause.[n5] It is foreseeable that losing control of a vehicle, crashing into a guardrail, and obstructing traffic on an interstate highway will result in secondary accidents by the following vehicles, such that the motorist who set into motion the chain of secondary accidents is negligent even though those involved in the secondary accidents were speeding.[n6]

Where one defendant negligently causes an accident and a subsequently approaching vehicle collides with those involved in the original collision, the original negligence can be found to continue as a proximate cause of the injury or damage caused by the second.[n7] Thus, a collision with a car stopped at an accident scene is a foreseeable intervening act associated with the driver's initial negligence and, therefore, is not sufficiently independent to insulate the driver from liability for causing the first accident approximately 15 minutes before the second collision.[n8]

In a number of other cases the courts have indicated that negligence causing one accident was too remote from a subsequent accident, or could not be found to have continued as an effective legal cause of injuries received when a subsequently approaching vehicle collided with a vehicle in or near the road as a result of the first accident.[n9] Similarly, other cases have held that negligence causing one motor vehicle accident could not be regarded as a proximate cause of injury to one standing or walking in or near the road when struck by a subsequently approaching vehicle.[n10]

FOOTNOTES:

n1 Holtz v. Holder, 101 Ariz. 247, 418 P.2d 584 (1966).

n2 Sanders v. Wright, 642 A.2d 847 (D.C. 1994); O'Connor v. Nigg, 254 Mont. 416, 838 P.2d 422 (1992).

n3 Jeloszewski v. Sloan, 375 Pa. 360, 100 A.2d 480 (1953).

n4 Coffey v. Baker, 34 A.D.3d 1306, 824 N.Y.S.2d 511 (4th Dep't 2006), leave to appeal dismissed in part, denied in part, 8 N.Y.3d 867, 831 N.Y.S.2d 767, 863 N.E.2d 1020 (2007).

n5 Allen v. Shiroma, 266 Or. 567, 514 P.2d 545 (1973).

n6 Mendoza v. Mashburn, 747 So. 2d 1159 (La. Ct. App. 5th Cir. 1999), writ not considered, 754 So. 2d 957 (La. 2000) and writ not considered, 754 So. 2d 957 (La. 2000) and writ denied, 754 So. 2d 976 (La. 2000).

n7 Vadurro v. Yellow Cab Co. of Camden, 6 N.J. 102, 77 A.2d 459 (1950).

n8 Boykin v. Morrison, 148 N.C. App. 98, 557 S.E.2d 583 (2001).

n9 Bergeron v. Thomas, 314 So. 2d 418 (La. Ct. App. 1st Cir. 1975), writ refused, 318 So. 2d 54 (La. 1975); Cefalu v. Continental Western Ins. Co., 285 Wis. 2d 766, 2005 WI App 187, 703 N.W.2d 743 (Ct. App. 2005), review denied, 2005 WI 150, 286 Wis. 2d 100, 705 N.W.2d 661 (2005).

n10 Fossett v. Durant, 150 Me. 413, 113 A.2d 620 (1955); Mahmood v. Pinto, 17 A.D.3d 641, 794 N.Y.S.2d 102 (2d Dep't 2005).

REFERENCE: West's Key Number Digest, Automobiles [westkey]201(.5), 201(6), 201(8), 201(10)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 433

§ 433 Relation between motorist and pedestrian

The duty to maintain a proper lookout requires motorists to exercise the highest degree of care to discover the presence of other persons and objects upon the streets and highways and to become aware of dangerous situations and conditions.[n1] A higher standard of care than that required of pedestrians is imposed upon motorists, in recognition of the greater hazards that a driver's conduct threatens to public safety.[n2] A motorist's duty of special care to pedestrians does not mean that the motorist is necessarily at fault whenever there is a motor vehicle-pedestrian collision, however;[n3] rather, the conduct of both the motorist and pedestrian must be considered when assessing fault in a motor vehicle-pedestrian collision case.[n4]

In vehicle and pedestrian collisions, the common law duty under ordinary negligence principles requires a driver to exercise the degree of care required of a reasonable person in light of all the circumstances.[n5] A determination of negligence in a case involving a pedestrian and a motorist rests upon the particular facts of each case.[n6] Even though the motorist commands a greater instrumentality of harm, in an action for personal injuries the pedestrian must still prove that the motorist was negligent in order to recover.[n7] A driver is liable for striking a pedestrian only when there is an opportunity to appreciate the pedestrian's peril in time to avoid the accident.[n8] Physical contact between the vehicle and pedestrian is not necessary to create liability if the natural result of the defendant's negligence is to place the person injured in a position of danger, and the plaintiff is injured in a reasonable attempt to escape the peril.[n9]

A motorist driving along the streets of a municipality must exercise the care that persons of ordinary care and prudence in driving and managing automobiles in the streets of a city are accustomed to exercise for the protection of persons traveling in the streets.[n10] A driver's violation of municipal code requiring drivers to exercise due care to avoid colliding with pedestrians does not constitute negligence per se, even though the driver's automobile strikes a pedestrian, where there is no positive and definite standard of care under the code section which would allow a jury to determine a violation by the finding of a single issue of fact.[n11]

A motorist cannot escape liability for injury to or death of a pedestrian on the ground of the concurrent negligence or intervening acts of a third person, where the motorist's own negligent conduct is one of the proximate causes of the harm.[n12] Thus, a motorist who negligently leaves a vehicle unattended in a public street may be liable to a pedestrian who is injured or killed by the vehicle driven by a third person who starts it,[n13] if it can be established that the negligence of the motorist was a proximate cause of the injury.[n14]

FOOTNOTES:

n1 Wiskur v. Johnson, 156 S.W.3d 477 (Mo. Ct. App. S.D. 2005).

n2 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007).

n3 Estate of Hickerson v. Zimmerman, 853 So. 2d 55 (La. Ct. App. 4th Cir. 2003), writ denied, 860 So. 2d 1154 (La. 2003).

n4 Estate of Hickerson v. Zimmerman, 853 So. 2d 55 (La. Ct. App. 4th Cir. 2003), writ denied, 860 So. 2d 1154 (La. 2003).

n5 Mulloy v. American Eagle Airlines, Inc., 358 Ill. App. 3d 706, 295 Ill. Dec. 54, 832 N.E.2d 205 (1st Dist. 2005); Woods v. O'Neil, 54 Mass. App. Ct. 768, 767 N.E.2d 1119 (2002); Downtown Auto Parts, Inc. v. Toner, 2004 WY 67, 91 P.3d 917 (Wyo. 2004).

n6 Simms v. Progressive Ins. Co., 883 So. 2d 473 (La. Ct. App. 2d Cir. 2004), writ denied, 893 So. 2d 78 (La. 2005).

n7 Simms v. Progressive Ins. Co., 883 So. 2d 473 (La. Ct. App. 2d Cir. 2004), writ denied, 893 So. 2d 78 (La. 2005).

n8 Foster v. Clarendon Nat. Ins., 753 So. 2d 968 (La. Ct. App. 2d Cir. 2000).

n9 Hrivnak v. Perrone, 472 Pa. 348, 372 A.2d 730 (1977).

n10 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n11 Krause v. Streamo, 2002-Ohio-4715, 2002 WL 31013009 (Ohio Ct. App. 5th Dist. Stark County 2002).

n12 Miller v. Weck, 186 Ky. 552, 217 S.W. 904 (1920).

n13 Bergman v. Williams, 173 Minn. 250, 217 N.W. 127 (1927).

n14 Malloy v. Newman, 310 Mass. 269, 37 N.E.2d 1001 (1941) (overruled in part on other grounds by, Galbraith v. Levin, 323 Mass. 255, 81 N.E.2d 560 (1948)); Kennedy v. Hedberg, 159 Minn. 76, 198 N.W. 302 (1924) (proximate cause not found); Rhad v. Duquesne Light Co., 255 Pa. 409, 100 A. 262 (1917) (proximate cause not found).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 434

§ 434 Privately-owned streets and lots

The statutory rules of the road and common-law rules pertaining to the duties and obligations of driving on public roadways do not apply in an accident between a driver and pedestrian if the accident occurs in a privately owned parking lot.[n1] The duties and liabilities of a driver of a vehicle involved in an accident with a pedestrian on private property are governed by the basic principles of common law negligence, requiring each person to exercise ordinary and reasonable care under the circumstances.[n2]

FOOTNOTES:

n1 Hickman v. Jordan, 87 S.W.3d 496 (Tenn. Ct. App. 2001).

n2 Hickman v. Jordan, 87 S.W.3d 496 (Tenn. Ct. App. 2001).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 435

§ 435 Motorist directing or signaling pedestrian

Although it has been held that a motorist signaling to a pedestrian or another motorist to proceed across traffic in front of the signaling motorist does no more than yield the right-of-way, rather than signal that it is safe to proceed across another lane of traffic,[n1] other authority holds that if the driver of a motor vehicle undertakes to direct a pedestrian safely across the road in front of the vehicle, and the pedestrian is struck while crossing the road, the driver who undertook to direct the pedestrian across the road may be liable if such direction was negligent,[n2] and the negligent gesturing was a proximate cause of the pedestrian's injuries.[n3] Thus, the motorist is not liable if the pedestrian did not rely on the signal,[n4] or if the reliance was unreasonable.[n5]

There may be no liability if a driver motions for a pedestrian to cross the road in front of the vehicle but the pedestrian did so in violation of a "Don't Walk"sign, and is struck by another vehicle.[n6] A motorist is not negligent by waving a pedestrian across the street in front of his or her stopped vehicle and, before signaling, checking the side-view mirror, where a second vehicle that strikes the pedestrian in the next lane was not in the motorist's range of vision at the time of signaling.[n7]

FOOTNOTES:

n1 Hoekman v. Nelson, 2000 SD 99, 614 N.W.2d 821 (S.D. 2000).

n2 Yau v. New York City Transit Authority, 10 A.D.3d 654, 781 N.Y.S.2d 778 (2d Dep't 2004).

n3 Valdez by Valdez v. Bernard, 123 A.D.2d 351, 506 N.Y.S.2d 363 (2d Dep't 1986) (no proximate cause where pedestrian misinterpreted bus driver's gesture to mean driver would not move bus while she passed in front).

n4 Wright v. Seidner, 291 A.D.2d 555, 737 N.Y.S.2d 664 (2d Dep't 2002) (pedestrian independently looked out into traffic and thus did not rely on gesture).

n5 Hoekman v. Nelson, 2000 SD 99, 614 N.W.2d 821 (S.D. 2000) (unreasonable reliance where truck driver was forced to stop for pedestrian standing in his lane of travel, and pedestrian failed to observe for himself that oncoming traffic in far lane of travel had not stopped).

n6 Diaz v. Krob, 264 Ill. App. 3d 97, 201 Ill. Dec. 799, 636 N.E.2d 1231, 92 Ed. Law Rep. 609 (3d Dist. 1994).

n7 Cofield v. Nuckles, 239 Va. 186, 387 S.E.2d 493 (1990).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 436

§ 436 Pedestrians on sidewalks

A pedestrian may generally recover for injuries sustained while on a sidewalk when struck by a motor vehicle where the operator is negligent.[n1] Some jurisdictions impose a statutory duty on motorists to yield the right of way to pedestrians on the sidewalk.[n2] In any event, drivers must keep a safe distance away from pedestrians, and if a pedestrian is struck on the sidewalk, a prima facie case of negligence is established.[n3] However, a driver's violation of a statute prohibiting parking on the sidewalk may not constitute negligence per se if a pedestrian standing behind the vehicle is struck by another vehicle that has jumped the sidewalk.[n4]

Liability may be imposed for operating a vehicle so near to the curb that a pedestrian standing on the sidewalk is struck,[n5] as may result from the swaying or swinging of the body of the vehicle over the curb line.[n6]

Liability is imposed on a person who negligently leaves a vehicle parked on a grade so that it coasts onto the sidewalk and injures a pedestrian,[n7] or upon one who turns from the street into a private driveway without exercising proper care toward or warning pedestrians on the sidewalk crossing the driveway.[n8]

FOOTNOTES:

n1 Medlin v. Bickford, 106 Ga. App. 859, 128 S.E.2d 531 (1962); Edgerton v. Norfolk Southern Bus Corp., 187 Va. 642, 47 S.E.2d 409 (1948).

n2 Rife v. Long, 127 Idaho 841, 908 P.2d 143, 105 Ed. Law Rep. 1256 (1995).

n3 Paz v. Sherwin-Williams, 917 F. Supp. 51 (D.D.C. 1996).

n4 Victor v. Hedges, 77 Cal. App. 4th 229, 91 Cal. Rptr. 2d 466 (2d Dist. 1999) (driver was showing pedestrian a compact disc system in rear of vehicle).

n5 Louisville Transit Co. v. Underhill, 447 S.W.2d 634, 34 A.L.R.3d 419 (Ky. 1969).

n6 Clark v. Philadelphia Transp. Co., 156 Pa. Super. 623, 41 A.2d 282 (1945).

n7 Vaughn v. Meier, 246 S.W. 279 (Mo. 1922).

n8 Bey v. Transport Indem. Co., 23 Wis. 2d 182, 127 N.W.2d 251 (1964).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 437

§ 437 Vehicle backing across sidewalk

The operator of a motor vehicle must use ordinary care to avoid injuring a pedestrian on the sidewalk when backing a vehicle from the street or a private driveway over the sidewalk.[n1] Ordinary care requires the operator of a motor vehicle not to back it over a sidewalk without checking whether the way is clear.[n2] Thus, it is negligent to back a motor vehicle suddenly and rapidly across a sidewalk.[n3]

FOOTNOTES:

n1 Thomas v. Spinney, 310 Mass. 749, 39 N.E.2d 753 (1942); Kemp v. Lormer, 87 Ohio App. 307, 43 Ohio Op. 42, 94 N.E.2d 702 (6th Dist. Lucas County 1949).

n2 Branan v. La Grange Truck Lines, Inc., 94 Ga. App. 829, 96 S.E.2d 364 (1956).

n3 Hendler Creamery Co. v. Miller, 153 Md. 264, 138 A. 1 (1927); Giannone v. Reale, 333 Pa. 21, 3 A.2d 331 (1939).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 438

§ 438 Duty of pedestrian

The failure of a pedestrian to use ordinary and reasonable care that contributes to causing an injury from a vehicle while the pedestrian is on the sidewalk may bar or diminish the pedestrian's recovery in proportion to the negligence.[n1] However, the sidewalk is considered as a sort of safety zone for pedestrians so as to absolve them from the duty of looking and listening for the approach of a vehicle.[n2] A pedestrian on the sidewalk may assume that there will be no danger from vehicular traffic, and thus walking or standing very near to the curb does not alone negligence.[n3] A pedestrian is not required to anticipate that a vehicle may wrongfully encroach upon the sidewalk.[n4] However, a pedestrian walking along a sidewalk at a point where it crosses a private driveway must exercise such care and caution as ordinarily prudent persons would under like circumstances,[n5] commensurate with the danger involved,[n6] but a pedestrian may assume that motorists using such driveway will give proper warning of their approach,[n7] and is not ordinarily negligent merely for failing to stop, look, and listen for approaching or backing vehicles before crossing.[n8]

A pedestrian on the sidewalk who is placed in a position of sudden peril by the negligence of the driver of a vehicle cannot be held to the same standard of care that a person would ordinarily use.[n9]

FOOTNOTES:

n1 Mastin v. City of New York, 201 N.Y. 81, 94 N.E. 611 (1911).

n2 Corona Coal & Iron Co. v. White, 158 Ala. 627, 48 So. 362 (1908); Brown v. Des Moines Steam Bottling Works, 174 Iowa 715, 156 N.W. 829, 1 A.L.R. 835 (1916).

n3 Calbreath v. Capital Transit Co., 240 F.2d 621 (D.C. Cir. 1956); Cincinnati, N. & C. Ry. Co. v. Henneberry, 253 S.W.2d 7 (Ky. 1952).

n4 Fielder v. Tipton, 149 Ala. 608, 42 So. 985 (1906).

n5 Tuttle v. Briscoe Mfg. Co., 190 Mich. 22, 155 N.W. 724 (1916).

n6 Henderson v. O'Leary, 177 Wis. 130, 187 N.W. 994, 24 A.L.R. 942 (1922).

n7 Henderson v. O'Leary, 177 Wis. 130, 187 N.W. 994, 24 A.L.R. 942 (1922).

n8 Benites v. Adams, 64 Cal. App. 2d 393, 148 P.2d 871 (2d Dist. 1944); Ottaway v. Gutman, 207 Mich. 393, 174 N.W. 127 (1919).

n9 Roach v. Hinchcliff, 214 Mass. 267, 101 N.E. 383 (1913); Oliver v. Ashworth, 239 Mich. 53, 214 N.W. 85 (1927).

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Automobiles and Highway Traffic
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1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 439

§ 439 Pedestrian falling or lying in roadway

A motorist, who drives over an intoxicated victim lying near the center of a straight, clear, unobstructed section of highway, owes as much duty of care to observe the victim as toward any other person lying incapacitated in the road.[n1] A motorist is ordinarily not considered negligent for striking such a pedestrian, if the vehicle's lights and brakes were adequate and the driver was keeping a proper lookout for pedestrians.[n2] Furthermore, it may reasonably be inferred that a pedestrian who, at night, voluntarily or involuntarily lies down in the road is not observing ordinary care for his or her own safety.[n3]

FOOTNOTES:

n1 Fountain v. Thompson, 252 Ga. 256, 312 S.E.2d 788, 41 A.L.R.4th 299 (1984).

n2 Trull v. Austin, 252 N.C. 367, 113 S.E.2d 552 (1960).

n3 Gilberg v. Tisdale, 13 Wis. 2d 249, 108 N.W.2d 515 (1961) (evidence that the pedestrian is intoxicated).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1220 (Answer -- Affirmative defenses and new matter -- Negligence of plaintiff pedestrian -- Falling in front of vehicle while intoxicated)

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 440

§ 440 Skidding vehicles

Since motor vehicles have a tendency to skid on slippery streets, the operator must exercise special care to avoid skidding into a pedestrian walking along or crossing a street or highway, and may be held liable for the pedestrian's injuries proximately resulting from the failure of the motorist to exercise such care.[n1] However, a driver may avoid liability for injuries to a pedestrian as a result of the skidding of his or her vehicle, if the motorist can show that the skidding was not due to any negligence.[n2]

FOOTNOTES:

n1 Rettlia v. Salomon, 308 Mo. 673, 274 S.W. 366 (1925); Anderson v. Schorn, 189 A.D. 495, 178 N.Y.S. 603 (2d Dep't 1919), aff'd, 231 N.Y. 590, 132 N.E. 900 (1921); Schoepp v. Gerety, 263 Pa. 538, 107 A. 317 (1919).

n2 Bergstrom v. Ove, 39 Wash. 2d 78, 234 P.2d 548 (1951).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 441

§ 441 Generally

In the absence of an applicable statute or ordinance, a pedestrian has the right to walk longitudinally along a highway or street,[n1] and is not negligent as a matter of law in doing so.[n2] However, a motorist is not an insurer of the safety of a pedestrian who places him- or herself in the vehicle's path.[n3] The operator of a motor vehicle owes to pedestrians walking along the highway or street the duty to exercise reasonable or ordinary care to avoid injuring them,[n4] and pedestrians must exercise reasonable or ordinary care for their own safety.[n5]

Motorists are charged with the duty to see what an ordinarily prudent driver should have seen and avoid striking pedestrians in the road.[n6] Thus, the operator of a motor vehicle has a constant duty to watch out for the possible negligent acts of pedestrians and avoid injuring them.[n7] Notwithstanding any alleged negligence of a pedestrian who is attempting to cross a road, a motorist who strikes the pedestrian has a common-law duty to detect what he or she should have seen through the proper use of the senses.[n8]

A motorist has a duty to keep a careful lookout, to operate the vehicle at a safe speed, to swerve, change lanes, slow down, or stop to avoid colliding with a pedestrian and to give a warning by sounding the horn when the motorist either knows, or by the exercise of the highest degree of care could have known, that a reasonable likelihood of collision exists.[n9] However, a motorist does not necessarily fail to exercise due care in striking a pedestrian merely because other motorists managed to avoid the pedestrian.[n10]

FOOTNOTES:

n1 § 14.

n2 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Eller v. Work, 233 Pa. Super. 186, 336 A.2d 645 (1975); Marton v. Pickrell, 112 Wash. 117, 191 P. 1101, 17 A.L.R. 68 (1920).

n3 Riley v. Willis, 585 So. 2d 1024 (Fla. Dist. Ct. App. 5th Dist. 1991); Brooks v. Allred, 573 So. 2d 1301 (La. Ct. App. 2d Cir. 1991).

The law requires extra special protection for pedestrians, although a driver is not held strictly liable in all automobile/pedestrian accidents. Myles v. Turner, 632 So. 2d 384 (La. Ct. App. 2d Cir. 1994).

n4 Hunnicutt v. Walker, 589 So. 2d 726 (Ala. Civ. App. 1991); Neimiec v. Roels, 244 Ill. App. 3d 275, 185 Ill. Dec. 222, 614 N.E.2d 356 (1st Dist. 1993); Springman By Springman v. Hall, 642 N.E.2d 521 (Ind. Ct. App. 1994) (statutory duty); Hundley v. Harper Truck Line, Inc., 681 So. 2d 46 (La. Ct. App. 2d Cir. 1996); Poe v. City of Detroit, 179 Mich. App. 564, 446 N.W.2d 523 (1989); Phillips By and

Through Schultz v. Holland, 107 N.C. App. 688, 421 S.E.2d 608 (1992), decision aff'd, 333 N.C. 571, 429 S.E.2d 347 (1993); Tomikel v. Com., Dept. of Transp., 658 A.2d 861 (Pa. Commw. Ct. 1995).

n5 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Taylor v. Wistey, 218 Iowa 785, 254 N.W. 50 (1934); Nikoleropoulos v. Ramsey, 61 Utah 465, 214 P. 304 (1923); Marton v. Pickrell, 112 Wash. 117, 191 P. 1101, 17 A.L.R. 68 (1920).

n6 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007).

n7 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007).

n8 Larsen v. Spano, 35 A.D.3d 820, 827 N.Y.S.2d 276 (2d Dep't 2006).

n9 Messina v. Prather, 42 S.W.3d 753 (Mo. Ct. App. W.D. 2001).

n10 Walker v. Horion, 55 Mass. App. Ct. 1107, 770 N.E.2d 1002 (2002); Paulino v. McCary, 2005-Ohio-5920, 2005 WL 2981298 (Ohio Ct. App. 10th Dist. Franklin County 2005).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 543 (Complaint, petition, or declaration -- Pedestrian walking along highway -- Willful misconduct -- Basis for punitive damages -- Against driver and employer)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 442

§ 442 Duty of motorist to anticipate presence and acts of pedestrian

Motorists are charged with a duty to see what an ordinarily prudent driver should have seen under the circumstances, and to avoid striking pedestrians in the roadway ahead.[n1] The duty a driver owes to pedestrians is not paramount to the duty owed to others.[n2]

A motorist must keep a reasonable lookout for obstructions, other vehicles and pedestrians,[n3] but may assume, absent contrary indications, that an adult pedestrian who has been warned of the approach of the vehicle will not carelessly change position so as to introduce a new danger.[n4] A motorist has a legal duty of care to pedestrians to drive cautiously under bad weather conditions if the motorist sees headlights and what appears to be an accident on the road ahead[n5] and has a duty to exercise proper precaution upon observing an incapacitated person on the highway.[n6]

Although a driver is bound to be constantly vigilant for persons along a highway and exercise reasonable care to avoid injuring them,[n7] there is no duty to anticipate the possible presence of a pedestrian walking on the highway[n8] or in the center of their lanes of travel.[n9] Furthermore, motorists are not held to as high a degree of care to anticipate the presence of pedestrians in the roadway outside of crosswalks.[n10] A motorist may be expected to know that children could reasonably have been expected to be in the vicinity of an ice cream truck parked on a residential street in a city[n11]

Motorists negligently coming to a sudden or unsignaled stop on the highway ahead of closely following motorists may be chargeable with negligence proximately causing injury to persons on or at the side of the road who were struck by the following motorists attempting to avoid the stopped motorist.[n12]

FOOTNOTES:

n1 Simms v. Progressive Ins. Co., 883 So. 2d 473 (La. Ct. App. 2d Cir. 2004), writ denied, 893 So. 2d 78 (La. 2005).

n2 Albright v. Delta Regional Medical Center, 899 So. 2d 897 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005) (ambulance driver in staging area at race track).

n3 Albright v. Delta Regional Medical Center, 899 So. 2d 897 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005).

n4 Vansandt v. Brewer, 209 Ala. 131, 95 So. 463 (1923).

n5 Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001).

n6 Sharbino v. State Farm Mut. Auto. Ins. Co., 690 So. 2d 73 (La. Ct. App. 3d Cir. 1997).

n7 Trotter v. Bowden, 81 Ark. App. 259, 101 S.W.3d 264 (2003); Countryman v. Seymour R-II School Dist., 823 S.W.2d 515, 72 Ed. Law Rep. 1195 (Mo. Ct. App. S.D. 1992); Malinowski v. United Parcel Service, Inc., 727 A.2d 194 (R.I. 1999).

n8 Sandow v. Eckstein, 67 Conn. App. 243, 786 A.2d 1223 (2001); Fotterall v. Hilleary, 178 Md. 335, 13 A.2d 358 (1940) (walking along middle of road).

n9 Desautelle v. Fletcher, 103 N.H. 177, 167 A.2d 685 (1961).

n10 Schupp v. Grill, 27 Conn. App. 513, 607 A.2d 1155 (1992); Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995).

n11 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006) ("Watch for Children"and "Slow"appeared in large, prominent letters on back of truck).

n12 Ritz v. Cousins Lumber Co., 227 Mo. App. 1167, 59 S.W.2d 1072 (1933); Beard v. Cabaniss, 166 S.C. 173, 164 S.E. 441 (1932).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 443

§ 443 Duty of pedestrian to anticipate presence and acts of motorist

Pedestrians have a duty to exercise reasonable care not only to avoid known dangers, but also to discover those to which their conduct might expose them and to be watchful of the surroundings. [n1]

Since vehicles ordinarily use the middle of the road and pedestrians use the sides, pedestrians must watch for the approach of vehicles in the middle of the road. [n2] However, pedestrians walking along the side of the road may assume that drivers will exercise ordinary care to avoid injuring them. [n3] Thus, the pedestrian is not required to anticipate that a motorist would back a vehicle down a street or attempt to do so without giving some type of warning. [n4] A pedestrian may assume, in the absence contrary indications, that a motorist will not approach on the wrong side of the highway, [n5] so a pedestrian is not conclusively negligent for failing to look for a motorist approaching on the wrong side of the highway. [n6] Similarly, a pedestrian walking along the highway is not negligent as a matter of law for failing to look, or continue to look, back for the approach of motorists from the rear. [n7] A pedestrian walking along the left side of a highway would not naturally expect a motorist to come from behind on that side, and is under no duty to check in back for dangers of being struck from behind. [n8] However, pedestrians may not rest on that assumption and take no care whatsoever for their own safety. [n9]

FOOTNOTES:

n1 Schupp v. Grill, 27 Conn. App. 513, 607 A.2d 1155 (1992).

n2 Fotterall v. Hilleary, 178 Md. 335, 13 A.2d 358 (1940).

n3 Mahan v. State, to Use of Carr, 172 Md. 373, 191 A. 575 (1937); Cotten v. Stolley, 124 Neb. 855, 248 N.W. 384 (1933).

n4 Herinckx v. Hagen, 44 Or. App. 437, 605 P.2d 1372 (1980).

n5 Hyams v. Simoncelli, 41 Cal. App. 2d 126, 106 P.2d 68 (1st Dist. 1940); Walkup v. Covington, 18 Tenn. App. 117, 73 S.W.2d 718 (1933).

n6 Aide v. Taylor, 214 Minn. 212, 7 N.W.2d 757, 145 A.L.R. 530 (1943).

n7 Louisville Taxicab & Transfer Co. v. Johnson, 311 Ky. 597, 224 S.W.2d 639, 27 A.L.R.2d 158 (1949); Johnson v. Anoka-Butte Lumber Co., 141 Neb. 851, 5 N.W.2d 114 (1942).

n8 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Fork Ridge Bus Line v. Matthews, 248 Ky. 419, 58 S.W.2d 615 (1933); Marton v. Pickrell, 112 Wash. 117, 191 P. 1101, 17 A.L.R. 68 (1920).

n9 Greer v. King, 247 Md. 577, 233 A.2d 775 (1967); Tio v. Molter, 262 Mich. 655, 247 N.W. 772 (1933); South Hill Motor Co. v. Gordon, 172 Va. 193, 200 S.E. 637 (1939).

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C. Persons Injured
1. In General; Pedestrians
b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 444

§ 444 Duty of motorist to give timely warning

A failure to adequately warn is a significant factor in determining liability for injuries to a pedestrian.[n1] Under certain circumstances, ordinary care may require a motorist to give a reasonable and timely warning upon approaching a pedestrian who is in, or walking alongside, a roadway.[n2] An audible signal must be given in a timely manner and within a sufficient distance of the pedestrian.[n3] Thus, a driver on a road at a point between intersections has a duty to sound the horn if, under the circumstances, he or she reasonably apprehends that a pedestrian may appear in the vehicle's path.[n4] However, a motorist may be liable for injury to a pedestrian even though the motorist has given an audible signal of his or her approach,[n5] and, indeed, liability may be predicated on the very fact that an audible signal was given under the particular circumstances.[n6]

In some jurisdictions, the failure to comply with a statute requiring motorists to sound warnings of their approach constitutes negligence per se.[n7] but will not result in liability if the failure is not a proximate cause of the injury.[n8] The failure to sound a horn as required by statute may be excused if the pedestrian already knew of the alerted danger.[n9]

FOOTNOTES:

n1 Strasma v. Lemke, 111 Ill. App. 2d 377, 250 N.E.2d 305 (4th Dist. 1969); Fotterall v. Hilleary, 178 Md. 335, 13 A.2d 358 (1940).

n2 Hunnicutt v. Walker, 589 So. 2d 726 (Ala. Civ. App. 1991); Myles v. Turner, 632 So. 2d 384 (La. Ct. App. 2d Cir. 1994); Gonzalez v. Medina, 69 A.D.2d 14, 417 N.Y.S.2d 953 (1st Dep't 1979).

n3 Chism v. Lampach, 352 S.W.2d 191 (Ky. 1961) (signal was given too close to pedestrian); Johnson v. Safeway Ins. Co., 694 So. 2d 411 (La. Ct. App. 3d Cir. 1997), decision clarified on reh'g, (June 4, 1997) and writ denied, 701 So. 2d 1330 (La. 1997).

n4 Morris v. Moss, 290 Pa. Super. 587, 435 A.2d 184 (1981).

n5 Brouillette v. City Bldg. Supply, 174 So. 2d 658 (La. Ct. App. 3d Cir. 1965), writ refused, 247 La. 1090, 176 So. 2d 146 (1965).

n6 Hausken v. Coman, 66 N.D. 633, 268 N.W. 430 (1936).

n7 Pope v. Deal, 39 N.C. App. 196, 249 S.E.2d 866 (1978).

n8 Houston v. Zimmerman, 30 Ill. App. 3d 425, 333 N.E.2d 472 (4th Dist. 1975); Gonzalez v. Medina, 69 A.D.2d 14, 417 N.Y.S.2d 953 (1st Dep't 1979).

n9 Wright v. Welter, 288 N.W.2d 553 (Iowa 1980).

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8 Am Jur 2d Automobiles and Highway Traffic § 445

§ 445 Lack of proper headlighting

At times when headlights on a motor vehicle are needed or required by law to allow pedestrians and motorists to see each other, it may constitute negligence rendering the driver liable for injuries sustained by a pedestrian struck by the vehicle while walking along the road if both[n1] or one of the headlights are out,[n2] or if dim or defective,[n3] or deflected or low-beamed headlights are being used.[n4] However, the operator will not be liable for such injuries where the lack of proper illumination is not the proximate cause of the collision.[n5]

The use of headlights that are inadequate because of abnormal atmospheric conditions, but which otherwise comply with statutory requirements, does not constitute negligence even if the circumstances might reasonably require extra caution by the driver.[n6]

FOOTNOTES:

n1 Cree v. Tannich, 220 Or. 606, 349 P.2d 1094 (1960).

n2 Swift & Co. v. Thompson's Adm'r, 308 Ky. 529, 214 S.W.2d 758 (1948).

n3 Marsee v. Hunt's Adm'x, 246 Ky. 503, 55 S.W.2d 376 (1932); Sweeney v. Moreland Bros. Co., 227 Mich. 203, 198 N.W. 932 (1924).

n4 Korstange v. Kroeze, 261 Mich. 298, 246 N.W. 127 (1933); Hamilton v. Althouse, 115 N.J.L. 248, 178 A. 792 (N.J. Ct. Err. & App. 1935).

n5 Cleary v. St. George, 335 Mass. 245, 139 N.E.2d 180 (1957); Archer v. Gage, 126 Or. 532, 270 P. 521 (1928); Sellman v. Hess, 15 Wash. 2d 310, 130 P.2d 688 (1942).

n6 Desautelle v. Fletcher, 103 N.H. 177, 167 A.2d 685 (1961).

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8 Am Jur 2d Automobiles and Highway Traffic § 446

§ 446 Motorist blinded by headlights of approaching vehicle

A motorist's duty to dim or deflect headlights when meeting another vehicle is not merely for the benefit of the other driver, rather the negligent failure to do so may also be the basis for liability to a person walking or standing on or near the road, who was injured by another vehicle as a result of the glaring lights on the defendant's vehicle.[n1] Generally, the duty owed to a pedestrian by a motorist blinded by the headlights of an approaching motorist's vehicle is to exercise reasonable care under the circumstances, or to stop.[n2]

Even on the open highway, a motorist blinded by such lights may not proceed or continue blindly ahead assuming that no pedestrians will be using the road, and under particular circumstances a motorist who so proceeds may be negligent as a matter of law,[n3] as where a blinded motorist proceeds into the blacked-out area in a vicinity where he or she knows, or should know, that pedestrians are likely to be walking on the road.[n4] However, liability may not attach where there is evidence that a motorist blinded by headlights has exercised reasonable care in attempting to slow down and otherwise take precautions,[n5] or was presented with an emergency and thus could not avoid striking the pedestrian.[n6]

FOOTNOTES:

n1 Matte v. Continental Trailways, Inc., 278 So. 2d 60 (La. 1973) (abrogated on other grounds by, Everything on Wheels Subaru, Inc. v. Subaru South, Inc., 616 So. 2d 1234 (La. 1993)).

n2 Coward v. Ruckert, 381 Pa. 388, 113 A.2d 287 (1955); Johnson v. Wilmoth, 209 Va. 82, 161 S.E.2d 682 (1968); Mainz v. Lund, 18 Wis. 2d 633, 119 N.W.2d 334 (1963).

n3 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Budnick v. Petersen, 215 Mich. 678, 184 N.W. 493 (1921); Layton v. Cook, 248 Miss. 690, 160 So. 2d 685 (1964).

n4 Sanborn v. Stone, 149 Me. 429, 103 A.2d 101 (1954); Barach v. Island Empire Tel. & Tel. Co., 151 Wash. 279, 275 P. 713 (1929).

n5 Krause v. Henker, 5 Ill. App. 3d 736, 284 N.E.2d 300 (1st Dist. 1972).

n6 Francis v. Broussard, 361 So. 2d 1245 (La. Ct. App. 1st Cir. 1978), writ denied, 363 So. 2d 923 (La. 1978).

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 546 (Complaint, petition, or declaration -- By pedestrian -- Walking along highway -- At night -- Concurrent negligence of drivers -- Vehicle ran off highway when driver blinded by high beams of approaching vehicle -- Wrongful death)

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8 Am Jur 2d Automobiles and Highway Traffic § 447

§ 447 Excessive speed of vehicle

If a motorist proceeds along the highway at an excessive speed under the circumstances, or at a speed in excess of that allowed by law, the motorist may be liable for injuries sustained when striking a pedestrian walking along the road.[n1] In jurisdictions that bar the operation of a motor vehicle at speeds greater than will permit the operator to bring it to a stop in the assured clear distance ahead,[n2] driving at such speed that the vehicle cannot be stopped within the distance at which the operator is able to see pedestrians in front of the vehicle is negligence per se.[n3] However, this rule does not apply if the pedestrian is not seen until the motorist is close upon him or her and the ability to stop within the range of visibility would not have averted the collision.[n4]

FOOTNOTES:

n1 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Keller v. Breneman, 153 Wash. 208, 279 P. 588, 67 A.L.R. 92 (1929).

n2 § 273.

n3 Nikoleropoulos v. Ramsey, 61 Utah 465, 214 P. 304 (1923).

n4 Johnson v. Anoka-Butte Lumber Co., 141 Neb. 851, 5 N.W.2d 114 (1942).

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8 Am Jur 2d Automobiles and Highway Traffic § 448

§ 448 Driving too near a pedestrian; swaying or swerving of vehicle

It may be negligent for the operator of a motor vehicle to drive too near, and striking, a pedestrian walking along the side of the highway.[n1] Similarly, a motorist may be negligent for allowing too narrow a margin of safety in passing, so that a pedestrian walking along the side of the highway who varies course slightly is struck by the vehicle.[n2] A motorist may also be found negligent for driving in such a manner or direction that an attached vehicle or trailer sways[n3] or swerves[n4] so that it strikes a pedestrian walking along the side of the highway. However, a driver is not negligent if there is no reason to anticipate that the vehicle would sway and strike a pedestrian.[n5]

FOOTNOTES:

n1 Idemoto v. Scheidecker, 193 Cal. 653, 226 P. 922 (1924); Canfield v. Seattle Cornice Works, 122 Wash. 318, 210 P. 773 (1922).

n2 Kelly v. Ludlum, 9 La. App. 57, 118 So. 781 (2d Cir. 1928).

n3 W & W Pickle & Canning Co. v. Baskin, 236 Ala. 168, 181 So. 765 (1938); Cooper v. Kennard, 192 So. 534 (La. Ct. App. 1st Cir. 1939).

n4 Montanez v. Beard, 108 Cal. App. 585, 291 P. 896 (4th Dist. 1930).

n5 Seader v. City of Philadelphia, 357 Pa. 369, 54 A.2d 701, 1 A.L.R.2d 162 (1947).

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8 Am Jur 2d Automobiles and Highway Traffic § 449

§ 449 Motorist driving on wrong side of road

The rules of the road require motorists to drive to the right of center on a road with opposing lanes, [n1] and that a motorist drives on the left without reasonable excuse is prima facie evidence of negligence, rendering the motorist liable for injuries proximate caused to a pedestrian walking along the left side of the highway exercising ordinary care for his or her own safety. [n2]

However, driving on the left side may be necessary under certain conditions, and thus doing so is not necessarily negligence. [n3]

FOOTNOTES:

n1 § 245.

n2 Kempf v. Himsel, 121 Ind. App. 488, 98 N.E.2d 200 (1951).

n3 Raymond v. Hill, 168 Cal. 473, 143 P. 743 (1914).

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1. In General; Pedestrians
b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 450

§ 450 Pedestrian on wrong side of road

In a number of jurisdictions the violation of a statute requiring a pedestrian to walk along the left side of a highway [n1] is negligence per se or negligence as a matter of law, and will preclude or diminish the pedestrian's recovery for injuries if the violation was a proximate cause of the injury. [n2] However, in other jurisdictions the violation of such a statute does not constitute negligence per se or negligence as a matter of law, [n3] but rather it is only a prima facie demonstration of negligence, [n4] or merely evidence of negligence. [n5]

However, if the pedestrian's failure to comply with the statute is not a proximate cause of the injury, recovery will not be precluded or diminished, [n6] Similarly, the pedestrian's claim will not be impaired if the motorist failed to take advantage of the last clear chance to avert the injury. [n7]

FOOTNOTES:

n1 § 321.

n2 McLenaghan v. Billow, 161 F. Supp. 835 (D. Del. 1958), judgment aff'd, 260 F.2d 360 (3d Cir. 1958); Saddler v. Parham, 249 S.W.2d 945 (Ky. 1952); Richardson v. Grezeszak, 358 Mich. 206, 99 N.W.2d 648 (1959).

n3 Zeni v. Anderson, 397 Mich. 117, 243 N.W.2d 270 (1976).

n4 Parkin v. Rigdon, 1 Ill. App. 2d 586, 118 N.E.2d 342 (3d Dist. 1954); Cameron v. Stewart, 153 Me. 47, 134 A.2d 474 (1957); Wojtowicz v. Belden, 211 Minn. 461, 1 N.W.2d 409 (1942).

n5 Haralson v. Jones Truck Line, 223 Ark. 813, 270 S.W.2d 892, 48 A.L.R.2d 248 (1954); Basque v. Anticich, 177 Miss. 855, 172 So. 141 (1937); Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

n6 Parker v. Windborne, 50 N.C. App. 410, 273 S.E.2d 750 (1981); Foles v. U. S. Fidelity & Guaranty Co., 259 Or. 337, 486 P.2d 537, 46 A.L.R.3d 956 (1971); Standridge v. Godsey, 189 Tenn. 522, 226 S.W.2d 277 (1949).

n7 Venero v. State Farm Mut. Auto. Ins. Co., 196 So. 2d 841 (La. Ct. App. 3d Cir. 1967); Earle v. Wyrick, 286 N.C. 175, 209 S.E.2d 469 (1974); Herbert v. Stephenson, 184 Va. 457, 35 S.E.2d 753 (1945).

As to the application of the last-clear-chance doctrine in motor vehicle accident cases, generally, see § 953.

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b. Pedestrians Walking along Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 451

§ 451 Violation of statute requiring pedestrian to use sidewalk

It is generally a question of fact for the jury whether a pedestrian struck by a motor vehicle while walking along the shoulder of the road, or on the roadway, in violation of a statute requiring pedestrians to use sidewalks was negligent. [n1]

FOOTNOTES:

n1 Cameron v. Stewart, 153 Me. 47, 134 A.2d 474 (1957) (walking along shoulder of road); DiFederico v. Reed, 21 Ohio App. 2d 137, 50 Ohio Op. 2d 240, 255 N.E.2d 869 (10th Dist. Franklin County 1969) (walking on roadway).

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8 Am Jur 2d Automobiles and Highway Traffic § 452

§ 452 Vehicle condition or equipment as threat to pedestrians

The operator of a motor vehicle that is carrying an object which protrudes from either the side [n1] or the rear [n2] has the duty to exercise reasonable care to avoid having the object strike pedestrians who are lawfully walking along the side of the highway exercising ordinary care for their own safety, and an operator who breaches this duty may be held liable for injuries to a pedestrian that are proximately caused by that failure. [n3] A company whose truck hits a low-hanging tree branch and causes a branch to break and hit a pedestrian may not be negligent if the truck was within the permitted height established by a municipal ordinance, and if the driver was not required to estimate the clearance on approaching the branch as it was not obvious that the truck could not pass. [n4]

It is foreseeable that if a business owner does not equip its vehicles with safe tires, the tires could create harm to pedestrians, other vehicles and their occupants, and anyone else in the owner's vehicles, and thus, the owner owes a duty to everyone on the highway to provide safe tires. [n5]

FOOTNOTES:

n1 Fjelstad v. Walsh, 244 Wis. 295, 12 N.W.2d 51 (1943).

n2 McCallam v. Hope Natural Gas Co., 93 W. Va. 426, 117 S.E. 148 (1923).

n3 Suess v. Westwood, 246 Cal. App. 2d 849, 55 Cal. Rptr. 269 (2d Dist. 1966) (radio antenna).

n4 Brule' v. Audubon Com'n, 902 So. 2d 403 (La. Ct. App. 4th Cir. 2005).

n5 Harris v. Best Business Products, Inc., 2002 SD 115, 651 N.W.2d 875 (S.D. 2002).

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8 Am Jur 2d Automobiles and Highway Traffic § 453

§ 453 Generally

Motorists have a duty to exercise due care to avoid injuring pedestrians who are crossing the highway or street,[n1] even between intersections or diagonally.[n2] They must anticipate and expect the presence of crossing pedestrians and must be reasonably vigilant at all times to discover their presence.[n3] The fact that a motorist by statute or ordinance has the right of way over pedestrians crossing the highway or street[n4] does not absolve the motorist of the obligation to use reasonable care for their safety.[n5] If a motorist by statute or ordinance must yield the right of way to pedestrians crossing the highway or street,[n6] the failure to do so constitutes negligence as a matter of law, in the absence of a reasonable justification or excuse.[n7] However, a motorist faced with an emergency who acts as a reasonably prudent person would act in an emergency is not liable for injuries sustained by a pedestrian in a collision with the motorist.[n8]

FOOTNOTES:

n1 Wong v. Terminal Cars, Inc., 201 Va. 564, 111 S.E.2d 799 (1960).

n2 § 458.

n3 § 457.

n4 § 299.

n5 Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).

n6 § 299.

n7 Gray v. Brinkerhoff, 41 Cal. 2d 180, 258 P.2d 834 (1953); Likens Drug Co. v. Bosley, 343 S.W.2d 841 (Ky. 1961).

n8 Maldonado v. Sunshine, 156 A.D.2d 341, 548 N.Y.S.2d 294 (2d Dep't 1989).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 454

§ 454 Pedestrian crosswalk defined

The protection afforded pedestrians by a crosswalk does not end at the inside of the lines but includes the lines of the identified path, as the lines define the edges of the crosswalk area.[n1] An "unmarked crosswalk,"for purposes of a statute imposing a motorist's duty of care towards pedestrians, is a projected extension of the appropriate sidewalk from one side of the street to the other.[n2] Furthermore, although a statute defining a crosswalk may on its face appear to define a crosswalk at an intersection or elsewhere only if distinctly marked by lines or other markings on the surface of the road, the statute may instead be read to provide for a crosswalk on any part of the roadway at an intersection, regardless of whether the intersection has sidewalks or markings, or neither.[n3] However, an intersection forming shape of "T"does not qualify as an unmarked "crosswalk"for purposes of a pedestrian's negligence suit against a driver, even if many other pedestrians cross at the location where the pedestrian was struck.[n4]

FOOTNOTES:

n1 Jenkins v. Wolf, 2006 PA Super 321, 911 A.2d 568 (2006).

n2 Tucker v. Bruton, 102 N.C. App. 117, 401 S.E.2d 130 (1991).

n3 Hanson v. Edwards, 2000 MT 221, 301 Mont. 185, 7 P.3d 419 (2000).

n4 McKenzie v. Detenber, 226 Ga. App. 742, 487 S.E.2d 497 (1997).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 455

§ 455 Duty of pedestrian to exercise ordinary care for own safety

A pedestrian must proceeded into an intersection with the degree of caution exercised by an ordinarily prudent person [n1] under the same or similar circumstances. [n2] A pedestrian thus may not try to cross a highway or street without regard to circumstances, conditions, or consequences, even if the pedestrian has the right of way by statute, [n3] or is within a marked crosswalk, [n4]

A firefighter crossing the highway has a lesser duty of care than an ordinary highway pedestrian. [n5]

A pedestrian does not necessarily have to wait until an approaching motorist passes before attempting a crossing; the issue is whether the motorist's proximity or speed makes crossing imprudent. [n6]

Practice Tip: Whether a pedestrian was negligent in crossing a highway or street is generally a question of fact for the jury. [n7]

FOOTNOTES:

n1 Norman v. Interlande, 2006 WL 391319 (Conn. Super. Ct. 2006).

n2 Williamson v. Garrigus, 228 Ark. 705, 310 S.W.2d 8 (1958); Pueblo Transp. Co. v. Moylan, 123 Colo. 207, 226 P.2d 806 (1951); Floyd v. Lipka, 51 Del. 487, 148 A.2d 541 (1959); McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960); Wong v. Terminal Cars, Inc., 201 Va. 564, 111 S.E.2d 799 (1960); Hoeft v. Milwaukee & Suburban Transport Corp., 42 Wis. 2d 699, 168 N.W.2d 134 (1969).

As to the effect of negligence of the injured party to bar or diminish recovery, see §§ 947 to 949.

n3 Switzer v. Baker, 178 Iowa 1063, 160 N.W. 372 (1916); Will v. McCoy, 135 Ohio St. 241, 14 Ohio Op. 85, 20 N.E.2d 371 (1939); Ordeman v. Watkins, 114 Or. 581, 236 P. 483 (1925); Williams v. Kalutz, 237 S.C. 398, 117 S.E.2d 591 (1960); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).

As to the right of way accorded pedestrians, generally, see § 299.

n4 Gallardo v. Luke, 33 Cal. App. 2d 230, 91 P.2d 211 (1st Dist. 1939).

n5 Knutter v. Bakalarski, 52 Wis. 2d 751, 191 N.W.2d 235 (1971) (noting preoccupation with firefighting duties).

n6 Hodge v. Hamilton, 155 Tenn. 403, 293 S.W. 752 (1926); Ritter v. Hicks, 102 W. Va. 541, 135 S.E. 601, 50 A.L.R. 1505 (1926).

n7 Heaton v. Waters, 8 Ariz. App. 256, 445 P.2d 458 (1968); Butler v. Malis, 207 Cal. App. 2d 38, 24 Cal. Rptr. 407 (2d Dist. 1962); Rodriguez v. Robert, 47 A.D.2d 548, 363 N.Y.S.2d 94 (2d Dep't 1975).

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C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 456

§ 456 Duty of motorist and pedestrian to anticipate presence and acts of each other

Although motorists must anticipate the presence of pedestrians crossing the highway or street and must be reasonably vigilant at all times to discover their presence, [n1] a pedestrian crossing a highway or street has a reciprocal duty to anticipate the presence of motorists. [n2] However, because pedestrians have much less capacity to injure others through in a collision, their duty is less stringent than those of drivers. [n3]

Pedestrians who attempts to cross a highway or street may act on an assumption that motorists will exercise reasonable care to avoid injuring them, [n4] and that they will not drive at an excessive speed [n5] or on the wrong side of the road. [n6] A pedestrian who has the right of way at an intersection by statute or ordinance may assume that motorists approaching the intersection will exercise reasonable care and comply with statutes or ordinances governing the movement of vehicles at intersections. [n7]

A pedestrian crossing the road does not conclusively engage in negligence by failing to anticipate and take special precautions against injury from motorists that recklessly speed, [n8] or drive on the wrong side of the road. [n9]

The omission of an instruction that it is negligence per se not to yield to a pedestrian in the crosswalk is a fundamental error warranting a new trial, in a pedestrian's negligence action against a driver whose vehicle struck the pedestrian while crossing an intersection, since without a negligence per se charge the jury is left with the erroneous impression that both driver and pedestrian had the same legal obligation to look for the other. [n10]

FOOTNOTES:

n1 Williamson v. Garrigus, 228 Ark. 705, 310 S.W.2d 8 (1958); Allen v. Burrow, 505 So. 2d 880 (La. Ct. App. 2d Cir. 1987), writ denied, 507 So. 2d 229 (La. 1987).

n2 Lawlor v. Gaylord, 233 Iowa 834, 10 N.W.2d 531 (1943).

n3 Lawlor v. Gaylord, 233 Iowa 834, 10 N.W.2d 531 (1943).

n4 Kirk v. Los Angeles Ry. Corp., 26 Cal. 2d 833, 161 P.2d 673, 164 A.L.R. 1 (1945) (disapproved of on other grounds by, Freeman v. Churchill, 30 Cal. 2d 453, 183 P.2d 4 (1947)).

n5 Law v. Osterland, 198 La. 421, 3 So. 2d 680 (1941).

n6 Hyams v. Simoncelli, 41 Cal. App. 2d 126, 106 P.2d 68 (1st Dist. 1940); Jakeway v. Allen, 226 Iowa 13, 282 N.W. 374 (1938).

n7 Gray v. Brinkerhoff, 41 Cal. 2d 180, 258 P.2d 834 (1953); Floyd v. Lipka, 51 Del. 487, 148 A.2d 541 (1959); Jerdal v. Sinclair, 54 Wash. 2d 565, 342 P.2d 585 (1959).

n8 Jerdal v. Sinclair, 54 Wash. 2d 565, 342 P.2d 585 (1959).

n9 Turner v. George Rushton Baking Co., 135 Kan. 484, 11 P.2d 746 (1932).

n10 Jenkins v. Wolf, 2006 PA Super 321, 911 A.2d 568 (2006).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 457

§ 457 Crossing at unusual places, or diagonally

A pedestrian has the right, in the absence of prohibition by statute or ordinance, to cross a highway or street at any point, either directly or diagonally, and is not restricted to the regular marked crossings,[n1] and motorists owe the pedestrian the duty of reasonable or ordinary care under the circumstances.[n2] Moreover, the fact that a pedestrian is prohibited by statute or ordinance from crossing a highway or street at places other than regular crossings[n3] does not relieve motorists from the duty of exercising reasonable care and diligence to avoid striking pedestrians at such places.[n4]

Motorists are generally not required to anticipate that pedestrians will, in violation of law, enter an intersection on an unfavorable signal.[n5] A motorist nonetheless owes a duty to keep a lookout for pedestrians crossing outside of intersections and regular designated crossing points,[n6] even though there is less reason for a motorist to expect persons crossing at these irregular places.[n7] However, a person driving on a summer day in downtown in a large city has reason to anticipate that pedestrians will cross a street outside a crosswalk.[n8]

A motorist is not required to have the vehicle under such control that it can be immediately stopped to avoid striking a pedestrian crossing the road at a place other than a regular crossing.[n9]

An automobile that is between intersections has the right of way over a pedestrian, and the driver has the right to assume that the pedestrian will observe this rule.[n10] A driver owes a pedestrian no duty to assure a safe passage across the remainder of a highway once the pedestrian crosses in front of the driver's vehicle.[n11]

Summary judgment may properly be entered against a pedestrian only if the evidence leaves no reasonable conclusion other than that the pedestrian's failure to yield the right of way was one of the proximate causes of the injuries.[n12] The issue of whether a motorist was negligent in striking a pedestrian who was walking across the road outside a regular crossing, is a question for the jury.[n13]

FOOTNOTES:

n1 § 320.

n2 Ivy v. Marx, 205 Ala. 60, 87 So. 813, 14 A.L.R. 1173 (1920); Morrison v. Flowers, 308 Ill. 189, 139 N.E. 10 (1923); Stringer v. Frost, 116 Ind. 477, 19 N.E. 331 (1889); Reier v. Hart, 202 Minn. 154, 277 N.W. 405 (1938); Hoffman v. Hansen, 118 Wash. 73, 203 P. 53 (1921).

n3 § 320.

n4 Ivy v. Marx, 205 Ala. 60, 87 So. 813, 14 A.L.R. 1173 (1920); Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 49 A.L.R. 1402 (1926).

n5 Allen v. Burrow, 505 So. 2d 880 (La. Ct. App. 2d Cir. 1987), writ denied, 507 So. 2d 229 (La. 1987).

n6 § 460.

n7 Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995).

n8 Alexander v. Yellow Cab Co., 241 Ill. App. 3d 1049, 182 Ill. Dec. 387, 609 N.E.2d 921 (1st Dist. 1993).

n9 Barriger v. Ziegler, 241 Mich. 83, 216 N.W. 417 (1927); Watson v. Lit Bros., 288 Pa. 175, 135 A. 631 (1927).

n10 Dutton v. Travis, 4 Neb. App. 875, 551 N.W.2d 759 (1996).

n11 Shank v. Government Employees Ins. Co., 390 So. 2d 903 (La. Ct. App. 3d Cir. 1980), writ denied, 396 So. 2d 901 (La. 1981) and writ denied, 396 So. 2d 902 (La. 1981) and (rejected on other grounds by, Askew By Askew v. Zeller, 361 Pa. Super. 35, 521 A.2d 459 (1987)).

n12 Ragland v. Moore, 299 N.C. 360, 261 S.E.2d 666 (1980).

n13 Sheldon v. James, 175 Cal. 474, 166 P. 8, 2 A.L.R. 1493 (1917).

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8 Am Jur 2d Automobiles and Highway Traffic § 458

§ 458 Multi-lane highway or roadway

A motorist whose vehicle strikes a pedestrian who is crossing a multi-lane road may be found not negligent if the pedestrian proceeded heedlessly from the safety of the center median without using a nearby crosswalk, and the motorist was unable to stop in time.[n1] Similarly, a driver who, upon seeing a pedestrian, immediately applies the brakes and acts to avoid the pedestrian, is not liable for the death of a pedestrian who is struck while attempting to cross a busy multi-lane road or highway with no marked crosswalks, where there is no indication that the driver was operating the vehicle in other than a prudent and reasonable manner under the circumstances.[n2] A driver does not breach the duty of care to a pedestrian struck and killed while attempting to cross a freeway ramp if the driver is traveling at the proper rate of speed, checks that the road is clear before beginning to merge onto the highway, and looks out for oncoming traffic.[n3]

FOOTNOTES:

n1 Etheredge v. Kersey, 236 Ga. App. 243, 510 S.E.2d 544 (1998).

n2 DiCocco v. Center for Developmental Disabilities, Inc., 264 A.D.2d 803, 695 N.Y.S.2d 612 (2d Dep't 1999).

n3 Partlow v. McDonald, 877 So. 2d 414 (Miss. Ct. App. 2003).

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8 Am Jur 2d Automobiles and Highway Traffic § 459

§ 459 Duty of pedestrian

A pedestrian generally has a right to cross a highway or street at a place other than a regular crossing, absent a statute or ordinance.[n1] However, a pedestrian in this circumstance must exercise reasonable or ordinary care for his or her own safety,[n2] which usually requires a higher degree of care than when crossing at the place provided for pedestrians.[n3] A motorist may be found not negligent for injuries to a pedestrian who crosses the street behind a vehicle that is stopped at an intersection, if the motorist is turning and cannot see the pedestrian.[n4]

The pedestrian must be alert to the approach of oncoming vehicles.[n5] The mere fact, however, that a pedestrian tries to cross a road at a place outside a regular crossing, where there is no statute or ordinance prohibiting such a crossing, does not of itself constitute negligence so as to defeat an action for injuries sustained when struck by a motorist, or diminish recovery,[n6] although the improper crossing is a factor in determining whether the pedestrian has exercised reasonable care for his or her own safety.[n7]

A pedestrian who attempts to make a diagonal crossing and is struck by a motorist will be found negligent when failing to exercise the degree of caution required under the circumstances.[n8] Thus, a pedestrian may be contributorily negligent for injuries received crossing a road between vehicles and outside of a crosswalk.[n9]

In some jurisdictions, violating a statute or ordinance that bars pedestrians from crossing a highway or street outside a regular crosswalk[n10] constitutes negligence as a matter of law.[n11] The violation, however, must be a proximate cause of the injury.[n12] In other jurisdictions, crossing a street outside of a crosswalk, in violation of an ordinance, is merely evidence of negligence.[n13]

In some jurisdictions, although a pedestrian is not prohibited from crossing a highway or street outside regular crossings, the pedestrian must yield the right of way to motorists[n14] and may be held negligent as a matter of law for failing to do so.[n15]

A negligent pedestrian struck by a vehicle while crossing a highway or street at a place other than a regular crossing may nonetheless recover under some circumstances, if the negligent motorist had the last clear chance to avoid the injury.[n16]

Under statutes that require pedestrians to travel on the right side of a crosswalk,[n17] a pedestrian is not conclusively negligent in failing to return to the right side, if compelled to start crossing on the left side because the right side is blocked.[n18]

FOOTNOTES:

n1 § 320.

n2 Tomey v. Dyson, 76 Cal. App. 2d 212, 172 P.2d 739 (3d Dist. 1946); Paterson v. Ellis, 284 A.D.2d 981, 725 N.Y.S.2d 513 (4th Dep't 2001).

n3 Tomey v. Dyson, 76 Cal. App. 2d 212, 172 P.2d 739 (3d Dist. 1946); Dix v. Spampinato, 28 Md. App. 81, 344 A.2d 155 (1975), judgment aff'd, 278 Md. 34, 358 A.2d 237 (1976); Jarosh v. Van Meter, 171 Neb. 61, 105 N.W.2d 531, 82 A.L.R.2d 714 (1960); Shuman v. Nolfi, 399 Pa. 211, 159 A.2d 716 (1960).

n4 Nazario v. Stalica, 272 A.D.2d 903, 707 N.Y.S.2d 575 (4th Dep't 2000) (did not violate statutes requiring motorists to yield to pedestrians in crosswalks and to exercise due care to avoid colliding with a pedestrian).

n5 Fennell v. Miller, 94 Nev. 528, 583 P.2d 455 (1978).

n6 Franco v. Zingarelli, 72 A.D.2d 211, 424 N.Y.S.2d 185 (1st Dep't 1980); Johnson v. Bennett, 225 Or. 213, 357 P.2d 527 (1960).

n7 Meenach v. Crawford, 187 S.W. 879 (Mo. 1916).

n8 Arrumm v. Yonkers Institutional Food Corp., 181 A.D.2d 707, 581 N.Y.S.2d 225 (2d Dep't 1992).

As to the effect of the negligence of an injured party, or a party asserting a claim, to have or diminish recovery, see §§ 947 to 949.

n9 Paterson v. Ellis, 284 A.D.2d 981, 725 N.Y.S.2d 513 (4th Dep't 2001).

n10 § 320.

n11 Simpson v. Glenn, 264 Ala. 519, 88 So. 2d 326 (1956); La Garde v. Aeverman, 144 Colo. 465, 356 P.2d 971 (1960); Henthorne v. Hopwood, 218 Or. 336, 338 P.2d 373 (1959).

n12 Williamson v. Garrigus, 228 Ark. 705, 310 S.W.2d 8 (1958); Meyn v. Dulaney-Miller Auto Co., 118 W. Va. 545, 191 S.E. 558 (1937).

n13 McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960).

n14 § 301.

n15 Music v. Waddle, 380 S.W.2d 203 (Ky. 1964); Nylund v. Johnston, 19 Wash. 2d 163, 141 P.2d 863 (1943).

n16 James v. Keene, 133 So. 2d 297 (Fla. 1961) (overruled in part on other grounds by, Perdue v. Copeland, 220 So. 2d 617 (Fla. 1969)).

As to application of last-clear-chance doctrine in motor vehicle accident cases, see § 953.

n17 § 320.

n18 Likens Drug Co. v. Bosley, 343 S.W.2d 841 (Ky. 1961).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 460

§ 460 Motorist's duty to maintain lookout

Motorists are charged with a duty to see what an ordinarily prudent driver should have seen under the circumstances, and to avoid striking pedestrians in the road ahead.[n1]

Observation: The essential features of a motorist's failure to keep a proper lookout are a failure to see and a failure to act. A failure to see occurs if a motorist does not become aware of other motorists, pedestrians, or objects that present a dangerous situation. A motorist's failure to act occurs by not taking precautionary action to avoid that danger.[n2]

When a motorist sees, should have seen, or anticipates that a pedestrian will cross the path of the vehicle, the motorist must exercise reasonable care to protect the pedestrian.[n3] Thus, a turning motorist who strikes a pedestrian crossing the street in the crosswalk with a favorable walk signal is negligent even if the pedestrian misjudged the turning capabilities of a long-wheelbase vehicle.[n4] The driver of an automobile that strikes a pedestrian who has looked for approaching traffic and was crossing within the crosswalk may be deemed negligent.[n5]

The violation of statute prohibiting a motorist from passing and overtaking vehicle that has stopped at marked crosswalk or an unmarked crosswalk at intersection to permit pedestrian to cross roadway is not negligence per se, but may be considered as evidence in determining motorist's negligence in striking pedestrian.[n6]

A motorist has no special duty to anticipate the presence of a pedestrian in a roadway where there is no crosswalk.[n7] Thus, a motorist is not obligated to slow down or stop simply by the appearance of a pedestrian on the side of the road waiting for an opportunity to cross.[n8] Although a motorist may properly assume that pedestrians will exercise reasonable care until evidence to the contrary is reasonably apparent,[n9] a motorist may not blindly rely on the assumption if the motorist sees, or should have seen, that a pedestrian is going to cross the path of the vehicle.[n10]

A motorist approaching a pedestrian crosswalk has a duty to use more than ordinary care to see what is ahead, and the motorist must expect that people may be crossing and be prepared for that possibility.[n11] The driver of a vehicle approaching a crosswalk has a duty of continuous observation.[n12]

A motorist has a duty of care to avoid collision with a pedestrian who is standing on the curb outside of the crosswalk, but only after the pedestrian enters the street and it reasonably apparent that the pedestrian is not going to yield the right-of-way to oncoming traffic.[n13] A driver violates the obligation to yield to a pedestrian who is still in the intersection by overtaking and passing a vehicle that has stopped at a crosswalk to allow a pedestrian to cross.[n14] Failure to yield to a pedestrian crossing the roadway within an unmarked crosswalk at an intersection is negligent, regardless of whether the driver actually struck the pedestrian.[n15]

Motorists must keep a constant lookout to avoid injury to pedestrians crossing the highway or street[n16] not only at intersections and regular marked crosswalks,[n17] but at other places as well.[n18] A reciprocal duty is imposed upon pedestrians crossing a public way to keep a lookout for motorists.[n19] A motorist is negligent by failing to see, and striking, a pedestrian on the highway.[n20]

Practice Tip: Instructions submitted to a jury, in an action brought by a pedestrian struck by a driver in a crosswalk, as to the driver's general duty to keep a lookout before entering the crosswalk and to maintain control of the vehicle, were insufficient to establish the driver's statutory duty to yield to the pedestrian, despite the trial court's answer to a jury question on the driver's duty that it had all it needed to consider, and therefore, the pedestrian was entitled to a new trial, as the jury was misled on the applicable law, and statute requiring drivers to yield to pedestrians in crosswalks created a duty that was greater than that described in the submitted instructions.[n21]

FOOTNOTES:

n1 Bell v. USAA Cas. Ins. Co., 707 So. 2d 102 (La. Ct. App. 2d Cir. 1998), writ denied, 718 So. 2d 433 (La. 1998) and writ denied, 718 So. 2d 434 (La. 1998).

n2 Wiskur v. Johnson, 156 S.W.3d 477 (Mo. Ct. App. S.D. 2005).

n3 Turner v. Lyons, 867 So. 2d 13 (La. Ct. App. 4th Cir. 2004), writ denied, 872 So. 2d 530 (La. 2004); Nick v. King Cab Co., Inc., 829 So. 2d 568 (La. Ct. App. 5th Cir. 2002).

n4 Kirchgaessner v. Hernandez, 40 A.D.3d 437, 836 N.Y.S.2d 170 (1st Dep't 2007) (motorist steering truck to right-most lanes of street being crossed by pedestrian).

n5 Abramov v. Miral Corp., 24 A.D.3d 397, 805 N.Y.S.2d 119 (2d Dep't 2005).

n6 Alston v. Blythe, 88 Wash. App. 26, 943 P.2d 692 (Div. 2 1997).

n7 Kerrigan v. Imperial Fire and Cas. Ins. Co., 748 So. 2d 67 (La. Ct. App. 3d Cir. 1999), writ denied, 754 So. 2d 236 (La. 2000) and writ not considered, 754 So. 2d 219 (La. 2000).

n8 Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

n9 Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

n10 Nick v. King Cab Co., Inc., 829 So. 2d 568 (La. Ct. App. 5th Cir. 2002).

n11 Johnson v. Safeway Ins. Co., 694 So. 2d 411 (La. Ct. App. 3d Cir. 1997), decision clarified on reh'g, (June 4, 1997) and writ denied, 701 So. 2d 1330 (La. 1997).

n12 Pudmaroff v. Allen, 138 Wash. 2d 55, 977 P.2d 574 (1999).

n13 Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

n14 Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

n15 Armstrong v. Gondeiro, 2000 MT 326, 303 Mont. 37, 15 P.3d 386 (2000).

n16 Williamson v. Garrigus, 228 Ark. 705, 310 S.W.2d 8 (1958).

n17 Crawford v. McElhinney, 171 Iowa 606, 154 N.W. 310 (1915); Likens Drug Co. v. Bosley, 343 S.W.2d 841 (Ky. 1961); Hornbuckle v. McCarty, 295 Mo. 162, 243 S.W. 327, 25 A.L.R. 1508 (1922).

n18 Ivy v. Marx, 205 Ala. 60, 87 So. 813, 14 A.L.R. 1173 (1920); Caschetto v. Silliman & Godfrey Co., 126 Conn. 22, 9 A.2d 286 (1939); Baker v. Close, 204 N.Y. 92, 97 N.E. 501 (1912); Meyn v. Dulaney-Miller Auto Co., 118 W. Va. 545, 191 S.E. 558 (1937).

n19 § 461.

n20 Shepard v. McGougan, 562 S.W.2d 678 (Mo. Ct. App. 1977); Larsen v. Spano, 35 A.D.3d 820, 827 N.Y.S.2d 276 (2d Dep't 2006).

n21 Sargent v. Collins, 134 P.3d 37 (Kan. Ct. App. 2006), unpublished and review denied, (Sept. 19, 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 461

§ 461 Pedestrian's duty to maintain lookout

Pedestrians crossing a highway or street are required to exercise reasonable care for their own safety,[n1] Ordinary care requires that a pedestrian about to cross a highway or street in a busy area look for motorists before attempting to cross,[n2] Where a pedestrian looks and sees an approaching motor vehicle and fails to yield the right of way, the pedestrian is guilty of negligence.[n3]

Ordinarily, it is a question of fact for the jury whether a pedestrian was negligent for failing to adequately look for approaching motorists before attempting to cross a highway or street,[n4] but the pedestrian's failure to make the lookout may be so careless under the circumstances as to constitute negligence as a matter of law.[n5] Although a pedestrian is negligent for failing to take proper precautions to discover and observe the approach of motorists before placing him- or herself in a position of danger,[n6] a pedestrian crossing a highway or street is under no duty to look for motorists traveling on the wrong side of the road,[n7] and is not negligent as a matter of law for failing to do so.[n8] Moreover, a pedestrian who is about to cross a highway or street is under no conclusive duty to look up and down an intersecting road, to look for motorists approaching from that direction, and thus a failure to do so is typically a question for the jury.[n9]

A pedestrian whose view of approaching motorists is obstructed must usually exercise a greater degree of care in looking for motorists before crossing than would be necessary under other circumstances.[n10] However, the mere fact that a pedestrian attempts to cross a highway or street while the view is obstructed does not necessarily make the pedestrian negligent as a matter of law.[n11]

FOOTNOTES:

n1 § 455.

n2 Paskewicz v. Hickey, 111 Conn. 219, 149 A. 671 (1930); Richardson v. Williams, 249 Mich. 350, 228 N.W. 766 (1930); Rucheski v. Wisswesser, 355 Pa. 400, 50 A.2d 291 (1947); Salsich v. Bunn, 205 Wis. 524, 238 N.W. 394, 79 A.L.R. 1069 (1931).

n3 Wiedle v. Remmel, 42 Ohio St. 2d 335, 71 Ohio Op. 2d 310, 328 N.E.2d 391 (1975); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960); Brake v. Cerra, 145 W. Va. 76, 112 S.E.2d 466 (1960).

As to the negligence of a pedestrian who suddenly darts or steps into the path of a motorist, see § 473.

n4 Sprinkle v. Davis, 111 F.2d 925, 128 A.L.R. 1101 (C.C.A. 4th Cir. 1940); Caplan v. Arndt, 123 Conn. 585, 196 A. 631, 119 A.L.R. 1037 (1938); Likens Drug Co. v. Bosley, 343 S.W.2d 841 (Ky. 1961); Murphy v. Hammons, 509 S.W.2d 845 (Tex. 1974).

n5 Palmer v. McDonald, 171 Neb. 727, 107 N.W.2d 655 (1961); Stephen Putney Shoe Co. v. Ormsby's Adm'r, 129 Va. 297, 105 S.E. 563 (1921).

As to the effect of the negligence of the injured party, or party asserting a claim, to have, or diminish, recovery, see §§ 947 to 949.

n6 Cooper & Co. v. American Can Co., 130 Me. 76, 153 A. 889 (1931); State ex rel. Schaffer v. Allen, 253 S.W. 768, 28 A.L.R. 1270 (Mo. 1923).

n7 Dreyfus v. Daronco, 253 Mich. 235, 234 N.W. 587 (1931); Aide v. Taylor, 214 Minn. 212, 7 N.W.2d 757, 145 A.L.R. 530 (1943); Goldschmidt v. Schumann, 304 Pa. 172, 155 A. 297 (1931).

n8 Park v. Orbison, 43 Cal. App. 74, 184 P. 428 (1st Dist. 1919); Lawrence v. Bartling & Dull Co., 255 Mich. 580, 238 N.W. 180 (1931).

n9 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Gearhart v. Des Moines R. Co., 237 Iowa 213, 21 N.W.2d 569 (1946); Hempel v. Hall, 136 Md. 174, 110 A. 210, 9 A.L.R. 1245 (1920); Dunlap v. Welch, 152 Neb. 459, 41 N.W.2d 384 (1950).

n10 Cooper & Co. v. American Can Co., 130 Me. 76, 153 A. 889 (1931).

n11 Reaugh v. Cudahy Packing Co., 189 Cal. 335, 208 P. 125 (1922).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 462

§ 462 Sufficiency, continuity, and direction of lookout

Pedestrians attempting to cross a highway or street need not always look for approaching motorists at the precise moment when they step from the curb, but must look at a reasonable time and place that will give them knowledge of the traffic conditions.[n1] Thus, a pedestrian attempting to cross a highway or street is not bound as a matter of law to look continuously or a certain number of times for approaching motorists.[n2] Whether a pedestrian should look again, or continue to look, for motorists while crossing is usually a question for the jury.[n3]

Generally, the pedestrian is under an obligation to look to the left while crossing the first half of the highway or street and then to the right after reaching the medial line,[n4] particularly when crossing a busy street,[n5] or crossing diagonally.[n6] However, a pedestrian who has placed him- or herself in a position in which danger may come from either direction must look to both the right and left,[n7] or in every direction if motorists may approach from four different directions at the same time.[n8]

FOOTNOTES:

n1 Hicks v. Burch, 231 Iowa 853, 2 N.W.2d 277 (1942); Byrd v. Gipson, 34 Tenn. App. 254, 236 S.W.2d 988 (1950); Moseley v. Mills, 145 Wash. 253, 259 P. 715 (1927).

n2 McFall v. Tooke, 308 F.2d 617 (6th Cir. 1962); Pueblo Transp. Co. v. Moylan, 123 Colo. 207, 226 P.2d 806 (1951); Floyd v. Lipka, 51 Del. 487, 148 A.2d 541 (1959); Lawlor v. Gaylord, 233 Iowa 834, 10 N.W.2d 531 (1943).

n3 Moeller v. St. Paul City Ry. Co., 218 Minn. 353, 16 N.W.2d 289, 156 A.L.R. 371 (1944) (overruled in part on other grounds by, TePoel v. Larson, 236 Minn. 482, 53 N.W.2d 468 (1952)); Lantis v. Bishop, 224 Or. 586, 356 P.2d 158 (1960).

n4 Rinker v. Carl, 102 Cal. App. 436, 283 P. 317 (3d Dist. 1929).

n5 Ivy v. Marx, 205 Ala. 60, 87 So. 813, 14 A.L.R. 1173 (1920); Salsich v. Bunn, 205 Wis. 524, 238 N.W. 394, 79 A.L.R. 1069 (1931).

n6 Sheldon v. James, 175 Cal. 474, 166 P. 8, 2 A.L.R. 1493 (1917); Rang v. Klawun, 198 Wis. 1, 223 N.W. 121 (1929).

n7 Ching Wing v. Kishi, 92 Cal. App. 495, 268 P. 483 (1st Dist. 1928).

n8 Peterson v. Millnitz, 119 Neb. 365, 229 N.W. 12 (1930).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 463

§ 463 Constructive knowledge of hazards

A pedestrian attempting to cross a highway or street is chargeable with what would have been seen had he or she looked, in the exercise of ordinary care,[n1] Thus, if a pedestrian does not look and is struck by a motorist who could have been seen and avoided if properly observed in the exercise of due care, the pedestrian is negligent.[n2]

FOOTNOTES:

n1 Brake v. Cerra, 145 W. Va. 76, 112 S.E.2d 466 (1960).

Ficke v. Gibson, 153 Neb. 478, 45 N.W.2d 436 (1950); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).

n2 McKinney v. Yelavich, 352 Mich. 687, 90 N.W.2d 883 (1958); Carpenter v. Kansas City Public Service Co., 330 S.W.2d 797 (Mo. 1959); Dando v. Brobst, 318 Pa. 325, 177 A. 831 (1935); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).

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1. In General; Pedestrians
c. Pedestrians Crossing Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 464

§ 464 Reliance on traffic signs, signals, or markings

A pedestrian or motorist near or crossing an intersection may assume, in the absence of reason to believe otherwise, that persons on or near the crossing will obey any plainly visible or clearly audible traffic signs or signals.[n1] Thus, a pedestrian who uses a clearly marked crosswalk,[n2] or obeys traffic signals,[n3] may assume that others will obey the law until something occurs to place the reasonably prudent pedestrian on notice that someone is violating, or about to violate, the law in a manner that presents a danger to the pedestrian. Moreover, a pedestrian may assume that a motorist will not enter[n4] or turn at[n5] a highway or street intersection without making an audible warning and to warn pedestrians crossing or about to cross the intersection.

That a pedestrian is in a marked crosswalk or safety zone when injured by a motorist often bars a determination that the pedestrian was conclusively negligent,[n6] as where a pedestrian who is within a crosswalk and crossing with the light is struck by a motorist who had an unobstructed view of the crosswalk.[n7] The question, however, is generally one of fact for the jury to determine.[n8] The preferential status of the pedestrian is a circumstance to be considered by the jury in determining whether the pedestrian was negligent.[n9]

FOOTNOTES:

n1 Kirk v. Los Angeles Ry. Corp., 26 Cal. 2d 833, 161 P.2d 673, 164 A.L.R. 1 (1945) (disapproved of on other grounds by, Freeman v. Churchill, 30 Cal. 2d 453, 183 P.2d 4 (1947)); Floyd v. Lipka, 51 Del. 487, 148 A.2d 541 (1959); Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).

n2 Salomon v. Meyer, 1 Cal. 2d 11, 32 P.2d 631 (1934); Wintrobe v. Hart, 178 Md. 289, 13 A.2d 365 (1940); Lund v. Western Union Telegraph Co., 192 Wash. 579, 74 P.2d 220 (1937).

n3 Novak v. Dewar, 55 Cal. 2d 749, 13 Cal. Rptr. 101, 361 P.2d 709 (1961); Beck v. Dye, 200 Wash. 1, 92 P.2d 1113, 127 A.L.R. 1022 (1939).

n4 Cairney v. Cook, 266 Mass. 279, 165 N.E. 406 (1929); Carter v. C.F. Smith Co., 285 Mich. 621, 281 N.W. 380 (1938); Raymen v. Galvin, 229 S.W. 747 (Mo. 1921).

n5 Schomer v. R.L. Craig Co., 137 Cal. App. 620, 31 P.2d 396 (3d Dist. 1934); Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Panitz v. Webb, 151 Md. 639, 135 A. 406 (1926); Offerman v. Yellow Cab Co., 144 Minn. 478, 175 N.W. 537 (1920); Davis v. Riegel, 182 Wash. 1, 44 P.2d 771 (1935).

n6 Mangan v. Des Moines City Ry. Co., 200 Iowa 597, 203 N.W. 705, 41 A.L.R. 368 (1925); Scott v. Vaughn, 140 Kan. 529, 37 P.2d 1012 (1934); Rohrer v. Schreiber, 223 Mich. 355, 193 N.W. 905 (1923).

n7 Zabusky v. Cochran, 234 A.D.2d 542, 651 N.Y.S.2d 190 (2d Dep't 1996).

n8 Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Williams v. Kalutz, 237 S.C. 398, 117 S.E.2d 591 (1960).

n9 Williams v. Kalutz, 237 S.C. 398, 117 S.E.2d 591 (1960).

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8 Am Jur 2d Automobiles and Highway Traffic § 465

§ 465 Motorist or pedestrian entering intersection on favorable traffic signal

A motorist approaching an intersection must watch vigilantly for pedestrians who are caught between light changes, and may not simply rely on a favorable light.[n1] A green signal at a street intersection confers no authority on a driver who receives this signal to proceed across the intersection heedless of other persons or vehicles that may already be within it, since the signal is not a command to go but a qualified permission to proceed lawfully and carefully in the direction indicated.[n2] Thus a driver may be negligent in striking a pedestrian who is walking across the street in a crosswalk after the walk/don't walk sign begins flashing.[n3] Similarly, a driver may be treated as solely at fault in hitting a pedestrian in a crosswalk even though the driver had a green light, where the pedestrian has a green light until reaching the median and has a yellow light when continuing across the street.[n4]

That someone charged with negligence, in connection with an accident between a motorist and a pedestrian at an intersection, entered the intersection with a favorable traffic signal operates, or at least tends, to prevent a finding of negligence as a matter of law that might otherwise by warranted.[n5] In some instances, this circumstance has been used to support a finding that a motorist or pedestrian was not negligent,[n6] or the circumstances have precluded, as a matter of law, a finding that the motorist or pedestrian was negligent.[n7] However, under some circumstances, the motorist or pedestrian was found negligent despite approaching or entering an intersection on a favorable traffic signal.[n8] It is improper to apply the doctrine of res ipsa loquitur in an action for injury to a pedestrian in a crosswalk who is struck by the defendant's car, where the unforeseeable actions of a third party may have contributed to the accident.[n9]

A pedestrian crossing a street intersection on a favorable traffic signal must still exercise ordinary care and caution.[n10] A right-of-way statute does not grant a pedestrian in a crosswalk precedence over all vehicles on the street under all circumstances.[n11] Accordingly, a pedestrian does not have the right of way across the entire street from one side to the other when crossing against the light, when struck by a left-turning motorist when the light turns green.[n12]

The pedestrian's duty on a favorable signal at a crosswalk includes keeping watch for approaching motorists[n13] or a change in the signal.[n14] However, courts tend to limit the duty of vigilance to the discovery of obvious perils,[n15] Thus, while crossing with a favorable traffic signal, a pedestrian is not bound to continue to look for approaching motorists,[n16] even though the traffic signal changes before the pedestrian reaches the other side.[n17]

A finding of negligence may be based upon the failure of a motorist or pedestrian crossing an intersection with a favorable signal to adequately observe traffic conditions at or near the intersection.[n18] In some cases, a motorist or pedestrian under these circumstances may be negligent as a matter of law,[n19] but in other cases, the question of negligence has been deemed one for the trier of fact.[n20] In yet other cases, courts will not attribute any negligence to the motorist or pedestrian under such circumstances, based on the right of one proceeding with a favorable traffic signal to assume that others will not disregard an unfavorable signal.[n21]

A motorist may be found negligent despite entering an intersection on a favorable traffic signal, if the motorist did not give pedestrians who entered the intersection while the signal was in their favor an opportunity to clear the crossing.[n22] Whether a pedestrian is negligent in continuing on after a change in the signal, or in remaining stationary to permit released traffic to pass, or in failing to observe the change of the signal, is usually a question for the trier of fact.[n23]

Under a statute requiring a pedestrian who has partially completed crossing on a "walk"signal to proceed without delay to the sidewalk or safety island while the "don't walk"signal is showing, a pedestrian who has passed the safety island must seek the most readily accessible sidewalk or safety island when the signal changes and may be contributorily negligent in proceeding to the far sidewalk.[n24]

FOOTNOTES:

n1 Patterson v. Meyers, 583 So. 2d 79 (La. Ct. App. 4th Cir. 1991).

n2 Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

n3 Razzaque v. Krakow Taxi, Inc., 238 A.D.2d 161, 656 N.Y.S.2d 208 (1st Dep't 1997).

n4 Dang v. New Hampshire Ins. Co., 798 So. 2d 1204 (La. Ct. App. 4th Cir. 2001), writ denied, 811 So. 2d 939 (La. 2002).

n5 Gnesa v. City and County of San Francisco, 40 Cal. App. 2d 640, 105 P.2d 376 (1st Dist. 1940); Evans v. Dickinson, 127 Conn. 297, 16 A.2d 582 (1940); Wintrobe v. Hart, 178 Md. 289, 13 A.2d 365 (1940); Schultz v. Frost, 294 Mich. 457, 293 N.W. 716 (1940); Jackson v. Smart, 90 N.H. 153, 5 A.2d 713 (1939); Beck v. Dye, 200 Wash. 1, 92 P.2d 1113, 127 A.L.R. 1022 (1939).

n6 Wilson v. Freeman, 271 Mass. 438, 171 N.E. 469 (1930); Bowers v. Colonial Warehouse Co., 153 Minn. 425, 190 N.W. 609 (1922); Cleveland Ry. Co. v. Goldman, 122 Ohio St. 73, 8 Ohio L. Abs. 175, 170 N.E. 641 (1930).

n7 Sun Cab Co. v. Cialkowski, 217 Md. 253, 142 A.2d 587 (1958); Stafford v. Jones, 292 Mass. 489, 198 N.E. 745 (1935); Lyntkowski v. Gallo, 310 Pa. 32, 164 A. 792 (1933); Miller v. Utah Light & Traction Co., 96 Utah 369, 86 P.2d 37 (1939).

n8 Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Clark v. Horowitz, 293 Pa. 441, 143 A. 131 (1928).

n9 Postlewaite v. Morales, 352 So. 2d 383 (La. Ct. App. 4th Cir. 1977) (defendant entered intersection on green light but was struck by another car running a red light, causing defendant's car to swerve into the pedestrian).

n10 Sloan v. Ambrose, 300 Mich. 188, 1 N.W.2d 505 (1942); Van Note v. Philadelphia Transp. Co., 353 Pa. 277, 45 A.2d 71 (1946); Cheatwood v. Virginia Elec. & Power Co., 179 Va. 54, 18 S.E.2d 301 (1942).

n11 Holeman v. Smallwood, 89 Ill. App. 3d 796, 45 Ill. Dec. 5, 412 N.E.2d 41 (3d Dist. 1980).

n12 Floyd v. Nunn, 217 Va. 834, 232 S.E.2d 813 (1977).

n13 Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Steger v. Blanchard, 353 Mich. 140, 90 N.W.2d 891 (1958); Goodman v. Brown, 164 Misc. 145, 298 N.Y.S. 574 (City Ct. 1937); Townsend v. Young, 114 S.W.2d 296 (Tex. Civ. App. Fort Worth 1938).

n14 Deane v. Johnston, 104 So. 2d 3, 65 A.L.R.2d 957 (Fla. 1958); Sloan v. Ambrose, 300 Mich. 188, 1 N.W.2d 505 (1942); Wells v. Johnson, 269 N.C. 192, 152 S.E.2d 229 (1967).

n15 Seinsheimer v. Burkhart, 132 Tex. 336, 122 S.W.2d 1063 (Comm'n App. 1939); Ballard v. Yellow Cab Co., 20 Wash. 2d 67, 145 P.2d 1019 (1944); Baumann v. Eva-Caroline Home Laundry, 213 Wis. 78, 250 N.W. 773 (1933).

n16 Railway Exp Agency v. Little, 50 F.2d 59, 75 A.L.R. 963 (C.C.A. 3d Cir. 1931); Romandel v. Kansas City Public Service Co., 254 S.W.2d 585 (Mo. 1953).

n17 Riddel v. Lyon, 124 Wash. 146, 213 P. 487, 37 A.L.R. 486 (1923) (applying city ordinance).

n18 Paquin v. Boston & Taunton Transp. Co., 69 R.I. 176, 32 A.2d 153 (1943); Lubliner v. Ruge, 21 Wash. 2d 881, 153 P.2d 694 (1944).

n19 Sloan v. Ambrose, 300 Mich. 188, 1 N.W.2d 505 (1942); Dando v. Brobst, 318 Pa. 325, 177 A. 831 (1935).

n20 King v. Unger, 25 Cal. App. 2d 632, 78 P.2d 255 (2d Dist. 1938); Dougherty v. McFee, 221 Iowa 391, 265 N.W. 176 (1936); Vandervelt v. Mather, 353 Mich. 1, 90 N.W.2d 894 (1958).

n21 Gearhart v. Des Moines R. Co., 237 Iowa 213, 21 N.W.2d 569 (1946); Wells v. Johnson, 269 N.C. 192, 152 S.E.2d 229 (1967).

n22 Stinebaugh v. Lucid, 103 Ind. App. 690, 7 N.E.2d 69 (1937); Jackson v. Smart, 89 N.H. 174, 195 A. 683 (1937); Gilles v. Leas, 282 Pa. 318, 127 A. 774 (1925).

n23 Kirk v. Los Angeles Ry. Corp., 26 Cal. 2d 833, 161 P.2d 673, 164 A.L.R. 1 (1945) (disapproved of on other grounds by, Freeman v. Churchill, 30 Cal. 2d 453, 183 P.2d 4 (1947)); Cahill v. Cummings, 322 Ill. App. 662, 54 N.E.2d 634 (1st Dist. 1944); McKinney v. Yelavich, 352 Mich. 687, 90 N.W.2d 883 (1958); MacDougall v. American Ice Co., 317 Pa. 222, 176 A. 428 (1935).

n24 Schweitzer v. Brewer, 280 Md. 430, 374 A.2d 347 (1977).

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8 Am Jur 2d Automobiles and Highway Traffic § 466

§ 466 Disregarding traffic signs, signals, or markings

Ordinarily, it is negligent to strike a pedestrian crossing the intersection if the motorist enters a highway or street intersection against the direction of a traffic light or officer's instruction,[n1] or without obeying a stop sign,[n2] or at an excessive speed,[n3] or into or through a pedestrian crosswalk.[n4] Similarly, a pedestrian who crosses a highway or street intersection against an unfavorable traffic light or officer's instruction may be held negligent.[n5] The conduct of a motorist in striking a pedestrian in a marked crosswalk sometimes constitutes negligence per se, or negligence as a matter of law,[n6] but the fact that a pedestrian is not within a marked crosswalk when struck by a motorist does not necessarily mean that the pedestrian was negligent as a matter of law.[n7]

A motorist may be held negligent in entering an intersection just as the traffic signal changes from red to green and striking a pedestrian therein,[n8] when a yellow or amber traffic light is showing,[n9] or in failing to yield the right of way while making a left turn on a green light, in favor of a pedestrian who has also entered the crossing with the favorable signal.[n10]

The failure of a motorist or pedestrian to detect an obvious traffic signal will itself suffice to support a finding of negligence in disobeying the signal,[n11] even if the circumstances of the case may have warranted a contrary finding.[n12]

FOOTNOTES:

n1 Mazanec v. Prosser, 323 Ill. App. 652, 56 N.E.2d 489 (1st Dist. 1944); Blunk v. Snider, 342 Mo. 26, 111 S.W.2d 163 (1937); Wells v. Johnson, 269 N.C. 192, 152 S.E.2d 229 (1967); Beck v. Dye, 200 Wash. 1, 92 P.2d 1113, 127 A.L.R. 1022 (1939).

n2 Cook v. Cook, 26 Ariz. App. 163, 547 P.2d 15 (Div. 1 1976) (abrogated by, Mezey v. Fioramonti, 204 Ariz. 599, 65 P.3d 980 (Ct. App. Div. 1 2003)); Field v. Collins, 263 Ky. 474, 92 S.W.2d 793 (1936).

n3 Gaymon v. Barbee, 52 N.C. App. 627, 279 S.E.2d 91 (1981).

n4 Kostouros v. O'Connell, 39 Cal. App. 2d 618, 103 P.2d 1028 (1st Dist. 1940); Kirkham v. Jenkins Music Co., 340 Mo. 911, 104 S.W.2d 234 (1937); Derricotte v. Ulitsky, 353 Pa. 309, 45 A.2d 5 (1946).

n5 Hurtel v. Albert Cohn, Inc., 5 Cal. 2d 145, 52 P.2d 922 (1936); Evans v. Dickinson, 127 Conn. 297, 16 A.2d 582 (1940); Himmel v. Orliski, 221 Minn. 192, 21 N.W.2d 605 (1946).

n6 Nicholas v. Leslie, 7 Cal. App. 2d 590, 46 P.2d 761 (2d Dist. 1935); Lund v. Western Union Telegraph Co., 192 Wash. 579, 74 P.2d 220 (1937).

n7 Umemoto v. McDonald, 6 Cal. 2d 587, 58 P.2d 1274 (1936).

n8 Vince v. Burns, 192 So. 735 (La. Ct. App. 1st Cir. 1939).

n9 Andresen v. Zimmerman, 12 N.J. Misc. 87, 169 A. 638 (Sup. Ct. 1933).

n10 Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Gearhart v. Des Moines R. Co., 237 Iowa 213, 21 N.W.2d 569 (1946).

n11 Cincinnati St. Ry. Co. v. Bartsch, 50 Ohio App. 464, 3 Ohio Op. 485, 19 Ohio L. Abs. 623, 198 N.E. 636 (1st Dist. Hamilton County 1935).

n12 Bellemare v. Ford, 94 N.H. 38, 45 A.2d 882 (1946).

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8 Am Jur 2d Automobiles and Highway Traffic § 467

§ 467 Duty of motorist to give timely warning

A failure to sound the horn will not make a motorist negligent for striking a pedestrian crossing a highway or street, if doing so would not have afforded the pedestrian any real opportunity to take proper action to avoid being hit.[n1] However,, if sounding the horn might have resulted in avoiding the injury to the pedestrian, negligence in failing to do so becomes a question of fact for the jury.[n2]

FOOTNOTES:

n1 Deeke v. Steffke Freight Co., 50 Ill. App. 2d 1, 199 N.E.2d 442, 24 A.L.R.3d 173 (2d Dist. 1964); Gish v. Scott, 345 S.W.2d 490 (Ky. 1961).

As to the duty of a motorist to give timely warnings, generally, see § 444.

n2 Oldham v. Adkisson, 448 S.W.2d 55 (Ky. 1969); Sutton v. Rogers, 222 So. 2d 504 (La. Ct. App. 2d Cir. 1969).

As to matters relating to the liability of a motorist for injuries sustained by a pedestrian crossing the highway as a result of skidding of the vehicle into the pedestrian, see § 440.

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8 Am Jur 2d Automobiles and Highway Traffic § 468

§ 468 Pedestrian colliding with side of vehicle

Generally, a motorist is not liable for injuries received by a pedestrian who collides with the side of the vehicle, either because the motorist was not negligent [n1] or, in those jurisdictions that apply the contributory negligence doctrine, [n2] because the injured pedestrian was contributorily negligent. [n3]

Under certain circumstances, however, ordinary care may require a motorist to look not only straight ahead but also sideways, to detect any potential danger that a pedestrian may collide with the side of the vehicle. [n4] However, a motorist need not stop the vehicle every time a pedestrian gets so close that he or she might walk into it. [n5]

FOOTNOTES:

n1 Carrasco v. Monteforte, 266 A.D.2d 330, 698 N.Y.S.2d 326 (2d Dep't 1999).

n2 §§ 947 et seq.

n3 Leslie-Four Coal Co. v. Brock, 343 S.W.2d 820 (Ky. 1961); Ulrich v. McDonough, 89 Ohio App. 178, 45 Ohio Op. 433, 101 N.E.2d 163 (6th Dist. Erie County 1950).

n4 Hornbuckle v. McCarty, 295 Mo. 162, 243 S.W. 327, 25 A.L.R. 1508 (1922).

n5 Laurinat v. Giery, 157 Neb. 681, 61 N.W.2d 251 (1953).

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8 Am Jur 2d Automobiles and Highway Traffic § 469

§ 469 Pedestrian struck by backing vehicle

A motorist is negligent as a matter of law in backing up a vehicle into a pedestrian without taking adequate precautions, where a statute provides that the driver of a vehicle shall not back it up unless the movement can be made with safety and without interfering with other traffic.[n1] However, a municipal code section providing that "[t]rucks shall not be backed or dumped in places where persons are working ... unless guided by a person so stationed that he sees the truck drivers and the spaces in the back of the vehicles"does not apply to a forklift that backs up without a flag or signal person.[n2]

A motorist may be liable for injuries sustained by a pedestrian crossing the street at a marked crosswalk or intersection if the motorist backs into the pedestrian suddenly and without warning,[n3] even if the backing was done at the direction of a police officer.[n4] However, a motorist is not liable for injuries sustained by a pedestrian crossing the street at a marked crosswalk or intersection if the motorist backs into the pedestrian who, knowing that the motorist is backing, walks into the vehicle's path.[n5]

A store with a retail automotive center may be liable for failing to adequately train and instruct its employees on the safety procedures to use in operating vehicles near pedestrians.[n6]

FOOTNOTES:

n1 Plaut v. Allright Parking Management, Inc., 18 A.D.3d 396, 795 N.Y.S.2d 576 (1st Dep't 2005).

n2 Fitzgerald v. New York City School Const. Authority, 18 A.D.3d 807, 796 N.Y.S.2d 694 (2d Dep't 2005), leave to appeal denied, 8 N.Y.3d 801, 830 N.Y.S.2d 9, 862 N.E.2d 88 (2007) (safety regulation governing forklifts contained no provision requiring that person be stationed behind forklift when it backed into area where people were working).

n3 Jonesboro Coca-Cola Bottling Co. v. Holt, 194 Ark. 992, 110 S.W.2d 535 (1937); Nicol v. Davis, 107 Cal. App. 26, 290 P. 114 (1st Dist. 1930); Hershovics v. Mindlin, 40 Ohio App. 2d 551, 69 Ohio Op. 2d 469, 320 N.E.2d 702 (10th Dist. Franklin County 1973).

As to the duty of care owing in regard to a vehicle backing over a sidewalk, see § 437.

n4 Armstrong v. McGraw, 115 Pa. Super. 156, 175 A. 279 (1934).

n5 David v. Pickering, 344 So. 2d 442 (La. Ct. App. 1st Cir. 1977); Dubeau v. Bordeau, 291 Mich. 418, 289 N.W. 198 (1939).

n6 Kresin v. Sears, Roebuck and Co., 316 Ill. App. 3d 433, 249 Ill. Dec. 329, 736 N.E.2d 171 (1st Dist. 2000) (customer struck by vehicle being backed out of service bay located next to doors used by pedestrians to enter and exit auto center).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 470

§ 470 Lack of proper headlighting

Driving a motor vehicle with both headlights out, resulting in a collision with a pedestrian crossing a highway or street at night, generally constitutes negligence rendering the operator of the vehicle liable for the pedestrian's injuries, absent evidence of the pedestrian's contributory negligence.[n1] In addition, colliding with a pedestrian crossing a street or highway at night while the motorist is driving with one headlight out may, depending on the circumstances, constitute negligence as a matter of law[n2] or at least raise a jury question on negligence.[n3]

The use of dim or defective headlights,[n4] or of deflected or low-beam headlights,[n5] may constitute negligence rendering the operator of the vehicle liable for injuries sustained when he or she runs into a pedestrian crossing the highway or street, the question being ordinarily one of fact for the jury.

It is not negligent to drive at night with the lights on low beam if heavy traffic would have made it unreasonable to operate on high beams.[n6]

In any event, the operator of the motor vehicle is not liable if the inadequate lights are not a proximate cause of the injuries.[n7]

FOOTNOTES:

n1 Price v. Lowman, 373 F.2d 390 (4th Cir. 1967); Campbell v. Burns, 512 So. 2d 1341 (Ala. 1987); Dupas v. City of New Orleans, 354 So. 2d 1311 (La. 1978); Cluster v. Cole, 21 Md. App. 242, 319 A.2d 320 (1974).

n2 Canning v. Cunningham, 322 Mich. 182, 33 N.W.2d 752 (1948).

n3 Casalegno v. Leonard, 40 Cal. App. 2d 575, 105 P.2d 125 (1st Dist. 1940); Heneghan v. Goldberg, 296 Ill. App. 253, 16 N.E.2d 139 (1st Dist. 1938); Neverett v. Patch, 295 Mass. 454, 4 N.E.2d 304 (1936).

n4 Burgesser v. Bullock's, 190 Cal. 673, 214 P. 649 (1923).

n5 Pottei v. Demanes, 338 Ill. App. 287, 87 N.E.2d 332 (2d Dist. 1949); Merrill v. State, 110 Misc. 2d 260, 442 N.Y.S.2d 352 (Ct. Cl. 1981), judgment aff'd, 89 A.D.2d 802, 453 N.Y.S.2d 384 (4th Dep't 1982) and judgment aff'd, 89 A.D.2d 802, 453 N.Y.S.2d 383 (4th Dep't 1982); Healy v. Moore, 108 Vt. 324, 187 A. 679 (1936).

n6 Murphy v. Allstate Ins. Co., 295 So. 2d 29 (La. Ct. App. 2d Cir. 1974), writ refused, 299 So. 2d 787 (La. 1974).

n7 Sajatovich v. Traction Bus Co., 314 Pa. 569, 172 A. 148 (1934).

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8 Am Jur 2d Automobiles and Highway Traffic § 471

§ 471 Motorist blinded by lights of approaching vehicle

A motorist blinded by approaching headlights owes a duty to a pedestrian crossing a highway or street to exercise reasonable care under the circumstances, or to stop,[n1] and negligence may more readily be found if a light-blinded driver proceeds into the blacked-out area in a vicinity where there is reason to know that pedestrians are likely to be walking across the road.[n2]

FOOTNOTES:

n1 Griffin v. Wood, 93 Conn. 99, 105 A. 354 (1918).

n2 Brandt v. Dodd, 150 Fla. 635, 8 So. 2d 471 (1942); Olson v. Evert, 224 Minn. 528, 28 N.W.2d 753 (1947).

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§ 472 Excessive speed of vehicle

The rule that it is negligence to drive a motor vehicle at such a speed that it cannot be stopped in time to avoid an obstruction that is discernible within the driver's length of vision, that is, within the assured clear distance ahead,[n1] has been applied to accidents involving a pedestrian crossing the highway or street.[n2] The failure of a motorist to observe the "assured clear distance ahead"requirements of a statute, resulting in injury to a pedestrian, in some cases constitutes negligence per se or as a matter of law,[n3] while in other cases it is merely evidence of negligence.[n4]

A legal excuse for violating the "assured clear distance ahead"rule is presented if an occurrence outside the driver's control occurs makes it impossible to comply with the rule,[n5] as, for example, when a pedestrian suddenly appears in the lane of travel or line of vision at an intermediate point in the assured clear distance ahead.[n6]

A statute fixing a rate of speed as prima facie lawful in a designated locality does not bar the application of the "assured clear distance ahead"rule to a motorist traveling at such speed when the vehicle strikes a pedestrian crossing the street at an intersection at night.[n7] Evidence that a driver who hits a pedestrian was speeding may present a triable issue of fact as to whether the driver's negligence was a proximate cause of the plaintiff's injuries, thereby precluding summary judgment for the driver.[n8] Furthermore, a jury question may be presented, precluding a directed verdict for the motorist, where the driver was speeding, the pedestrian had reached the median before the driver reached the pedestrian, and, while the latter was looking for traffic in the opposite lanes, the driver swerved onto the median and struck the pedestrian.[n9]

FOOTNOTES:

n1 § 273.

n2 Parkins v. Brown, 241 F.2d 367 (5th Cir. 1957); Erdman v. Mestrovich, 155 Ohio St. 85, 44 Ohio Op. 97, 97 N.E.2d 674, 31 A.L.R.2d 1417 (1951); Weibel v. Ferguson, 342 Pa. 113, 19 A.2d 357 (1941).

n3 Staunton v. City of Detroit, 329 Mich. 516, 46 N.W.2d 569 (1951); Anderson v. Lee, 130 Neb. 258, 264 N.W. 666 (1936).

n4 Lorimer v. Hutchinson Ice Cream Co., 216 Iowa 384, 249 N.W. 220 (1933); Holmes v. Merson, 285 Mich. 136, 280 N.W. 139 (1938).

n5 Swan v. Dailey-Luce Auto Co., 221 Iowa 842, 265 N.W. 143 (1936) (sudden emergency).

n6 Flowers v. Morris, 43 So. 2d 917 (La. Ct. App. 2d Cir. 1950); Elliott v. A.J. Smith Contracting Co., 358 Mich. 398, 100 N.W.2d 257 (1960); Erdman v. Mestrovich, 155 Ohio St. 85, 44 Ohio Op. 97, 97 N.E.2d 674, 31 A.L.R.2d 1417 (1951).

n7 Feuerstein v. Grady, 86 N.H. 406, 169 A. 622 (1933).

n8 Ragland v. Moore, 299 N.C. 360, 261 S.E.2d 666 (1980).

n9 Oliver v. Powell, 47 N.C. App. 59, 266 S.E.2d 830 (1980) (holding also that pedestrian was not contributorily negligent).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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West's Key Number Digest, Automobiles [westkey]160(4)
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C. Persons Injured
1. In General; Pedestrians
d. Pedestrians Suddenly Darting or Stepping into Path of Vehicles

8 Am Jur 2d Automobiles and Highway Traffic § 473

§ 473 Generally

The determining element in a car-pedestrian accident is the pedestrian's sudden movement into the vehicle's path followed by an almost instantaneous collision.[n1] A driver does not breach any duty to a pedestrian who leaves a point of safety and walks into the vehicle's path, since a driver with the right of way need not keep an effective lookout for persons violating that priority.[n2]

Where a pedestrian is standing in a place of safety and apparently sees an approaching motor vehicle, the driver may assume that the pedestrian will remain in the place of safety until the vehicle has passed, and will not suddenly step into a place of danger.[n3] A motorist is not required to anticipate that a pedestrian seen in a place of safety will leave it and enter the danger zone unless and until the pedestrian's movement reasonably indicates that fact.[n4] However, a motorist has a duty to give warning to one on the highway, or in close proximity to it, who is apparently oblivious of the former's approach, or one who the motorist reasonably anticipates will come into his or her way.[n5]

That a driver was traveling at a very slow speed and paying close attention to the surroundings when the pedestrian entered the roadway tends to show that the driver was not negligent.[n6] A pedestrian who is struck by a car after stepping into the street to avoid an altercation with a third party on a street corner may be found negligent per se.[n7]

The fact that a pedestrian comes into the path of a motorist suddenly and so close that the motorist cannot stop and avoid striking the pedestrian does not excuse a motorist who is driving at an unreasonable speed under the circumstances.[n8] However, in other cases if injury to a pedestrian is produced by a sudden appearance in front of a motorist who is thus unable to prevent a collision, recovery may be denied, even though the motorist is traveling at an unreasonable rate of speed or is otherwise negligent.[n9]

Where a pedestrian in a place of safety sees or could have seen an approaching vehicle in close proximity yet moves suddenly into the vehicle's path and is struck, the pedestrian's negligence will preclude or diminish recovery for resulting injuries.[n10]

FOOTNOTES:

n1 Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

n2 Snider v. Nieberding, 2003-Ohio-5715, 2003 WL 22427808 (Ohio Ct. App. 12th Dist. Clermont County 2003).

n3 Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995).

n4 Trainor's Adm'r v. Keller, 257 Ky. 840, 79 S.W.2d 232 (1935).

n5 Trainor's Adm'r v. Keller, 257 Ky. 840, 79 S.W.2d 232 (1935); Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995).

n6 Thompson v. Fox-Jones, 715 N.W.2d 768 (Iowa Ct. App. 2006).

n7 Byrd v. Towns, 2004-Ohio-1905, 2004 WL 795920 (Ohio Ct. App. 8th Dist. Cuyahoga County 2004).

n8 Morrison v. Flowers, 308 Ill. 189, 139 N.E. 10 (1923); American Dye Works v. Baker, 210 Ky. 508, 276 S.W. 133 (1925).

n9 Golubic v. Rasnich, 249 Ky. 266, 60 S.W.2d 616 (1933); Hulan v. State Farm Mut. Auto. Ins. Co., 635 So. 2d 640 (La. Ct. App. 3d Cir. 1994).

n10 Jarvis v. Stone, 216 Iowa 27, 247 N.W. 393 (1933); Palmer v. McDonald, 171 Neb. 727, 107 N.W.2d 655 (1961); Dando v. Brobst, 318 Pa. 325, 177 A. 831 (1935).

As to effect of negligence of injured party to bar, or diminish, recovery, see §§ 947 to 949.

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8 Am Jur 2d Automobiles and Highway Traffic § 474

§ 474 Pedestrian coming from behind or around, or alighting from, vehicle

A motorist is not bound to anticipate that a pedestrian may suddenly dart from behind a parked vehicle into the motorist's path, or suddenly enter the roadway after alighting from a parked vehicle,[n1] and is not ordinarily liable for injuries sustained in a collision with such pedestrian.[n2] A motorist does not have any heightened duty toward a police officer who suddenly enter the roadway in front of a vehicle.[n3] Similarly, a motorist is not negligent if a pedestrian darts out from between two parked vehicles outside of a crosswalk, directly into the side of a vehicle.[n4] Compliance with governing traffic laws does not necessarily demonstrate that the driver exercised due care, but is only one factor to be considered.[n5] A motorist passing through a busy thoroughfare on which vehicles are parked and which pedestrians are crossing may be put on notice of danger, and be required to proceed more slowly and have the vehicle under better control.[n6]

A motorist proceeding at an excessive speed under the circumstances may be negligent in striking a pedestrian coming from behind or around a vehicle, or alighting from it,[n7] The excessive speed, however, must have been a proximate cause of the accident.[n8] Similarly, absent proximate cause, a defendant is not liable for injuries to a pedestrian who steps into street to go around obstructions placed on the shoulder by the defendant and is then struck by a vehicle.[n9]

If a pedestrian suddenly steps from behind one vehicle into the path of another, without looking or listening, and is struck, the pedestrian is usually contributorily negligent as a matter of law.[n10] In other cases, however, the question of the negligence of the pedestrian is one of fact for the jury.[n11]

FOOTNOTES:

n1 McAteer v. Highland Coffee Co., 291 Pa. 32, 139 A. 585 (1927).

n2 Johnson v. Lovett, 285 A.D.2d 627, 728 N.Y.S.2d 753 (2d Dep't 2001).

n3 Powell v. Regional Transit Authority, 701 So. 2d 1370 (La. Ct. App. 4th Cir. 1997), writ denied, 712 So. 2d 877 (La. 1998) (officer who had stopped a motorist stepped suddenly into road as bus was trying to pass by).

n4 Mancia v. Metropolitan Transit Authority Long Island Bus, 14 A.D.3d 665, 790 N.Y.S.2d 31 (2d Dep't 2005) (bus).

n5 Downtown Auto Parts, Inc. v. Toner, 2004 WY 67, 91 P.3d 917 (Wyo. 2004).

n6 Webster v. Motor Parcel Delivery Co., 41 Cal. App. 657, 183 P. 220 (1st Dist. 1919).

n7 Smith v. Spirek, 196 Iowa 1328, 195 N.W. 736 (1923); Ennis v. Dupree, 258 N.C. 141, 128 S.E.2d 231 (1962).

As to speed of vehicle as a factor, generally, see § 472.

n8 Pettijohn v. Weede, 209 Iowa 902, 227 N.W. 824 (1929).

n9 Pope v. Cruise Boat Co., Inc., 380 So. 2d 1151 (Fla. Dist. Ct. App. 3d Dist. 1980).

n10 Standard Oil Co. of Kentucky v. Noakes, 59 F.2d 897 (C.C.A. 6th Cir. 1932); Runge v. Haller, 236 Ky. 423, 33 S.W.2d 317 (1930); Jean v. Nester, 261 Mass. 442, 158 N.E. 893 (1927); Jones v. Florios, 248 Mich. 153, 226 N.W. 852 (1929); Gatens v. Vrabel, 393 Pa. 155, 142 A.2d 287 (1958).

As to effect of negligence of an injured party to bar, or diminish, recovery, see 947 to 949.

n11 Blumb v. Getz, 366 Ill. 273, 8 N.E.2d 620 (1937); Jones v. Bagwell, 207 N.C. 378, 177 S.E. 170 (1934); Phillips Petroleum Co. v. Johnson, 1937 OK 567, 181 Okla. 256, 72 P.2d 488 (1937).

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8 Am Jur 2d Automobiles and Highway Traffic § 475

§ 475 Pedestrian turning around or stepping backward

A motorist may assume that a pedestrian who crosses the street and reaches a place of safety will either remain there or continue crossing, and will not retrace his or her steps and come within the motorist's line of travel.[n1] Any negligence of a motorist in striking such a pedestrian is generally a question of fact for the jury,[n2] although in some cases the motorist is not negligent as a matter of law.[n3]

In many cases pedestrians have been negligent as a matter of law in stepping or turning back into the path of a motorist after reaching a place of safety while crossing a highway or street.[n4] In other cases the question of the negligence of a pedestrian struck by a motorist under a similar factual situation is left for the jury.[n5]

FOOTNOTES:

n1 Faatz v. Sullivan, 199 Iowa 875, 200 N.W. 321 (1924); Goodson v. Schwandt, 318 Mo. 666, 300 S.W. 795 (1927).

n2 Tio v. Molter, 262 Mich. 655, 247 N.W. 772 (1933); Anderson v. Kelley, 196 Minn. 578, 265 N.W. 821 (1936); Hausken v. Coman, 66 N.D. 633, 268 N.W. 430 (1936).

n3 Stafford v. Jones, 292 Mass. 489, 198 N.E. 745 (1935); Goodson v. Schwandt, 318 Mo. 666, 300 S.W. 795 (1927).

n4 Grubb Motor Lines v. Woodson, 175 F.2d 278 (4th Cir. 1949) (stating that right of way statutes are not applicable where a pedestrian retraces his or her steps); Stewart v. Langer, 9 Cal. App. 2d 60, 48 P.2d 758 (4th Dist. 1935); Page's Adm'r v. Scott, 245 Ky. 648, 54 S.W.2d 23 (1932); Smith v. Joe's Sanitary Market, 132 Me. 234, 169 A. 900 (1933); Johnson v. Butler, 120 Pa. Super. 501, 182 A. 650 (1936); Shanley v. Hadfield, 124 Wash. 192, 213 P. 932 (1923).

As to the effect of the negligence of an injured party to bar, or diminish, recovery, see §§ 947 to 949.

n5 Anderson v. Kelley, 196 Minn. 578, 265 N.W. 821 (1936); Russell v. Davis, 38 N.M. 533, 37 P.2d 536 (1934).

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Automobiles and Highway Traffic
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C. Persons Injured
2. Children; Disabled Persons
a. Children
(1) In General
(a) Standard of Care

8 Am Jur 2d Automobiles and Highway Traffic § 476

§ 476 Generally

A motorist who knows of the presence of one or more children in, near, or adjacent to the street, or should know that children may reasonably be expected to be in the vicinity, must exercise due care for the safety of the children.[n1] In order to satisfy the standard of due care, a greater amount of vigilance is ordinarily required in the case of children than in the case of adults.[n2]

Although a motorist is not an insurer of a child pedestrian's safety,[n3] the law does impose a high degree of care upon the driver and a duty to anticipate that children, possessed with limited judgment, might be unable to appreciate impending danger, are likely to be inattentive, and might suddenly imperil themselves.[n4]

The duty of care that a driver owes a child-pedestrian depends on the place, circumstances, conditions, and surroundings,[n5] as well as the age, intelligence, and maturity of the child.[n6] Thus, the degree of care required of a motorist may be greater if the child is younger and therefore more vulnerable.[n7]

FOOTNOTES:

n1 Springman By Springman v. Hall, 642 N.E.2d 521 (Ind. Ct. App. 1994); Thomas v. Goodies Ice Cream Co., 13 Ohio App. 2d 67, 42 Ohio Op. 2d 147, 233 N.E.2d 876 (10th Dist. Franklin County 1968); Cheney v. Wheeler, 122 Vt. 295, 170 A.2d 642 (1961).

n2 Choe v. Ashdown, 808 F. Supp. 1342 (N.D. Ill. 1992); Wilson v. U.S., 874 F. Supp. 128 (M.D. La. 1995); Neal v. Shiels, Inc., 166 Conn. 3, 347 A.2d 102 (1974) (holding that the duty extends to children that driver would have seen, had reasonable care been exercised); Craig v. School Bd. of Broward County, 679 So. 2d 1219 (Fla. Dist. Ct. App. 4th Dist. 1996); Weatherford v. Commercial Union Ins. Co., 637 So. 2d 1208 (La. Ct. App. 1st Cir. 1994), writ granted, 644 So. 2d 1062 (La. 1994) and writ granted, 644 So. 2d 1062 (La. 1994) and judgment aff'd, 650 So. 2d 763 (La. 1995).

n3 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007); Manley By and Through Manley v. Parker, 123 N.C. App. 540, 473 S.E.2d 36 (1996).

n4 Thomas v. Duncan, 954 So. 2d 218 (La. Ct. App. 2d Cir. 2007).

n5 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n6 Colson v. Shaw, 301 N.C. 677, 273 S.E.2d 243 (1981); Hall v. Hall, 240 Va. 360, 397 S.E.2d 829 (1990); La Moreaux v. Fosket, 45 Wash. 2d 249, 273 P.2d 795 (1954).

n7 Hall v. Hall, 240 Va. 360, 397 S.E.2d 829 (1990); Aliff v. Berryman, 111 W. Va. 103, 160 S.E. 864 (1931).

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8 Am Jur 2d Automobiles and Highway Traffic § 477

§ 477 Particular standards of care

Where a motorist knows of the presence of one or more children in, near, or adjacent to the street or highway, or should know that children may be reasonably expected to be in the vicinity, he or she should be alert, attentive, or vigilant,[n1] and maintain a lookout.[n2]

To impose liability on a driver who collides with a child, it is not enough to prove that the driver saw the child, however; the driver must have been able to appreciate the danger in time to avoid the injury.[n3] The motorist must maintain control of his or her vehicle,[n4] and must not drive at a high, dangerous, unreasonable, excessive, or unlawful speed;[n5] and may, under the circumstances, be required to slow down,[n6] or even stop,[n7] and remain stopped until the children are out of danger and the motorist's vision of the road is cleared.[n8]

A motorist should not drive too close to children,[n9] and may be required to yield the right of way to them,[n10] to turn aside,[n11] or even to keep in a straight course,[n12] and not drive on the wrong side of the street,[n13] although it is not negligence per se for a driver to change lanes when children are in the vicinity.[n14]

A driver who knows that children are present must expect that childish behavior may occur, and take precautions accordingly,[n15] even though the children may be accompanied by adults holding them by the hand.[n16]

The circumstances may be such as to require a motorist who knows or should know of the presence of children to sound a warning of his or her approach,[n17] and even after sounding a warning, to give further warning.[n18]

Absent additional circumstances, such as giving confusing signals or blinding a child with headlights, a motorist is only required to let a child out of a vehicle in a place of safety.[n19]

FOOTNOTES:

n1 Morningred v. Golden State Co., 196 Cal. App. 2d 130, 16 Cal. Rptr. 219 (2d Dist. 1961); Riley v. Willis, 585 So. 2d 1024 (Fla. Dist. Ct. App. 5th Dist. 1991); Stowers v. Carp, 29 Ill. App. 2d 52, 172 N.E.2d 370 (2d Dist. 1961); State for Use of Taylor v. Barlly, 216 Md. 94, 140 A.2d 173 (1958); Ross v. Robert's Exp. Co., 100 N.H. 98, 120 A.2d 335 (1956); Chapple v. Sellers, 365 Pa. 503, 76 A.2d 172, 30 A.L.R.2d 1 (1950); Feltner v. Bishop, 348 P.2d 548 (Wyo. 1960).

n2 Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); Lange v. Hoyt, 114 Conn. 590, 159 A. 575, 82 A.L.R. 486 (1932); Hampton v. Burrell, 236 Iowa 79, 17 N.W.2d 110 (1945); Falzone v. Burgoyne, 317 Mass. 493, 58 N.E.2d 751 (1945); Brinson v. Mabry, 251 N.C. 435, 111 S.E.2d 540 (1959); Callahan v. Disorda, 111 Vt. 331, 16 A.2d 179 (1940).

n3 Blumenshein v. Voelker, 124 Wash. App. 129, 100 P.3d 344 (Div. 3 2004).

n4 Winner v. Sharp, 43 So. 2d 634 (Fla. 1949); Stemkowski v. J. H. Patterson Co., 324 Ill. App. 318, 58 N.E.2d 463 (2d Dist. 1944); Haywood v. Fidelity Mut. Ins. Co. of Indianapolis, Ind., 47 So. 2d 59 (La. Ct. App. 1st Cir. 1950); Greene v. Willey, 147 Me. 227, 86 A.2d 82 (1952); Seitzer v. Halverson, 231 Minn. 230, 42 N.W.2d 635 (1950); Brinson v. Mabry, 251 N.C. 435, 111 S.E.2d 540 (1959); Geiger v. Schneyer, 398 Pa. 69, 157 A.2d 56 (1959).

n5 Murphy v. Clayton, 179 Ark. 225, 15 S.W.2d 391 (1929); Zarzana v. Neve Drug Co., 180 Cal. 32, 179 P. 203, 15 A.L.R. 401 (1919); State for Use of Taylor v. Barlly, 216 Md. 94, 140 A.2d 173 (1958); Oakes v. Van Zomeren, 255 Mich. 372, 238 N.W. 177 (1931); Robb v. Miller, 372 Pa. 505, 94 A.2d 734 (1953).

n6 Byington v. Horton, 61 Idaho 389, 102 P.2d 652 (1940); Holden v. Bloom, 314 Mass. 309, 50 N.E.2d 193, 147 A.L.R. 722 (1943).

n7 Savoy v. McLeod, 111 Me. 234, 88 A. 721 (1913); Tews v. Bamrick, 148 Neb. 59, 26 N.W.2d 499 (1947); Wynn v. Gandy, 170 Va. 590, 197 S.E. 527 (1938).

n8 Moreau v. Southern Bell Tel. & Tel. Co., 158 So. 412 (La. Ct. App. 2d Cir. 1935); Chapman v. Dillard, 162 Va. 389, 174 S.E. 657 (1934).

n9 Rosenthal v. United Elec. Rys. Co., 79 R.I. 11, 82 A.2d 830 (1951); Carlton v. Martin, 160 Va. 149, 168 S.E. 348 (1933).

n10 Ratterman v. Cleveland, 309 Ky. 435, 217 S.W.2d 978 (1949); Seitzer v. Halverson, 231 Minn. 230, 42 N.W.2d 635 (1950).

n11 Holden v. Bloom, 314 Mass. 309, 50 N.E.2d 193, 147 A.L.R. 722 (1943); Morris v. Radley, 306 Mich. 689, 11 N.W.2d 291 (1943).

n12 Seader v. City of Philadelphia, 357 Pa. 369, 54 A.2d 701, 1 A.L.R.2d 162 (1947).

n13 Gretton v. Duncan, 238 Ky. 554, 38 S.W.2d 448 (1931).

n14 Bogan on Behalf of Bogan v. O'Connor on Behalf of O'Connor, 703 So. 2d 1382 (La. Ct. App. 4th Cir. 1997), writ denied, 715 So. 2d 1212 (La. 1998).

n15 Dorsey v. Williams, 525 So. 2d 542 (La. Ct. App. 3d Cir. 1988); Countryman v. Seymour R-II School Dist., 823 S.W.2d 515, 72 Ed. Law Rep. 1195 (Mo. Ct. App. S.D. 1992); Kim v. Boucher, 55 S.W.3d 551 (Tenn. Ct. App. 2001).

n16 Peperone v. Lee, 160 So. 467 (La. Ct. App., Orleans 1935).

n17 Hilyar v. Union Ice Co., 45 Cal. 2d 30, 286 P.2d 21 (1955); Jones v. Brown, 176 Cal. App. 2d 184, 1 Cal. Rptr. 267 (2d Dist. 1959); Nunnelley's Adm'r v. Muth, 195 Ky. 352, 242 S.W. 622, 27 A.L.R. 910 (1922); Herbst v. Balogh, 7 A.D.2d 530, 184 N.Y.S.2d 718 (1st Dep't 1959).

n18 Leonard v. Fowle, 255 Mass. 531, 152 N.E. 240 (1926).

As to the duty and liability of motorists toward children alighting from and boarding streetcars or buses, see §§ 510 to 517.

As to the duty and school buses, see § 491.

As to the duty and children riding bicycles or motorcycles, see §§ 591, 596.

n19 Hoffman v. U.S., 862 F. Supp. 1431 (E.D. N.C. 1994) (bookmobile operator); Charles v. Dougal, 685 F. Supp. 508 (E.D. N.C. 1988), judgment aff'd, 869 F.2d 593 (4th Cir. 1989) (boy scout troop leader).

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8 Am Jur 2d Automobiles and Highway Traffic § 478

§ 478 Duty of parent or custodian of child pedestrian

Parents and custodians of minor children must use reasonable care to protect them against known hazards incident to their presence on a street or other public way,[n1] and to permit such a child to be upon a highway or street unattended may constitute negligence that will bar or diminish recovery by a parent or custodian for medical expenses and loss of services as a result of injuries to the child when struck by a motor vehicle.[n2] In some cases, the question of the parents' negligence in such situation is a question of fact for the jury.[n3] In other cases, the parents may not be deemed negligent as a matter of law in allowing their children to be upon or play in the street,[n4] particularly where the child of tender years was on the streets in the care and custody of older children,[n5] and if the parents repeatedly caution the child about going into the streets and the child is of sufficient age to understand those warnings.[n6]

Even though a parent may be negligent in allowing a child to go into the street unattended, if the child did nothing that a prudent custodian would not permit, then the parent's negligence is not a contributing cause to the injury and will thus not impair the recovery of damages.[n7]

FOOTNOTES:

n1 United Fuel Gas Co. v. Friend's Adm'x, 270 S.W.2d 946 (Ky. 1954).

n2 Dattola v. Burt Bros., 288 Pa. 134, 135 A. 736, 51 A.L.R. 205 (1927); Lowery v. Berry, 153 Tex. 411, 269 S.W.2d 795 (1954).

n3 Wood v. Dennison's Adm'r, 273 S.W.2d 374 (Ky. 1954); McDonough v. Vozzela, 247 Mass. 552, 142 N.E. 831 (1924); Stone v. Hinsvark, 74 S.D. 625, 57 N.W.2d 669 (1953); Becker v. Tacoma Transit Co., 50 Wash. 2d 688, 314 P.2d 638 (1957).

n4 Montoya v. Winchell, 69 N.M. 177, 364 P.2d 1041 (1961).

n5 Montoya v. Winchell, 69 N.M. 177, 364 P.2d 1041 (1961); Reid v. City Coach Co., 215 N.C. 469, 2 S.E.2d 578, 123 A.L.R. 140 (1939).

n6 Montoya v. Winchell, 69 N.M. 177, 364 P.2d 1041 (1961).

n7 Wiswell v. Doyle, 160 Mass. 42, 35 N.E. 107 (1893).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 479

§ 479 Generally

Whether the question of a child's negligence is regarded as one of capacity, standard of care, or compliance with that standard, it is generally a question of fact for the jury.[n1] However, in cases involving older children, or children not protected by any presumption of incapacity, while the question of the child's contributory negligence is ordinarily for the jury, a child may be contributorily negligent as a matter of law in some circumstances.[n2] It is only in an extreme situation where the facts plainly show knowledge and appreciation of the danger that a court may decide as a matter of law that the child was contributorily negligent,[n3] as where a 12-year-old child who is struck and injured while crossing the street fails to look both ways for traffic before crossing.[n4]

FOOTNOTES:

n1 Krause v. Watson Bros. Transp. Co., 119 Colo. 73, 200 P.2d 387 (1948); Mercer by Mercer v. Crocker, 73 N.C. App. 634, 327 S.E.2d 31 (1985); Patterson v. Palley Mfg. Co., 360 Pa. 259, 61 A.2d 861 (1948); Inman v. Thompson, 297 S.C. 221, 375 S.E.2d 358, 51 Ed. Law Rep. 316 (Ct. App. 1988); Stone v. Hinsvark, 74 S.D. 625, 57 N.W.2d 669 (1953); Mann v. Fairbourn, 12 Utah 2d 342, 366 P.2d 603 (1961).

As to the conclusive presumption that a particular child, in view of his or her age, is not capable of negligence, see § 480.

n2 Tabor v. Continental Baking Co., 110 Ind. App. 633, 38 N.E.2d 257 (1941); Denman v. Youngblood, 337 Mich. 383, 60 N.W.2d 170 (1953); Wineman v. Carter, 212 Minn. 298, 4 N.W.2d 83 (1942); Gloshinsky v. Bergen Milk Transp. Co., 279 N.Y. 54, 17 N.E.2d 766 (1938); Farrell v. Greene, 110 Vt. 87, 2 A.2d 194 (1938).

n3 Bear v. Auguy, 164 Neb. 756, 83 N.W.2d 559 (1957).

n4 Smith v. Diamond, 421 N.E.2d 1172, 32 A.L.R.4th 43 (Ind. Ct. App. 1981).

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8 Am Jur 2d Automobiles and Highway Traffic § 480

§ 480 Capacity of child for negligence

In connection with actions involving injuries to children arising from motor vehicle accidents, at least at some point during the early stages of infancy a child is incapable of negligence as a matter of law.[n1] At the other extreme, children between the ages of nine and 13 cannot be said to be incapable of negligence merely because of their age.[n2]

As to intermediate-age children involved in motor vehicle accidents, there generally is a conclusive presumption of incapacity for negligence. who are under three years of age,[n3] or between three and four years of age,[n4] This presumption has been applied also to children four years old,[n5] five years old,[n6] six years old,[n7] or to all children under seven years of age,[n8] and to a child seven years old.[n9]

Other courts have held that there is no conclusive presumption of incapacity of a child four years old,[n10] five years old,[n11] six years old,[n12] seven years old,[n13] or eight years old.[n14]

Caution: Some courts, however, hold that age does not alone determine a child's capacity to care for him- or herself and avoid danger, and the law should not arbitrarily fix an age at which the duty to exercise some care begins, and that whether a child is contributorily negligent is a jury question.[n15]

A rule has been applied in other jurisdictions that a child between the ages of seven and 14 is prima facie incapable of negligence in a motor vehicle accident, so that the defendant has the burden of proving the child's capacity to exercise care for his or her safety.[n16]

Observation: Some courts have applied this rebuttable presumption of incapacity in the case of children under seven[n17] even if the child has allegedly violated a statutory duty.[n18]

In some states, a 12-year-old child of normal intelligence is conclusively presumed capable of negligence.[n19] In others, upon reaching the age of 14 years, the child becomes responsible for his or her acts of negligence,[n20] although this does not mean that the standard of the reasonably prudent adult applies.[n21]

Even though a minor child is injured in a motor vehicle accident, in some jurisdictions the negligence of the child's parent or custodian contributing to the child's injury by a third person may be imputed to the child so as to bar or diminish the child's recovery.[n22]

FOOTNOTES:

n1 Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959); Le May v. City of Oconto, 229 Wis. 65, 281 N.W. 688, 118 A.L.R. 1019 (1938).

n2 Akoboff v. Dusenbury, 41 Cal. App. 2d 173, 106 P.2d 33 (2d Dist. 1940).

n3 Asumendi v. Ferguson, 57 Idaho 450, 65 P.2d 713 (1937); Martin v. Atherton, 151 Me. 108, 116 A.2d 629 (1955); Tucker v. Ryan, 298 Mass. 282, 10 N.E.2d 73 (1937); Carraway v. Johnson, 63 Wash. 2d 212, 386 P.2d 420 (1963).

n4 Colvaruso v. Stroh Brewery Co., 301 Mich. 245, 3 N.W.2d 261 (1942); Simpson v. Hillman, 163 Or. 357, 97 P.2d 527 (1940); Gift v. Palmer, 392 Pa. 628, 141 A.2d 408 (1958).

n5 Miller v. Graff, 196 Md. 609, 78 A.2d 220 (1951); Nagy v. Balogh, 337 Mich. 691, 61 N.W.2d 47 (1953); Washington v. Davis, 249 N.C. 65, 105 S.E.2d 202 (1958); Oviatt v. Camarra, 210 Or. 445, 311 P.2d 746 (1957).

n6 Beliak v. Plants, 84 Ariz. 211, 326 P.2d 36 (1958); Duffy v. Cortesi, 2 Ill. 2d 511, 119 N.E.2d 241 (1954); Guscinski v. Kenzie, 282 Mich. 204, 275 N.W. 820 (1937); Tews v. Bamrick, 148 Neb. 59, 26 N.W.2d 499 (1947); Grogan v. York, 93 N.H. 184, 38 A.2d 295 (1944).

n7 Paschka v. Carsten, 231 Iowa 1185, 3 N.W.2d 542 (1942); Lever Bros. Co. v. Stapleton, 313 Ky. 837, 233 S.W.2d 1002 (1950); Walston v. Greene, 247 N.C. 693, 102 S.E.2d 124 (1958).

n8 Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959).

n9 Borman v. Lafargue, 183 So. 548 (La. Ct. App. 1st Cir. 1938).

n10 Boyett v. Airline Lumber Co., 1954 OK 321, 277 P.2d 676 (Okla. 1954).

n11 Jones v. Wray, 169 Cal. App. 2d 372, 337 P.2d 226 (2d Dist. 1959); Altieri v. D'Onofrio, 21 Conn. Supp. 1, 140 A.2d 887 (Super. Ct. 1958); State for Use of Taylor v. Barlly, 216 Md. 94, 140 A.2d 173 (1958); Dillman v. Mitchell, 13 N.J. 412, 99 A.2d 809 (1953); Mann v. Fairbourn, 12 Utah 2d 342, 366 P.2d 603 (1961); De Groot v. Van Akkeren, 225 Wis. 105, 273 N.W. 725 (1937).

n12 Patterson v. Cushman, 394 P.2d 657, 6 A.L.R.3d 421 (Alaska 1964); Ruggiero v. Mello, 333 Mass. 295, 130 N.E.2d 555 (1955); Forseth v. Duluth-Superior Transit Co., 202 Minn. 447, 278 N.W. 904 (1938).

n13 Atlantic Coast Line R. Co. v. Clements, 184 Va. 656, 36 S.E.2d 553 (1946).

n14 Friedman v. Berthiaume, 303 Mass. 159, 21 N.E.2d 261 (1939); Kawaguchi v. Bennett, 112 Utah 442, 189 P.2d 109 (1948).

n15 Eckhardt v. Hanson, 196 Minn. 270, 264 N.W. 776, 107 A.L.R. 1 (1936); Dillman v. Mitchell, 13 N.J. 412, 99 A.2d 809 (1953); Doyen v. Lamb, 75 S.D. 77, 59 N.W.2d 550 (1953) (stating that definite age limit leads to absurd conclusion that one day's difference in age determines child's capability for negligence); Mann v. Fairbourn, 12 Utah 2d 342, 366 P.2d 603 (1961).

n16 Westman v. Bingham, 230 Iowa 1298, 300 N.W. 525 (1941); Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959); Yates v. Brown, 344 So. 2d 37 (La. Ct. App. 4th Cir. 1977); Moak v. Black, 230 Miss. 337, 92 So. 2d 845 (1957); Absher v. Miller, 220 N.C. 197, 16 S.E.2d 829 (1941); Edgerton v. Norfolk Southern Bus Corp., 187 Va. 642, 47 S.E.2d 409 (1948); Burget v. Saginaw Logging Co., 198 Wash. 61, 86 P.2d 1117 (1939).

n17 Bush v. New Jersey & New York Transit Co., 30 N.J. 345, 153 A.2d 28, 77 A.L.R.2d 908 (1959).

n18 Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959).

n19 Government Emp. Ins. Co. v. Davis, 266 F.2d 760 (5th Cir. 1959).

n20 Fishel v. Givens, 47 Ill. App. 3d 512, 5 Ill. Dec. 784, 362 N.E.2d 97 (4th Dist. 1977); Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959).

n21 § 481.

n22 § 723.

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8 Am Jur 2d Automobiles and Highway Traffic § 481

§ 481 Standard of care required of child

While there is much conflict in the various jurisdictions on the capacity of children of various ages to be responsible for negligent conduct,[n1] generally a child who is deemed capable of negligence is required to exercise, for his or her own safety in connection with highway traffic, the standard of care reasonably to be expected under similar circumstances for an ordinary child of like age, intelligence, and experience.[n2] Thus, a motorist may not rely upon the assumption that a child pedestrian will act with the same degree of care, caution and circumspection, or will remain in a place of safety or obey the rules of the road to the same extent the motorist could if an adult were involved.[n3]

Until a child has matured and become capable of using the judgment of a reasonably prudent adult, the child's conduct is not to be measured by the adult standard of a reasonably prudent person, but by the standard of care children of similar age, experience, and judgment would use under the circumstances.[n4] This principle has been applied where the injured child was 13 years old or under, or was age[n5] 14,[n6] 15,[n7] 16,[n8] or 18.[n9] In other cases, the child was charged with the same standard of care as that of an adult because of the particular capabilities and the type of danger confronting the child, where the child was age 14,[n10] or 18.[n11]

Age, however, is only one element to be considered in the standard of care, along with experience and, most importantly, judgment, specifically discretion and the power to control impulses.[n12]

The ordinary rule that a child's negligence is to be tested by the standard of care of an ordinarily prudent child of the same or similar age, intelligence, experience, and capacity, under the same or similar circumstances, will apply even if the act of negligence arose from a statute or ordinance violation that would have constituted negligence per se if committed by an adult.[n13]

Traffic regulations are not intended to impose upon children the standard of care required of adults,[n14] and a motorist has no right to assume that children will obey all traffic regulations.[n15] However, a child is not free from a general duty to obey the traffic regulation; rather, the child's age, experience, and intelligence must be considered in assessing negligence.[n16] If the child is held to the adult standard of care, then the child's violation of a traffic regulation may also constitute negligence per se.[n17]

FOOTNOTES:

n1 § 480.

n2 Luedtke v. Arizona Family Restaurants of Tucson, Inc., 158 Ariz. 442, 763 P.2d 262 (Ct. App. Div. 2 1988), review dismissed, opinion vacated in part on other grounds, 160 Ariz. 500, 774 P.2d 804 (1989); Caradori v. Fitch, 200 Neb. 186, 263 N.W.2d 649 (1978); Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961); Inman v. Thompson, 297 S.C. 221, 375 S.E.2d 358, 51 Ed. Law Rep. 316 (Ct. App. 1988); Guzman v. Guajardo, 761 S.W.2d 506 (Tex. App. Corpus Christi 1988), writ denied, (June 14, 1989); Mann v. Fairbourn, 12 Utah 2d 342, 366 P.2d 603 (1961).

n3 Trotter v. Bowden, 81 Ark. App. 259, 101 S.W.3d 264 (2003).

n4 Baldwin v. Hosley, 328 S.W.2d 426 (Ky. 1959); Locklin v. Fisher, 264 A.D. 452, 36 N.Y.S.2d 162 (3d Dep't 1942); Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961).

n5 Hart v. Irvine, 46 Cal. App. 2d 805, 117 P.2d 11 (2d Dist. 1941); Levin v. Lauterbach Coal & Ice Co., 329 Ill. App. 180, 67 N.E.2d 303 (1st Dist. 1946); Gardner v. Turk, 343 Mo. 899, 123 S.W.2d 158 (1938); Maker v. Wellin, 214 Or. 332, 327 P.2d 793 (1958).

n6 Brotherton v. Walden, 204 Ark. 92, 161 S.W.2d 391 (1942); Bear v. Auguy, 164 Neb. 756, 83 N.W.2d 559 (1957).

n7 Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941); Pfisterer v. Key, 218 Ind. 521, 33 N.E.2d 330 (1941).

n8 Nehrbass v. Home Indem. Co., 37 F. Supp. 123 (W.D. La. 1941); Nelson v. Arrowhead Freight Lines, 99 Utah 129, 104 P.2d 225 (1940).

n9 Holt v. Walsh, 180 Tenn. 307, 174 S.W.2d 657 (1943).

n10 Costa v. Hicks, 98 A.D.2d 137, 470 N.Y.S.2d 627 (2d Dep't 1983); Van Dyke v. Atlantic Greyhound Corp., 218 N.C. 283, 10 S.E.2d 727 (1940); Termuhlen v. Campbell, 71 Ohio App. 285, 26 Ohio Op. 128, 38 Ohio L. Abs. 33, 48 N.E.2d 891 (1st Dist. Hamilton County 1942); McCormick v. Campbell by Campbell, 285 S.C. 272, 329 S.E.2d 752 (1985).

n11 McIntyre v. Pope, 326 Pa. 172, 191 A. 607 (1937); Colwell v. Nygaard, 8 Wash. 2d 462, 112 P.2d 838 (1941).

n12 Sherman v. William M. Ryan & Sons, 128 Conn. 182, 21 A.2d 378 (1941).

n13 Trippy v. Basile, 44 A.D.2d 759, 354 N.Y.S.2d 235 (4th Dep't 1974); Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961); Rudes v. Gottschalk, 159 Tex. 552, 324 S.W.2d 201 (1959).

n14 Maker v. Wellin, 214 Or. 332, 327 P.2d 793 (1958).

n15 Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961).

n16 Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961).

n17 Simmons v. Holm, 229 Or. 373, 367 P.2d 368 (1961).

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(c) Application of Attractive Nuisance Doctrine

8 Am Jur 2d Automobiles and Highway Traffic § 482

§ 482 Generally

The "attractive nuisance"doctrine, which imposes liability on those who maintain inherently dangerous structures or instrumentalities attractive to children for injuries sustained by children while playing on or about them, is not followed in all jurisdictions,[n1] but in those jurisdictions that do apply it, the general rule is that a motor vehicle is not inherently an attractive nuisance, whether it is standing still[n2] or moving.[n3] The type of the motor vehicle is not the key factor in determining whether the attractive nuisance doctrine applies, at least for common types of vehicles.[n4] However, a vehicle may become an attractive nuisance, such as when it is left exposed so children are likely to come into contact with it under circumstances obviously dangerous to them,[n5] or where it is in a defective condition.[n6]

Generally, the fact that the motor vehicle is on a public highway tends to make the doctrine of attractive nuisance more apt than when it is on private property, because the presence of children on private property cannot always be reasonably anticipated, while their presence on a public street is invariably expected.[n7] However, that a vehicle is on a highway may be deemed not augment the attractiveness of the vehicle.[n8]

FOOTNOTES:

n1 Am. Jur. 2d, Premises Liability §§ 283 et seq.

n2 Rapczynski v. W. T. Cowan, Inc., 138 Pa. Super. 392, 10 A.2d 810 (1940); Town of Big Stone Gap v. Johnson, 184 Va. 375, 35 S.E.2d 71 (1945); Coffey v. Oscar Mayer & Co., 252 Wis. 473, 32 N.W.2d 235, 3 A.L.R.2d 753 (1948).

n3 § 483.

n4 Gamble v. Uncle Sam Oil Co. of Kansas, 100 Kan. 74, 163 P. 627 (1917); Heaton v. Kagley, 198 Tenn. 530, 281 S.W.2d 385 (1955) (farm machinery).

n5 Garis v. Eberling, 18 Tenn. App. 1, 71 S.W.2d 215 (1934).

n6 Lee v. Van Beuren & New York Bill Posting Co., 190 A.D. 742, 180 N.Y.S. 295 (1st Dep't 1920) (defective brakes).

n7 Tierney v. New York Dugan Bros., 288 N.Y. 16, 41 N.E.2d 161, 140 A.L.R. 534 (1942); Reichvalder v. Borough of Taylor, 322 Pa. 72, 185 A. 270 (1936).

n8 Mead v. Parker, 340 F.2d 157 (6th Cir. 1965); Braselton v. Brazell, 49 Ga. App. 269, 175 S.E. 254 (1934); Rapczynski v. W. T. Cowan, Inc., 138 Pa. Super. 392, 10 A.2d 810 (1940).

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8 Am Jur 2d Automobiles and Highway Traffic § 483

§ 483 Moving vehicles

Generally, no liability exists under the attractive nuisance doctrine if a child is injured or killed by a motor vehicle moving along a highway or street.[n1] In most cases where children were injured or killed by a vehicle in motion, the doctrine of attractive nuisance does not apply, as where a child is trying to steal a ride on a vehicle.[n2] For example, the conduct of a child in riding on the outside of a city bus may be deemed not reasonably foreseeable, thus absolving a municipal transit authority from liability for resulting injuries.[n3]

Similarly, the attractive nuisance doctrine will generally not apply if children are playing in the vicinity of a moving vehicle,[n4] or riding on the vehicle with the permission of the operator.[n5] However, the doctrine may apply if the operator knew of the presence of children and the attractiveness of the vehicle to them.[n6]

FOOTNOTES:

n1 Braselton v. Brazell, 49 Ga. App. 269, 175 S.E. 254 (1934); Nechodomu v. Lindstrom, 273 Wis. 313, 77 N.W.2d 707, 62 A.L.R.2d 884 (1956).

n2 Michalik v. City of Chicago, 286 Ill. App. 617, 4 N.E.2d 256 (1st Dist. 1936); Ice Delivery Co. v. Thomas, 290 Ky. 230, 160 S.W.2d 605 (1942); Courtright v. Southern Compress & Warehouse Co., 299 S.W.2d 169 (Tex. Civ. App. Galveston 1957).

n3 Wade v. New York City Transit Authority, 5 A.D.3d 474, 773 N.Y.S.2d 98 (2d Dep't 2004).

n4 Schock v. Ringling Bros. and Barnum & Bailey Combined Shows, 5 Wash. 2d 599, 105 P.2d 838 (1940) (overruled in part on other grounds by, Potts v. Amis, 62 Wash. 2d 777, 384 P.2d 825 (1963)) and (overruled on other grounds by, Laudermilk v. Carpenter, 78 Wash. 2d 92, 457 P.2d 1004 (1969)).

n5 Braselton v. Brazell, 49 Ga. App. 269, 175 S.E. 254 (1934).

n6 Skinner v. Knickrehm, 10 Cal. App. 596, 102 P. 947 (2d Dist. 1909); Middaugh v. Waseca Canning Co., 203 Minn. 456, 281 N.W. 818 (1938).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
2. Children; Disabled Persons
a. Children
(1) In General
(c) Application of Attractive Nuisance Doctrine

8 Am Jur 2d Automobiles and Highway Traffic § 484

§ 484 Vehicles left temporarily unattended

Neither a motor vehicle,[n1] nor an ordinary bicycle,[n2] left temporarily unattended is in itself an attractive nuisance, and its owner or operator is under not duty to render it non-tamperable.[n3] This principle is grounded in the fact that vehicles, if properly parked, do not present an unusual attraction to children.[n4] However, a motor vehicle left temporarily unattended may become an attractive nuisance if left exposed so that children are likely to come into contact with it, and the operator does not take adequate precautions to safeguard the vehicle from children before leaving it.[n5]

In most cases in which children put a vehicle left temporarily unattended into actual motion, and thereby injured themselves or a playmate, liability under the attractive nuisance doctrine has been denied;[n6] but exceptions exist.[n7]

In a number of cases in which children, while playing on or about a motor vehicle left temporarily unattended, were injured, the doctrine of attractive nuisance did not apply under the circumstances,[n8] but in others the doctrine has been applied.[n9]

In contrast, in most cases involving children tampering with motor vehicles left temporarily unattended,[n10] or tampering with the contents of such vehicles,[n11] liability has been imposed upon the operator or owner of the vehicle under the doctrine of attractive nuisance. However, in a few cases involving injuries to children who tampered with a motor vehicle left temporarily unattended,[n12] or who tampered with their contents,[n13] the doctrine of attractive nuisance did not apply under the circumstances.

FOOTNOTES:

n1 Herbert v. Regency Apartments, Inc., 292 Ala. 417, 295 So. 2d 404 (1974) (flatbed trailer); De Francisco v. La Face, 128 Pa. Super. 538, 194 A. 511 (1937).

n2 Appling v. Stuck, 164 N.W.2d 810 (Iowa 1969).

n3 Tabary v. New Orleans Public Service, 142 So. 800 (La. Ct. App., Orleans 1932).

n4 Rapczynski v. W. T. Cowan, Inc., 138 Pa. Super. 392, 10 A.2d 810 (1940).

n5 De Francisco v. La Face, 128 Pa. Super. 538, 194 A. 511 (1937); Garis v. Eberling, 18 Tenn. App. 1, 71 S.W.2d 215 (1934).

n6 Brooker v. El Encino Co., 216 Cal. App. 2d 598, 31 Cal. Rptr. 24 (4th Dist. 1963); Roach v. Dozier, 97 Ga. App. 568, 103 S.E.2d 691 (1958); McGaughey v. Haines, 189 Kan. 453, 370 P.2d 120 (1962); Rapczynski v. W. T. Cowan, Inc., 138 Pa. Super. 392, 10 A.2d 810 (1940); Smith v. Henson, 214 Tenn. 541, 381 S.W.2d 892 (1964).

n7 Commercial Union Fire Ins. Co. v. Blocker, 86 So. 2d 760 (La. Ct. App., Orleans 1956); Tierney v. New York Dugan Bros., 288 N.Y. 16, 41 N.E.2d 161, 140 A.L.R. 534 (1942); Campbell v. Model Steam Laundry, 190 N.C. 649, 130 S.E. 638 (1925).

n8 Burkett v. Southern Belle Dairy Co., 272 S.W.2d 661 (Ky. 1954); Klaus v. Eden, 70 N.M. 371, 374 P.2d 129 (1962); De Francisco v. La Face, 128 Pa. Super. 538, 194 A. 511 (1937).

n9 Copfer v. Golden, 135 Cal. App. 2d 623, 288 P.2d 90 (2d Dist. 1955); Garis v. Eberling, 18 Tenn. App. 1, 71 S.W.2d 215 (1934).

n10 Selby v. Tolbert, 56 N.M. 718, 249 P.2d 498 (1952); Reichvalder v. Borough of Taylor, 322 Pa. 72, 185 A. 270 (1936); Hamrick v. Wilhite, 278 S.W.2d 578 (Tex. Civ. App. Amarillo 1954), writ refused n.r.e., (Mar. 30, 1955).

n11 Johnson v. Clement F. Sculley Const. Co., 255 Minn. 41, 95 N.W.2d 409 (1959).

n12 Town of Big Stone Gap v. Johnson, 184 Va. 375, 35 S.E.2d 71 (1945).

n13 Dennis v. Odend'Hal-Monks Corp., 182 Va. 77, 28 S.E.2d 4 (1943).

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8 Am Jur 2d Automobiles and Highway Traffic § 485

§ 485 Vehicles left abandoned

If a child is killed or injured while playing with an abandoned vehicle, liability under the doctrine of attractive nuisance will usually be held to apply, primarily because of the well-known attractiveness of junkyards and discarded materials to children.[n1] In a number of cases, liability under the attractive nuisance principle was imposed for harm to children who played on or around abandoned vehicles,[n2] or who tampered with the contents of abandoned vehicles.[n3]

In a few cases, however, the doctrine was not applied under the circumstances, where a child was harmed while playing on or around,[n4] or tampering with the contents of an abandoned motor vehicle.[n5]

FOOTNOTES:

n1 Parnell v. Holland Furnace Co., 234 A.D. 567, 256 N.Y.S. 323 (4th Dep't 1932), aff'd, 260 N.Y. 604, 184 N.E. 112 (1932).

n2 Eastburn v. Levin, 113 F.2d 176 (App. D.C. 1940); Gabel v. Koba, 1 Wash. App. 684, 463 P.2d 237 (Div. 1 1969).

n3 Shapiro v. City of Chicago, 308 Ill. App. 613, 32 N.E.2d 338 (1st Dist. 1941).

n4 Esquibel v. City and County of Denver, 112 Colo. 546, 151 P.2d 757 (1944) (overruled in part on other grounds by, Mile High Fence Co. v. Radovich, 175 Colo. 537, 489 P.2d 308 (1971)).

n5 Hornsby v. Henry, 68 Ga. App. 171, 22 S.E.2d 326 (1942).

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(2) Children Playing, Walking, or Standing in or Near Street or Highway

8 Am Jur 2d Automobiles and Highway Traffic § 486

§ 486 Children playing in roadway

A motorist who sees or should know that one or more children are playing in the roadway must exercise a high degree of caution.[n1] The motorist should anticipate childish conduct,[n2] and maintain a proper lookout.[n3] The motorist may have a duty under the circumstances to sound a warning of his or her approach[n4] or take evasive action.[n5]

Observation: If the motorist's sounding of the horn might have prevented a collision between the vehicle and a child, the question of proximate cause is one for the jury.[n6]

There is a duty not to operate a vehicle at an excessive speed if the motorist knows that children are playing in the road, or if children may reasonably be expected to be playing there.[n7] In such cases, the motorist may have a duty to slow down,[n8] or even to stop completely.[n9] In some cases, the motorist under such circumstances may be required to be prepared to stop immediately or on short notice.[n10]

Negligence may be found for striking a child whom the driver knew or should have know was playing in the road, where the motorist was backing a vehicle along the road,[n11] or making parking maneuvers.[n12]

The age, experience, and intelligence of the child must be taken into consideration[n13] in determining whether the child has exercised proper care for his or her own safety while playing in the road.[n14] A child playing in the road may assume that a motorist will exercise the care required by law and will give some warning before striking the child, and to that degree the child is not bound to exercise constant vigilance to avoid a charge of negligence.[n15] This principle does not mean, however, that a child may take the full run of the road as a play area to the exclusion of motorists driving in the vicinity.[n16] If the child's play creates dangers that the child is fully capable of appreciating, he or she will generally be viewed as having assumed the risk of playing in the road, thus barring or diminishing recovery for resulting injuries.[n17]

FOOTNOTES:

n1 Lesage v. Largey Lumber Co., 99 Mont. 372, 43 P.2d 896 (1935); Oland v. Kohler, 111 Pa. Super. 185, 169 A. 411 (1933); Dervin v. Frenier, 91 Vt. 398, 100 A. 760 (1917); Blair v. Kilbourne, 121 Wash. 93, 207 P. 953 (1922).

n2 Forrest v. Turlay, 125 Or. 251, 266 P. 229 (1928); Williams v. Blue Bird Cab Co., 189 Va. 402, 52 S.E.2d 868 (1949).

n3 Di Leo v. Dolinsky, 129 Conn. 203, 27 A.2d 126 (1942); Hughes v. Gill, 41 So. 2d 536 (La. Ct. App. 1st Cir. 1949); Brunson v. Gainey, 245 N.C. 152, 95 S.E.2d 514 (1956).

n4 Ballman v. H.A. Lueking Teaming Co., 281 Mo. 342, 219 S.W. 603 (1920); Cleveland v. Grays Harbor Dairy Products, 193 Wash. 122, 74 P.2d 909 (1938).

n5 Holden v. Bloom, 314 Mass. 309, 50 N.E.2d 193, 147 A.L.R. 722 (1943).

n6 Thomas v. Newman, 262 Ark. 42, 553 S.W.2d 459 (1977).

n7 Morrison v. Flowers, 308 Ill. 189, 139 N.E. 10 (1923); Westling v. Holm, 239 Minn. 191, 58 N.W.2d 252 (1953); Brunson v. Gainey, 245 N.C. 152, 95 S.E.2d 514 (1956).

n8 Duff v. Husted, 95 Conn. 206, 111 A. 186 (1920); Holden v. Bloom, 314 Mass. 309, 50 N.E.2d 193, 147 A.L.R. 722 (1943).

As to the statutory duty of a motorist to slow down when approaching a pedestrian on the traveled part of the way, see §§ 442, 457, 460, 472.

n9 Scandalis v. Jenny, 132 Cal. App. 307, 22 P.2d 545 (3d Dist. 1933).

n10 Guillory v. Horecky, 185 La. 21, 168 So. 481 (1936); Olesen v. Noren, 161 Minn. 113, 201 N.W. 296 (1924); Van Buren v. Eberhard, 377 Pa. 22, 104 A.2d 98 (1954).

n11 Smith v. Whittall, 257 Mass. 306, 153 N.E. 536 (1926); Scott v. New York Dugan Bros., 271 A.D. 1015, 66 N.Y.S.2d 387 (2d Dep't 1947).

n12 Carevic v. Ashland Public Market, 340 Ill. App. 217, 93 N.E.2d 377 (1st Dist. 1950); Callahan v. Disorda, 111 Vt. 331, 16 A.2d 179 (1940).

n13 § 481.

n14 Falzone v. Burgoyne, 317 Mass. 493, 58 N.E.2d 751 (1945); Smith v. Pachter, 342 Pa. 21, 19 A.2d 85 (1941).

n15 Dervin v. Frenier, 91 Vt. 398, 100 A. 760 (1917).

n16 Clerici v. Gennari, 102 N.J.L. 377, 132 A. 667, 44 A.L.R. 1302 (N.J. Ct. Err. & App. 1926).

n17 Day v. Cunningham, 125 Me. 328, 133 A. 855, 47 A.L.R. 1229 (1926); Zoltovski v. Gzella, 159 Mich. 620, 124 N.W. 527 (1910); Clerici v. Gennari, 102 N.J.L. 377, 132 A. 667, 44 A.L.R. 1302 (N.J. Ct. Err. & App. 1926).

As to the effect of the negligence of an injured party to bar, or diminish, recovery, see §§ 947 to 949.

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(2) Children Playing, Walking, or Standing in or Near Street or Highway

8 Am Jur 2d Automobiles and Highway Traffic § 487

§ 487 Children playing at the side of or near roadway

If the driver of a motor vehicle knows of the presence of children in, near, or adjacent to the street or highway, or should know that children may reasonably be expected to be in the vicinity, the driver is under a heightened duty to exercise ordinary care.[n1] Thus, a motorist who sees a crowd of children playing by the side of the highway must exercise the greatest care,[n2] and the greater the number of children, the greater the care required.[n3] Statutory provisions governing the standard of care owed by drivers to children who are in or near a roadway do not apply in a negligence action against a driver who comes to a complete stop to discharge a mother and her child from the van and the child then darts into street and is struck by a different vehicle.[n4]

A motorist in the vicinity of children playing in or near the street must not operate the vehicle at an excessive speed,[n5] and may have a duty to slow down,[n6] or to sound the horn as a warning.[n7]

A motorist who is proceeding along a highway where children are playing on plots of grass bordering it is under no duty to anticipate children dropping from trees.[n8]

FOOTNOTES:

n1 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n2 Lee v. Hartford, 411 So. 2d 704 (La. Ct. App. 3d Cir. 1982); Stein v. Palisi, 308 N.Y. 293, 125 N.E.2d 575 (1955).

n3 Moreau v. Southern Bell Tel. & Tel. Co., 158 So. 412 (La. Ct. App. 2d Cir. 1935).

n4 Tavares ex rel. Guiterrez v. Barbour, 790 A.2d 1110 (R.I. 2002).

n5 Ottenheimer v. Molohan, 146 Md. 175, 126 A. 97 (1924); Stackhouse v. Stepanian, 174 Pa. Super. 614, 101 A.2d 151 (1953).

n6 Noland v. Kyar, 228 Iowa 1006, 292 N.W. 810 (1940).

n7 Simpson v. Miller, 210 Kan. 133, 499 P.2d 1102 (1972).

n8 Bernstein v. Carmichael, 146 Me. 446, 82 A.2d 786 (1951).

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8 Am Jur 2d Automobiles and Highway Traffic § 488

§ 488 Children walking along street or highway

A high degree of care is required of a motorist toward children the motorist sees walking along a street or highway.[n1] The motorist has a duty to maintain a proper lookout[n2] and to anticipate childish conduct.[n3] Under some circumstances, the motorist has a duty to sound a warning of his or her approach.[n4]

The motorist must not operate the vehicle at a high, dangerous, unreasonable, or excessive speed,[n5] and must keep the vehicle under control so as to avoid striking the children,[n6] which may require the motorist to slow down,[n7] or to stop.[n8]

With regard to children near a roadway, when children are accompanied by their parents or other adults, the degree of care that must be exercised by a motorist is lessened because it is only reasonable for prudent person to assume, absent contrary indications, that the adult will guard against childish impulses and give an immediate warning of any sudden change in position that might imperil the child.[n9]

FOOTNOTES:

n1 Woodward v. Spring Canyon Coal Co., 90 Utah 578, 63 P.2d 267 (1936).

As to duty and liability of a motorist toward pedestrians generally walking along the road, see §§ 441 to 452.

n2 Metts' Adm'r v. Louisville Gas & Electric Co., 222 Ky. 551, 1 S.W.2d 985 (1928); Ross v. Robert's Exp. Co., 100 N.H. 98, 120 A.2d 335 (1956).

n3 Bullard v. McCarthy, 89 N.H. 158, 195 A. 355 (1937); Gettemy v. Grennan Bakeries, 145 Pa. Super. 405, 21 A.2d 465 (1941); Ball v. Witten, 155 Va. 40, 154 S.E. 547 (1930).

n4 Oliphant v. Hamm, 167 Ark. 167, 267 S.W. 563 (1925); Wilhite v. Beavers, 227 So. 2d 919 (La. Ct. App. 2d Cir. 1969); Pierce v. Safeway Stores, 93 Mont. 560, 20 P.2d 253 (1933).

n5 Metcalf v. Romano, 83 Cal. App. 508, 257 P. 114 (1st Dist. 1927).

n6 Webster v. Luckow, 219 Iowa 1048, 258 N.W. 685 (1935).

n7 Webster v. Luckow, 219 Iowa 1048, 258 N.W. 685 (1935); Bullard v. McCarthy, 89 N.H. 158, 195 A. 355 (1937).

n8 Carroll v. Lumpkin, 146 S.C. 178, 143 S.E. 648 (1928).

n9 Brown v. U.S. Fire Ins. Co., 671 So. 2d 1195, 109 Ed. Law Rep. 474 (La. Ct. App. 2d Cir. 1996), writ denied, 674 So. 2d 967 (La. 1996).

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8 Am Jur 2d Automobiles and Highway Traffic § 489

§ 489 Children standing in or at the side of road

A motorist who sees children standing near or at the side of the road must have a heightened vigilance.[n1] The motorist must anticipate childish conduct[n2] by keeping a proper lookout,[n3] and always maintaining vehicle control[n4] A motorist who sees children standing at the side of the road must not operate the vehicle at an unreasonable speed,[n5] and may be under a duty to reduce the vehicle's speed,[n6] or to stop.[n7] The motorist may also have the duty to sound the horn,[n8] where such action might be effective to warn the child,[n9] and to turn aside.[n10]

Practice Tip: The mere fact of an accident does not raise a presumption of negligence by a motorist who strikes a child, even if the motorist was aware that there were children in the vicinity, such as where the motorist was traveling within the speed limit and did all that was possible to avoid striking the child.[n11] The question of whether a motorist has been negligent with regard to children who are present along a highway or street is usually one of fact for the jury.[n12]

FOOTNOTES:

n1 Price v. Burton, 155 Va. 229, 154 S.E. 499 (1930).

n2 Sanders v. English, 325 So. 2d 692 (La. Ct. App. 1st Cir. 1976); Bland v. Briggs, 512 So. 2d 894 (Miss. 1987); Hildreth v. Key, 341 S.W.2d 601 (Mo. Ct. App. 1960).

n3 Wallace v. Weinrich, 87 Ill. App. 3d 868, 42 Ill. Dec. 721, 409 N.E.2d 336 (5th Dist. 1980); Bland v. Briggs, 512 So. 2d 894 (Miss. 1987); Gupton by Gupton v. McCombs, 74 N.C. App. 547, 328 S.E.2d 886 (1985).

n4 Paschka v. Carsten, 231 Iowa 1185, 3 N.W.2d 542 (1942); Brinson v. Mabry, 251 N.C. 435, 111 S.E.2d 540 (1959); Bradshaw v. Holt, 200 Tenn. 249, 292 S.W.2d 30 (1956).

n5 Moore v. Powell, 205 N.C. 636, 172 S.E. 327 (1934).

n6 Figarelli v. Ihde, 39 Ill. App. 3d 1023, 351 N.E.2d 624 (1st Dist. 1976); Paschka v. Carsten, 231 Iowa 1185, 3 N.W.2d 542 (1942).

n7 De Francisco v. Heath, 306 Mass. 527, 28 N.E.2d 995 (1940).

n8 Wallace v. Weinrich, 87 Ill. App. 3d 868, 42 Ill. Dec. 721, 409 N.E.2d 336 (5th Dist. 1980); Thomas v. Boklage, 293 Ky. 804, 170 S.W.2d 348 (1943).

n9 Houston v. Zimmerman, 30 Ill. App. 3d 425, 333 N.E.2d 472 (4th Dist. 1975) (no such duty where child entered road a split second before being struck); Hall v. Randell, 26 Ill. App. 3d 505, 325 N.E.2d 710 (1st Dist. 1975).

n10 Hall v. Randell, 26 Ill. App. 3d 505, 325 N.E.2d 710 (1st Dist. 1975); Paschka v. Carsten, 231 Iowa 1185, 3 N.W.2d 542 (1942); Price v. Burton, 155 Va. 229, 154 S.E. 499 (1930).

n11 Hernandez v. Lukas, 104 Ill. App. 3d 692, 60 Ill. Dec. 129, 432 N.E.2d 1028 (1st Dist. 1982).

n12 Figarelli v. Ihde, 39 Ill. App. 3d 1023, 351 N.E.2d 624 (1st Dist. 1976).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
2. Children; Disabled Persons
a. Children
(2) Children Playing, Walking, or Standing in or Near Street or Highway

8 Am Jur 2d Automobiles and Highway Traffic § 490

§ 490 Children on sidewalk

Childish conduct must be anticipated when a motorist sees or, in the exercise of reasonable care, should see, children on a sidewalk who are standing,[n1] walking or running,[n2] playing,[n3] or riding a tricycle.[n4] Generally, the motorist should maintain a lookout,[n5] and may be under a duty to sound a warning.[n6] The motorist under such circumstances should maintain control of the vehicle,[n7] and should not operate it at an excessive speed,[n8] particularly when driving across the sidewalk.[n9] A motorist who operates a vehicle at an excessive speed or without maintaining proper control thereof and swerves onto the sidewalk striking a child is guilty of negligence and is liable for resulting injuries.[n10]

A motorist who backs a vehicle onto or across the sidewalk and strikes a child may be liable for resulting injuries if the motorist fails to keep a proper lookout for children and give proper warning of his or her movement,[n11] as where, for example, a motorist backs a vehicle across a sidewalk from a driveway and strikes a child on the sidewalk.[n12]

A motorist, operating a vehicle after dark with the lights on and within the speed limit, is not required to come to a complete stop where a child remains on the sidewalk and where the motorist observed that the child had already waited for one car to pass without attempting to cross the street.[n13]

FOOTNOTES:

n1 Ondrusek v. Zahn, 356 Pa. 537, 52 A.2d 461 (1947).

n2 Lehman v. Patterson, 298 Ky. 360, 182 S.W.2d 897 (1944); Ford v. Knight, 337 So. 2d 1225 (La. Ct. App. 1st Cir. 1976).

n3 Maletis v. Portland Traction Co., 160 Or. 30, 83 P.2d 141 (1938).

n4 Smith v. Trahan, 398 So. 2d 572 (La. Ct. App. 1st Cir. 1980).

n5 Martineau v. Waldman, 93 N.H. 147, 36 A.2d 627 (1944); Wilcox v. Wunderlich, 73 Utah 1, 272 P. 207 (1928).

As to the duty generally regarding pedestrians on a sidewalk, see §§ 436, 437.

n6 D. C. Transit System, Inc. v. Bates, 262 F.2d 697 (D.C. Cir. 1958) (driver not required to sound horn); Pokoyski v. McDermott, 53 Del. 253, 167 A.2d 742 (1961); Ordon v. Nash, 411 So. 2d 1111 (La. Ct. App. 4th Cir. 1982), writ denied, 415 So. 2d 941 (La. 1982) (driver not

required to sound horn); Ackerman v. Advance Petroleum Transport, 304 Mich. 96, 7 N.W.2d 235 (1942); Maletis v. Portland Traction Co., 160 Or. 30, 83 P.2d 141 (1938).

n7 Chapple v. Sellers, 365 Pa. 503, 76 A.2d 172, 30 A.L.R.2d 1 (1950); Plautz v. Kubasta, 237 Wis. 198, 295 N.W. 667 (1941).

n8 Zarzana v. Neve Drug Co., 180 Cal. 32, 179 P. 203, 15 A.L.R. 401 (1919).

n9 Tews v. Bamrick, 148 Neb. 59, 26 N.W.2d 499 (1947).

n10 Letton v. Kitchen, 166 Ga. 121, 142 S.E. 658 (1928); Core v. Resha, 140 Tenn. 408, 204 S.W. 1149 (1918).

n11 Jenkins v. Bentley, 277 Mich. 81, 268 N.W. 819 (1936).

n12 Frasciello v. Baer, 304 Mass. 643, 24 N.E.2d 653 (1939); Carroll v. Lumpkin, 146 S.C. 178, 143 S.E. 648 (1928).

n13 Parker by Parker v. McCall, 60 N.C. App. 401, 299 S.E.2d 253 (1983).

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8 Am Jur 2d Automobiles and Highway Traffic § 491

§ 491 Children boarding, exiting, or waiting for school bus

The general principles governing the negligence of a child involved in a motor vehicle accident[n1] apply to the question of the negligence of a child who is struck by a passing motorist while alighting from or boarding a school bus.[n2]

A motorist passing a school bus picking up or discharging children must exercise the degree of care that the situation and the circumstances demand.[n3] The presence of a school bus that is discharging or taking on children alerts motorists that children may run across the road in front of approaching vehicles.[n4] The danger of injuring a child under such circumstances is increased, and the care to be exercised by motorists in preventing an injury is accordingly heightened.[n5]

Specifically, a motorist approaching or passing a stopped school bus should maintain a proper lookout,[n6] should anticipate that children may cross in front of him or her,[n7] and may be under a duty to sound a warning.[n8] The motorist must maintain proper control over the vehicle[n9] and drive at a reasonable speed.[n10]

A motorist who violates a statute or ordinance by failing to stop for a school bus discharging children is negligent as a matter of law in some jurisdictions,[n11] but in others it is a question for the jury.[n12]

A motorist approaching a school bus stop must anticipate the possible presence of children, exercise extra caution, and accommodate his or her movement to children who are, or may be, in immediate peril.[n13] Also, when a motorist passes a moving school bus transporting children, he or she must anticipate that other children will be waiting further along to board the bus, and therefore should exercise extra caution.[n14]

An owner or operator of a school bus may be liable for injuries resulting to child pedestrians from failing to keep the bus's flashing lights properly operating,[n15] or a failure to look to the rear of the bus to make sure that children who had just exited are in a safe location.[n16]

A motorist may be negligent in causing a collision with a young child crossing the street at an intersection even though the pedestrian runs into the roadway without looking for oncoming cars, if the motorist was traveling in a residential area in which young children were scurrying about and fails, despite unobstructed vision, to see children waiting for a school bus.[n17]

FOOTNOTES:

n1 §§ 479 to 481.

n2 J. Weingarten, Inc. v. Sanchez, 228 S.W.2d 303 (Tex. Civ. App. Galveston 1950); Kellum v. Rounds, 195 Wash. 518, 81 P.2d 783 (1938).

n3 Carlton v. Martin, 160 Va. 149, 168 S.E. 348 (1933).

n4 Carlton v. Martin, 160 Va. 149, 168 S.E. 348 (1933).

n5 Carlton v. Martin, 160 Va. 149, 168 S.E. 348 (1933).

n6 Lange v. Hoyt, 114 Conn. 590, 159 A. 575, 82 A.L.R. 486 (1932); Vandenberg v. Prosek, 335 Mich. 382, 56 N.W.2d 227 (1953); Hughes v. Thayer, 229 N.C. 773, 51 S.E.2d 488 (1949); Fedorovich v. Glenn, 337 Pa. 60, 9 A.2d 358 (1939).

n7 Richards v. Miller North Broad Transit Co., 96 N.H. 272, 74 A.2d 552 (1950); Hughes v. Thayer, 229 N.C. 773, 51 S.E.2d 488 (1949); Fedorovich v. Glenn, 337 Pa. 60, 9 A.2d 358 (1939).

n8 Lange v. Hoyt, 114 Conn. 590, 159 A. 575, 82 A.L.R. 486 (1932); Hughes v. Thayer, 229 N.C. 773, 51 S.E.2d 488 (1949).

n9 Lange v. Hoyt, 114 Conn. 590, 159 A. 575, 82 A.L.R. 486 (1932); Davis v. Surebest Bakery, 38 So. 2d 624 (La. Ct. App. 2d Cir. 1948); Hughes v. Thayer, 229 N.C. 773, 51 S.E.2d 488 (1949) (reasonable control).

n10 Porter v. Bakersfield & Kern Elec. Ry. Co., 36 Cal. 2d 582, 225 P.2d 223 (1950); Wood v. Claussen, 207 S.W.2d 802 (Mo. Ct. App. 1948); Richards v. Miller North Broad Transit Co., 96 N.H. 272, 74 A.2d 552 (1950).

n11 Earl W. Baker & Co. v. Lagaly, 144 F.2d 344, 154 A.L.R. 1098 (C.C.A. 10th Cir. 1944); Dean v. Baumann, 39 A.D.2d 138, 332 N.Y.S.2d 665 (3d Dep't 1972), order aff'd, 32 N.Y.2d 756, 344 N.Y.S.2d 950, 298 N.E.2d 114 (1973); J. Weingarten, Inc. v. Sanchez, 228 S.W.2d 303 (Tex. Civ. App. Galveston 1950).

n12 Kellum v. Rounds, 195 Wash. 518, 81 P.2d 783 (1938).

n13 Levine v. Beebe, 238 Md. 365, 209 A.2d 67 (1965).

n14 Brenna v. Melvie, 304 Minn. 426, 231 N.W.2d 306 (1975).

n15 Cruz v. Hundley, 371 So. 2d 698 (Fla. Dist. Ct. App. 3d Dist. 1979).

n16 Huckstep v. Richards, 609 S.W.2d 731 (Mo. Ct. App. S.D. 1980).

n17 Johnson v. Safeway Ins. Co., 694 So. 2d 411 (La. Ct. App. 3d Cir. 1997), decision clarified on reh'g, (June 4, 1997) and writ denied, 701 So. 2d 1330 (La. 1997) (children standing at corner near intersection).

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8 Am Jur 2d Automobiles and Highway Traffic § 492

§ 492 Children in school zones or near schools

A motorist driving near a school or through a school zone must be highly cautious,[n1] particularly when school is starting or about to start, or is being dismissed.[n2] The motorist must be vigilant,[n3] maintain a lookout,[n4] and anticipate childish conduct.[n5] The motorist may have the duty to sound a warning of his or her approach.[n6]

A motorist driving in a school zone or near a school must maintain control of the vehicle,[n7] must not drive at an excessive speed,[n8] and may be under a duty to slow down.[n9]

In many jurisdictions, statutes or ordinances impose lowered speed limits for school zones.[n10]

FOOTNOTES:

n1 Frederiksen v. Costner, 99 Cal. App. 2d 453, 221 P.2d 1008 (2d Dist. 1950); Robb v. Miller, 372 Pa. 505, 94 A.2d 734 (1953); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960); Vargo v. Cochrane, 108 W. Va. 607, 152 S.E. 8 (1930).

n2 Glowaskie v. Rhoads, 312 Pa. 508, 166 A. 850 (1933).

n3 Smith v. Kleinberg, 49 Ga. App. 194, 174 S.E. 731 (1934); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960); Chapman v. Dillard, 162 Va. 389, 174 S.E. 657 (1934); Vargo v. Cochrane, 108 W. Va. 607, 152 S.E. 8 (1930).

n4 Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); Graf v. Harvey, 79 Cal. App. 2d 64, 179 P.2d 348 (2d Dist. 1947); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960).

n5 Robb v. Miller, 372 Pa. 505, 94 A.2d 734 (1953); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960); Chapman v. Dillard, 162 Va. 389, 174 S.E. 657 (1934).

n6 Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960); Vargo v. Cochrane, 108 W. Va. 607, 152 S.E. 8 (1930).

n7 Tamburrino v. Sterrick Delivery Corp., 241 A.D. 221, 271 N.Y.S. 765 (1st Dep't 1934); Urbanick v. Croneweth Dairy Co., 154 Pa. Super. 44, 35 A.2d 83 (1943); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960).

n8 U.S. v. Benson, 185 F.2d 995 (D.C. Cir. 1950); Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); Miller v. Graff, 196 Md. 609, 78 A.2d 220 (1951); Gaulin v. Yagoobian, 261 Mass. 145, 158 N.E. 352 (1927); Stark v. Turner, 154 Neb. 268, 47 N.W.2d 569 (1951).

n9 Miller v. Graff, 196 Md. 609, 78 A.2d 220 (1951); Parker v. Gunther, 122 Vt. 68, 164 A.2d 152 (1960).

n10 §§ 276 to 278.

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8 Am Jur 2d Automobiles and Highway Traffic § 493

§ 493 Children in residential or densely populated areas

A motorist proceeding through a residential or densely populated area must exercise the highest degree of care to avoid endangering child pedestrians.[n1] Such a motorist must maintain a proper lookout,[n2] and, if the driver knows that many children live in the neighborhood, must anticipate that a child may dart out into the street from almost any place, and must be alert at all times.[n3] A motorist must also maintain proper control of the vehicle when traveling in a residential or densely populated area,[n4] must not drive at an excessive speed,[n5] and may be under a duty to sound a warning of his or her approach.[n6]

Practice Tip: The negligence of a motorist with regard to children in a residential or densely populated zone is generally a question of fact for the jury.[n7]

FOOTNOTES:

n1 Beliak v. Plants, 84 Ariz. 211, 326 P.2d 36 (1958); Mulligan v. Pruitt, 244 Md. 338, 223 A.2d 574 (1966); Hults v. Miller, 299 S.W. 85 (Mo. Ct. App. 1927); Mahaffey v. Ahl, 264 S.C. 241, 214 S.E.2d 119 (1975).

n2 Wallace v. Weinrich, 87 Ill. App. 3d 868, 42 Ill. Dec. 721, 409 N.E.2d 336 (5th Dist. 1980); Lever Bros. Co. v. Stapleton, 313 Ky. 837, 233 S.W.2d 1002 (1950); Hughes v. Gill, 41 So. 2d 536 (La. Ct. App. 1st Cir. 1949); Falzone v. Burgoyne, 317 Mass. 493, 58 N.E.2d 751 (1945).

n3 Taylor v. Armiger, 277 Md. 638, 358 A.2d 883 (1976); De Furia v. Mooney, 280 Mass. 447, 182 N.E. 828 (1932).

n4 Cotant v. U.S., 103 F. Supp. 770 (D. Idaho 1952); Winner v. Sharp, 43 So. 2d 634 (Fla. 1949).

n5 Galbraith v. Thompson, 108 Cal. App. 2d 617, 239 P.2d 468 (1st Dist. 1952); Lever Bros. Co. v. Stapleton, 313 Ky. 837, 233 S.W.2d 1002 (1950); Taylor v. Armiger, 277 Md. 638, 358 A.2d 883 (1976).

n6 Wallace v. Weinrich, 87 Ill. App. 3d 868, 42 Ill. Dec. 721, 409 N.E.2d 336 (5th Dist. 1980); Lever Bros. Co. v. Stapleton, 313 Ky. 837, 233 S.W.2d 1002 (1950).

n7 Houston v. Zimmerman, 30 Ill. App. 3d 425, 333 N.E.2d 472 (4th Dist. 1975); Mahaffey v. Ahl, 264 S.C. 241, 214 S.E.2d 119 (1975).

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8 Am Jur 2d Automobiles and Highway Traffic § 494

§ 494 Children sleigh riding in the road

A motorist who is aware of children sledding ("coasting") in the street must exercise an especially high degree of caution,[n1] and the question of motorist's negligence in such circumstances is ordinarily one of fact for the jury.[n2]

A child coasting in the street must exercise the degree of care for his or her own safety expected of a child of similar age, experience, and intelligence in order to avoid collision with a motorist.[n3] Whether a child has exercised such care is ordinarily a question of fact for the jury,[n4] unless the evidence allows for only one conclusion on the issue.[n5]

In those jurisdictions that adhere to the doctrine of contributory negligence,[n6] even though a child coasting in the street and injured by a motorist had not exercised proper care for his or her own safety, the child's contributory negligence will not bar recovery if the motorist had the last clear chance to avoid the collision.[n7]

A child riding on a sled, though not a "pedestrian,"nor upon a "motor vehicle,"is riding on a "vehicle"for purposes of applying a right of way statute and other rules of the road.[n8] The violation of an ordinance prohibiting coasting on a public street is generally viewed as a proximate cause of injuries when a coaster is struck by a motorist, even though the motorist was negligent,[n9] at least where the doctrine of last clear chance does not apply under the circumstances.[n10] This rule is applied even if the child is not actually in the act of coasting when struck by the motorist but is pulling a sled along the street after losing momentum.[n11] A motorist is not required to anticipate that a street on which coasting is forbidden will in fact be used for coasting.[n12]

FOOTNOTES:

n1 Yeager v. Gately & Fitzgerald, Inc., 262 Pa. 466, 106 A. 76 (1919); Grady v. Bryant, 506 S.W.2d 159 (Tenn. Ct. App. 1973).

n2 Terrill v. Virginia Brewing Co., 130 Minn. 46, 153 N.W. 136 (1915); Webster v. Wickham, 5 N.J. Misc. 186, 135 A. 781 (Sup. Ct. 1927); Idell v. Day, 273 Pa. 34, 116 A. 506, 20 A.L.R. 1429 (1922); Hadley v. Wood, 9 Utah 2d 366, 345 P.2d 197 (1959).

n3 Tabor v. Continental Baking Co., 110 Ind. App. 633, 38 N.E.2d 257 (1941); Illingworth v. Madden, 135 Me. 159, 192 A. 273, 110 A.L.R. 1090 (1937); Hustad v. Cooney, 308 S.W.2d 647 (Mo. 1958).

n4 Webster v. Wickham, 5 N.J. Misc. 186, 135 A. 781 (Sup. Ct. 1927); Idell v. Day, 273 Pa. 34, 116 A. 506, 20 A.L.R. 1429 (1922).

n5 Goldberg v. Berkowitz, 173 Wis. 603, 181 N.W. 216 (1921).

n6 §§ 947, 948.

n7 Anderson v. Prugh, 364 Mo. 557, 264 S.W.2d 358 (1954).

n8 Moon v. Weeks, 25 Md. App. 322, 333 A.2d 635 (1975).

n9 Ahmedjian v. Erickson, 281 Mass. 6, 183 N.E. 65 (1932); Hustad v. Cooney, 308 S.W.2d 647 (Mo. 1958); Shea v. Pilette, 108 Vt. 446, 189 A. 154, 109 A.L.R. 933 (1937).

As to effect of negligence of an injured party to bar, or diminish, recovery, see §§ 947 to 949.

n10 Shea v. Pilette, 108 Vt. 446, 189 A. 154, 109 A.L.R. 933 (1937).

n11 Reynolds v. Stillman, 335 Mass. 762, 138 N.E.2d 634 (1956).

n12 Labay v. Leiken, 252 Mass. 579, 147 N.E. 737 (1925).

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(3) Children Crossing, about to Cross, or Darting into Street or Highway

8 Am Jur 2d Automobiles and Highway Traffic § 495

§ 495 Children crossing street or highway

A motorist who knows that children are crossing a street or highway, or that he or she is approaching a place where children may be expected to cross, must exercise a great or high degree of care or caution.[n1] The motorist should be vigilant to maintain a lookout for children crossing the road,[n2] and anticipate childish conduct.[n3] The circumstances may require a motorist to sound a warning of his or her approach,[n4] although the motorist must still anticipate childish conduct.[n5]

A motorist who knows or should know that children are, or might be, crossing the street, must maintain control of the vehicle[n6] and not drive at an excessive speed.[n7] The motorist may even be under a duty to reduce the speed of the vehicle,[n8] and even to stop,[n9] and to remain stopped while the children are still in a dangerous location.[n10] If necessary to avoid striking a child crossing the road, the motorist should turn aside,[n11] but should not drive on the wrong side of the roadway.[n12]

A child may be negligent in crossing the road without looking under certain circumstances.[n13] Such a child must exercise the degree of caution to be expected of a child of similar age, experience, and intelligence.[n14] Whether the child has done so is usually a question for the jury.[n15]

FOOTNOTES:

n1 Bell v. Giamarco, 50 Ohio App. 3d 61, 553 N.E.2d 694 (10th Dist. Franklin County 1988); Volkmann v. Fidelity & Cas. Co. of N.Y., 252 Wis. 464, 32 N.W.2d 348 (1948).

n2 Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); State for Use of Taylor v. Barlly, 216 Md. 94, 140 A.2d 173 (1958); Seitzer v. Halverson, 231 Minn. 230, 42 N.W.2d 635 (1950).

n3 Silberstein v. Showell, Fryer & Co., 267 Pa. 298, 109 A. 701 (1920).

n4 Byington v. Horton, 61 Idaho 389, 102 P.2d 652 (1940); Birch v. Strout, 303 Mass. 28, 20 N.E.2d 429 (1939).

n5 Herald v. Smith, 56 Utah 304, 190 P. 932 (1920); Pisarek v. Singer Talking Mach. Co., 185 Wis. 92, 200 N.W. 675 (1924).

n6 Schlotterbeck v. Anderson, 238 Iowa 208, 26 N.W.2d 340 (1947); Seitzer v. Halverson, 231 Minn. 230, 42 N.W.2d 635 (1950); Geiger v. Schneyer, 398 Pa. 69, 157 A.2d 56 (1959).

n7 Kelly v. Marshall's Adm'r, 274 Ky. 666, 120 S.W.2d 142 (1938); State for Use of Taylor v. Barlly, 216 Md. 94, 140 A.2d 173 (1958); Cummins v. Woody, 177 Tenn. 636, 152 S.W.2d 246 (1941).

n8 Cole v. Ridings, 95 Cal. App. 2d 136, 212 P.2d 597 (2d Dist. 1949); Miller v. Graff, 196 Md. 609, 78 A.2d 220 (1951); Greco v. Schmidt, 101 N.J.L. 554, 129 A. 146 (N.J. Ct. Err. & App. 1925).

n9 Morris v. Radley, 306 Mich. 689, 11 N.W.2d 291 (1943); Kachman v. Blosberg, 251 Minn. 224, 87 N.W.2d 687 (1958); Pritchard v. Hockett, 140 Wash. 499, 249 P. 989 (1926).

n10 Meserve v. Libby, 115 Me. 282, 98 A. 754 (1916); Chapman v. Dillard, 162 Va. 389, 174 S.E. 657 (1934).

n11 Short v. Nehi Bottling Co., 145 S.W.2d 684 (Tex. Civ. App. Dallas 1940).

n12 Lorig v. Brunson, 84 Ga. App. 558, 66 S.E.2d 268 (1951).

n13 Thomas v. Price, 81 Ill. App. 3d 542, 36 Ill. Dec. 810, 401 N.E.2d 651 (3d Dist. 1980); Moore v. Cook, 275 Mich. 578, 267 N.W. 567 (1936); Duval v. Palmer, 113 Vt. 389, 34 A.2d 317 (1943).

As to the negligence of children, generally, see §§ 479 to 481.

n14 Brotherton v. Walden, 204 Ark. 92, 161 S.W.2d 391 (1942); Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941); Blanchette v. Miles, 139 Me. 70, 27 A.2d 396 (1942).

n15 Holden v. Bloom, 314 Mass. 309, 50 N.E.2d 193, 147 A.L.R. 722 (1943); Bear v. Auguy, 164 Neb. 756, 83 N.W.2d 559 (1957); Bentson v. Brown, 186 Wis. 629, 203 N.W. 380, 38 A.L.R. 1417 (1925).

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8 Am Jur 2d Automobiles and Highway Traffic § 496

§ 496 Crossing at unusual places

Although the amount of care to be exercised by a motorist toward one crossing the road at a place which is not a regular crossing is less than that required toward one crossing at a regular crossing,[n1] a motorist must still exercise more care toward a child who crosses in this way than toward an adult, with the degree of additional care varying according to the age, physical condition, and the like, of the child.[n2] The failure of a motorist to exercise proper care toward a child crossing the road at a place other than a regular crossing constitutes negligence.[n3] A child's violation of a traffic regulation governing the crossing of streets at crosswalks is only one factor to be considered in determining contributory negligence, along with the child's age, education, training, and experience.[n4]

It is not negligence per se for a child to cross a road at an unusual place, or diagonally, as a child crossing in this manner must exercise only the care that persons of like age, experience, and intelligence typically exercise under similar circumstances.[n5]

FOOTNOTES:

n1 § 457.

n2 Zylstra v. Graham, 244 Mich. 319, 221 N.W. 318 (1928), opinion adhered to on reh'g, 246 Mich. 91, 224 N.W. 343 (1929).

n3 Lo Vaglio v. Kahn, 253 A.D. 824, 1 N.Y.S.2d 322 (2d Dep't 1938).

n4 Stevens v. Hall, 391 A.2d 792 (D.C. 1978).

n5 Louis Pizitz Dry Goods Co. v. Cusimano, 206 Ala. 689, 91 So. 779 (1921); Morrison v. Flowers, 308 Ill. 189, 139 N.E. 10 (1923).

As to the negligence of children, generally, see §§ 479 to 481.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 497

§ 497 Children about to cross street or highway

A motorist who sees a child near a crossing, or about to cross a street, must exercise a high degree of care and caution to avoid endangering the child,[n1] particularly when seeing that the child is inattentive to the approach of the vehicle.[n2] This duty attaches at the instant the motorist sees the child on or near the roadway.[n3]

The motorist may be under a duty to sound a warning of his or her approach,[n4] although doing so does not relieve the motorist from the duty to anticipate childish conduct.[n5]

If a motorist sees a child about to cross a street or highway, he or she should maintain control of the vehicle,[n6] and not drive at an excessive speed.[n7] Indeed, the speed should be reduced.[n8]

FOOTNOTES:

n1 Short v. Nehi Bottling Co., 145 S.W.2d 684 (Tex. Civ. App. Dallas 1940).

n2 Deputy v. Kimmell, 73 W. Va. 595, 80 S.E. 919 (1914).

n3 Dodson By and Through Dodson v. Robertson, 710 S.W.2d 292 (Mo. Ct. App. S.D. 1986).

n4 Young v. Wayde, 383 So. 2d 1283 (La. Ct. App. 1st Cir. 1980); Crowe v. Havens, 277 A.D. 812, 96 N.Y.S.2d 760 (3d Dep't 1950); Sparks v. Willis, 228 N.C. 25, 44 S.E.2d 343 (1947).

n5 Darr v. Porte, 220 Iowa 751, 263 N.W. 240 (1935).

n6 Zeise v. Deprey, 252 Wis. 316, 31 N.W.2d 523 (1948).

n7 Gretton v. Duncan, 238 Ky. 554, 38 S.W.2d 448 (1931).

n8 Darr v. Porte, 220 Iowa 751, 263 N.W. 240 (1935); Young v. Wayde, 383 So. 2d 1283 (La. Ct. App. 1st Cir. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 498

§ 498 Darting or stepping into path of vehicle

A motorist is not an insurer of the safety of children playing near the street and thus will not be liable if a child suddenly darts or runs into his or her path from a concealed position when the motorist is proceeding at a lawful and reasonable speed and is obeying all rules of the road on maintaining a proper lookout,[n1] or if a child darts out from the opposite side of the street from where the motorist had observed children playing.[n2] Thus, a motorist is not ordinarily bound to anticipate that a child will suddenly dart from the side of the road or suddenly run across the road in front of the vehicle,[n3] especially when the motorist does not know of any children in or near the road,[n4] and could not reasonably have discovered their presence.[n5]

Observation: An attentive motorist who prudently manages and controls the vehicle at all times need not to go to such lengths as to ignore customary traffic rules, and perhaps even the safety of other motorists, in order to keep perpetual guard over children on the sidewalk when it is clearly unrealistic to do so, especially when there is no sign that the children may dart out into traffic.[n6]

Ordinary care requires a motorist to take cognizance of the tendency of children to dart suddenly into the road in obedience to impulse,[n7] and thus a motorist may not disregard the tendency of young children to be heedlessly and capriciously dart into the path of oncoming vehicles.[n8]

A motorist driving at a reasonable speed and obeying the rules of the road is generally not liable for injuries to a child who darts in front of the vehicle so suddenly that the motorist cannot avoid injuring the child,[n9] as where a child darts out from behind other vehicles that were stopped in traffic, directly into the path of the vehicle, and there was no evidence that driver was driving too fast.[n10]

Although a motorist will not be subject to absolute liability for striking a child in a dart-out situation,[n11] if anything warns the motorist to expect heedless acts, the motorist must try to avoid a collision.[n12] A motorist's failure warn a child that he or she is approaching after seeing the child dart in front of the vehicle may be a factor in demonstrating that the motorist has not established a conformity with the standard of due care.[n13]

If a motorist knows or should know that children are playing in the road around parked vehicles,[n14] and has sufficient time to stop the vehicle if under proper control, it is the motorist's duty to exercise such care as is reasonably necessary to avoid an accident.[n15]

A motorist who sees, or in the exercise of reasonable care should see, children on the side of the road, should be alerted to be on guard for some thoughtless or impulsive act.[n16] Thus, a motorist who sees a ball roll into the street may be negligent for failing to slow down or otherwise exercise heightened care.[n17]

Practice Tip: In a negligence action, a driver established that he was driving in a reasonable manner when a child ran in front of his vehicle by submitting his deposition and affidavits of two witnesses. [n18]

The question of the child's negligence may be one for the jury, thus precluding summary judgment. [n19]

FOOTNOTES:

n1 Lee v. Hartford, 411 So. 2d 704 (La. Ct. App. 3d Cir. 1982).

n2 Wicker v. Southern Farm Bureau Cas. Ins. Co., 337 So. 2d 1233 (La. Ct. App. 1st Cir. 1976), writ not considered, 339 So. 2d 853 (La. 1976).

n3 Pokoyski v. McDermott, 53 Del. 253, 167 A.2d 742 (1961); Klink v. Bany, 207 Iowa 1241, 224 N.W. 540, 65 A.L.R. 187 (1929); Manley By and Through Manley v. Parker, 123 N.C. App. 540, 473 S.E.2d 36 (1996); Bowman v. Stouman, 292 Pa. 293, 141 A. 41 (1928); Messick v. Mason, 156 Va. 193, 157 S.E. 575 (1931); McCune v. Crawley Transp. Co., 120 W. Va. 301, 198 S.E. 516 (1938).

n4 Johnson v. Brown, 77 Nev. 61, 359 P.2d 80 (1961); Underwood v. Fultz, 1958 OK 210, 331 P.2d 375 (Okla. 1958).

n5 Underwood v. Fultz, 1958 OK 210, 331 P.2d 375 (Okla. 1958).

n6 Foulke v. Beogher, 166 Ohio App. 3d 435, 2006-Ohio-1411, 850 N.E.2d 1269 (3d Dist. Marion County 2006).

n7 Peperone v. Lee, 160 So. 467 (La. Ct. App., Orleans 1935); Yokeley v. Kearns, 223 N.C. 196, 25 S.E.2d 602 (1943).

n8 Darr v. Porte, 220 Iowa 751, 263 N.W. 240 (1935).

n9 Wilson v. U.S., 874 F. Supp. 128 (M.D. La. 1995); Scardina v. State Farm Mut. Auto. Ins. Co., 597 So. 2d 1148 (La. Ct. App. 1st Cir. 1992), writ denied, 604 So. 2d 1004 (La. 1992); Dorough v. Lockman, 224 Md. 168, 167 A.2d 129 (1961); Splain v. Hines, 609 So. 2d 1234 (Miss. 1992); Manley By and Through Manley v. Parker, 123 N.C. App. 540, 473 S.E.2d 36 (1996).

n10 Sheppeard v. Murci, 306 A.D.2d 268, 761 N.Y.S.2d 244 (2d Dep't 2003).

n11 Bogan on Behalf of Bogan v. O'Connor on Behalf of O'Connor, 703 So. 2d 1382 (La. Ct. App. 4th Cir. 1997), writ denied, 715 So. 2d 1212 (La. 1998).

n12 Bilams v. Metropolitan Transit Authority, 371 So. 2d 693 (Fla. Dist. Ct. App. 3d Dist. 1979) (driving in areas where children are present); Golubic v. Rasnick, 239 Ky. 355, 39 S.W.2d 513 (1931); Keller v. Stevenson, 6 So. 2d 569 (La. Ct. App. 2d Cir. 1941).

n13 Stallings v. Copeland, 28 A.D.3d 1215, 814 N.Y.S.2d 472 (4th Dep't 2006) (motorist was properly denied summary judgment).

n14 Smith v. Kleinberg, 49 Ga. App. 194, 174 S.E. 731 (1934); Day v. Johnson, 265 A.D. 383, 39 N.Y.S.2d 203 (4th Dep't 1943).

n15 Phillips By and Through Schultz v. Holland, 107 N.C. App. 688, 421 S.E.2d 608 (1992), decision aff'd, 333 N.C. 571, 429 S.E.2d 347 (1993).

n16 Bilams v. Metropolitan Transit Authority, 371 So. 2d 693 (Fla. Dist. Ct. App. 3d Dist. 1979); Petty v. Henroid, 313 S.W.2d 688 (Mo. 1958).

n17 Cooks v. Cornin, 560 So. 2d 994 (La. Ct. App. 4th Cir. 1990).

n18 Ash v. McNamara, 288 A.D.2d 956, 732 N.Y.S.2d 791 (4th Dep't 2001).

n19 Stevens v. Hall, 391 A.2d 792 (D.C. 1978).

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8 Am Jur 2d Automobiles and Highway Traffic § 499

§ 499 Generally

Drivers of motor vehicles are charged with knowledge of the unpredictable behavior of children and are therefore expected to govern themselves accordingly when parking or driving about school grounds, recreation parks, residential communities, trailer parks, and other places where inhabited or frequented by children.[n1]

Where children are known or may reasonably be expected to be in the vicinity of a motor vehicle parked on private property, the driver must exercise a degree of vigilance commensurate with the hazard.[n2] A driver of a motor vehicle who fails to exercise proper care to avoid striking a child playing in such a place is negligent, absent any negligence by the child that may bar or diminish the child's recovery.[n3] Whether such a driver has measured up to the required standard of care is ordinarily a question of fact for the jury.[n4]

If the driver of a vehicle that has been parked on private premises knows that a small child, who is not legally capable of negligence, is playing around the vehicle, the driver should thoroughly investigate around and under the vehicle before starting to see that the child is not in a position of danger.[n5] However, if the driver of a motor vehicle parked on private property has no reason to anticipate the presence of a child near the vehicle, negligence may not be grounded on the mere fact that the driver started up the vehicle and thereby injures a child,[n6] and the driver is not required under these circumstances to look around and under the vehicle before starting it.[n7]

FOOTNOTES:

n1 Miami Paper Co. v. Johnston, 58 So. 2d 869 (Fla. 1952).

n2 Lovel v. Squirt Bottling Co. of Waconia, 234 Minn. 333, 48 N.W.2d 525 (1951); Kroft v. Grimm, 225 Or. 247, 357 P.2d 499 (1960).

n3 Dungan v. Brandenberg, 72 Ariz. 47, 230 P.2d 518 (1951); Miami Paper Co. v. Johnston, 58 So. 2d 869 (Fla. 1952); Butler v. Temples, 227 S.C. 496, 88 S.E.2d 586 (1955).

As to the effect of the negligence of an injured party to bar, or diminish, recovery, see §§ 947 to 949.

n4 Miami Paper Co. v. Johnston, 58 So. 2d 869 (Fla. 1952); Lovel v. Squirt Bottling Co. of Waconia, 234 Minn. 333, 48 N.W.2d 525 (1951).

n5 Cunningham v. Sublett's Adm'r, 306 Ky. 701, 208 S.W.2d 509 (1948); Mitchell v. Reinhardt, 114 Ohio App. 175, 19 Ohio Op. 2d 59, 181 N.E.2d 53 (4th Dist. Brown County 1960).

n6 Walker v. Bullard, 317 Mass. 288, 57 N.E.2d 917 (1944); Larson v. Loucks, 69 S.D. 60, 6 N.W.2d 436 (1942); Rose v. Nevitt, 56 Wash. 2d 882, 355 P.2d 776 (1960).

n7 Larson v. Loucks, 69 S.D. 60, 6 N.W.2d 436 (1942).

As to application of attractive nuisance doctrine to cases involving injuries to children playing on or about a motor vehicle, see §§ 482 to 485.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 500

§ 500 Children in private road or driveway

Ordinary care must be taken to avoid striking children who the motorist knows are playing in a private road [n1] or driveway. [n2] Accordingly, a driver must keep a lookout for children in the driveway or road, as well as on the shoulder, [n3] and the driver may not proceed until checking that the way is clear. [n4]

If a driver proceeds into a private driveway knowing that a child is playing there, the driver must use the precautions that the circumstances require to inform the child of his or her approach, regardless of the child's age. [n5] Similarly, if a driver of a motor vehicle that is parked in a private driveway knows that a child has been playing in front of the vehicle, the motorist is negligent by not determining whether the child is still there before moving. [n6] However, the driver of a motor vehicle who otherwise exercises care in driving out of a private driveway is not negligent in striking a child there if there is no reason for the driver to anticipate the child's presence. [n7]

A driver who proceeds down a street slowly and collides with a child on a bicycle is not negligent, if the child rode out of a private driveway that was partially obscured to the driver, and there was no chance to observe the child's peril of being struck. [n8] The fact that a driver did not sound the horn does not create liability for the resulting injuries if there was no apparent danger presented to the child. [n9]

FOOTNOTES:

n1 Downer v. Southern Union Gas Co., 53 N.M. 354, 208 P.2d 815 (1949); Ford v. Phillips, 250 S.W.2d 752 (Tex. Civ. App. Beaumont 1952).

n2 Gray v. Golden, 301 Ky. 477, 192 S.W.2d 371 (1945); Jackson v. State Farm Mut. Auto. Ins. Co., 32 So. 2d 52 (La. Ct. App. 1st Cir. 1947); Stephens v. Clayton, 22 Tenn. App. 449, 124 S.W.2d 33 (1938).

n3 Schwartz v. Petfield, 283 A.D. 845, 128 N.Y.S.2d 338 (4th Dep't 1954); Ford v. Phillips, 250 S.W.2d 752 (Tex. Civ. App. Beaumont 1952).

n4 Jackson v. State Farm Mut. Auto. Ins. Co., 32 So. 2d 52 (La. Ct. App. 1st Cir. 1947).

n5 Stephens v. Clayton, 22 Tenn. App. 449, 124 S.W.2d 33 (1938).

n6 Lovel v. Squirt Bottling Co. of Waconia, 234 Minn. 333, 48 N.W.2d 525 (1951).

n7 Langham v. Norlander, 58 Cal. App. 2d 543, 137 P.2d 29 (2d Dist. 1943).

n8 Dorsey v. Buchanan, 52 N.C. App. 597, 279 S.E.2d 92 (1981).

n9 Edelson v. Higgins, 43 Cal. App. 2d 759, 111 P.2d 668 (2d Dist. 1941).

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8 Am Jur 2d Automobiles and Highway Traffic § 501

§ 501 Generally

Although a motorist is not required to inspect the area or otherwise investigate whether a child is in, on, or about the vehicle, absent notice that a child is nearby,[n1] due care for the child's safety must be exercised by if a motorist who knows, or has reason to know, that a child is playing near the parked vehicle,[n2] or has climbed on or into the vehicle.[n3] The presence of children close by a vehicle in motion or about to get under way is a danger signal that should not be ignored, and calls for heightened care.[n4]

FOOTNOTES:

n1 Williams v. Cohn, 201 Iowa 1121, 206 N.W. 823 (1926); Ostrander v. Armour & Co., 176 A.D. 152, 161 N.Y.S. 961 (2d Dep't 1916).

n2 § 502.

n3 § 503.

n4 Lavallee v. Pratt, 122 Vt. 90, 166 A.2d 195 (1960).

As to owner's or operator's liability for motor vehicle left unattended in the highway for injuries sustained by a child when the vehicle is set in motion, see §§ 921 et seq.

As to application of attractive nuisance doctrine to case of injuries to a child playing on or about a motor vehicle, see §§ 482 to 485.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 502

§ 502 Children near parked vehicle

If a motorist knows or ought to know that children are in the immediate vicinity of his or her parked vehicle, the motorist is charged with the common knowledge that very young children are erratic and likely to move quickly and without regard for their own safety.[n1] Thus, the motorist should, in starting the vehicle, exercise a high degree of vigilance to avoid injuring any children.[n2] The degree of care is higher than would be required in the case of adults.[n3] The motorist should maintain a proper lookout[n4] and may be required to sound a warning.[n5]

FOOTNOTES:

n1 Thomas v. Goodies Ice Cream Co., 13 Ohio App. 2d 67, 42 Ohio Op. 2d 147, 233 N.E.2d 876 (10th Dist. Franklin County 1968); Callahan v. Disorda, 111 Vt. 331, 16 A.2d 179 (1940).

n2 Coca Cola Bottling Co. of Black Hills v. Hubbard, 203 F.2d 859 (8th Cir. 1953); McCarthy v. City of St. Paul, 201 Minn. 276, 276 N.W. 1 (1937); Conrad v. Taylor, 197 Va. 188, 89 S.E.2d 40 (1955).

n3 Conroy v. Perez, 64 Cal. App. 2d 217, 148 P.2d 680 (1st Dist. 1944).

n4 Irish v. U. S., 225 F.2d 3 (9th Cir. 1955); Kading v. Willis, 135 Cal. App. 2d 82, 286 P.2d 861 (2d Dist. 1955); Ruggiero v. Mello, 333 Mass. 295, 130 N.E.2d 555 (1955); Nehi Bottling Co. of Ellisville v. Jefferson, 226 Miss. 586, 84 So. 2d 684 (1956).

n5 Hilyar v. Union Ice Co., 45 Cal. 2d 30, 286 P.2d 21 (1955); Barry v. Panich, 324 Mass. 162, 85 N.E.2d 251 (1949); Maletis v. Portland Traction Co., 160 Or. 30, 83 P.2d 141 (1938).

As to duty and liability of a motorist toward children playing around or about a motor vehicle parked on private property or in places other than a public highway, see §§ 499, 500.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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a. Children
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8 Am Jur 2d Automobiles and Highway Traffic § 503

§ 503 Children in or on vehicles

The doctrine that one owes a trespasser only the duty of refraining from inflicting wanton or willful injury upon him or her[n1] has been applied in cases involving injury to children playing upon motor vehicles or hitching a ride thereon without permission.[n2] It has also been held, however, that a young child cannot be deemed a trespasser,[n3] and that a vehicle operator who knows or should know that small children are in or about the vehicle is not absolved from liability merely by chasing them off of the vehicle, but must exercise reasonable care to see that they stay off.[n4] In such cases, the younger and more persistent the children are, the more determined the operator of the vehicle must be.[n5]

The operator of a motor vehicle who allows children to ride on it must exercise reasonable care to avoid injury to them.[n6]

FOOTNOTES:

n1 Am. Jur. 2d, Premises Liability §§ 205 et seq.

n2 Gamble v. Uncle Sam Oil Co. of Kansas, 100 Kan. 74, 163 P. 627 (1917); Iaconio v. D'Angelo, 104 N.J.L. 506, 142 A. 46, 58 A.L.R. 614 (N.J. Ct. Err. & App. 1928).

n3 Helland v. Arland, 14 Wash. 2d 32, 126 P.2d 594 (1942).

n4 Glover v. Dixon, 63 Ga. App. 592, 11 S.E.2d 402 (1940); Ziehm v. Vale, 98 Ohio St. 306, 120 N.E. 702, 1 A.L.R. 1381 (1918); Lavallee v. Pratt, 122 Vt. 90, 166 A.2d 195 (1960).

n5 Ziehm v. Vale, 98 Ohio St. 306, 120 N.E. 702, 1 A.L.R. 1381 (1918).

n6 Llorens v. McCann, 187 La. 642, 175 So. 442 (1937).

As to matters relating to the liability of the owner or operator of a motor vehicle for injuries sustained by a child playing or riding in or on such vehicle, predicated on the attractive nuisance doctrine, see §§ 482 to 485.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)

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8 Am Jur 2d Automobiles and Highway Traffic § 504

§ 504 Riding in or on unusual position on vehicle not designed for passengers

The owner or operator of a motor vehicle who has consented to, or acquiesced in, a child's riding on or in an unusual position in or on the vehicle, or a position not designed for passengers, must exercise ordinary care for the child's safety.[n1] Further, in some jurisdictions a child of tender years who rides in or on a motor vehicle without the consent of the owner or operator is not treated as a trespasser, but rather the owner or operator is required to exercise reasonable care for the child's safety.[n2] However, if the circumstances are such that a child riding in such an unusual position in or on a motor vehicle is viewed as a trespasser, the owner or operator need only refrain from injuring the child willfully or wantonly.[n3] A statute that prohibits the transportation of children in the cargo area of a motor vehicle, but excepts parades, applies to the de-staging area of a parade.[n4] Thus, the driver of a truck may not be liable in negligence for an injury to a minor suffered after jumping off a truck's tailgate in the de-staging area of a parade, even if the statutory exception only applies to injuries that occur during the course of the actual parade.[n5]

Typically it is a question of fact for the jury whether a motorist engaged in negligence,[n6] gross negligence, or wanton misconduct causing injuries to a child riding in or on an unusual position not designed for passengers.[n7] However, in a few cases, the issue has been deemed resolvable as a matter of law.[n8] For example, in some cases, particularly in light of the advanced age and experience of the child, that act of riding on the running board of a motor vehicle or in another unusual position has been deemed negligence as a matter of law.[n9]

FOOTNOTES:

n1 Tenney v. Enkeball, 62 Ariz. 416, 158 P.2d 519 (1945) (overruled in part on other grounds by, Capps v. American Airlines, Inc., 81 Ariz. 232, 303 P.2d 717 (1956)); Hanlon v. White Fuel Corp., 328 Mass. 455, 104 N.E.2d 424 (1952); Turenne v. Smith, 215 Minn. 64, 9 N.W.2d 409 (1943); Di Giuseppe v. Hrivnak, 359 Pa. 408, 59 A.2d 164 (1948); Stoll v. Wagaman, 73 S.D. 186, 40 N.W.2d 393 (1949).

n2 § 503.

n3 Wilson v. Ward Baking Co., 318 F.2d 674, 24 Ohio Op. 2d 303 (6th Cir. 1963); Neary v. Middlesex Transp. Co., 296 N.Y. 818, 72 N.E.2d 12 (1947); Barall Food Stores v. Bennett, 1944 OK 78, 194 Okla. 508, 153 P.2d 106 (1944); Home Stores v. Parker, 179 Tenn. 372, 166 S.W.2d 619 (1942).

n4 Nunez ex rel. Poulos v. American Family Mut. Ins., 260 Wis. 2d 377, 2003 WI App 35, 659 N.W.2d 171 (Ct. App. 2003).

n5 Nunez ex rel. Poulos v. American Family Mut. Ins., 260 Wis. 2d 377, 2003 WI App 35, 659 N.W.2d 171 (Ct. App. 2003).

n6 Christiana v. Rattaro, 81 Cal. App. 2d 597, 184 P.2d 682 (1st Dist. 1947); Kilmain v. D'Urbano, 301 Mass. 131, 16 N.E.2d 659 (1938); Turenne v. Smith, 215 Minn. 64, 9 N.W.2d 409 (1943); Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461 (1952); Hosford v. Clark, 359 S.W.2d 424 (Mo. Ct. App. 1962); Chase v. Draper Corp., 95 N.H. 483, 66 A.2d 588 (1949); Harris v. Seiavitch, 336 Pa. 294, 9 A.2d 375 (1939).

n7 Tenney v. Enkeball, 62 Ariz. 416, 158 P.2d 519 (1945) (overruled in part on other grounds by, Capps v. American Airlines, Inc., 81 Ariz. 232, 303 P.2d 717 (1956)); Tilghman v. Rightor, 211 Ark. 229, 199 S.W.2d 943 (1947); Llorens v. McCann, 187 La. 642, 175 So. 442 (1937); Bump v. Bellingar, 311 Mich. 254, 18 N.W.2d 814 (1945); Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461 (1952); Marcoux v. Collins, 94 N.H. 345, 53 A.2d 322 (1947); Malkowski v. Diasparra, 270 A.D. 768, 59 N.Y.S.2d 417 (2d Dep't 1946); Harris v. Seiavitch, 336 Pa. 294, 9 A.2d 375 (1939).

n8 Ravey v. Healy, 279 Mich. 323, 272 N.W. 692 (1937) (sudden, unforeseen, and unanticipated act); Southern United Ice Co. v. Fowler, 185 Miss. 300, 187 So. 218 (1939); Coffey v. Oscar Mayer & Co., 252 Wis. 473, 32 N.W.2d 235, 3 A.L.R.2d 753 (1948).

n9 D'Ambrosio v. City of Philadelphia, 354 Pa. 403, 47 A.2d 256, 174 A.L.R. 1166 (1946).

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8 Am Jur 2d Automobiles and Highway Traffic § 505

§ 505 Generally

The law requires a motorist to exercise heightened care toward persons in the roadway whose physical disability is known or should have been known to the motorist. such as blind persons or those with defective vision,[n1] deaf persons or persons with impaired hearing,[n2] persons with impaired physical mobility due to age or some other condition,[n3] and intoxicated persons,[n4] A duty to exercise proper caution in this context upon observing an obviously confused or incapacitated person is sometimes imposed by statute,[n5] and may implicitly recognize that a higher duty devolves upon a driver observing a pedestrian who is prone to act in an unpredictable manner due to confusion or disability.[n6]

A person who has a physical disability uses the public highways and streets without being negligent when exercising a degree of care that an ordinarily prudent person would exercise under the same circumstances.[n7] Precisely what quantum of care and caution will be exacted of a person under a physical disability is obviously dependent upon the facts of the individual case, as well as upon the nature and extent of the disability.[n8] Although the degree of care required of someone with a disability is increased, the standard of due care itself is not thereby altered in nature.[n9]

The fact that a person with a physical disability fails to exercise reasonable care for his own safety in the use of the public roadways will not bar recovery, under the doctrine of contributory negligence, for injuries sustained when struck by a motorist if the motorist discovered or should have discovered the pedestrian's dangerous position in time to avoid the accident.[n10] However, if the doctrine of contributory negligence applies, recovery is barred if the motorist was not put on notice that the injured person was under a physical disability and there is no evidence that the pedestrian would not exercise care for his or her own safety or could not extricate him- or herself from a position of peril.[n11]

FOOTNOTES:

n1 § 506.

n2 § 507.

n3 § 508.

n4 § 509.

n5 Springman By Springman v. Hall, 642 N.E.2d 521 (Ind. Ct. App. 1994) (statute requiring motorist to exercise proper caution upon observing an obviously confused, incapacitated, or intoxicated person); Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995) (confused or incapacitated person).

As to statutes concerning a motorist's duty of caution upon observing a blind pedestrian carrying a white cane or using a guide dog, see § 506.

n6 Dutton v. Travis, 4 Neb. App. 875, 551 N.W.2d 759 (1996).

n7 Jones v. Bayley, 49 Cal. App. 2d 647, 122 P.2d 293 (1st Dist. 1942); Cook v. City of Winston-Salem, 241 N.C. 422, 85 S.E.2d 696 (1955); Weinstein v. Wheeler, 127 Or. 406, 257 P. 20, 62 A.L.R.574 (1927).

The fact that one is subject to vertigo or other illness will not serve to make him contributorily negligent in his use of the public thoroughfares. He has as much right to the use of the streets as one not so afflicted. Woodson v. Metropolitan St. Ry. Co., 224 Mo. 685, 123 S.W. 820 (1909).

A person who faints upon the highway is not, merely for that reason, viewed as contributorily negligent. Magee v. Jones County, 161 Iowa 296, 142 N.W. 957 (1913).

n8 Cook v. City of Winston-Salem, 241 N.C. 422, 85 S.E.2d 696 (1955); Weinstein v. Wheeler, 127 Or. 406, 257 P. 20, 62 A.L.R.574 (1927).

n9 McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960).

n10 Aydlett v. Keim, 232 N.C. 367, 61 S.E.2d 109 (1950).

As to the application of the last-clear-chance doctrine, generally, see § 953.

n11 Aydlett v. Keim, 232 N.C. 367, 61 S.E.2d 109 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 506

§ 506 Blind or visually impaired persons

A motorist who knows, or in the exercise of reasonable care ought to know, that a person in the highway or street is blind, or has defective vision, must exercise care that is commensurate with the situation, to avoid injuring that person.[n1]

Although a person who is blind or has defective vision is not deemed negligent simply by the act of using the public highways and streets,[n2] that person has a duty to exercise ordinary care for his or her own safety, that is, the care that an ordinarily prudent person with such a handicap would use under similar circumstances.[n3] A person whose vision is diminished must exert greater effort and employ keener watchfulness than someone who does not labor under such a disability, in order to satisfy the requisite standard of care.[n4] The law requires a degree of care proportionate to the degree of impairment of vision.[n5]

Observation: Some states have enacted statutes, sometimes referred to as "white cane"laws, which set forth a motorist's duty to take precautions upon observing a blind or partly blind pedestrian carrying a white cane or using a guide dog.[n6] Although such statutes may dictate that a covered motorist is liable in damages for failure to comply with the statute, these laws do consider a motorist's awareness of a pedestrian's blindness, and thus do not impose strict liability.[n7]

FOOTNOTES:

n1 Weinstein v. Wheeler, 127 Or. 406, 257 P. 20, 62 A.L.R.574 (1927).

n2 Reed v. Union St. Ry. Co., 320 Mass. 706, 71 N.E.2d 114 (1947); Hatten v. Brame, 233 Miss. 509, 103 So. 2d 4 (1958); Weinstein v. Wheeler, 127 Or. 406, 257 P. 20, 62 A.L.R.574 (1927).

n3 Tisserat v. Peters, 251 Iowa 250, 99 N.W.2d 924 (1959); Law v. Hemmingsen, 249 Iowa 820, 89 N.W.2d 386 (1958); Epperly v. Kerrigan, 275 So. 2d 884 (La. Ct. App. 4th Cir. 1973), writ denied, 279 So. 2d 685 (La. 1973); Bernard v. Russell, 103 N.H. 76, 164 A.2d 577, 83 A.L.R.2d 766 (1960); Cook v. City of Winston-Salem, 241 N.C. 422, 85 S.E.2d 696 (1955); Bennett v. McDonald, 118 Ohio App. 82, 24 Ohio Op. 2d 418, 193 N.E.2d 439 (9th Dist. Summit County 1962).

n4 Law v. Hemmingsen, 249 Iowa 820, 89 N.W.2d 386 (1958); Cook v. City of Winston-Salem, 241 N.C. 422, 85 S.E.2d 696 (1955).

n5 Smith v. Sneller, 345 Pa. 68, 26 A.2d 452, 141 A.L.R. 718 (1942).

n6 Wright v. Engum, 124 Wash. 2d 343, 878 P.2d 1198 (1994).

n7 Wright v. Engum, 124 Wash. 2d 343, 878 P.2d 1198 (1994).

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8 Am Jur 2d Automobiles and Highway Traffic § 507

§ 507 Deaf persons and persons with impaired hearing

A motorist who knows, or in the exercise of ordinary care should know, that a person in the highway or street is deaf or has impaired hearing is required to exercise care commensurate with the situation to avoid injuring the pedestrian.[n1] The fact that a motorist does not know, and is not chargeable with knowledge, of the fact that a pedestrian has impaired hearing, does not vitiate the duty of exercising ordinary care to avoid injuring the pedestrian,[n2] although under such circumstances the motorist may assume that the deaf person, having been given normal warning of the motorist's approach, would not dart across the street in front of the vehicle.[n3]

The fact that a person is deaf does not in itself make it negligent to be on the public streets[n4] or bar or diminish the damages for personal injuries sustained by the negligence of a motorist.[n5] However, a pedestrian whose hearing is impaired, like other persons in using the highway, is bound to use ordinary care for his or her own safety.[n6] This duty may require the pedestrian to take precautions, practice diligence, and sharpen other senses to an extent greater than for a normal person at such time, in order to attain the exercise of ordinary care that the law requires of all.[n7] In other words, the amount of care required of someone with such a disability is increased in order to satisfy the standard of ordinary or due care, although the standard itself is not thereby altered.[n8]

FOOTNOTES:

n1 Deputy v. Kimmell, 73 W. Va. 595, 80 S.E. 919 (1914).

n2 Crawley v. Jermain, 218 Ill. App. 51, 1920 WL 1109 (1st Dist. 1920).

n3 Napier v. Di Cosola, 126 Ill. App. 2d 324, 261 N.E.2d 779 (1st Dist. 1970); Settle v. Haynes, 312 Ky. 285, 227 S.W.2d 193 (1950).

n4 McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960); Wilson v. Freeman, 271 Mass. 438, 171 N.E. 469 (1930); McCann v. Sadowski, 287 Pa. 294, 135 A. 207 (1926).

n5 Tomey v. Dyson, 76 Cal. App. 2d 212, 172 P.2d 739 (3d Dist. 1946); Crawley v. Jermain, 218 Ill. App. 51, 1920 WL 1109 (1st Dist. 1920) (pedestrian struck by automobile backing out across sidewalk had perfect right to assume that sidewalk was safe).

n6 McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960); Covert v. Randall, 298 Mich. 38, 298 N.W. 396 (1941); Horney v. Giering, 132 Wash. 555, 231 P. 958 (1925).

n7 Tomey v. Dyson, 76 Cal. App. 2d 212, 172 P.2d 739 (3d Dist. 1946) (hearing seriously impaired); Rosser v. Smith, 260 N.C. 647, 133 S.E.2d 499 (1963) (not wearing hearing aid); Fann v. North Carolina R. Co., 155 N.C. 136, 71 S.E. 81 (1911); Horney v. Giering, 132 Wash. 555, 231 P. 958 (1925).

A deaf and mute person proceeding across a street should exercise greater care in visually observing than would a person with normal hearing. Fink v. City of New York, 206 Misc. 79, 132 N.Y.S.2d 172 (Sup 1954).

n8 McCullough v. Lalumiere, 156 Me. 479, 166 A.2d 702 (1960).

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8 Am Jur 2d Automobiles and Highway Traffic § 508

§ 508 Persons with impaired physical mobility

A motorist who knows, or in the exercise of ordinary care should know, that a pedestrian has impaired physical mobility due to age or some other condition must take into account that lack of capacity.[n1] The degree of caution required of a motorist varies with regard to pedestrians of different ages or physical condition.[n2]

A person involved in a vehicle accident is not deemed negligent as a matter of law solely because of lameness or due to infirmities that are incidental to advanced age.[n3] However, he or she is required to exercise ordinary care for his or her own safety[n4] which is the degree of care that an ordinarily prudent person with those disabilities would exercise under similar circumstances.[n5] A person's failure to exercise such care will constitute contributory negligence,[n6] unless the doctrine of last clear chance applies.[n7]

Illustration: The admitted failure of a pedestrian, crippled by paralysis, in stepping from the curb in the face of a red light, after seeing no vehicles approaching, to make further observation when proceeding across the street, where he was struck by a car, is sufficient to establish contributory negligence and bar recovery for injuries sustained when struck by an automobile.[n8]

FOOTNOTES:

n1 Brown v. City of Wilmington, 27 Del. 492, 4 Boyce 492, 90 A. 44 (Super. Ct. 1914).

n2 Glinco v. Wimer, 88 W. Va. 508, 107 S.E. 198 (1921).

n3 Brown v. Patterson, 141 Md. 293, 118 A. 653 (1922); Thomas v. Metzendorf, 101 N.J.L. 346, 128 A. 162 (N.J. Ct. Err. & App. 1925).

n4 Payne v. Wright, 58 Cal. App. 655, 209 P. 218 (1st Dist. 1922) (crutches); Quigley v. Yellow Taxicab Co., 225 Mich. 275, 196 N.W. 198 (1923).

n5 Conjorsky v. Murray, 135 Cal. App. 2d 478, 287 P.2d 505 (4th Dist. 1955); Bellemare v. Ford, 94 N.H. 38, 45 A.2d 882 (1946); Weinstein v. Wheeler, 127 Or. 406, 257 P. 20, 62 A.L.R.574 (1927); Brunner v. John, 45 Wash. 2d 341, 274 P.2d 581 (1954).

n6 Quigley v. Yellow Taxicab Co., 225 Mich. 275, 196 N.W. 198 (1923).

n7 § 953.

n8 Rucheski v. Wisswesser, 355 Pa. 400, 50 A.2d 291 (1947).

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C. Persons Injured
2. Children; Disabled Persons
b. Disabled Persons

8 Am Jur 2d Automobiles and Highway Traffic § 509

§ 509 Intoxicated persons

The law exacts greater care of a motorist toward an intoxicated person, at least if the motorist knew, or should have known, of the person's condition.[n1] A motorist who observes a drunken person in the street must exercise the same degree of reasonable care as in the case of a child or helpless person.[n2] However, even where the pedestrian should have been able to observe oncoming vehicles and was somewhat intoxicated when crossing a roadway, the motorist and pedestrian may each be equally at fault in a collision that kills the pedestrian if both had a clear field of view and the motorist was negligent.[n3]

Although an intoxicated pedestrian is as entitled as a sober one to enjoy a safe street, the circumstance of the plaintiff's sobriety or intoxication is relevant, in an action by him or her to recover for an injury, on the issue of whether he or she had heedlessly and witlessly exposed him- or herself to injury at the immediate moment of the accident.[n4] Intoxication will not relieve the pedestrian from the obligation to exercise the ordinary care for his or her safety that the law imposes on a sober person.[n5] No greater care, however, is required of such a person than is required of someone sober, and thus the fact that the pedestrian was intoxicated becomes immaterial if he or she exercised the degree of care required of a sober person.[n6]

FOOTNOTES:

n1 Brown v. City of Wilmington, 27 Del. 492, 4 Boyce 492, 90 A. 44 (Super. Ct. 1914).

n2 Cofone v. Gnassi, 5 N.J. Misc. 343, 136 A. 505 (Sup. Ct. 1927).

n3 Estate of Hickerson v. Zimmerman, 853 So. 2d 55 (La. Ct. App. 4th Cir. 2003), writ denied, 860 So. 2d 1154 (La. 2003) (motorist failed to observe pedestrian preparing to cross, and then crossing, the roadway).

n4 Brkljaca v. Ross, 60 Cal. App. 431, 213 P. 290 (1st Dist. 1923).

n5 De Saddler v. Yellow Taxicab Co., 216 Mich. 45, 184 N.W. 419 (1921); Herzig v. Sandberg, 54 Mont. 538, 172 P. 132 (1918).

n6 De Saddler v. Yellow Taxicab Co., 216 Mich. 45, 184 N.W. 419 (1921).

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C. Persons Injured
3. Persons Boarding, Leaving, or Moving between Public Conveyances
a. Duties and Liabilities

8 Am Jur 2d Automobiles and Highway Traffic § 510

§ 510 Duties and liability of motorists

Under the common law, a motorist passing a public conveyance that has stopped to receive or discharge passengers must anticipate that they will, or may be, moving to and from the conveyance, and must keep the vehicle under control and exercise due care to avoid injury to any such person. [n1]

A motorist must exercise due care to avoid injuring prospective passengers standing at a regular stopping place for a public conveyance, [n2] or running after such a conveyance. [n3] Furthermore, a motorist may be negligent for failing to have the vehicle under sufficient control that to avoid striking a prospective passenger who is moving into the street. [n4]

FOOTNOTES:

n1 Minor v. Mapes, 102 Ark. 351, 144 S.W. 219 (1912); Coursault v. Schwebel, 118 Cal. App. 259, 5 P.2d 77 (1st Dist. 1931); Trout's Adm'r v. Ohio Valley Elec. Ry. Co., 241 Ky. 144, 43 S.W.2d 507 (1931); Feldser v. Beeman, 176 Md. 377, 4 A.2d 750, 123 A.L.R. 786 (1939); Hennessey v. Taylor, 189 Mass. 583, 76 N.E. 224 (1905).

n2 Petrusha v. Korinek, 237 Mich. 583, 213 N.W. 188 (1927) (abrogated on other grounds by, Sexton v. Ryder Truck Rental, Inc., 413 Mich. 406, 320 N.W.2d 843 (1982)); Goldstein v. Fendelman, 336 S.W.2d 661 (Mo. 1960).

n3 Wellington v. Reynolds, 177 Ind. 49, 97 N.E. 155 (1912); Wickman v. Lundy, 120 Wash. 69, 206 P. 842 (1922).

n4 Summers v. Brown, 170 Md. 695, 183 A. 246 (1936); Hennessey v. Taylor, 189 Mass. 583, 76 N.E. 224 (1905); Hillebrant v. Manz, 71 Wash. 250, 128 P. 892 (1912).

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8 Am Jur 2d Automobiles and Highway Traffic § 511

§ 511 As to passengers alighting

A motorist approaching a public conveyance that has stopped to allow passengers to alight must take notice of that fact and have his or her vehicle under control.[n1] The general rule that a motorist must exercise due care to avoid injury to a passenger alighting from a public conveyance applies to a passenger alighting from a moving conveyance.[n2] However, a motorist passing a public conveyance that is moving is not ordinarily bound to anticipate that a passenger will alight or jump therefrom.[n3]

FOOTNOTES:

n1 Marsh v. Boyden, 33 R.I. 519, 82 A. 393 (1912).

n2 Coursault v. Schwebel, 118 Cal. App. 259, 5 P.2d 77 (1st Dist. 1931).

n3 Brown v. Brashear, 22 Cal. App. 135, 133 P. 505 (2d Dist. 1913); Uetz v. Skinner, 212 Mo. App. 444, 249 S.W. 651 (1923).

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a. Duties and Liabilities

8 Am Jur 2d Automobiles and Highway Traffic § 512

§ 512 Duties of injured persons

A person boarding or alighting from a public conveyance, or in the highway before boarding or after alighting, must exercise ordinary care for his or her own safety, especially to look out for approaching motorists, and the failure to look before approaching or leaving the public conveyance, or while crossing to the curb, which contributes proximately to his or her injury, may bar or diminish recovery from a negligent motorist,[n1] unless the motorist was guilty of wanton misconduct[n2] or the doctrine of last clear chance applies.[n3] Someone boarding or alighting from a public conveyance must look for any traffic that may reasonably be expected, and may be charged with negligence as a matter of law for failing to do so.[n4] Such a person is chargeable with seeing whatever would have been obvious to anyone exercising reasonable diligence.[n5] Generally, however, a person boarding or alighting from a public conveyance, or in the highway prior to boarding or after alighting, may assume that most motorists will respect his or her rights,[n6] and will obey statutes and ordinances governing the use of the highway.[n7]

Issues that are ordinarily considered jury questions include: whether a prospective passenger was negligent in waiting at a regular stopping place for a public conveyance,[n8] or in leaving the sidewalk to board,[n9] or in walking or running along the street to overtake the conveyance.[n10] Other examples are whether a person alighting from or boarding a public conveyance, having looked once for approaching traffic, must look again in the exercise of reasonable care;[n11] whether a person boarding or alighting is negligent in assuming that there is enough time to board or alight safely after having seen an approaching vehicle;[n12] whether a person alighting and struck by a motor vehicle when walking toward the curb kept a proper lookout;[n13] and whether a passenger alighting is negligent in moving around the front of the conveyance and stepping directly into the path of a motor vehicle passing to its left,[n14] or in passing around the back of a conveyance and stepping into the path of a motor vehicle.[n15]

Under some circumstances, however, the conduct of a person boarding, alighting from, or moving to or from a public conveyance may be so obviously careless as to constitute negligence as a matter of law.[n16] Thus, the failure of a passenger who alights from a public conveyance to keep a proper lookout for passing motorists when walking to the nearest curb may amount to negligence as a matter of law, barring or diminishing recovery for injuries sustained when struck by a motorist.[n17]

Although generally, a passenger alighting from a public conveyance and crossing at some place other than an established crossing must exercise a higher degree of care, it is not negligence as a matter of law for a passenger to proceed at such other place.[n18] In such cases, the question of his or her negligence is thus for the jury.[n19]

The standard of care properly exercisable in boarding or alighting from a public conveyance is that which would be reasonably expected of someone of the same age and intelligence.[n20] Thus, the failure of a child to look carefully for

automobiles in the immediate vicinity as he or she boards or alights will not necessarily constitute contributory negligence as a matter of law.[n21]

FOOTNOTES:

n1 Day v. Cunningham, 125 Me. 328, 133 A. 855, 47 A.L.R. 1229 (1926); Feldser v. Beeman, 176 Md. 377, 4 A.2d 750, 123 A.L.R. 786 (1939); Tobin v. Goodwin, 157 Wash. 658, 290 P. 215 (1930).

n2 Menzie v. Kalmonowitz, 107 Conn. 197, 139 A. 698 (1928).

n3 Pollinger v. Messerschmidt, 260 S.W. 804 (Mo. Ct. App. 1924).

As to the application of the last-clear-chance doctrine in motor vehicle accident cases generally, see § 953.

n4 Brodie v. City of Detroit, 275 Mich. 626, 267 N.W. 576 (1936); Uetz v. Skinner, 212 Mo. App. 444, 249 S.W. 651 (1923); Trimboli v. Public Service Co-ordinated Transport, 111 N.J.L. 481, 168 A. 572 (N.J. Ct. Err. & App. 1933); Gottstein v. Daly, 166 Wash. 582, 7 P.2d 610 (1932).

n5 Farrar v. Koontz, 58 Ohio App. 479, 12 Ohio Op. 297, 16 N.E.2d 829 (6th Dist. Huron County 1938).

n6 Wawin Coal Co. v. Orr, 33 F.2d 27 (C.C.A. 8th Cir. 1929); Pond v. Somes, 302 Mass. 587, 20 N.E.2d 449 (1939); Smith v. Shatz, 331 Pa. 453, 200 A. 620 (1938).

n7 McQuigg v. Childs, 213 Cal. 661, 3 P.2d 309 (1931); Campbell v. Cairns, 302 Mass. 584, 20 N.E.2d 427 (1939).

n8 Murphy v. Gladney's, Inc., 12 La. App. 442, 124 So. 780 (1st Cir. 1929); Anselmo v. Morsing, 166 Wash. 111, 6 P.2d 377 (1931).

n9 Hennessey v. Taylor, 189 Mass. 583, 76 N.E. 224 (1905).

n10 Warner v. Bertholf, 40 Cal. App. 776, 181 P. 808 (1st Dist. 1919).

n11 Wright v. Zido, 151 Wash. 486, 276 P. 542 (1929).

n12 McQuigg v. Childs, 213 Cal. 661, 3 P.2d 309 (1931); Steele v. Stahelin, 234 Mich. 307, 207 N.W. 822 (1926); Newham v. Nazzara, 107 N.J.L. 208, 152 A. 467 (N.J. Sup. Ct. 1930); Trentman v. Cox, 118 Ohio St. 247, 6 Ohio L. Abs. 190, 160 N.E. 715 (1928).

n13 Feldser v. Beeman, 176 Md. 377, 4 A.2d 750, 123 A.L.R. 786 (1939); Steele v. Stahelin, 234 Mich. 307, 207 N.W. 822 (1926); Tobin v. Goodwin, 157 Wash. 658, 290 P. 215 (1930).

n14 Hepburn v. Walters, 263 Mass. 139, 160 N.E. 783 (1928); Russell v. Winters, 185 Minn. 472, 241 N.W. 589 (1932).

n15 Hoff v. Johnston, 186 Kan. 214, 349 P.2d 873 (1960); Campbell v. Cairns, 302 Mass. 584, 20 N.E.2d 427 (1939); Landra v. Marone, 105 N.J.L. 405, 144 A. 565 (N.J. Ct. Err. & App. 1929).

n16 Brodie v. City of Detroit, 275 Mich. 626, 267 N.W. 576 (1936); Wood v. Pace, 220 A.D. 386, 222 N.Y.S. 157 (3d Dep't 1927), aff'd, 250 N.Y. 556, 166 N.E. 322 (1929); Gottstein v. Daly, 166 Wash. 582, 7 P.2d 610 (1932).

n17 Bence v. Teddy's Taxi, 101 Cal. App. 748, 282 P. 392 (3d Dist. 1929); Picharella v. Ovens Transfer Co., 135 Pa. Super. 112, 5 A.2d 408 (1939).

n18 Coursault v. Schwebel, 118 Cal. App. 259, 5 P.2d 77 (1st Dist. 1931).

n19 Thorpe v. Broadway-Overland Co., 42 Ohio App. 160, 12 Ohio L. Abs. 548, 181 N.E. 907 (6th Dist. Lucas County 1930).

n20 Pond v. Somes, 302 Mass. 587, 20 N.E.2d 449 (1939).

n21 Day v. Cunningham, 125 Me. 328, 133 A. 855, 47 A.L.R. 1229 (1926).

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8 Am Jur 2d Automobiles and Highway Traffic § 513

§ 513 Passing too close to conveyance

In some jurisdictions, statutes or ordinances require that motorists must keep a specified distance when passing a public conveyance that has stopped to receive or discharge passengers.[n1] The violation of such a regulation constitutes negligence.[n2] A passenger standing within the prescribed distance of a public conveyance may assume that no motorist will enter that zone, and is not conclusively negligent in failing to be on the lookout while standing in that manner.[n3]

Even in the absence of a statute or ordinance prescribing the distance from a stopped conveyance within which a motorist should not pass, reasonable care requires that a motorist should not pass close to one, and if he or she does so and strikes a person alighting or boarding, a jury question on negligence is presented.[n4]

FOOTNOTES:

n1 § 280.

n2 Gonnermann v. Roberts, 78 Cal. App. 378, 248 P. 749 (2d Dist. 1926); Wilcox v. Sides, 267 Mass. 70, 165 N.E. 871 (1929).

n3 Medlin v. Spazier, 23 Cal. App. 242, 137 P. 1078 (2d Dist. 1913); Wilcox v. Sides, 267 Mass. 70, 165 N.E. 871 (1929).

n4 Maryland Ice Cream Co. v. Woodburn, 133 Md. 295, 105 A. 269 (1918); Sougstad v. Zils, 180 Wis. 464, 193 N.W. 656 (1923).

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8 Am Jur 2d Automobiles and Highway Traffic § 514

§ 514 Failure to slow down

In some jurisdictions statutes or ordinances require that a motorist must slow down, and if necessary for the safety of the public, come to a full stop, when passing a public conveyance that has stopped to allow passengers to alight or board.[n1] The violation of such a statute or ordinance constitutes negligence or at least evidence of negligence.[n2] Persons boarding or alighting from a public conveyance may assume that motorists will perform their duty and obey such regulation, and in the absence of reasonable ground to think otherwise, are not negligent in assuming freedom from a danger that arises only from a violation of that statute.[n3]

Even in the absence of a statute or ordinance, the circumstances may require a motorist in the exercise of reasonable care to slow down to avoid a collision with a passenger boarding or alighting.[n4] The mere fact that a motorist was driving within the legal speed limit does not establish due care in a collision with a passenger boarding or alighting from a public conveyance, as the conditions of traffic must be examined in assessing the prudent speed under the circumstances.[n5] In those jurisdictions in which the contributory negligence doctrine prevails,[n6] a motorist who speeds past a public conveyance that is stopped to discharge or receive passengers may be deemed to have acted wantonly, thus barring the defense of contributory negligence.[n7]

FOOTNOTES:

n1 § 280.

n2 Hartnett v. Tripp, 231 Mass. 382, 121 N.E. 17 (1918); Hill v. Haller, 108 Mont. 251, 90 P.2d 977 (1939).

As to duty of motorist with regard to a school bus, see § 491.

n3 Johnson v. Young, 127 Minn. 462, 149 N.W. 940 (1914).

n4 Bongner v. Ziegenhein, 165 Mo. App. 328, 147 S.W. 182 (1912).

n5 Nisley v. Sawyer Service, 123 Or. 293, 261 P. 890 (1927).

n6 §§ 947, 948.

n7 Byrd v. Gipson, 34 Tenn. App. 254, 236 S.W.2d 988 (1950).

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8 Am Jur 2d Automobiles and Highway Traffic § 515

§ 515 Failure to stop

In the absence of a statute or ordinance, there is no duty to stop before passing a stopped public conveyance, unless the situation reasonably indicates that someone is going to run in front of the motorist.[n1] In such cases, although it is ordinarily sufficient that the motorist has the vehicle under proper control; the circumstances of the particular case may require that the motorist to stop the vehicle in order to avoid injury to an alighting or boarding passenger.[n2]

FOOTNOTES:

n1 Patin v. Southwestern Fire & Cas. Co., 116 So. 2d 134 (La. Ct. App. 1st Cir. 1959).

n2 Gregory v. Slaughter, 124 Ky. 345, 30 Ky. L. Rptr. 500, 99 S.W. 247 (1907); Kirk v. McKnight, 311 Pa. 483, 167 A. 36 (1933).

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8 Am Jur 2d Automobiles and Highway Traffic § 516

§ 516 Failure to give warning

The failure of a motorist to comply with a statute a warning when approaching a public conveyance that has stopped to take on or discharge passengers [n1] raises an issue of negligence for the jury. [n2] Even in the absence of such a statutory requirement, a motorist's failure to sound the horn or give another alert when approaching a public conveyance while passengers are boarding or alighting is a factor to be assessed in determining the negligence of such a motorist. [n3] A failure to sound the horn may be deemed negligence even though the injured person saw the motorist approach. [n4]

FOOTNOTES:

n1 § 280.

n2 Simonson v. Angel, 256 Mass. 256, 152 N.E. 52 (1926).

n3 Feldser v. Beeman, 176 Md. 377, 4 A.2d 750, 123 A.L.R. 786 (1939); Walling v. Jenks, 59 R.I. 129, 194 A. 600 (1937); Wright v. Zido, 151 Wash. 486, 276 P. 542 (1929).

n4 Vitale v. Biando, 52 S.W.2d 24 (Mo. Ct. App. 1932).

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8 Am Jur 2d Automobiles and Highway Traffic § 517

§ 517 Driving on wrong side of road

A person operating a motor vehicle on the wrong side of the highway or street who injures a person alighting from or waiting for a public conveyance is ordinarily deemed to be negligent,[n1] especially if a statute or ordinance prohibits driving a motor vehicle on that side of the highway or street.[n2]

FOOTNOTES:

n1 Hart v. Roth, 186 Ky. 535, 217 S.W. 893 (1920); Allen v. Schultz, 107 Wash. 393, 181 P. 916, 6 A.L.R. 676 (1919).

n2 Harris v. Johnson, 174 Cal. 55, 161 P. 1155 (1916).

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8 Am Jur 2d Automobiles and Highway Traffic § 518

§ 518 Status of vehicle occupant

The duty and liability of the owner or operator of a motor vehicle to an occupant of the vehicle depends largely upon the status of the occupant -- that is, whether he or she is an invited guest,[n1] an occupant at sufferance,[n2] a trespasser,[n3] or a passenger for hire.[n4] In many states the duties and liabilities of owners or operators of motor vehicles to occupants of the vehicles are prescribed by statute.[n5]

FOOTNOTES:

n1 §§ 502 et seq.

n2 § 519.

n3 § 520.

n4 As to the duty and liability of carriers to a passenger for hire, see Am. Jur. 2d, Carriers §§ 856 et seq.

n5 §§ 550 et seq.

SUPPLEMENT:

Cases
Passenger was a guest in dump truck, within the meaning of guest statute, even though driver asked passenger to accompany driver on trip, and purpose of trip was to deliver gravel for driver's employer, where the only benefit passenger conferred on driver by passenger's presence in truck was companionship. Code 1975, § 32-1-2. Neal v. Sem Ray, Inc., 68 So. 3d 194 (Ala. Civ. App. 2011).

Passenger sleeping in his father's car on return trip to college was not a "guest" within the meaning guest statute, and, thus, the statute did not protect driver's estate from liability for passenger's injuries, even though passenger did not have title to car and passenger never drove on return trip; passenger had sole possession of car for at least two years and was operator or person responsible for the operation of the vehicle, driver was his guest, and that status was set when they left college. Tonini v. Campagna, 991 So. 2d 266 (Ala. Civ. App. 2008).

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8 Am Jur 2d Automobiles and Highway Traffic § 519

§ 519 Occupants at sufferance

The courts are not in harmony regarding the liability of the owner or operator of a motor vehicle for injuries to permissive guests or guests at sufferance. In many states it is held that where the owner or operator of a motor vehicle owes to an invited guest the duty of reasonable care not to injure him or her,[n1] the owner or operator owes the same duty of care to a guest at sufferance, or a licensee.[n2]

In a few states, however, the courts make a distinction between the degree of care required in the operation of a motor vehicle toward one riding as an invited guest and toward one riding merely as a guest at sufferance. In such states, courts have held that the duty owed by the owner or operator of a motor vehicle to a guest at sufferance, is only to refrain from wantonly or willfully injuring him or her.[n3]

FOOTNOTES:

n1 As to duty owed to invited guest, see §§ 524 et seq.

n2 Black v. Goldweber, 172 Ark. 862, 291 S.W. 76 (1927); Dashiell v. Moore, 177 Md. 657, 11 A.2d 640 (1940); Brigman v. Fiske-Carter Const. Co., 192 N.C. 791, 136 S.E. 125, 49 A.L.R. 773 (1926); Grabau v. Pudwill, 45 N.D. 423, 178 N.W. 124 (1920); Ravis v. Shehulskie, 339 Pa. 161, 14 A.2d 70 (1940); Deskins v. Warden, 122 W. Va. 644, 12 S.E.2d 47 (1940); Marple v. Haddad, 103 W. Va. 508, 138 S.E. 113, 61 A.L.R. 1248 (1927); Mitchell v. Raymond, 181 Wis. 591, 195 N.W. 855 (1923).

n3 Theriault v. Pierce, 307 Mass. 532, 30 N.E.2d 682 (1940).

Where plaintiff "asked"to be invited on motor trips because she loved to go on such trips, that she incidentally rendered beneficial services by attending to children was immaterial; defendant driver owed plaintiff only duty to exercise slight care for her safety. Whisnant v. Whisnant, 116 Ga. App. 598, 158 S.E.2d 693 (1967).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
4. Occupants of Vehicles; Guests
a. In General
(1) Generally

8 Am Jur 2d Automobiles and Highway Traffic § 520

§ 520 Trespassers

The duty owed by the owner or operator of a motor vehicle to a trespasser in or on the vehicle is analogous to the duty imposed on a landowner toward a trespasser,[n1] which is to refrain from inflicting injury willfully or wantonly,[n2] or through gross negligence.[n3] This rule has been applied in some jurisdictions with regard to trespassers who were discovered[n4] and undiscovered.[n5]

The result is that a trespasser may not recover for injuries sustained merely as a result of the failure of the owner or operator of the motor vehicle to exercise ordinary care, regardless of whether the presence of the trespasser in or on a motor vehicle is known[n6] or unknown.[n7] However, a trespasser may recover for injuries sustained as a result of the willful or wanton negligence of the owner or operator of the motor vehicle, regardless of whether the presence of a trespasser in or on the motor vehicle is known[n8] or unknown.[n9]

Some courts hold that the rule that the owner or operator of a motor vehicle owes the duty toward a trespasser in or on such vehicle merely to refrain from injuring him or her willfully or wantonly applies only insofar as an undiscovered trespasser is concerned,[n10] and that there is a duty to use reasonable care not to injure a discovered trespasser.[n11] However, a guest who refuses, after getting on the roof of a vehicle, to get off the roof and re-enter the vehicle when requested to do so by the operator, does not thereby become a trespasser, and the guest statute will continue to apply.[n12]

FOOTNOTES:

n1 See Am. Jur. 2d, Premises Liability §§ 205 et seq.

n2 Lockwood v. Bowman Const. Co., 101 F.3d 1231 (7th Cir. 1996); Triplett v. Dempsey, 633 So. 2d 1011 (Miss. 1994); Slother v. Jaffe, 356 Pa. 238, 51 A.2d 747 (1947); Brooks v. Southeastern Motor Truck Lines, 36 Tenn. App. 110, 252 S.W.2d 128 (1952); Williams v. Bill's Custom Fit, Inc., 821 S.W.2d 432 (Tex. App. Waco 1991).

n3 Triplett v. Dempsey, 633 So. 2d 1011 (Miss. 1994); Williams v. Bill's Custom Fit, Inc., 821 S.W.2d 432 (Tex. App. Waco 1991).

n4 Sheehan v. Goriansky, 317 Mass. 10, 56 N.E.2d 883 (1944).

n5 McGhee v. Birmingham News Co., 206 Ala. 487, 90 So. 492 (1921); Gauss v. Wolter, 233 Ill. App. 353, 1924 WL 3567 (1st Dist. 1924).

n6 Shotzberger v. Piazza, 333 A.2d 167 (Del. 1975).

n7 Mainer v. Cambron Const. Co., 237 So. 2d 275 (Fla. Dist. Ct. App. 4th Dist. 1970); Brooks v. Southeastern Motor Truck Lines, 36 Tenn. App. 110, 252 S.W.2d 128 (1952).

n8 Sheehan v. Goriansky, 317 Mass. 10, 56 N.E.2d 883 (1944).

n9 Shotzberger v. Piazza, 333 A.2d 167 (Del. 1975); Mainer v. Cambron Const. Co., 237 So. 2d 275 (Fla. Dist. Ct. App. 4th Dist. 1970).

n10 Surratt v. Petrol, Inc., 160 Ind. App. 479, 312 N.E.2d 487 (1974); Beale & Strayhorn v. Clayborn, 152 Miss. 681, 120 So. 812 (1929).

n11 Surratt v. Petrol, Inc., 160 Ind. App. 479, 312 N.E.2d 487 (1974); McVicar v. W. R. Arthur & Co., 312 S.W.2d 805, 65 A.L.R.2d 785 (Mo. 1958); Lavallee v. Pratt, 122 Vt. 90, 166 A.2d 195 (1960).

n12 Slauter v. Moneyham, 263 So. 2d 598 (Fla. Dist. Ct. App. 2d Dist. 1972).

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8 Am Jur 2d Automobiles and Highway Traffic § 521

§ 521 Generally

The traditional conflict of laws rule [n1] that the law of the place where a motor vehicle is involved in an accident ordinarily governs the substantive rights of the parties, has been applied to the liability of an owner or operator of a vehicle for injuries sustained by a guest in the vehicle. [n2] Thus, even though, under the law of the forum, gross negligence of the owner or operator of a motor vehicle is the sole criterion of liability to a guest, the courts have taken jurisdiction and given effect to the law of the state in which the negligent act took place and under the law of which ordinary negligence was sufficient for liability to a guest. [n3] Conversely, even though ordinary negligence may be sufficient under the law of the forum to impose liability against the owner or operator of a motor vehicle to a guest, courts have taken jurisdiction and given effect to the law of the state in which the negligent act took place, even though under that law gross negligence was the sole ground of liability to a guest. [n4]

If an action is commenced in one state by a guest-passenger, as plaintiff, who, at the time of the collision and alleged injuries, had been riding as the guest of the defendant in another jurisdiction, the provisions of the guest statute of the forum state will be controlling on the issue of the defendant's liability, absent any showing that the law of the state where the injury occurred differs. [n5]

FOOTNOTES:

n1 § 404.

n2 Neumeier v. Kuehner, 31 N.Y.2d 121, 335 N.Y.S.2d 64, 286 N.E.2d 454 (1972); Schiltz v. Meyer, 32 Ohio App. 2d 221, 61 Ohio Op. 2d 247, 289 N.E.2d 587 (1st Dist. Clinton County 1971), judgment aff'd, 29 Ohio St. 2d 169, 58 Ohio Op. 2d 391, 280 N.E.2d 925 (1972).

n3 Redfern v. Redfern, 212 Iowa 454, 236 N.W. 399 (1931); Hall v. Hamel, 244 Mass. 464, 138 N.E. 925 (1923).

n4 Pryor v. Swarner, 445 F.2d 1272, 60 Ohio Op. 2d 270 (2d Cir. 1971) (applying New York law).

n5 Ethridge v. Sullivan, 245 S.W.2d 1015 (Tex. Civ. App. Amarillo 1951), writ refused.

SUPPLEMENT:

Cases
Actual conflict existed between Nebraska and Colorado law for purposes of conflict-of-law analysis in personal injury action arising out of a motor vehicle accident involving married Nebraska residents which occurred in Colorado; Nebraska had a guest statute, while Colorado had repealed its guest statute. Heinze v. Heinze, 274 Neb. 595, 742 N.W.2d 465 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 522

§ 522 Where law of accident site is repugnant to public policy of forum state

The law of the place where a motor vehicle was involved in an accident has not been applied by the courts of the forum in an action by a guest against the owner or operator of the vehicle, if the law of the place of the accident was opposed to the established public policy of the state of the forum.[n1] However, the mere fact that there are differences between the law of the forum and the lex loci delicti as to the degree or criterion of negligence that will render the owner or operator of a motor vehicle liable to a guest, does not violate any public policy of the lex fori so as to lead the courts of the forum to refuse to apply the lex loci delicti.[n2] Furthermore, the law of the place of the accident to the effect that a guest has no claim against the owner or operator of a vehicle for injuries sustained in an accident from ordinary or wanton negligence does not violate a public policy of the lex fori that such negligence would be actionable so as to lead the courts of the forum to refuse to apply the lex loci delicti.[n3] However, the law of the place of a motor vehicle accident to the effect that an owner or operator who is not at fault is liable for injuries sustained by a guest, violates the public policy of the lex fori if injuries suffered under such circumstances would not be actionable, thus leading the courts of the forum to apply the lex fori and to refuse to apply the lex loci delicti.[n4]

In a court of a forum state having a law requiring only ordinary neglect in order to hold a host liable to a passenger for injuries arising from the host's operation of a vehicle, the applicability of a guest statute of another state has long presented a difficult question for the forum court when an accident involving its residents occurs in such a state where the law requires some lesser degree of care on the part of a host toward his passenger, with guest statutes usually imposing liability on a showing of requiring gross negligence or willful or wanton conduct.[n5] The artificiality of applying the lex loci delicti in this situation, particularly when all the parties are from a forum state having no guest statute, is in tension with the often strong local policy against such statutes, and lex loci delicti has in some cases given way.[n6]

FOOTNOTES:

n1 Wessling v. Paris, 417 S.W.2d 259 (Ky. 1967); Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Paul v. National Life, 177 W. Va. 427, 352 S.E.2d 550, 63 A.L.R.4th 155 (1986) (rejected on other grounds by, Hataway v. McKinley, 830 S.W.2d 53 (Tenn. 1992)).

n2 Loranger v. Nadeau, 215 Cal. 362, 10 P.2d 63, 84 A.L.R. 1264 (1932) (overruled in part on other grounds by, Reich v. Purcell, 67 Cal. 2d 551, 63 Cal. Rptr. 31, 432 P.2d 727 (1967)).

n3 Bednarowicz' Estate v. Vetrone, 400 Pa. 385, 162 A.2d 687 (1960) (overruled in part on other grounds by, Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796 (1964)).

n4 Victor v. Sperry, 163 Cal. App. 2d 518, 329 P.2d 728 (4th Dist. 1958).

n5 Fuerste v. Bemis, 156 N.W.2d 831 (Iowa 1968).

n6 Milkovich v. Saari, 295 Minn. 155, 203 N.W.2d 408 (1973); Tooker v. Lopez, 24 N.Y.2d 569, 301 N.Y.S.2d 519, 249 N.E.2d 394 (1969); Labree v. Major, 111 R.I. 657, 306 A.2d 808 (1973).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
4. Occupants of Vehicles; Guests
a. In General
(2) What Law Governs

8 Am Jur 2d Automobiles and Highway Traffic § 523

§ 523 Grouping of contacts theory; significant relationship test

In applying the grouping of contacts theory to choice of law problems in cases involving a guest-passenger relationship, the contacts are relevant only when related to the policies and interests underlying the particular issue before the court; the weight of a particular state's contacts must be measured on a qualitative scale, rather than a quantitative scale.[n1] Thus, in an action arising out of accident that occurred near the border of two states, the residencies of the parties may be an important factor in determining which state's laws will apply.[n2] Whether a family liability exclusion violates state law and public policy may be a factor also.[n3]

In at least one jurisdiction that applies the grouping of contacts theory to choice of law problems, the law of the forum should presumptively apply unless it is clear that non-forum contacts are of greater significance,[n4] but this does not mean that foreign law will be applied even when the contacts with the foreign jurisdiction are quantitatively overwhelming, since the carrying out of foreign state policy may be a crucial element if the foreign jurisdiction's contacts are less relevant qualitatively or if the foreign law is repugnant to the forum law.[n5]

FOOTNOTES:

n1 Cipolla v. Shaposka, 439 Pa. 563, 267 A.2d 854 (1970).

n2 Danner v. Staggs, 680 F.2d 427 (5th Cir. 1982) (applying Texas law).

n3 Draper v. Draper, 115 Idaho 973, 772 P.2d 180 (1989).

n4 Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965).

n5 Heath v. Zellmer, 35 Wis. 2d 578, 151 N.W.2d 664 (1967).

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b. Invited Guests, in General
(1) Overview

8 Am Jur 2d Automobiles and Highway Traffic § 524

§ 524 Generally

Although some state statutes exempt the owner or operator of a motor vehicle from liability to a gratuitous guest for injuries caused by a failure to exercise ordinary care while driving, and thereby limit liability to cases involving gross negligence or higher degrees of culpability,[n1] in the absence of such a statute the rule followed generally requires the owner or operator of a motor vehicle to exercise ordinary or reasonable care toward a gratuitous invited guest in the operation of the vehicle,[n2] and must not unreasonably expose an invited passenger to danger of an injury by increasing the hazard of travel.[n3] Accordingly, the owner or operator may be held liable in damages if the failure to exercise such care is the proximate cause of injury to a guest,[n4] in the absence of negligence or assumption of risk by the guest.[n5]

A driver has a duty to drive defensively after witnessing the negligent operation of another vehicle or noticing other hazards posing the potential for resulting damage, including the duty to slow down or otherwise avoid risks posed by a vehicle ahead.[n6] However, the owner or operator of a motor vehicle is not an insurer of the safety of a gratuitous guest.[n7] Nor does he or she guarantee to a gratuitous guest an accomplished degree of skill in the management of his or her vehicle,[n8] and is thus not bound to exercise a degree of extraordinary care that an expert would.[n9] Generally, it is a factual question for the jury whether the requisite degree of care was exercised by the host in a specific situation, unless the inferences that may be drawn from the undisputed facts are not in conflict.[n10] Thus, although issues of negligence are ordinarily not amenable to summary resolution, nothing precludes a court from deciding such issues as a matter of law.[n11]

Practice Tip: If a passenger sues both drivers in a two-car accident and the "boulevard rule"is in effect, giving preference to drivers on highways when they encounter other drivers attempting to enter or cross through highways, neither of the drivers must be negligent as a matter of law.[n12]

Observation: The duty to exercise due care for the safety of passengers in the operation and maintenance of a vehicle is not analogous to the "special relationship"that affords protection against the foreseeable criminal acts of third parties.[n13]

In a few states, the common law requires that gross negligence must be shown in order to hold the owner or operator of a motor vehicle liable for injury to an invited guest.[n14] This rule requiring gross negligence has been applied even in the case of an infant riding as an invited guest, as the infancy does not affect the degree of care required of the owner or operator although the age of the child may affect the nature of the care required.[n15]

FOOTNOTES:

n1 § 550.

n2 Guilliams v. Succession of Harrel, 774 So. 2d 325 (La. Ct. App. 3d Cir. 2000), writ denied, 786 So. 2d 737 (La. 2001); Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006); Wlasiuk v. McElwee, 334 N.J. Super. 661, 760 A.2d 829 (App. Div. 2000); Lauritzen v. Lauritzen, 74 Wash. App. 432, 874 P.2d 861 (Div. 2 1994).

n3 Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006).

n4 Hewlett v. Schadel, 68 F.2d 502, 91 A.L.R. 743 (C.C.A. 4th Cir. 1934); Jessup v. Davis, 115 Neb. 1, 211 N.W. 190, 56 A.L.R. 1403 (1926) (overruled in part on other grounds by, Fielding v. Publix Cars, 130 Neb. 576, 265 N.W. 726, 105 A.L.R. 1306 (1936)).

n5 §§ 552, 559.

n6 Edwards v. Horstman, 687 So. 2d 1007 (La. 1997).

n7 Harris v. Varnado, 94 So. 2d 74, 79 A.L.R.2d 204 (La. Ct. App. 1st Cir. 1957).

n8 Setser v. Browning, 214 W. Va. 504, 590 S.E.2d 697 (2003); Cleary v. Eckart, 191 Wis. 114, 210 N.W. 267, 51 A.L.R. 576 (1926) (overruled in part on other grounds by, McConville v. State Farm Mut. Auto. Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962)).

n9 Harris v. Varnado, 94 So. 2d 74, 79 A.L.R.2d 204 (La. Ct. App. 1st Cir. 1957).

n10 Hewlett v. Schadel, 68 F.2d 502, 91 A.L.R. 743 (C.C.A. 4th Cir. 1934); Whitt v. Farley, 275 S.W.2d 906, 50 A.L.R.2d 990 (Ky. 1955); Avery v. Thompson, 117 Me. 120, 103 A. 4 (1918).

n11 Green v. Burrill, 26 Wash. App. 774, 614 P.2d 229 (Div. 1 1980).

n12 Dennard v. Green, 335 Md. 305, 643 A.2d 422 (1994).

n13 Lauritzen v. Lauritzen, 74 Wash. App. 432, 874 P.2d 861 (Div. 2 1994).

n14 Baker v. Hurwitch, 265 Mass. 360, 164 N.E. 87 (1928).

n15 Balian v. Ogassian, 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).

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8 Am Jur 2d Automobiles and Highway Traffic § 525

§ 525 Effect of owner of vehicle riding as passenger

The mere fact that a passenger in an automobile who sues the driver of the automobile for personal injuries is the owner of the automobile does not itself make the passenger contributorily negligent.[n1]

FOOTNOTES:

n1 Stephens v. Jones, 710 S.W.2d 38 (Tenn. Ct. App. 1984).

As to the contributory negligence and assumption of risk of a passenger, generally, see §§ 552 et seq.

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8 Am Jur 2d Automobiles and Highway Traffic § 526

§ 526 Generally

The relationship of driver and passenger has long been recognized in the law as one in which the driver, by reason of the control exercised over the motor vehicle, is required to use reasonable care for the safety of passengers,[n1] but the owner or operator of a private automobile is not a guarantor of the safety of a guest.[n2]

The failure of a person to operate a vehicle in conformity with a safety statute establishes a prima facie case of negligence.[n3] The general rule that the owner or operator of a motor vehicle must exercise ordinary or reasonable care toward an invited guest[n4] has been applied in a variety of situations, and what constitutes ordinary negligence within the meaning of this rule depends on the circumstances of the individual case.[n5] Thus, the operator of a motor vehicle is not negligent when his or her vehicle is rear-ended by another vehicle while waiting to make a turn.[n6] However, if a driver fails to negotiate a turn, crosses over a yellow line into a no-passing zone, goes into the opposing lane, and strikes another vehicle head-on, the driver is liable to passengers for negligent operation.[n7]

Observation: Under a Good Samaritan law, a motorist providing roadside assistance to an accident victim by attempting to drive the victim to a hospital is immune from liability for damages resulting from the motorist's later negligent driving,[n8] even though the driver uses an indirect route to the facility or makes a brief stop on the way there.[n9]

FOOTNOTES:

n1 Wlasiuk v. McElwee, 334 N.J. Super. 661, 760 A.2d 829 (App. Div. 2000).

n2 Setser v. Browning, 214 W. Va. 504, 590 S.E.2d 697 (2003).

n3 Duncan v. Wescott, 142 Vt. 471, 457 A.2d 277 (1983).

n4 § 524.

n5 §§ 526 et seq.

n6 Dickens v. Merritt, 123 A.D.2d 738, 507 N.Y.S.2d 210 (2d Dep't 1986).

n7 Cummins v. Rose, 185 A.D.2d 839, 586 N.Y.S.2d 988 (2d Dep't 1992).

n8 Swenson v. Waseca Mut. Ins. Co., 653 N.W.2d 794 (Minn. Ct. App. 2002).

n9 Swenson v. Waseca Mut. Ins. Co., 653 N.W.2d 794 (Minn. Ct. App. 2002).

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8 Am Jur 2d Automobiles and Highway Traffic § 527

§ 527 Speeding

In a jurisdiction requiring a driver to exercise ordinary care for the safety of a gratuitous guest,[n1] the operation of a motor vehicle in violation of the speed laws constitutes negligence rendering the owner or operator of the vehicle liable for injuries proximately caused to a guest,[n2] particularly if the driver's speeding is compounded by alcohol impairment.[n3] Moreover, the operation of a motor vehicle at an excessive speed during a rainstorm,[n4] particularly over rough roads,[n5] whereby the operator loses control of the vehicle, constitutes negligence rendering the motorist liable for injuries proximately caused to an invited guest. Similarly, driving at an unlawful speed and turning around to observe passengers in the rear of a pickup truck may be deemed negligent.[n6]

The operator of a motor vehicle is liable for injuries received by a guest as the result of the vehicle going off the highway while rounding a curve, if by the exercise of due care the operator could have seen a curve sign and the curve itself, and could have driven safely around it at a proper speed.[n7]

FOOTNOTES:

n1 § 524.

n2 Thompson v. Bradley, 142 N.C. App. 636, 544 S.E.2d 258 (2001).

n3 Efferson v. State, Through Dept. of Transp. & Development, 463 So. 2d 1342 (La. Ct. App. 1st Cir. 1984), writ denied, 465 So. 2d 722 (La. 1985) and writ denied, 465 So. 2d 722 (La. 1985).

n4 Cowart v. Lewis, 151 Miss. 221, 117 So. 531, 61 A.L.R. 1229 (1928).

n5 Truso v. Ehnert, 177 Minn. 249, 225 N.W. 98 (1929).

n6 Old Second Nat. Bank of Aurora v. Baumann, 86 Ill. App. 3d 547, 41 Ill. Dec. 802, 408 N.E.2d 224 (2d Dist. 1980).

n7 Proctor v. Town of Colonie, 6 A.D.2d 967, 176 N.Y.S.2d 560 (3d Dep't 1958), judgment aff'd, 8 N.Y.2d 952, 204 N.Y.S.2d 183, 168 N.E.2d 849 (1960).

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 243, 245, 250 (Complaint, petition, or declaration -- By occupants for injuries resulting from speeding by driver)
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8 Am Jur 2d Automobiles and Highway Traffic § 528

§ 528 Failure to keep lookout

A motorist must exercise the same care in looking out for danger to his or her own passengers that the motorist must use toward occupants of other vehicles,[n1] and the failure to do so constitutes negligence.[n2] Thus, a bus driver's failure to take heed of a sign warning of a low height clearance may constitute negligence,[n3] even if the driver was distracted by a passenger urging the driver to hurry so as not to miss a plane.[n4]

A driver's passengers may not recover against the driver for injuries sustained when the driver strikes an animal and loses control of the vehicle, on only unsupported allegations that the driver negligently failed to keep the vehicle under control and failed to maintain a lookout, where there is no evidence that driver acted negligently or that he could have done anything to avoid the accident.[n5]

FOOTNOTES:

n1 Sinitiere v. Lavergne, 391 So. 2d 821 (La. 1980).

n2 Dashiell v. Moore, 177 Md. 657, 11 A.2d 640 (1940); Kiernan v. Edwards, 97 A.D.2d 750, 468 N.Y.S.2d 381 (2d Dep't 1983).

n3 Adams v. Romero, 227 A.D.2d 292, 642 N.Y.S.2d 673 (1st Dep't 1996).

n4 Adams v. Romero, 227 A.D.2d 292, 642 N.Y.S.2d 673 (1st Dep't 1996) (drove in low clearance area, in contravention of direct orders from superiors not to travel on the alternate drop-off roadway).

n5 Burch v. Burch, 34 Kan. App. 2d 506, 120 P.3d 799 (2005).

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8 Am Jur 2d Automobiles and Highway Traffic § 529

§ 529 Driving with vision obscured

The operator of a vehicle may be found negligent toward guests, and liable for injuries proximately resulting from that negligence, by failing to exercise care commensurate with the circumstances, in driving with obscured vision due to poor weather, such as fog,[n1] rain,[n2] mist,[n3] snow,[n4] sleet, ice, or frost,[n5] or dust.[n6]

FOOTNOTES:

n1 Nelson v. Inland Motor Freight Co., 60 Idaho 443, 92 P.2d 790 (1939); Porterfield v. Brinegar, 719 S.W.2d 558 (Tex. 1986).

n2 Kirby v. Swift & Co., 199 Ark. 442, 134 S.W.2d 865 (1939).

n3 Metropolitan Cas. Ins. Co. of New York v. Bowdon, 164 So. 464 (La. Ct. App. 2d Cir. 1935).

n4 Parr v. Douglas, 253 Wis. 311, 34 N.W.2d 229 (1948).

n5 Truso v. Ehnert, 177 Minn. 249, 225 N.W. 98 (1929).

n6 Brice v. Miller, 121 Colo. 552, 218 P.2d 746 (1950).

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8 Am Jur 2d Automobiles and Highway Traffic § 530

§ 530 Blinded by approaching headlights

If a motorist is blinded by the lights of an approaching vehicle and an accident ensues, injuring a guest, liability of the motorist may be based on driving at an excessive speed under the circumstances, or on a failure to slow down.[n1]

FOOTNOTES:

n1 Doody v. Rogers, 116 Conn. 713, 164 A. 641 (1933); Bielke v. Knaack, 207 Wis. 490, 242 N.W. 176 (1932).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 531

§ 531 Skidding

The operator of a motor vehicle is generally not liable for injuries suffered by a guest from the skidding of the vehicle, if the skidding was unavoidable or there was no precedent negligence by the operator.[n1] However, the operator may be found liable for such injuries if the vehicle goes into a skid after the driver applies the brakes suddenly on a slippery pavement,[n2] or is speeding.[n3]

FOOTNOTES:

n1 Shepherd v. Ball, 47 Tenn. App. 189, 337 S.W.2d 243 (1959); Maltby v. Thiel, 224 Wis. 648, 272 N.W. 848 (1937).

n2 Norfleet v. Hall, 204 N.C. 573, 169 S.E. 143 (1933); Coerver v. Haab, 23 Wash. 2d 481, 161 P.2d 194, 161 A.L.R. 909 (1945); Monsos v. Euler, 216 Wis. 133, 256 N.W. 630 (1934).

n3 Jarvis v. Bostic, 79 F.2d 831 (App. D.C. 1935); Norfleet v. Hall, 204 N.C. 573, 169 S.E. 143 (1933).

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8 Am Jur 2d Automobiles and Highway Traffic § 532

§ 532 Illness of or falling asleep by, driver

Ordinarily the owner or operator is not liable to a guest injured if the driver is suddenly stricken by a fainting spell or loss of consciousness from an unforeseen cause,[n1] or suddenly falls asleep,[n2] although this may justify an inference of negligence sufficient to make out a prima facie case,[n3] or may create a presumption of negligence that, if not adequately excused or justified by the driver, may result in a verdict for the plaintiff,[n4] particularly if other factors suggesting negligence by the driver' are present,[n5] such as an earlier lack of sleep,[n6] a long period of driving,[n7] the presence of premonitory signs of drowsiness,[n8] or the intake of alcohol.[n9]

Illustration: A driver is negligent with respect to injuries sustained by a passenger when the driver fell asleep at wheel of a car, where there is unequivocal evidence that the driver felt sleepy while driving, and thus had warning that he or she was at risk of falling asleep at the wheel.[n10] A driver is also liable for injuries sustained by a passenger when a car crashes after the driver continued to drive in spite of feeling drowsy and offered no evidence to explain or exculpate the conduct.[n11]

A driver who loses control of a vehicle after falling asleep is negligent as a matter of law, regardless of whether the passenger refuses to drive upon the driver's request.[n12]

FOOTNOTES:

n1 Wingate v. United Services Auto. Ass'n, 480 So. 2d 665 (Fla. Dist. Ct. App. 5th Dist. 1985) (onset of heart attack); Hinton v. McKee, 329 So. 2d 519 (Miss. 1976); Harrington v. H.D. Lee Mercantile Co., 97 Mont. 40, 33 P.2d 553 (1934).

n2 Bushnell v. Bushnell, 103 Conn. 583, 131 A. 432, 44 A.L.R. 785 (1925).

n3 Diamond State Tel. Co. v. Hunter, 41 Del. 336, 21 A.2d 286 (Super. Ct. 1941).

n4 Kilburn v. Bush, 223 A.D.2d 110, 646 N.Y.S.2d 429 (4th Dep't 1996).

n5 Whiddon v. Malone, 220 Ala. 220, 124 So. 516 (1929).

n6 Diamond State Tel. Co. v. Hunter, 41 Del. 336, 21 A.2d 286 (Super. Ct. 1941); Rennolds' Adm'x v. Waggener, 271 Ky. 300, 111 S.W.2d 647 (1937); Kee v. Hill, 51 Tenn. App. 228, 366 S.W.2d 520 (1962).

n7 Baird v. Baird, 223 N.C. 730, 28 S.E.2d 225 (1943); Lea v. Gentry, 167 Tenn. 664, 73 S.W.2d 170 (1934).

n8 Lankford v. Mong, 283 Ala. 24, 214 So. 2d 301 (1968); Gower v. Strain, 169 Miss. 344, 145 So. 244 (1933).

n9 Devlin v. Morse, 254 Mich. 113, 235 N.W. 812 (1931).

n10 Barlow v. Hertz Corp., 160 A.D.2d 580, 554 N.Y.S.2d 224 (1st Dep't 1990).

n11 DeTellis v. Avis Rent A Car System, Inc., 273 A.D.2d 268, 708 N.Y.S.2d 703 (2d Dep't 2000).

n12 Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006).

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8 Am Jur 2d Automobiles and Highway Traffic § 533

§ 533 Failure to signal for turn

The owner or operator of a motor vehicle may be held liable for injuries to an invited guest sustained in a collision at an intersection with another vehicle traveling in the same direction,[n1] or for injuries sustained in a collision with an on-coming or intersecting motor vehicle,[n2] if the driver is negligent in failing to signal for a turn and that negligence was a proximate cause of the injuries. Similarly, a guest may recover for injuries sustained in a collision proximately caused by the negligence of the host-operator to signal a left turn between intersections.[n3]

FOOTNOTES:

n1 Barr v. Matlock, 222 Ark. 260, 258 S.W.2d 540 (1953).

n2 Iverson v. Iverson, 56 Ill. App. 3d 297, 13 Ill. Dec. 108, 370 N.E.2d 1135 (1st Dist. 1977); Lind v. Nebel, 232 Minn. 255, 45 N.W.2d 401 (1950); Scott v. Service Pipe Line Co., 159 Neb. 36, 65 N.W.2d 219 (1954).

n3 Bennett v. De Leonardo, 109 Conn. 602, 145 A. 61 (1929); Fussell v. U. S. Fidelity & Guar. Co., 153 So. 2d 911 (La. Ct. App. 1st Cir. 1963).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 534

§ 534 Attempting unsafe maneuver

Attempting an unsafe maneuver, such as a U-turn,[n1] or driving into an unsafe area,[n2] may be deemed negligence imposing liability on the driver for his or her passenger's injuries.

FOOTNOTES:

n1 Crow v. Goins, 427 So. 2d 51, 53 A.L.R.4th 841 (La. Ct. App. 4th Cir. 1983), writ denied, 430 So. 2d 82 (La. 1983) (across narrow median dividing a six-lane road, causing vehicle to be rear-ended).

n2 Carter v. City Parish Government of East Baton Rouge, 423 So. 2d 1080 (La. 1982) (driver under influence of alcohol went around or through barricade on closed highway and into floodwaters of submerged underpass).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 535

§ 535 Sudden or unsignaled stops

A driver who negligently brings the vehicle to a sudden or unsignaled stop on the highway ahead of a closely following vehicle that collides with its rear end may properly be found liable to a guest in the vehicle who is injured in the collision. [n1]

However, the driver will not be held liable unless the negligence was a proximate cause of the injuries. [n2]

FOOTNOTES:

n1 Warput v. Reading Coal Co., 250 Ill. App. 450, 1928 WL 4169 (1st Dist. 1928), cert. denied.

n2 Benson v. Hoenig, 228 Minn. 412, 37 N.W.2d 422 (1949); MacNeill v. Makos, 366 Pa. 465, 77 A.2d 378 (1951).

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8 Am Jur 2d Automobiles and Highway Traffic § 536

§ 536 Failure to maintain proper distance from preceding vehicle

The driver of a motor vehicle who is following too closely behind a vehicle and is unable to avoid colliding with it when it comes to a stop, may be deemed negligent and liable for injuries to the guest resulting from the accident,[n1] but in some circumstances a finding of negligence may not be supportable.[n2]

FOOTNOTES:

n1 Cohen v. Boxberger, 544 F.2d 701 (4th Cir. 1976); Hamby v. Hamby, 101 Ga. App. 681, 115 S.E.2d 411 (1960); Silberman v. Surrey Cadillac Limousine Service, Inc., 109 A.D.2d 833, 486 N.Y.S.2d 357 (2d Dep't 1985).

n2 Seeds v. Chicago Transit Authority, 409 Ill. 566, 101 N.E.2d 84 (1951); O'Brien v. J.I. Case Co., 140 Neb. 847, 2 N.W.2d 107 (1942); Curry v. Brown, 8 N.C. App. 464, 174 S.E.2d 856 (1970).

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8 Am Jur 2d Automobiles and Highway Traffic § 537

§ 537 Improper application of brakes

The fact that a motorist who is suddenly confronted with another vehicle approaching from the opposite direction on the wrong side of the road,[n1] or with another vehicle that enters an intersection when the motorist is crossing it,[n2] applies the brakes with too much force or without enough force, and a collision ensues, does not constitute negligence rendering him or her liable for injuries sustained by an invited guest, if the emergency doctrine is applicable. However, while there may be situations that call for sudden and forceful baking, doing so without any reason is negligent, rendering the driver liable for injuries sustained by a guest when the driver thereby loses control of the vehicle and collides with a parked motor vehicle.[n3]

Sudden or forceful braking, causing a vehicle to leave the road or to flip over, may under the circumstances constitute negligence rendering the operator liable for injuries sustained by an invited guest.[n4] However, a motorist who acts in good faith and in accordance with his or her best skill in an emergency when a tire blows out may not be held liable for injuries to a guest if the vehicle overturns, merely because the driver's baking may have contributed to the car's over-turning.[n5]

Under some circumstances, failure to apply brakes may also be deemed negligence, as where the driver does not attempt to apply the brakes until after leaving the road, and hit the accelerator pedal instead of the brake pedal.[n6]

FOOTNOTES:

n1 Olivier v. Baldwin, 48 So. 2d 806 (La. Ct. App. 1st Cir. 1950); Havens v. Havens, 266 Wis. 282, 63 N.W.2d 86, 47 A.L.R.2d 1 (1954).

n2 Fitzhugh v. Bushnell, 118 Conn. 677, 174 A. 80 (1934).

n3 Christian v. Walsh, 70 So. 2d 733 (La. Ct. App. 1st Cir. 1954).

n4 Stenson v. Schumacher, 234 Wis. 19, 290 N.W. 285 (1940).

n5 Kelly v. Gagnon, 121 Neb. 113, 236 N.W. 160 (1931).

n6 Simmons v. Jackson, 653 S.W.2d 935 (Tex. App. Fort Worth 1983) (steering wheel purportedly locked up on dry, paved road in middle of long, gradual curve).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 538

§ 538 Overcrowding of vehicle

In several cases involving an action against the owner or operator of a motor vehicle in which the plaintiff was riding, the owner or operator was negligent in allowing the vehicle to be so overcrowded as to make safe operation impossible. [n1]

FOOTNOTES:

n1 Lorance v. Smith, 173 La. 883, 138 So. 871 (1931) (operation on foggy night); Kirr v. Suwak, 336 Pa. 561, 9 A.2d 735 (1939).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 539

§ 539 Defective or unsafe condition of vehicle or its equipment

The owner or operator of a motor vehicle inviting another to ride in the vehicle does not guarantee to the guest a mechanically sound vehicle,[n1] and has no duty to make a prior inspection or repair.[n2] Where there is no evidence that the owner or operator knew, or in the exercise of reasonable care should have known, of the defect, there is thus no liability for injuries sustained by a guest in an accident resulting from a defect in the steering mechanism,[n3] the transmission gears,[n4] a tire,[n5] or a door,[n6] or from the failure of the brakes[n7] or the breaking of a spring.[n8]

Caution: In some states, statutes have been enacted that provide that motor vehicles must be equipped with such parts and equipment so arranged and kept in such a state of repair as to prevent carbon monoxide from entering the interior of the vehicle.[n9] A gratuitous guest may claim the benefit of a violation of such a statute without proof that the owner or operator knew of the defect when the guest entered the vehicle.[n10]

FOOTNOTES:

n1 Perry v. Krumpelman, 309 Ky. 745, 218 S.W.2d 963, 9 A.L.R.2d 1335 (1949); Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951).

n2 Lee v. Lott, 50 Ga. App. 39, 177 S.E. 92 (1934); Olson v. Buskey, 220 Minn. 155, 19 N.W.2d 57 (1945); Marple v. Haddad, 103 W. Va. 508, 138 S.E. 113, 61 A.L.R. 1248 (1927).

n3 Olson v. Buskey, 220 Minn. 155, 19 N.W.2d 57 (1945); Higgins v. Mason, 255 N.Y. 104, 174 N.E. 77 (1930).

n4 Dawson v. Casey, 178 W. Va. 717, 364 S.E.2d 43 (1987).

n5 Eubanks v. Kielsmeier, 171 Wash. 484, 18 P.2d 48 (1933) (overruled on other grounds by, Roberts v. Johnson, 91 Wash. 2d 182, 588 P.2d 201 (1978)).

n6 Perry v. Krumpelman, 309 Ky. 745, 218 S.W.2d 963, 9 A.L.R.2d 1335 (1949) (fact that automobile had been involved in an accident in which the door had been creased did not charge the defendant with knowledge that the door had been hung so that its latch was not working properly); Hoover v. Odom, 252 N.C. 459, 113 S.E.2d 926 (1960).

n7 Helton v. Prater's Adm'r, 272 Ky. 574, 114 S.W.2d 1120 (1938); Clark v. Parker, 161 Va. 480, 171 S.E. 600 (1933).

n8 O'Shea v. Lavoy, 175 Wis. 456, 185 N.W. 525, 20 A.L.R. 1008 (1921) (overruled in part on other grounds by, McConville v. State Farm Mut. Auto. Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962)).

n9 § 201.

n10 Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 540

§ 540 Where owner or operator of vehicle has knowledge of defective condition of vehicle

A gratuitous passenger in a private automobile accepts the automobile as it is, subject to the duty of the host to warn him or her of any known dangerous defect.[n1] Thus, if the owner or operator of a motor vehicle has knowledge of a defective condition that make riding in the vehicle hazardous or unsafe for a guest, and believes or has reason to believe that the guest would not discover the danger, he or she has an obligation to warn the guest of the condition,[n2] and to exercise reasonable care in the operation and control of the vehicle in view of its known defective condition.[n3] Thus, if he or she knew, or in the exercise of reasonable care should have known, that the equipment was defective, and the guest had no knowledge, actual or constructive, of such condition, the owner or operator will be liable for injuries sustained by a guest by reason of the failure of a tire[n4] or the brakes,[n5] a defect in the steering mechanism[n6] or a door,[n7] or a sticking accelerator.[n8]

A driver of a vehicle is not liable to a passenger for alleged negligence in a roll-over accident that occurs when the vehicle stalls on a steep hill during a recreational, off-road excursion, if the vehicle, though having stalled once or twice in the past, had climbed steeper hills on the day of accident without stalling, so that the driver had no reason to expect that it would fail to successfully maneuver the hill on which the roll-over occurred.[n9]

FOOTNOTES:

n1 Setser v. Browning, 214 W. Va. 504, 590 S.E.2d 697 (2003).

n2 Perry v. Krumpelman, 309 Ky. 745, 218 S.W.2d 963, 9 A.L.R.2d 1335 (1949); Murray v. Volkswagen Mid-Am., Inc., 297 So. 2d 236 (La. Ct. App. 3d Cir. 1974); Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951); Holloman v. Holloman, 22 N.C. App. 176, 205 S.E.2d 736 (1974).

n3 Bartolucci v. Falleti, 314 Ill. App. 551, 41 N.E.2d 777 (2d Dist. 1942), judgment aff'd, 382 Ill. 168, 46 N.E.2d 980 (1943).

n4 Henry v. Strobel, 94 Colo. 492, 31 P.2d 319 (1934); Branam v. Traders & General Ins. Co., 344 So. 2d 1073 (La. Ct. App. 3d Cir. 1977); Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951).

n5 Richardson v. Moore, 254 Ill. App. 511, 1929 WL 3361 (4th Dist. 1929).

n6 Nettleton v. Audubon Ins. Co., 637 So. 2d 792 (La. Ct. App. 1st Cir. 1994); In re O'Byrne's Estate, 133 Neb. 750, 277 N.W. 74 (1938); Eastman v. Silva, 156 Wash. 613, 287 P. 656 (1930).

n7 Milestone System v. Gasior, 160 Md. 131, 152 A. 810 (1931); McGee v. Cox, 267 N.C. 314, 148 S.E.2d 132 (1966).

n8 Hennig v. Booth, 4 N.J. Misc. 150, 132 A. 294 (Sup. Ct. 1926).

n9 Setser v. Browning, 214 W. Va. 504, 590 S.E.2d 697 (2003).

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8 Am Jur 2d Automobiles and Highway Traffic § 541

§ 541 Lack of seat belts

Most legislation dealing with automobile seat belt requirements is aimed at the manufacturer and seller, rather than the owner or operator; accordingly, whether an automobile owner or operator has a duty to supply seat belts for use by passengers depends either upon the common law or upon some statutory requirement not directly connected with the seat belt requirement.[n1] The operator of a vehicle may have no duty to equip it with seat belts because the vehicle is old enough not to be covered by seat belt statutes.[n2]

Where the owner and driver of the car in which a passenger was riding, who may not have been at fault in the accident but who may have removed, or consented to the removal of, the car's seat belts prior to the accident, negligence will be established as a matter of law if the passenger can prove that the owner, or someone with the owner's consent, removed the seat belts.[n3]

In a personal injury action arising from an automobile accident in which the plaintiff is an injured passenger, the plaintiff's failure to use an available seat belt may constitute contributory negligence.[n4] Even if a motorist has duty to equip the middle seats in a vehicle with seat belts, a motorist does not breach the duty, as required for an injured passenger to recover in a negligence action, if the passenger chooses to sit in a seat that was not equipped with a seat belt, and the motorist did not direct the passenger to sit in that seat.[n5]

FOOTNOTES:

n1 Tiemeyer v. McIntosh, 176 N.W.2d 819, 49 A.L.R.3d 285 (Iowa 1970).

n2 Brightly v. Lydon, 117 Misc. 2d 854, 459 N.Y.S.2d 398 (Sup 1983).

n3 Twohig v. Briner, 168 Cal. App. 3d 1102, 214 Cal. Rptr. 729 (4th Dist. 1985).

n4 Housley v. Godinez, 4 Cal. App. 4th 737, 6 Cal. Rptr. 2d 111 (5th Dist. 1992).

As to duty of guest to use seat belts, see § 568.

n5 Perez v. Nichols, 2006 ND 20, 708 N.W.2d 884 (N.D. 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 542

§ 542 Duty of driver to ensure seat belt use by minor or adult passengers

Parents must ensure that the seat belts of their minor passengers are buckled, if the passengers are dependent on adult care and supervision for their safety and well-being,[n1] regardless of the absence of a statute requiring seat belt usage at the time of the accident.[n2] However, although ensuring that an available restraint device is buckled may be part of a parent's duty to protect and supervise a child, the duty does not require a parent to install in a vehicle a device intended to restrain children.[n3]

Under certain circumstances there is no duty on the part of the driver of a vehicle to restrain a minor child,[n4] and evidence of a failure to comply with a statutory duty to belt the child may be inadmissible to show negligence.[n5]

A statute prohibiting evidence of violation of seat belt law barred parents of five-year-old child, who was injured in automobile accident, from alleging that driver of vehicle in which child had been riding was negligent in allowing child to ride in back seat of vehicle without wearing safety belt.[n6] Moreover, the failure of a mother to use a child restraint system on her child, even where a statute required its use, may not be negligent.[n7]

The driver of a vehicle does not have a duty to ensure that an adult passenger wears a seat belt, as it would not be fair to impose a duty on the driver for a passenger who was responsible for his or her own actions.[n8] Thus a driver of an automobile does not have a duty to ensure that an adult passenger is wearing a seat belt, where a statute mandating seat belt use explicitly requires only that drivers make sure passengers under age of 18 are secured and provided that it was not intended to change the common law of torts, and if it would be unfair to impose a duty on driver relating to a passenger who was responsible for their own actions.[n9]

FOOTNOTES:

n1 Dellapenta v. Dellapenta, 838 P.2d 1153 (Wyo. 1992).

n2 Costello by Hines v. Marchese, 137 A.D.2d 482, 524 N.Y.S.2d 232 (2d Dep't 1988) (grandparent's failure to fasten grandchild's seat belt before operating vehicle).

n3 Selfe v. Smith, 397 So. 2d 348 (Fla. Dist. Ct. App. 1st Dist. 1981) (rejected on other grounds by, Rivera v. Randle Eastern Ambulance Service, Inc., 446 So. 2d 200 (Fla. Dist. Ct. App. 3d Dist. 1984)).

n4 Hammer v. City of Lafayette, 502 So. 2d 301 (La. Ct. App. 3d Cir. 1987) (but must take reasonable steps to protect minor child); Stewart v. Taylor, 193 A.D.2d 1078, 598 N.Y.S.2d 627 (4th Dep't 1993) (16-year-old passenger); Comer v. Preferred Risk Mut. Ins. Co., 1999 OK 86, 991 P.2d 1006 (Okla. 1999).

A teacher was not negligent in driving an 11-year-old student home from school after the student's suspension for fighting, even after the student failed to buckle his seat belt when the teacher requested him to do so, and thus, the teacher was not liable for injuries the student sustained when he "bailed out"of the teacher's automobile, as the teacher testified that she locked the doors when the student failed to put on his seat belt and that she did not lean over and fasten it for him because she was afraid he might hit her, which fear was reasonable in light of fact that student had been suspended for fighting and had made it explicitly clear that he did not want to be touched by teachers, and it was not foreseeable to teacher that student would jump out. Turner v. D'Amico, 684 So. 2d 1161, 115 Ed. Law Rep. 200 (La. Ct. App. 1st Cir. 1996), writ granted, judgment vacated, 691 So. 2d 70 (La. 1997) and writ not considered, 694 So. 2d 227 (La. 1997).

n5 Patterson v. Horton, 84 Wash. App. 531, 929 P.2d 1125 (Div. 2 1997).

n6 Baker v. Keller, 241 A.D.2d 947, 661 N.Y.S.2d 330 (4th Dep't 1997).

n7 State Farm Mut. Auto. Ins. Co. v. Holland, 324 N.C. 466, 380 S.E.2d 100 (1989) (construing former statute).

n8 Poole v. Janeski, 259 N.J. Super. 83, 611 A.2d 169 (Law Div. 1992).

n9 Poole v. Janeski, 259 N.J. Super. 83, 611 A.2d 169 (Law Div. 1992).

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8 Am Jur 2d Automobiles and Highway Traffic § 543

§ 543 Inexperienced or unskilled driver

The general rule is that the extent of a motorist's duty to a guest is to exercise whatever skill and judgment the motorist possesses, and the guest may not recover from the motorist for injuries from an accident attributable solely to his or her inexperience or lack of skill.[n1] Even when a driver's lack of skill is not known to the guest, and the guest is a young child, there is no liability if the driver exercises whatever skill he or she does possess.[n2] However, the driver may still be liable if the accident resulted from a failure to exercise even that lesser degree of skill.[n3]

However, at least in some jurisdictions, the basic standard of care by which the conduct of a driver of an automobile is to be judged is that of a reasonably prudent person in the same or similar circumstances, and this standard applies regardless of the driver's experience in operating a motor vehicle and regardless of whether the question is one of ordinary negligence, or recklessness under a guest statute.[n4]

FOOTNOTES:

n1 Hall v. Hall, 63 S.D. 343, 258 N.W. 491 (1935); Ebben v. Farmers Mut. Auto. Ins. Co. of Madison, 254 Wis. 249, 36 N.W.2d 75, 10 A.L.R.2d 895 (1949).

n2 Eisenhut v. Eisenhut, 212 Wis. 467, 248 N.W. 440, 91 A.L.R. 549 (1933).

n3 Kinsey v. Kolber, 103 Ill. App. 3d 933, 59 Ill. Dec. 559, 431 N.E.2d 1316 (1st Dist. 1982); Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995) (driver had learner's permit and was operating car under supervision of passenger, but without warning suddenly drove car off the side of road, striking tree); Hall v. Hall, 63 S.D. 343, 258 N.W. 491 (1935); Ebben v. Farmers Mut. Auto. Ins. Co. of Madison, 254 Wis. 249, 36 N.W.2d 75, 10 A.L.R.2d 895 (1949).

n4 Barrow v. Talbott, 417 N.E.2d 917 (Ind. Ct. App. 1981); Jones v. Dague, 252 S.C. 261, 166 S.E.2d 99 (1969).

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8 Am Jur 2d Automobiles and Highway Traffic § 544

§ 544 Injury to guest when hand caught in door

The owner or operator of a motor vehicle may be held liable for injuries to an invited guest whose hand was caught in the vehicle's door, where he or she fails to exercise that degree of care expected of a reasonable person under the circumstances[n1] and the negligence was a proximate cause of the injuries.[n2] An automobile passenger may not recover against a driver of an automobile for injuries sustained when a door opens and then re-closes on the passenger's finger, allegedly from the fact that a seatbelt was inadvertently left outside the automobile when the door was closed, absent a showing that the driver had notice of the hazardous condition allegedly created.[n3] Furthermore, a heightened duty of care is generally owed to children to prevent their hands from being injured in the vehicle door.[n4] However, the operator of a motor vehicle may assume that an adult guest will exercise care for his or her own safety in not getting a hand crushed in a closing door when exiting.[n5] In any event, an ordinary motorist's duty of care in preventing injury by the vehicle's door to the hands of a guest is less exacting than that of a common carrier.[n6]

FOOTNOTES:

n1 Jordan v. Marsee, 256 S.W.2d 25 (Ky. 1953); Wildes v. Wildes, 188 Minn. 441, 247 N.W. 508 (1933).

Where a truck owner had been aware of a defective door lock for some six months prior to the time when his wife was injured when she caught her left finger on the exposed door lock while alighting from the vehicle resulting in a severing of the finger, and where the husband failed to warn the wife of the existence of a defective lock and did not attempt to contradict wife's statement that she was unfamiliar with the truck, the owner was under a clear duty to warn his wife and failure to do so was as much negligence as was his failure to repair the defect, and thus the trial court did not err in instructing the jury as to duty of the owner to warn of defects. Howard v. Howard, 607 S.W.2d 119 (Ky. Ct. App. 1980).

n2 Patterson v. Moffitt, 236 N.C. 405, 72 S.E.2d 863, 34 A.L.R.2d 1169 (1952).

n3 Mitchell v. Gonzalez, 264 A.D.2d 644, 695 N.Y.S.2d 343 (1st Dep't 1999).

n4 Rosenbaum v. Raskin, 45 Ill. 2d 25, 257 N.E.2d 100 (1970); Mundinger v. Sewell, 40 S.W.2d 530 (Mo. Ct. App. 1931); Arnett v. Yeago, 247 N.C. 356, 100 S.E.2d 855 (1957).

n5 Patterson v. Moffitt, 236 N.C. 405, 72 S.E.2d 863, 34 A.L.R.2d 1169 (1952).

n6 Clark v. Shefferly, 346 Mich. 332, 78 N.W.2d 155 (1956).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 545

§ 545 Injury to guest when clothing caught in door

A motorist may be held liable for an injury occurring when the clothing of an invited guest who has alighted is caught in the door of the vehicle as, or just before, the vehicle is put in motion.[n1] However, the motorist must have been negligent in this regard, and cannot be held liable if in exercise of reasonable care would not require the motorist to have anticipated or guarded against the injury.[n2]

FOOTNOTES:

n1 Ward v. Dwyer, 177 Kan. 212, 277 P.2d 644 (1954); Swank v. Jordan, 71 So. 2d 636, 43 A.L.R.2d 1277 (La. Ct. App. 2d Cir. 1954).

n2 Swank v. Jordan, 71 So. 2d 636, 43 A.L.R.2d 1277 (La. Ct. App. 2d Cir. 1954); Dyer v. Heatwole, 225 Md. 507, 171 A.2d 241 (1961).

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8 Am Jur 2d Automobiles and Highway Traffic § 546

§ 546 Guest injured when falling from moving vehicle or when extending part of body outside vehicle

The owner or operator of a vehicle owes the guest a duty to exercise reasonable care in its operation, and not to unreasonably expose him or her to danger by increasing the hazard of travel has been applied in regard to injuries to a guest resulting from his or her fall through the door of a moving automobile.[n1] The operator must exercise reasonable care in attempting to close the doors, and may be held liable for injuries sustained by a guest who falls out of the moving vehicle when the door flies open because it was not securely latched.[n2]

The doctrine of res ipsa loquitor is inappropriate in an automobile accident that arises from a passenger falling from the vehicle, as the accident must be one that ordinarily could not happen except through defects in the car or fault in its operation.[n3]

The responsibility of a driver to ensure that the doors of the vehicle are securely fastened to protect a child passenger is not altered by the fact that another adult is present in the vehicle, as the standard of care imposed on the driver of the vehicle as to minor passengers is the same as that for adult passengers.[n4] In general, however, the operator of an automobile is under no duty to check that the doors of the vehicle are securely fastened,[n5] and thus is not liable for injuries sustained by a child falling out of the moving vehicle when the door is thrown open, if the child old enough to appreciate that the door should be fastened.[n6] However, negligence may be present if the driver knew that the door was defective but failed to warn the passengers.[n7]

An operator may incur liability to a passenger who is injured when part of his or her body becomes extended outside the vehicle.[n8] However, where a passenger has chosen a position of peril, the operator of a vehicle has no duty to try to prevent the passenger from being injured, and thus the driver of a vehicle has no duty to stop a passenger from exiting the moving truck by climbing out an open window.[n9]

FOOTNOTES:

n1 Newton v. Wetherby's Adm'x, 287 Ky. 400, 153 S.W.2d 947 (1941); Wilson v. Tabor, 656 S.W.2d 299 (Mo. Ct. App. W.D. 1983); Smith v. Babb, 91 N.H. 472, 22 A.2d 330 (1941); Mathers v. Younger, 1936 OK 302, 177 Okla. 294, 58 P.2d 857 (1936); Smith v. Prater, 206 Va. 693, 146 S.E.2d 179 (1966).

n2 Steinhaus v. Steinhaus, 145 Conn. 95, 139 A.2d 55 (1958).

As to liability where a door fails to latch properly because of a defect, see § 539.

n3 Beauclair v. Travelers Ins. Co., 480 So. 2d 796 (La. Ct. App. 3d Cir. 1985), writ denied, 481 So. 2d 1337 (La. 1986), reconsideration not considered, 483 So. 2d 1016 (La. 1986).

n4 Phomvongsa by Phomvongsa v. Phounsaveth, 72 Or. App. 518, 696 P.2d 567 (1985).

n5 Newton v. Wetherby's Adm'x, 287 Ky. 400, 153 S.W.2d 947 (1941); Fontenot v. Fidelity General Ins. Co., 185 So. 2d 896 (La. Ct. App. 3d Cir. 1966), writ refused, 249 La. 578, 187 So. 2d 740 (1966).

n6 Newton v. Wetherby's Adm'x, 287 Ky. 400, 153 S.W.2d 947 (1941).

n7 Bordelon v. Safeway Ins. Co., 380 So. 2d 1379 (La. Ct. App. 3d Cir. 1980), writ refused, 384 So. 2d 799 (La. 1980) (driver operated vehicle at a speed that caused the passenger to fall against door).

n8 Istre v. ABC Ins. Co., 517 So. 2d 1225 (La. Ct. App. 4th Cir. 1987).

n9 Senese v. Peoples, 626 F. Supp. 465 (M.D. Pa. 1985).

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8 Am Jur 2d Automobiles and Highway Traffic § 547

§ 547 Guest riding on or in unusual position

The driver of a vehicle with a guest passenger riding in an unusual position is required to use due care commensurate to the passenger's insecure position on the vehicle.[n1] In some cases, the defendant was, as a matter of law, not negligent.[n2] However, a driver may be found negligent per se in these circumstances for violating a regulation pertaining to the vehicle.[n3]

The fact that the passenger was intoxicated does not generally place any special duty of care on the driver in addition to that owed to sober passengers, as the driver of a vehicle is not the insurer of a passenger's safety merely because the passenger is failing to exercise due care.[n4]

FOOTNOTES:

n1 Billeaud v. Poledore, 603 So. 2d 754 (La. Ct. App. 1st Cir. 1992), writ denied, 608 So. 2d 176 (La. 1992).

n2 Stephens v. Eades, 314 S.W.2d 201 (Ky. 1958) (running board); Leman v. Allstate Ins. Co., 522 So. 2d 696 (La. Ct. App. 5th Cir. 1988) (rear of vehicle); Marquez v. Gomez, 116 N.M. 626, 866 P.2d 354 (Ct. App. 1991) (rear bumper); Giessel v. Columbia County, 250 Wis. 260, 26 N.W.2d 650 (1947) (running board).

n3 Garcia v. Brulotte, 25 Wash. App. 818, 609 P.2d 976 (Div. 3 1980), judgment rev'd on other grounds, 94 Wash. 2d 794, 620 P.2d 99 (1980).

n4 Stephenson v. Ledbetter, 596 N.E.2d 1369 (Ind. 1992).

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8 Am Jur 2d Automobiles and Highway Traffic § 548

§ 548 Guest injured while or immediately after alighting

The operator of a motor vehicle must exercise reasonable care toward an invited guest who alights from the vehicle, to warn him or her of the dangers of other traffic,[n1] particularly where the guest is a child,[n2] or where the guest alights under the direction of the operator.[n3]

However, even if the operator of the vehicle has been negligent, liability for injury to or the death of the guest alighting cannot be grounded on such negligence unless the guest's injury or death was proximately caused thereby.[n4] A driver may not have a duty to see that a passenger safely exits the vehicle and crosses the road, under certain circumstances.[n5]

Observation: Since the operator of a motor vehicle is required to exercise reasonable or ordinary care for the safety of pedestrians in the public way,[n6] it makes no difference in the degree of care required of the operator, in those jurisdictions that require the operator of a motor vehicle to exercise reasonable or ordinary care for the safety of an invited guest,[n7] whether a guest who has alighted is still considered to be a guest or is considered to be a pedestrian.

The operator of motor vehicle who fulfills the duty to provide a child passenger with a safe place to alight from the vehicle is not negligent when the child is struck and killed by another vehicle while crossing the street after alighting from the vehicle.[n8]

FOOTNOTES:

n1 Chatterton v. Pocatello Post, 70 Idaho 480, 223 P.2d 389, 20 A.L.R.2d 783 (1950); Smith v. Travelers Ins. Co., 430 So. 2d 55 (La. 1983) (placing vehicle in reverse).

n2 Harrison v. Gamatero, 52 Cal. App. 2d 178, 125 P.2d 904 (2d Dist. 1942); Nelson v. Williams, 300 Minn. 143, 218 N.W.2d 471 (1974).

n3 Webster v. Nelson, 96 Colo. 6, 38 P.2d 908 (1934); Smith v. Willis-Gertrude Geddes Funeral Homes, Inc., 389 So. 2d 1268 (La. 1980) (no liability where passenger unexpectedly tilts jump seat in limousine, causing injury).

n4 Chatterton v. Pocatello Post, 70 Idaho 480, 223 P.2d 389, 20 A.L.R.2d 783 (1950); Bakken v. Lewis, 223 Minn. 329, 26 N.W.2d 478 (1947); Stewart v. McGarvey, 348 Pa. 221, 34 A.2d 901 (1943).

n5 Employers Liability Assur. Corp. v. Smith, 322 S.W.2d 126 (Ky. 1959); Wicker v. Southern Farm Bureau Cas. Ins. Co., 337 So. 2d 1233 (La. Ct. App. 1st Cir. 1976), writ not considered, 339 So. 2d 853 (La. 1976).

n6 See generally §§ 441 et seq.

n7 § 524.

n8 Loder v. Greco, 5 A.D.3d 978, 774 N.Y.S.2d 231 (4th Dep't 2004).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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West's Key Number Digest, Automobiles [westkey]181(1)
Liability of driver of private automobile for injury to occupant struck by another vehicle after alighting, 20 A.L.R.2d 789

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8 Am Jur 2d Automobiles and Highway Traffic § 549

§ 549 Unloading passengers in a safe area

The operator of a private passenger vehicle owes to the passengers a duty of reasonable care when providing a safe place to alight.[n1] Thus, the operator of a motor vehicle who has stopped in order to permit an invited guest to alight must give the guest a reasonable opportunity to reach a safe place before starting up again, and the failure to do so constitutes negligence rendering the operator liable for injuries sustained by the guest when struck by the vehicle in which he or she had been riding.[n2] Similarly, the operator of a vehicle, in allowing passengers to unload in a safe place, may not stop the car in a manner likely to create a hazard to those alighting.[n3] The operator of a private passenger vehicle may breach the duty of reasonable care in providing a safe place for a passenger to alight by dropping the passenger off at a parking lot near the passenger's car, where the driver failed to notice, or shouldn't have noticed, the dangerous condition of the parking lot where the passenger exited.[n4]

A driver who volunteers to transport a child assumes the type of control over the child's safety that creates a special relationship and thus a duty to protect; thus, a driver may be liable for negligence in allowing the child to exit the vehicle in an unsafe area.[n5] However, there is authority that a driver's duty to the passenger ends when the passenger exits the vehicle to a place of safety, even if the passenger is a child.[n6]

Definition: "Place of safety"generally means an area of firm ground that is itself reasonably safe.[n7]

FOOTNOTES:

n1 Liebman v. Heiss, 256 A.D.2d 449, 682 N.Y.S.2d 82 (2d Dep't 1998).

n2 Shinofield v. Curtis, 245 Iowa 1352, 66 N.W.2d 465, 50 A.L.R.2d 964 (1954); Williams v. Williams, 210 Wis. 304, 246 N.W. 322 (1933).

n3 Colson v. Shaw, 301 N.C. 677, 273 S.E.2d 243 (1981).

n4 Liebman v. Heiss, 256 A.D.2d 449, 682 N.Y.S.2d 82 (2d Dep't 1998) (no liability where insufficient evidence that defendant noticed, or should have noticed, icy conditions).

n5 Terrell v. LBJ Electronics, 188 Mich. App. 717, 470 N.W.2d 98 (1991).

A driver who offers a younger child a ride assumes the duty to exercise due care in delivering the child safely; thus, when the driver fails to stop at the child's house and the child jumps from the bed of a truck and is injured, the driver may be found to have breached a duty of care owed to the child. Jacobsen v. McMillan, 124 N.C. App. 128, 476 S.E.2d 368 (1996).

n6 Cooperider v. Peterseim, 103 Ohio App. 3d 476, 659 N.E.2d 882 (9th Dist. Medina County 1995).

n7 Cooperider v. Peterseim, 103 Ohio App. 3d 476, 659 N.E.2d 882 (9th Dist. Medina County 1995).

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4. Occupants of Vehicles; Guests
c. Guest Statutes

8 Am Jur 2d Automobiles and Highway Traffic § 550

§ 550 Generally

The general common-law rule that the owner or operator of a motor vehicle owes to an invited gratuitous guest the duty of exercising ordinary or reasonable care to avoid injuring him or her[n1] has been abrogated in a small minority of states through so-called "guest"statutes, which limit the liability of the owner or operator for injury to or the death of an invited gratuitous guest to cases where the harm arose from the owner or operator's intentional,[n2] or heedlessness or reckless disregard for the consequences,[n3] or willful or wanton misconduct,[n4] or gross negligence,[n5] or gross and wanton negligence,[n6] or intoxication.[n7]

FOOTNOTES:

n1 § 524.

n2 Shea v. Olson, 185 Wash. 143, 53 P.2d 615, 111 A.L.R. 998 (1936), adhered to on reh'g en banc, 186 Wash. 700, 59 P.2d 1183 (1936).

n3 Rowan v. Allen, 134 Tex. 215, 134 S.W.2d 1022 (Comm'n App. 1940).

n4 Ex parte Anderson, 682 So. 2d 467 (Ala. 1996).

n5 Rogers v. Brown, 129 Neb. 9, 260 N.W. 794 (1935).

n6 Thomas v. Hughes, 177 Kan. 347, 279 P.2d 286, 65 A.L.R.2d 306 (1955).

n7 Norden v. Henry, 167 Colo. 274, 447 P.2d 212 (1968) (intoxication must be related to impairment of capacity to operate motor vehicle).

SUPPLEMENT:

Cases
Driver who waved to friends and lost control of truck did not engage in "wanton misconduct" within the meaning of guest statute relieving driver of liability for passenger's injuries unless the injuries were caused by willful or wanton misconduct; even though driver was aware of need for concentration and effect of distractions and knew how to proper-

ly and safely operate an automobile, driver's actions in causing the single-vehicle accident were inattentive, thoughtless, or heedless, i.e., negligent. Phillips ex rel. Phillips v. United Services Auto. Ass'n, 988 So. 2d 464 (Ala. 2008).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
4. Occupants of Vehicles; Guests
c. Guest Statutes

8 Am Jur 2d Automobiles and Highway Traffic § 551

§ 551 Purpose of guest statutes

Guest statutes are intended to prevent generous drivers, who offer transport to guests, from being sued in cases in which the question of negligence is a close one.[n1] Another purpose is to prevent fraud and collusion between gratuitous guests and the owners or operators of motor vehicles, which results in unwarranted charges to automobile liability insurers.[n2]

FOOTNOTES:

n1 Ex parte Anderson, 682 So. 2d 467 (Ala. 1996); Roe By and Through Roe v. Lewis, 416 So. 2d 750 (Ala. 1982).

n2 Lloyd v. Runge, 186 Kan. 54, 348 P.2d 594 (1960).

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8 Am Jur 2d Automobiles and Highway Traffic § 552

§ 552 Generally

Although passengers are not chargeable with the driver's negligence,[n1] they are not absolved from all personal care for their own safety, but are under the duty to exercise ordinary care to avoid injury,[n2] that is, the care that an ordinarily prudent person would exercise under like circumstances.[n3] The failure to do so is negligent, and may bar or diminish recovery against a third party[n4] or the owner or operator of the vehicle,[n5] except under certain guest statutes,[n6] for injuries sustained in an accident, if the negligent act was a proximate cause of the accident.[n7]

FOOTNOTES:

n1 As to imputing the driver's negligence to a guest, see §§ 705 et seq.

n2 Peterson v. Davis, 254 Iowa 1359, 121 N.W.2d 111 (1963); Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960).

n3 Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105, 163 A.L.R. 697 (1946); Remmenga v. Selk, 150 Neb. 401, 34 N.W.2d 757 (1948); Tabor v. O'Grady, 59 N.J. Super. 330, 157 A.2d 701 (App. Div. 1960), on reh'g, 61 N.J. Super. 446, 161 A.2d 267 (App. Div. 1960); Balle v. Smith, 81 Utah 179, 17 P.2d 224 (1932); Virginia Transit Co. v. Simmons, 198 Va. 122, 92 S.E.2d 291 (1956).

n4 Robbins v. McCarthy, 581 N.E.2d 929 (Ind. Ct. App. 1991); Ferguson v. Lang, 126 Kan. 273, 268 P. 117, 63 A.L.R. 1423 (1928); Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105, 163 A.L.R. 697 (1946); Haynie v. Olson Drilling Co., 1941 OK 336, 189 Okla. 527, 118 P.2d 230 (1941); Stillwater Milling Co. v. Templin, 1938 OK 203, 182 Okla. 309, 77 P.2d 732 (1938); Stevens v. Nurenburg, 117 Vt. 525, 97 A.2d 250 (1953).

As to the effect, generally, of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947 to 949.

n5 Campbell v. Van Roekel, 347 N.W.2d 406 (Iowa 1984); Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954); White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953); Dashiell v. Moore, 177 Md. 657, 11 A.2d 640 (1940); Schwartz v. Johnson, 152 Tenn. 586, 280 S.W. 32, 47 A.L.R. 323 (1926).

n6 § 558.

n7 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953).

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8 Am Jur 2d Automobiles and Highway Traffic § 553

§ 553 Right to assume driver will exercise care

A person riding in a vehicle driven by another has the right to assume that the driver will exercise proper care and caution, absent an indication to the contrary.[n1] Thus, a guest is entitled to be confident in the driver's operation of the vehicle and to assume that the driver is alert to other traffic, until it becomes reasonably apparent that the driver is inattentive.[n2]

Observation: It is not negligent for the guest to accept the driver's manner of operating the vehicle unless the driver's fault or incompetence is so obvious as to demand effort on the guest's part to abate the danger.[n3]

FOOTNOTES:

n1 Lindley v. Sink, 218 Ind. 1, 30 N.E.2d 456, 2 A.L.R.2d 772 (1940); Shinofield v. Curtis, 245 Iowa 1352, 66 N.W.2d 465, 50 A.L.R.2d 964 (1954); White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953); Andre v. Pomeroy, 35 N.Y.2d 361, 362 N.Y.S.2d 131, 320 N.E.2d 853 (1974); Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960); Virginia Transit Co. v. Simmons, 198 Va. 122, 92 S.E.2d 291 (1956).

n2 Dennis v. Wood, 357 Mo. 886, 211 S.W.2d 470 (1948).

n3 Woodman v. Peck, 90 N.H. 292, 7 A.2d 251, 122 A.L.R. 1402 (1939).

SUPPLEMENT:

Cases
Occupant of vehicle may properly assume that the driver will exercise proper care and caution, and generally, occupant need not keep a lookout for approaching vehicles and must only act as a reasonable person would in the same or similar circumstances. Burton v. Bridwell, 938 N.E.2d 1 (Ind. Ct. App. 2010).

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8 Am Jur 2d Automobiles and Highway Traffic § 554

§ 554 Duty of passenger to take action prevent injury to him- or herself

Although a guest usually has no duty to direct or control the driver of a motor vehicle who has physical control of the vehicle,[n1] and may assume that the driver will exercise proper caution, there is a point at which passive reliance on the driver may properly end, and a guest's duty to exercise ordinary care for his or her own safety begins.[n2] The precise point at which this duty to actively intervene commences is largely a factual question to be resolved by the jury on the basis of the available facts and circumstances.[n3]

What a person should do to protect themselves from injury while riding as a guest in another's vehicle depends on the facts and circumstances of each case,[n4] especially since the guest passenger has no control over the management and operation of the vehicle.[n5] Since the guest's duty depends on the special circumstances, and there are varied and conflicting notions of the propriety of interference in the management of the vehicle, it is unusual for a person in such circumstances to be deemed negligent as a matter of law.[n6]

Ordinarily, the issue of whether a guest in a vehicle that was involved in an accident was negligent is one for the jury to decide in light of all the surrounding facts and circumstances,[n7] unless the facts of the accident, and the inferences to be drawn from them, are manifestly clear.[n8]

FOOTNOTES:

n1 § 554.

n2 Rennolds' Adm'x v. Waggener, 271 Ky. 300, 111 S.W.2d 647 (1937); Kapla v. Lehti, 225 Minn. 325, 30 N.W.2d 685 (1948); Tabor v. O'Grady, 59 N.J. Super. 330, 157 A.2d 701 (App. Div. 1960), on reh'g, 61 N.J. Super. 446, 161 A.2d 267 (App. Div. 1960); Hanisch v. Body, 77 S.D. 265, 90 N.W.2d 924 (1958).

n3 Hanisch v. Body, 77 S.D. 265, 90 N.W.2d 924 (1958).

n4 Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960).

n5 Willbanks v. Laster, 211 Ark. 88, 199 S.W.2d 602 (1947); Smith v. Williams, 180 Or. 626, 178 P.2d 710, 173 A.L.R. 1220 (1947); Stevens v. Nurenburg, 117 Vt. 525, 97 A.2d 250 (1953).

n6 Powell v. Berry, 145 Ga. 696, 89 S.E. 753 (1916).

n7 Powell v. Berry, 145 Ga. 696, 89 S.E. 753 (1916); Lindley v. Sink, 218 Ind. 1, 30 N.E.2d 456, 2 A.L.R.2d 772 (1940); Finley v. Lowden, 224 Iowa 999, 277 N.W. 487 (1938); Sharp v. Sproat, 111 Kan. 735, 208 P. 613, 26 A.L.R. 1421 (1922); Howard v. Howard, 607 S.W.2d 119 (Ky. Ct. App. 1980); Smith v. Williams, 180 Or. 626, 178 P.2d 710, 173 A.L.R. 1220 (1947); Hanisch v. Body, 77 S.D. 265, 90 N.W.2d 924 (1958); Archer v. Chicago, M., St. P. & P. Ry. Co., 215 Wis. 509, 255 N.W. 67, 95 A.L.R. 851 (1934).

But see Emery v. Northern Pac. R. Co., 407 F.2d 109 (8th Cir. 1969), noting that under North Dakota law the negligence of a driver is not ordinarily to be imputed to a guest.

n8 Rayfield v. Lawrence, 253 F.2d 209, 68 A.L.R.2d 868 (4th Cir. 1958); Lindley v. Sink, 218 Ind. 1, 30 N.E.2d 456, 2 A.L.R.2d 772 (1940); Minnich v. Easton Transit Co., 267 Pa. 200, 110 A. 273, 18 A.L.R. 296 (1920).

SUPPLEMENT:

Cases

A passenger in a motor vehicle generally has only two duties: (1) not to interfere with the driver's operations, and (2) to protect himself or herself. Champion ex rel. Ezzo v. Dunfee, 398 N.J. Super. 112, 939 A.2d 825 (App. Div. 2008), certification granted (N.J. Apr. 17, 2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 555

§ 555 Compared with duty of driver to protect guest passenger

Although the standard of care required of a guest is to exercise reasonable or ordinary care for his or her own safety, the precautions required to be taken by a guest are less than those required of the driver.[n1] Since the duty of driving and the corresponding duty of exercising due care for the safety of a guest rest primarily on the driver,[n2] a guest should not try to supervise or direct the driver, except where the action is reasonably necessary for the guest's own safety.[n3]

FOOTNOTES:

n1 Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954); Lawson v. Benton, 272 N.C. 627, 158 S.E.2d 805 (1968); Stevens v. Nurenburg, 117 Vt. 525, 97 A.2d 250 (1953); Virginia Transit Co. v. Simmons, 198 Va. 122, 92 S.E.2d 291 (1956).

n2 Kapla v. Lehti, 225 Minn. 325, 30 N.W.2d 685 (1948).

n3 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953); Kapla v. Lehti, 225 Minn. 325, 30 N.W.2d 685 (1948).

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(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 556

§ 556 Owner of vehicle as passenger

If a person riding in a vehicle driven by another is the owner, he or she is not chargeable by reason of that ownership with the negligence of the driver so as to be barred from recovering from the driver for the driver's negligence,[n1] but he or she must, nevertheless, like any other person, take reasonable precautions to protect himself from injury.[n2] Thus, the owner may not merely sit by and, when injured by the negligent operation, escape the consequences of his or her own lack of due care, as owner ordinarily has the duty and ability to control and direct the manner in which the vehicle is to be operated.[n3]

FOOTNOTES:

n1 § 659.

n2 Sorrell v. Moore, 251 N.C. 852, 112 S.E.2d 254 (1960).

n3 Sorrell v. Moore, 251 N.C. 852, 112 S.E.2d 254 (1960).

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d. Negligence of Guest; Assumption of Risk
(2) Guest Statutes

8 Am Jur 2d Automobiles and Highway Traffic § 557

§ 557 Plaintiff's negligence as affecting action based on driver's recklessness or willful or wanton misconduct

The general rule that the guest's ordinary negligence will not bar recovery in an action grounded in the driver's recklessness or willful and wanton misconduct[n1] has been recognized and applied in several jurisdictions under automobile guest statutes that limit the recovery by an invited guest in a host to circumstances evincing recklessness or misconduct.[n2] However, in some states, even though the guest's ordinary negligence may not bar recovery under a guest statute for injuries resulting from the host's recklessness or willful or wanton misconduct, an action will be barred if the guest's lack of care for his or her own safety amounts to recklessness or willfulness equal to that of the host, the doctrine sometimes being characterized as that of "comparative misconduct."[n3] Furthermore, some courts have entirely rejected a guest statute principle that the plaintiff's ordinary negligence still allows recovery for injuries resulting from the defendant's recklessness or willful or wanton misconduct.[n4]

FOOTNOTES:

n1 § 948.

n2 Smith v. Furness, 117 Conn. 97, 166 A. 759 (1933); Hodge v. Borden, 91 Idaho 125, 417 P.2d 75 (1966); Bohnsack v. Driftmier, 243 Iowa 383, 52 N.W.2d 79 (1952); Long v. Foley, 180 Kan. 83, 299 P.2d 63 (1956); Finkler v. Zimmer, 258 Mich. 336, 241 N.W. 851 (1932); Stewart v. Farley, 364 Mo. 921, 269 S.W.2d 896 (1954) (applying Illinois law).

n3 Williams v. Carr, 68 Cal. 2d 579, 68 Cal. Rptr. 305, 440 P.2d 505 (1968) (guest's action in taking one or two drinks with host-driver who later falls asleep at the wheel is not to contributory willful misconduct); Lane v. Bobis, 340 Ill. App. 10, 91 N.E.2d 106 (3d Dist. 1950); Lynch v. Alexander, 242 S.C. 208, 130 S.E.2d 563 (1963).

n4 Schiller v. Rice, 151 Tex. 116, 246 S.W.2d 607 (1952).

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Comment Note. -- Contributory negligence, assumption of risk, or related defenses as available in action based on automobile guest statute or similar common-law rule, 44 A.L.R.2d 1342
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1373 to 1386 (Instruction to jury -- Contributory negligence)

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C. Persons Injured
4. Occupants of Vehicles; Guests
d. Negligence of Guest; Assumption of Risk
(2) Guest Statutes

8 Am Jur 2d Automobiles and Highway Traffic § 558

§ 558 Guest's negligence as affecting action based on driver's gross negligence

Under guest statutes that characterize the host's conduct as "gross negligence,"rather than, or in addition to, willful or wanton misconduct, negligence by the guest seeking recovery is a recognized defense.[n1] Some courts that have developed a common-law rule making an automobile host liable for injuries sustained by an invited guest only for "gross negligence"[n2] have also recognized the negligence of the guest seeking recovery as a good defense.[n3] However, in jurisdictions that have adopted a comparative negligence regime,[n4] such a rule applies if an action is brought under a guest statute based upon gross negligence.[n5]

Observation: A guest statute is not impliedly repealed by the enactment of comparative negligence legislation.[n6]

FOOTNOTES:

n1 Henley v. Carter, 63 So. 2d 192, 44 A.L.R.2d 1339 (Fla. 1953); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943).

n2 § 524.

n3 Oast v. Mopper, 58 Ga. App. 506, 199 S.E. 249 (1938); Oppenheim v. Barkin, 262 Mass. 281, 159 N.E. 628, 61 A.L.R. 1228 (1928).

n4 § 949.

n5 Sharp v. Johnson, 248 Minn. 518, 80 N.W.2d 650 (1957) (applying Nebraska statute); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943); McConville v. State Farm Mut. Auto. Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962).

n6 Nehring v. Russell, 582 P.2d 67 (Wyo. 1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 559

§ 559 Generally

The principle that a person who voluntarily assumes the risk of injury from a known danger is barred from recovering for resulting injuries[n1] has been applied to bar recovery by a guest riding in a motor vehicle for injuries sustained from the negligence of the host.[n2]

Although negligence and assumption of risk are somewhat related doctrines, and may even coexist in a particular case, the assumption by the occupant of a motor vehicle of the risk of the driver's negligence is not necessarily itself negligence.[n3] For the doctrine of assumption of risk to apply to an automobile guest, there must be: (1) a hazard or danger inconsistent with the safety of the guest; (2) knowledge and appreciation of the hazard by the guest; (3) acquiescence or willingness on the part of the guest to proceed in the face of danger;[n4] and (4) the known danger must be a proximate cause of the injury.[n5] Whether the principle of assumption of risk is justified as a consent to receiving harm, as actual consent only to being exposed to a danger that one hopes will not materialize in harm, or as a limitation on the duty of a host to a guest, the doctrine reflects a policy that an automobile host should not be held to as high a standard of responsibility for injury to a guest as for injury to other types of victims.[n6]

In jurisdictions that recognize a rule of assumption of risk as distinct from the defense of negligence on the part of the injured party, assumption of risk is generally available to an automobile host charged with willful or wanton misconduct or recklessness under a guest statute,[n7] even though the guest's negligence might not bar his or her recovery.[n8]

FOOTNOTES:

n1 See Am. Jur. 2d, Negligence §§ 804 et seq.

n2 Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943); Cross v. Foster, 378 P.2d 903 (Wyo. 1963) (driver appeared drowsy).

n3 Woodman v. Peck, 90 N.H. 292, 7 A.2d 251, 122 A.L.R. 1402 (1939).

n4 Bugh v. Webb, 231 Ark. 27, 328 S.W.2d 379, 84 A.L.R.2d 444 (1959); King v. Barrett, 185 N.W.2d 210 (Iowa 1971).

n5 Major v. Hoppe, 209 Va. 193, 163 S.E.2d 164 (1968).

n6 McConville v. State Farm Mut. Auto. Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962).

n7 Henley v. Carter, 63 So. 2d 192, 44 A.L.R.2d 1339 (Fla. 1953); Evans v. Holsinger, 242 Iowa 990, 48 N.W.2d 250, 28 A.L.R.2d 1434 (1951); Gleason v. Baack, 137 Neb. 272, 289 N.W. 349 (1939).

n8 § 557.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 560

§ 560 Assumption of risk as to motorcycles and snowmobiles

That a guest thought it necessary to warn the operator about his or her driving before getting on the motorcycle does not show an assumption of the risk of injuries arising from the operator's negligent or careless driving.[n1] However, where a passenger assumes a position on a one-seated motorcycle that is hazardous to him- or herself, the passenger is deemed to have assumed the responsibility for any injury to which the dangerous position contributes.[n2] With respect to an injury to a guest-passenger upon a snowmobile, the incidental risks associated with snowmobiling are not so well known as to require the application of the doctrine of assumption of risk to snowmobile passengers.[n3]

FOOTNOTES:

n1 McJunkin v. Chase, 11 Utah 2d 238, 357 P.2d 490 (1960).

n2 McMahon v. Hamilton, 204 Cal. 228, 267 P. 546 (1928).

n3 Olson v. Hansen, 299 Minn. 39, 216 N.W.2d 124 (1974).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 561

§ 561 Duty to watch for, and warn of, danger

Although riding in a motor vehicle driven by another requires the exercise of reasonable care,[n1] which may require the passenger to maintain some sort of lookout,[n2] the duty is not the same strict legal obligation to maintain a lookout as belongs to the driver.[n3] A front-seat passenger ordinarily has no greater duty of personal vigilance than the rear-seat passenger.[n4]

Observation: The passenger has the right to assume that the driver will exercise reasonable care,[n5] and is under no duty to supervise the driving and to look out for sudden or unexpected dangers that may arise,[n6] in the absence of knowledge that the driver is unfit or incompetent to drive.[n7]

A guest is not negligent if, by observing as the situation permits, and as a prudent person would, he or she fails to discover a peril in time to avoid an accident.[n8] Guests are not required in the ordinary operation of a motor vehicle to be constantly alert in order to raise an instant alarm if danger should arise.[n9] Indeed, such conduct may readily result in more harm than good by annoying or distracting the driver.[n10] Thus, a person riding in a motor vehicle driven by another is required to warn the driver of the imminence of danger only if a reasonably prudent person under the same circumstances would have realized the danger and raised an alert,[n11] and only if the driver is not aware of the danger or the guest has reason to believe that the driver is not aware of it.[n12]

FOOTNOTES:

n1 § 554.

n2 Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960).

n3 Happy v. Blanton, 303 S.W.2d 633 (Mo. 1957); Ford v. Etheridge, 71 N.M. 204, 377 P.2d 386 (1962); Hanisch v. Body, 77 S.D. 265, 90 N.W.2d 924 (1958); Major v. Hoppe, 209 Va. 193, 163 S.E.2d 164 (1968).

n4 Yarabek v. Brown, 357 Mich. 120, 97 N.W.2d 797 (1959).

n5 § 553.

n6 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953); Jones v. Daniels, 328 Mich. 402, 43 N.W.2d 906 (1950).

n7 § 578.

n8 Bessey v. Salemme, 302 Mass. 188, 19 N.E.2d 75, 123 A.L.R. 1156 (1939); Kapla v. Lehti, 225 Minn. 325, 30 N.W.2d 685 (1948).

n9 Lindley v. Sink, 218 Ind. 1, 30 N.E.2d 456, 2 A.L.R.2d 772 (1940); Darling v. Browning, 120 W. Va. 666, 200 S.E. 737 (1938).

n10 Darling v. Browning, 120 W. Va. 666, 200 S.E. 737 (1938).

n11 Lindley v. Sink, 218 Ind. 1, 30 N.E.2d 456, 2 A.L.R.2d 772 (1940); White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953); Happy v. Blanton, 303 S.W.2d 633 (Mo. 1957).

n12 Jones v. Daniels, 328 Mich. 402, 43 N.W.2d 906 (1950); Moore v. Kopp, 400 S.W.2d 176 (Mo. 1966); Otterbeck v. Lamb, 85 Nev. 456, 456 P.2d 855 (1969); Adams v. Morris, 584 S.W.2d 712 (Tex. Civ. App. Tyler 1979).

SUPPLEMENT:

Cases

Until there is evidence of unsafe driving, there is no duty on the passenger's part to supervise the driving, to keep a lookout for danger, or to warn of a danger. Champion ex rel. Ezzo v. Dunfee, 398 N.J. Super. 112, 939 A.2d 825 (App. Div. 2008), certification granted (N.J. Apr. 17, 2008).

Front seat passenger bore no special relationship to intoxicated driver or injured passenger in rear seat and owed no duty to fellow passenger to prevent driver from operating his car, where front seat passenger never interfered with driver's operation of the vehicle, was not using driver or the vehicle for her own purposes, and told driver to slow down and where rear passenger apparently goaded driver into speeding. Champion ex rel. Ezzo v. Dunfee, 398 N.J. Super. 112, 939 A.2d 825 (App. Div. 2008), certification granted (N.J. Apr. 17, 2008).

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8 Am Jur 2d Automobiles and Highway Traffic § 562

§ 562 At intersections

Ordinarily, no duty is imposed upon a person riding in a motor vehicle driven by another to keep a lookout for impending danger at street and highway intersections, and, thus, if an accident occurs at an intersection, the passenger will not deemed negligent merely for failing to keep any watch or observe the condition of traffic.[n1] However, under some circumstances a person riding in a motor vehicle driven by another may be negligent in a collision with another motor vehicle at an intersection, although the law does not hold the guest equally bound with the driver to watch for the approach of other traffic at intersections, for this would require such constant interference with the driver as to increase, rather than diminish, the danger.[n2]

FOOTNOTES:

n1 Campion v. Eakle, 79 Colo. 320, 246 P. 280, 47 A.L.R. 289 (1926).

n2 Epperson v. Wright, 277 Ky. 205, 126 S.W.2d 123 (1939); Volz v. Dresser, 150 Pa. Super. 371, 28 A.2d 493 (1942).

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8 Am Jur 2d Automobiles and Highway Traffic § 563

§ 563 Signs and signals

A person riding in a vehicle driven by another must keep some lookout for traffic signals and warn the driver of their existence and purport,[n1] or protest the driver's conduct in disregarding them or threatening to disregard them,[n2] and thus the guest may be negligent in failing to exercise that duty.[n3] However, a person riding in a vehicle driven by another is bound to exercise only ordinary care for his or her own safety and, in the absence of obvious or known danger or knowledge superior to that of the driver as to the location of traffic signs, is not bound, as a matter of law, to be constantly on the lookout for traffic signs in order to warn the driver to observe them.[n4]

FOOTNOTES:

n1 Audino v. Hantman, 11 N.J. Misc. 478, 166 A. 698 (Sup. Ct. 1933); Teas v. Eisenlord, 215 Wis. 455, 253 N.W. 795 (1934).

n2 § 565.

n3 Hower v. Roberts, 153 F.2d 726 (C.C.A. 8th Cir. 1946); Stone v. Barnes, 248 S.C. 28, 148 S.E.2d 738 (1966).

n4 Carman v. Huff, 32 Tenn. App. 687, 227 S.W.2d 780 (1949).

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8 Am Jur 2d Automobiles and Highway Traffic § 564

§ 564 At railroad crossings

A person riding in a vehicle driven by another is not required to exercise the same degree of vigilance as the driver in looking and listening for trains at a crossing,[n1] and the mere sight of a railroad crossing does not impose a duty to warn the driver of what lies ahead,[n2] particularly if the driver has already seen the train and has ample opportunity and time to stop and avoid a collision before reaching the crossing.[n3] The guest may rely on the driver performing his or her duty at a railroad crossing until the contrary becomes apparent.[n4] In most cases in which the question has arisen, the circumstances and evidence have been such that the negligence of a guest in failing to watch for and warn of the approach of a train at a railroad crossing has been deemed to be a question of fact for the jury.[n5]

A guest may not be found negligent, so as to bar or diminish his or her recovery against the driver or owner of the motor vehicle for injuries sustained in a collision with a train at a crossing, if the guest was not inattentive and in fact gave a warning of train's approach of, but it was not heeded by the driver.[n6]

FOOTNOTES:

n1 Alio v. Pennsylvania R. Co., 312 Pa. 453, 167 A. 326, 90 A.L.R. 980 (1933).

n2 Finley v. Lowden, 224 Iowa 999, 277 N.W. 487 (1938).

n3 Zank v. Chicago, R. I. & P. R. Co., 17 Ill. 2d 473, 161 N.E.2d 848 (1959).

n4 Norfolk & W. Ry. Co. v. Wellons' Adm'r, 155 Va. 218, 154 S.E. 575 (1930).

n5 Finley v. Lowden, 224 Iowa 999, 277 N.W. 487 (1938); Tennessee Cent. R. Co. v. Vanhoy, 143 Tenn. 312, 226 S.W. 225 (1920).

n6 Avery v. Thompson, 117 Me. 120, 103 A. 4 (1918).

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8 Am Jur 2d Automobiles and Highway Traffic § 565

§ 565 Duty to protest driver's conduct or manner of driving

When it becomes apparent, or should become apparent, to a guest that the driver is operating the vehicle in a negligent or reckless manner, the exercise of reasonable care by the guest for his or her own safety requires that the guest protest or remonstrate the driver's negligent or reckless conduct, in an attempt to persuade the driver to be careful.[n1] Complaints by the passenger regarding the vehicle operator's driving may not be a sufficient protest to allow the passenger to circumvent a guest statute, particularly if the passenger is not able to show that he was a captive of the driver and an involuntary occupant against his will.[n2]

Whether a passenger violated a duty to warn the driver of a vehicle that he or she was driving recklessly is a question of fact for the jury.[n3] A jury should not be permitted to infer that a guest's silence showed an acquiesced in the driver's reckless driving at the time of an accident, unless the reckless driving continued long enough to give the guest a reasonable opportunity to protest against it.[n4]

Observation: In the legal context of whether a plaintiff who is a gratuitous passenger has acquiesced in defendant's acts which constitute willful or wanton conduct, plaintiff's acquiescence must be more than ordinary negligence to bar recovery, and the plaintiff's mere failure to protest, remonstrate, or request that he or she be allowed to leave the car amounts to only simple negligence.[n5]

FOOTNOTES:

n1 Miller v. Mathis, 233 Iowa 221, 8 N.W.2d 744 (1943); Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954); Tabor v. O'Grady, 59 N.J. Super. 330, 157 A.2d 701 (App. Div. 1960), on reh'g, 61 N.J. Super. 446, 161 A.2d 267 (App. Div. 1960); Kropko v. Galida, 155 Pa. Super. 446, 38 A.2d 491 (1944); Darling v. Browning, 120 W. Va. 666, 200 S.E. 737 (1938).

n2 McDougle v. Shaddrix, 534 So. 2d 228 (Ala. 1988) (passenger, after driver stopped at an intersection, opened his car door, leaned out, and waved to his friends in a vehicle behind him before closing his door and staying in vehicle).

n3 Morris v. Sorrells, 1992 OK 125, 837 P.2d 913 (Okla. 1992).

n4 Gordon v. Opalecky, 152 Md. 536, 137 A. 299 (1927).

n5 Harrington v. Collins, 298 N.C. 535, 259 S.E.2d 275 (1979).

SUPPLEMENT:

Cases

When it becomes apparent to a reasonably prudent passenger that the vehicle in which he or she is riding is being driven negligently, reasonable care requires the passenger to protest or remonstrate with the driver in an effort to persuade him to drive carefully and, if ignored, to leave the car when a reasonable opportunity is afforded, if a reasonably prudent person would do so in like circumstances. Champion ex rel. Ezzo v. Dunfee, 398 N.J. Super. 112, 939 A.2d 825 (App. Div. 2008), certification granted (N.J. Apr. 17, 2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 566

§ 566 Speeding

The circumstances may demonstrate the guest's negligence in failing to challenge the driver's excessive speed,[n1] especially if the driver's vision is obscured by poor weather or a dirty windshield.[n2] The question of the negligence of a guest in failing to remonstrate sufficiently with the driver as to his or her speed is typically one for the jury,[n3] and only if there is no dispute on the facts, and only one conclusion to be drawn, may the issue be decided as a matter of law.[n4]

In determining whether a guest is negligent by acquiescing in a high rate of speed, appropriate consideration should be given to the guest's ability to judge speed; whether the guest ever owned or drove a motor vehicle; and the extent of the guest's experience in riding in motor vehicles.[n5] Even if a guest is negligent in failing to protest against excessive speed, recovery will not be precluded or diminished if, because the driver did not see the other car until it was very close, the excessive speed was not the proximate cause of the accident.[n6]

FOOTNOTES:

n1 Hubbard v. Bartholomew, 163 Iowa 58, 144 N.W. 13 (1913); State v. Phillinger, 142 Md. 365, 120 A. 878 (1923); Morris v. Sorrells, 1992 OK 125, 837 P.2d 913 (Okla. 1992) (defense of contributory negligence was available to teenage driver who was speeding only when encouraged by his passenger friends, and expected them to advise him when to slow down).

n2 § 584.

n3 Ling v. Pease, 123 Colo. 518, 232 P.2d 189 (1951); Mitchell v. Dowdy, 184 Md. 634, 42 A.2d 717 (1945); Samuels v. Bowers, 232 N.C. 149, 59 S.E.2d 787 (1950).

n4 Nelson v. Nygren, 259 N.Y. 71, 181 N.E. 52 (1932).

n5 Irwin v. McDougal, 217 Mo. App. 645, 274 S.W. 923 (1925).

n6 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953) (accident would have occurred even if warning had been given).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947 to 949.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 567

§ 567 Duty to leave vehicle

The exercise of reasonable care for his or her own safety by a passenger in a vehicle driven by another may require not only that a protest be made against the negligence or recklessness of the driver,[n1] but also that the passenger request the driver to stop so that the passenger may leave the vehicle, if the driver disregards the remonstrations or protests.[n2] In general, if a passenger knows, or in the exercise of reasonable care should know, that the driver is operating the vehicle in a negligent or reckless manner, and persists in the misconduct even after the guest has protested, the guest may be deemed contributorily negligence by unreasonably failing to leave the vehicle when a reasonable opportunity to do so is afforded.[n3] Whether the conduct of the driver of a motor vehicle demands that a passenger leave must be judged in the light of all the surrounding facts and circumstances.[n4]

The question of the negligence of one riding in a motor vehicle driven by another in failing to leave the vehicle in view of the negligent or reckless conduct of the driver is ordinarily one of fact for the jury,[n5] except if there is no dispute on the facts and only one conclusion can be drawn.[n6] Thus, in some cases it is a question for the jury whether a guest was negligent in failing to make an effort to leave a motor vehicle where the driver was speeding,[n7] or intoxicated,[n8] or in view of the fact that the driver's vision was obscured because of atmospheric conditions.[n9] In other cases, however, it may be negligent as a matter of law for a guest not to make an effort to leave a motor vehicle if the driver was proceeding at an excessive speed,[n10] or without lights at nighttime on an unfamiliar road,[n11] or with defective headlights and brakes,[n12] or if the driver was intoxicated.[n13] In still other cases, it may not be negligent for a guest not to make an effort to leave a motor vehicle where the driver was proceeding at an excessive speed,[n14] or was intoxicated,[n15] or was driving with vision obscured because of atmospheric conditions.[n16]

FOOTNOTES:

n1 § 565.

n2 American Smelting & Refining Co. v. Sutyak, 175 F.2d 123 (10th Cir. 1949); Samuels v. Bowers, 232 N.C. 149, 59 S.E.2d 787 (1950); Miller v. Treat, 57 Wash. 2d 524, 358 P.2d 143 (1960).

n3 American Smelting & Refining Co. v. Sutyak, 175 F.2d 123 (10th Cir. 1949); Sharp v. Sproat, 111 Kan. 735, 208 P. 613, 26 A.L.R. 1421 (1922); Tabor v. O'Grady, 59 N.J. Super. 330, 157 A.2d 701 (App. Div. 1960), on reh'g, 61 N.J. Super. 446, 161 A.2d 267 (App. Div. 1960); Lynch v. Alexander, 242 S.C. 208, 130 S.E.2d 563 (1963); Maybee v. Maybee, 79 Utah 585, 11 P.2d 973 (1932); Young v. Wheby, 126 W. Va. 741, 30 S.E.2d 6, 154 A.L.R. 919 (1944).

n4 American Smelting & Refining Co. v. Sutyak, 175 F.2d 123 (10th Cir. 1949); United Broth. of Carpenters and Joiners of America, Local Union No. 55 v. Salter, 114 Colo. 513, 167 P.2d 954 (1946); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943).

n5 Boyd v. Wilson, 269 N.C. 728, 153 S.E.2d 484 (1967).

n6 Maybee v. Maybee, 79 Utah 585, 11 P.2d 973 (1932); Young v. Wheby, 126 W. Va. 741, 30 S.E.2d 6, 154 A.L.R. 919 (1944).

n7 Bell v. Maxwell, 246 N.C. 257, 98 S.E.2d 33 (1957); Layman v. Heard, 156 Or. 94, 66 P.2d 492 (1937).

n8 Bell v. Proctor, 212 Ga. 325, 92 S.E.2d 514 (1956); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943).

n9 Van Fleet v. Heyler, 51 Cal. App. 2d 719, 125 P.2d 586 (2d Dist. 1942).

n10 Sheehan v. Coffey, 205 A.D. 388, 200 N.Y.S. 55 (3d Dep't 1923).

n11 Rebillard v. Minneapolis, St. P. & S.S.M. Ry. Co., 216 F. 503 (C.C.A. 8th Cir. 1914).

n12 Laffey v. Mullen, 275 Mass. 277, 175 N.E. 736 (1931) (overruled in part on other grounds by, Reynolds v. Sullivan, 330 Mass. 549, 116 N.E.2d 128 (1953)).

n13 Nettles v. Your Ice Co., 191 S.C. 429, 4 S.E.2d 797 (1939); Sargent v. Williams, 152 Tex. 413, 258 S.W.2d 787 (1953).

n14 Shields v. King, 207 Cal. 275, 277 P. 1043 (1929).

n15 Yorke v. Cottle, 173 Va. 372, 4 S.E.2d 372 (1939).

n16 Derouen v. Allstate Ins. Co., 237 So. 2d 88 (La. Ct. App. 3d Cir. 1970); Janeway v. Lafferty Bros., 323 Pa. 324, 185 A. 827 (1936).

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8 Am Jur 2d Automobiles and Highway Traffic § 568

§ 568 Duty to use seat belts; as affecting recovery

There is a duty under the common-law standard of ordinary care to use available seat belts, independent of any statutory mandate.[n1]

Practice Tip: The burden is on the defense to introduce competent evidence on the seat belt defense, which requires the defendant to show evidence of a causal relation between the injury and the failure to use a seat belt. The connection must not be uncertain, speculative, or conjectural.[n2]

In other jurisdictions, the negligence of a passenger in failing to use available seat belts is considered to be an issue to be raised with the legislature, not the courts.[n3] Thus, in the absence of an affirmative statutory duty, a plaintiff's failure to use a seat belt does not amount to contributory negligence or constitute a pre-injury failure to minimize damages.[n4] In some jurisdictions, the failure to use an available seat belt does constitute negligence.[n5] Similarly, evidence of failure to wear a seat belt should not be admitted on the question of liability.[n6]

FOOTNOTES:

n1 Bentzler v. Braun, 34 Wis. 2d 362, 149 N.W.2d 626 (1967).

As to duty to furnish seat belts, see § 541.

n2 State Farm Mut. Auto. Ins. Co. v. Smith, 565 So. 2d 751 (Fla. Dist. Ct. App. 5th Dist. 1990), cause dismissed, 570 So. 2d 1306 (Fla. 1990); Kavanagh v. Butorac, 140 Ind. App. 139, 221 N.E.2d 824 (1966) (expert testimony insufficient to show that injury could have been avoided had the passenger used seat belt).

n3 Pritts v. Walter Lowery Trucking Co., 400 F. Supp. 867 (W.D. Pa. 1975) (applying Pennsylvania law); Lipscomb v. Diamiani, 226 A.2d 914 (Del. Super. Ct. 1967); Cierpisz v. Singleton, 247 Md. 215, 230 A.2d 629 (1967); Quinius v. Estrada, 448 S.W.2d 552 (Tex. Civ. App. Austin 1969), writ refused n.r.e., (May 13, 1970).

n4 Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968) (legislature's failure to require the installation of seat belts, plus limited requirement of only two sets of such belts in the front seat, supported conclusion that seat belt enactments are not absolute safety measures and that no statutory duty to use the belts can be implied from them); Keaton v. Pearson, 292 S.C. 579, 358 S.E.2d 141 (1987).

n5 Melesko v. Riley, 32 Conn. Supp. 89, 339 A.2d 479 (Super. Ct. 1975); Fudge v. City of Kansas City, 239 Kan. 369, 720 P.2d 1093 (1986); Keaton v. Pearson, 292 S.C. 579, 358 S.E.2d 141 (1987).

The seat belt defense is not available for purposes of determining degree of plaintiff's negligence under comparative negligence statute. Churning v. Staples, 628 P.2d 180 (Colo. Ct. App. 1981); Taplin v. Clark, 6 Kan. App. 2d 66, 626 P.2d 1198 (1981).

n6 Clarkson v. Wright, 108 Ill. 2d 129, 90 Ill. Dec. 950, 483 N.E.2d 268 (1985) (rejected by, Law v. Superior Court In and For Maricopa County, 157 Ariz. 147, 755 P.2d 1135 (1988)).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 569

§ 569 As mitigating damages

The failure to use a seat belt has been considered in mitigation of damages, rather than as constituting negligence that may bar recovery, on the view that the failure to use a seat belt may contribute to the cause of the injury but almost never to the cause of the accident.[n1] The jury may not consider a plaintiff's failure to utilize seat belts in mitigation of damages, unless the defendant introduces competent evidence to show that the injuries would have been mitigated if seat belts had been used.[n2]

In some jurisdictions, however, evidence regarding the nonuse of seat belts in mitigation of damages has been rejected,[n3] particularly when there is no evidence bearing on the extent that damages or injuries might have been reduced by the use of seat belts.[n4]

Caution: It may be error to submit the seat belt defense to the jury if there was no evidence tying the injury to the fact that the plaintiff's head may have hit the windshield because of the failure to wear a seat belt.[n5]

FOOTNOTES:

n1 Wilson v. Volkswagen of America, Inc., 445 F. Supp. 1368 (E.D. Va. 1978); Britton v. Doehring, 286 Ala. 498, 242 So. 2d 666 (1970); Mount v. McClellan, 91 Ill. App. 2d 1, 234 N.E.2d 329 (2d Dist. 1968); Demarest v. Progressive American Ins. Co., 552 So. 2d 1329 (La. Ct. App. 5th Cir. 1989).

n2 Thomas v. Goodman, 52 Ill. App. 3d 774, 8 Ill. Dec. 852, 365 N.E.2d 1314 (5th Dist. 1977).

n3 Britton v. Doehring, 286 Ala. 498, 242 So. 2d 666 (1970); Parker v. Montgomery, 529 So. 2d 1145 (Fla. Dist. Ct. App. 1st Dist. 1988); State v. Ingram, 427 N.E.2d 444 (Ind. 1981); Fudge v. City of Kansas City, 239 Kan. 369, 720 P.2d 1093 (1986); Taplin v. Clark, 6 Kan. App. 2d 66, 626 P.2d 1198 (1981); Carnation Co. v. Wong, 516 S.W.2d 116 (Tex. 1974).

n4 Potts v. Benjamin, 882 F.2d 1320 (8th Cir. 1989); Glover v. Daniels, 310 F. Supp. 750 (N.D. Miss. 1970) (applying Mississippi law); Bartlett v. State, 40 A.D.2d 267, 340 N.Y.S.2d 63 (4th Dep't 1973), Decisions combined in A.D.2d and (overruled on other grounds by, Tierney v. State, 55 A.D.2d 158, 389 N.Y.S.2d 709 (4th Dep't 1976)).

n5 Schrader v. Carney, 180 A.D.2d 200, 586 N.Y.S.2d 687 (4th Dep't 1992).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 570

§ 570 Interfering with driver

Interfering with the driver while on a high-speed highway is apt to contribute to, rather than decrease, the danger of an accident, and in most cases the more prudent course is to in let the driver alone.[n1] Thus, if the situation would reveal to a reasonably intelligent person that interference was likely to increase the danger of an accident, the guest is under no duty to interfere,[n2] and, moreover, if he or she does interfere, the guest may be deemed negligent.[n3]

Where a passenger yells and grabs at the driver or the steering wheel in a distracting manner that prevents the driver from avoiding an accident, the jury in an appropriate case may find the passenger comparatively negligent, where the evidence was sufficient to determine that the passenger's conduct was a proximate cause of the accident.[n4]

FOOTNOTES:

n1 Dashiell v. Moore, 177 Md. 657, 11 A.2d 640 (1940).

n2 Dashiell v. Moore, 177 Md. 657, 11 A.2d 640 (1940).

n3 Dunston v. Greenberger, 205 A.D. 778, 200 N.Y.S. 426 (3d Dep't 1923).

n4 Escamilla v. Garcia, 653 S.W.2d 58 (Tex. App. San Antonio 1983), writ refused n.r.e., (Sept. 14, 1983).

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8 Am Jur 2d Automobiles and Highway Traffic § 571

§ 571 Falling asleep of passenger guest

The conduct of a guest in voluntarily going to sleep does not amount to negligence as a matter of law, so as to preclude a recovery against the driver who has been found to have been negligent, but rather the question of the negligence of the guest is ordinarily one for the jury.[n1] Thus, the contributory negligence of a passenger who is injured when the driver falls asleep is not supportable if the driver had been drinking earlier, the passenger was asleep at the time of the accident, and the driver had not informed the passenger about his own condition.[n2] However, a guest may be found negligent in going to sleep knowing that the highway was in a dangerous condition and the driver was operating the vehicle carelessly,[n3] or knowing that the driver is apt to go to sleep because it is late at night or the trip was long.[n4] The contributory negligence of a passenger who is injured when the driver falls asleep is established or supportable if the driver had not been drinking earlier and the passenger was asleep at the time of the accident, regardless of whether the driver had informed the passenger of the driver's condition.[n5] In some cases, under such circumstances the guest may be found to have assumed the risk of injury from the driver falling sleep.[n6] Thus, the passenger's awareness of the driver's extreme drowsiness may constitute contributory negligence or assumption of risk.[n7]

FOOTNOTES:

n1 Clayton v. Bartoszewski, 57 Del. 274, 198 A.2d 692 (1964); McKirchy v. Ness, 256 Iowa 744, 128 N.W.2d 910 (1964); Richie v. Chears, 288 S.W.2d 660 (Ky. 1956); Oppenheim v. Barkin, 262 Mass. 281, 159 N.E. 628, 61 A.L.R. 1228 (1928); Rader v. Fleming, 1967 OK 104, 429 P.2d 750 (Okla. 1967); Smith v. Williams, 180 Or. 626, 178 P.2d 710, 173 A.L.R. 1220 (1947).

n2 Merritt v. Grant, 285 S.C. 150, 328 S.E.2d 346 (Ct. App. 1985).

n3 Parker v. Helfert, 140 Misc. 905, 252 N.Y.S. 35 (Sup 1931).

n4 Oppenheim v. Barkin, 262 Mass. 281, 159 N.E. 628, 61 A.L.R. 1228 (1928); Sackett v. Haeckel, 249 Minn. 290, 81 N.W.2d 833 (1957); Rader v. Fleming, 1967 OK 104, 429 P.2d 750 (Okla. 1967); Frank v. Markley, 315 Pa. 257, 173 A. 186 (1934).

n5 McGriff v. McGriff, 114 Ariz. 323, 560 P.2d 1230 (1977); Smith v. Solfest, 65 Ill. App. 3d 779, 22 Ill. Dec. 441, 382 N.E.2d 831, 1 A.L.R.4th 550 (2d Dist. 1978); Burell v. Riggs, 557 N.E.2d 698 (Ind. Ct. App. 1990).

n6 Rennolds' Adm'x v. Waggener, 271 Ky. 300, 111 S.W.2d 647 (1937); Krueger v. Krueger, 197 Wis. 588, 222 N.W. 784 (1929).

As to applicability and effect of the doctrine of assumption of risk generally, see § 952.

n7 Burell v. Riggs, 557 N.E.2d 698 (Ind. Ct. App. 1990).

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8 Am Jur 2d Automobiles and Highway Traffic § 572

§ 572 Riding with sleepy driver

The mere fact that a guest knows that the driver of the motor vehicle is in a sleepy or drowsy condition does not in itself, as a matter of law, constitute negligence, but is a factor to be taken into consideration in determining this question. [n1] The guest's knowledge that the driver was likely to feel drowsy because he or she had drunk liquor is a factor in determining the question of the guest's negligence. [n2] Other factors to be taken into consideration are the failure of the guest to keep the driver awake [n3] and the guest's opportunity to leave the vehicle. [n4]

FOOTNOTES:

n1 Thompson v. Kost, 298 Ky. 32, 181 S.W.2d 445 (1944); Edwards v. Washkuhn, 11 Wash. 2d 425, 119 P.2d 905 (1941).

n2 Williams v. Carr, 68 Cal. 2d 579, 68 Cal. Rptr. 305, 440 P.2d 505 (1968); Willoughby v. Driscoll, 168 Or. 187, 120 P.2d 768 (1942), on reh'g, 168 Or. 187, 121 P.2d 917 (1942) and (overruled in part on other grounds by, Cook v. Michael, 214 Or. 513, 330 P.2d 1026 (1958)).

n3 Oppenheim v. Barkin, 262 Mass. 281, 159 N.E. 628, 61 A.L.R. 1228 (1928).

n4 Belletete v. Morin, 322 Mass. 214, 76 N.E.2d 660 (1948).

As to duty to leave vehicle, generally, see § 567.

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 573

§ 573 Riding with physically incapacitated driver

The mere fact that a guest knows that the driver of the motor vehicle has a physical defect that may interfere with the ability to operate the vehicle does not in itself, as a matter of law, constitute negligence, but is only a factor to be taken into consideration in resolving the issue.[n1] Thus, if the driver of a vehicle was suffering from a defect affecting the use of the arms, the contributory negligence of a passenger who was injured in a resulting accident is not established.[n2]

FOOTNOTES:

n1 Krause v. Rarity, 210 Cal. 644, 293 P. 62, 77 A.L.R. 1327 (1930).

n2 White v. State Through Dept. of Public Safety & Corrections, 644 So. 2d 684 (La. Ct. App. 1st Cir. 1994), writ denied, 648 So. 2d 927 (La. 1995).

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8 Am Jur 2d Automobiles and Highway Traffic § 574

§ 574 Assumption of risk

A guest who knowingly rides with a driver who is sleepy or drowsy assumes the risk of injury from the driver's going to sleep.[n1] A finding of assumption of risk by a passenger who is injured when a driver falls asleep may be appropriate if the driver had been drinking earlier and had not informed the passenger of his condition,[n2] or where the driver had not been drinking earlier, but had told the passenger that he was sleepy.[n3]

FOOTNOTES:

n1 Krueger v. Krueger, 197 Wis. 588, 222 N.W. 784 (1929).

As to the applicability and the effect of the doctrine of assumption of risk generally, see § 952.

n2 Pertilla v. Farley, 141 Ga. App. 620, 234 S.E.2d 125 (1977).

n3 McGriff v. McGriff, 114 Ariz. 323, 560 P.2d 1230 (1977).

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8 Am Jur 2d Automobiles and Highway Traffic § 575

§ 575 Riding with intoxicated driver

If a person voluntarily rides in a motor vehicle with an intoxicated driver and knows, or under the circumstances should know of the driver's condition, the passenger may be precluded from recovering from the driver or a third person for injuries sustained in an accident, or his or her recovery from such persons may be diminished, if the intoxicated condition of the driver was the proximate cause or one of the proximate causes of the accident producing the injuries in question, on the theory either that the guest is negligent,[n1] or has assumed the risk of injury.[n2] The plaintiff's contributory negligence may be established where the driver and passenger were drinking together on the afternoon of the accident, the defendant driver's outward appearance clearly indicated intoxication, and the plaintiff nevertheless chooses to ride in the car.[n3] However, a passenger's knowledge that the driver has been drinking does not as a matter of law establish that the passenger assumed the risk.[n4]

Practice Tip: A plaintiff's allegation that defendant was under the influence of alcohol while operating a vehicle in which the plaintiff was a passenger does not constitute a concession that the passenger was contributorily negligent, since the plaintiff's statement merely amounts to a binding admission that the defendant was under the influence of alcohol, not that the passenger knew that defendant was under the influence of alcohol.[n5]

Absent some negligence by the guest with regard to the occurrence of the accident, a finding of negligence based only on the choice to ride with the driver would be unwarranted, as there are many instances in which a driver drinks only a little with no visible effect, or where he or she drinks a little and retains full control, or where the driver drinks and the guest is unaware either of the drinking or of any carelessness until an accident occurs.[n6] Thus, even though the ability of a driver has in fact been impaired by drinking, the guest may not be found contributorily negligent in electing to ride with the driver unless the guest was aware of that fact or, in the exercise of reasonable care, should have been aware of it.[n7] Whether the guest knew, or should have known, of the intoxicated condition of the driver impairing his or her ability to drive, is ordinarily a question for the jury,[n8] as is the question whether the driver was in fact sufficiently intoxicated to impair the ability to drive.[n9]

FOOTNOTES:

n1 Arnett v. Arnett, 293 S.W.2d 733 (Ky. 1956); Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954); Watkins v. Hellings, 83 N.C. App. 430, 350 S.E.2d 590 (1986), decision rev'd on other grounds, 321 N.C. 78, 361 S.E.2d 568 (1987); Dabney v. Home Ins. Co., 643 S.W.2d 386 (Tex. 1982); Packard v. Quesnel, 112 Vt. 175, 22 A.2d 164 (1941); Wright v. Tate, 208 Va. 291, 156 S.E.2d 562 (1967).

n2 Holmes v. State Through Dept. of Highways, 466 So. 2d 811, 61 A.L.R.4th 379 (La. Ct. App. 3d Cir. 1985), writ denied, 472 So. 2d 31 (La. 1985).

n3 Goodman v. Connor, 117 N.C. App. 113, 450 S.E.2d 5 (1994).

n4 Price v. Rogers, 205 Ga. App. 315, 422 S.E.2d 7 (1992) (trial court erred in granting defense summary judgment on basis that guest passenger assumed risk that intoxicated minor would lose control).

n5 Ayscue v. Weldon, 118 N.C. App. 636, 456 S.E.2d 344 (1995).

n6 Burnell v. La Fountain, 6 A.D.2d 586, 180 N.Y.S.2d 52 (3d Dep't 1958).

n7 Powers v. State, for Use and Benefit of Reynolds, 178 Md. 23, 11 A.2d 909 (1940).

n8 Thomas v. Bowman, 24 Ariz. App. 322, 538 P.2d 409 (Div. 1 1975); Arnett v. Arnett, 293 S.W.2d 733 (Ky. 1956); Willoughby v. Driscoll, 168 Or. 187, 120 P.2d 768 (1942), on reh'g, 168 Or. 187, 121 P.2d 917 (1942) and (overruled in part on other grounds by, Cook v. Michael, 214 Or. 513, 330 P.2d 1026 (1958)); Dickenson v. Tabb, 208 Va. 184, 156 S.E.2d 795 (1967).

n9 Arnett v. Arnett, 293 S.W.2d 733 (Ky. 1956); Meese v. Goodman, 167 Md. 658, 176 A. 621, 98 A.L.R. 480 (1935); Keith v. Norris, 57 Tenn. App. 423, 419 S.W.2d 189 (1967).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 576

§ 576 As affecting recovery under guest statute

A person who rides in a motor vehicle driven by another with knowledge that the driver is intoxicated and incapable of careful driving is precluded from holding the driver or owner of the motor vehicle liable under an applicable guest statute or comparable common-law rule which requires something more than ordinary negligence on the part of the driver as a condition to liability to a guest for injuries sustained by reason of the driver's negligent operation of the vehicle.[n1] However, mere knowledge that the driver has been drinking does not suffice to preclude recovery under a guest statute or equivalent common-law rule.[n2]

To preclude recovery, a guest must have had actual or constructive knowledge that the driver was unfit to operate the vehicle because if intoxication.[n3] Whether the guest did in fact have such knowledge, or was chargeable with such knowledge, is ordinarily a question for the jury.[n4]

In those jurisdictions that apply the contributory negligence doctrine,[n5] although recovery where the guest has knowledge that the driver has been drinking to such an extent as to render him or her incapable of driving safely, the act of the guest in riding with the driver under such circumstances may be viewed as contributory negligence barring recovery,[n6] or the negligence of the injured passenger may be no defense to an action but the doctrine of assumption of risk may apply.[n7] In other jurisdictions, where the misconduct of the plaintiff was of an approximately equal degree to that of the defendant, or substantially contributed to the subsequent accident, the guest may be barred from recovery.[n8]

FOOTNOTES:

n1 Poole v. James, 231 Ark. 810, 332 S.W.2d 833 (1960); Lindemann v. San Joaquin Cotton Oil Co., 5 Cal. 2d 480, 55 P.2d 870 (1936); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943).

n2 Westergard v. Peterson, 117 Mont. 550, 159 P.2d 518 (1945).

n3 United Broth. of Carpenters and Joiners of America, Local Union No. 55 v. Salter, 114 Colo. 513, 167 P.2d 954 (1946); Petersen v. Abrams, 188 Or. 518, 216 P.2d 664 (1950).

n4 Miller v. Treat, 57 Wash. 2d 524, 358 P.2d 143 (1960).

n5 § 947.

n6 Davis v. Brooks Transp. Co., 186 F. Supp. 366 (D. Del. 1960); Landrum v. Roddy, 143 Neb. 934, 12 N.W.2d 82, 149 A.L.R. 1041 (1943); Yorke v. Mason, 173 Va. 379, 4 S.E.2d 375 (1939).

n7 Evans v. Holsinger, 242 Iowa 990, 48 N.W.2d 250, 28 A.L.R.2d 1434 (1951); Willoughby v. Driscoll, 168 Or. 187, 121 P.2d 917 (1942); Milligan v. Harward, 11 Utah 2d 74, 355 P.2d 62 (1960).

n8 Bessman v. Harding, 176 N.W.2d 129 (Iowa 1970) (discussing assumption of risk as a matter of law by driving with intoxicated host); Schwartz v. Johnson, 152 Tenn. 586, 280 S.W. 32, 47 A.L.R. 323 (1926).

SUPPLEMENT:

Cases

Guest statute barred automobile passenger's action against the driver for injuries sustained in accident in another state, where passenger and driver were married residents of Nebraska at time of accident. Heinze v. Heinze, 274 Neb. 595, 742 N.W.2d 465 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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West's Key Number Digest, Automobiles [westkey]181(1), 181(2)
Guest's knowledge that automobile driver has been drinking as precluding recovery, under guest statutes or equivalent common-law rule, 15 A.L.R.2d 1165

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8 Am Jur 2d Automobiles and Highway Traffic § 577

§ 577 Effect of voluntary intoxication of guest

In a personal injury action by an automobile passenger who has been drinking, the issue of contributory negligence is to be judged by the same standards as would be applicable to a sober plaintiff.[n1] Evidence of a passenger's blood-alcohol level is admissible in support of a defense that the passenger was contributorily negligent or assumed the risk of an automobile accident.[n2]

FOOTNOTES:

n1 Purvis v. Virgil Barber Contractor, Inc., 205 Ga. App. 13, 421 S.E.2d 303 (1992).

n2 Sandberg v. Hoogensen, 201 Neb. 190, 266 N.W.2d 745, 5 A.L.R.4th 1185 (1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 A.L.R.4th 1194
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8 Am Jur 2d Automobiles and Highway Traffic § 578

§ 578 Riding with inexperienced or unskilled driver

One accepting an invitation for a gratuitous ride in a motor vehicle driven by another, accepts such skill as may be possessed by the driver in the handling of the vehicle, and assumes whatever risks attend the degree of proficiency of such driver and his or her usual and customary habit of driving with which the guest is familiar.[n1] The same considerations which compel the guest to accept the motor vehicle in the condition in which he or she finds it,[n2] also compels the guest to be content with the honest and conscientious exercise of such skill as the driver may have in the management and control of the motor vehicle, and this includes the exercise of judgment as an element of skill.[n3] A number of cases have noted, as an element of the application of the doctrine of assumption of risk under such circumstances, that there was knowledge on the part of the guest of the driver's inexperience or lack of proficiency.[n4] In any event, the assumption of risk incident to the driver's lack of experience or skill will not preclude recovery by a guest injured as the result of an accident arising out of other dangers or risks not directly connected with the inexperience or lack of skill of the driver.[n5] There is authority that a guest who knows, or who should know, of the driver's inexperience or lack of proficiency, may be guilty of negligence such as will preclude his recovery, in those jurisdictions in which the contributory negligence doctrine applies, if his conduct in voluntarily riding with the driver amounts to a failure to exercise reasonable or ordinary care for his own safety.[n6] In a few cases involving a guest statute, recovery has been denied a guest injured in a motor vehicle accident on the ground that he or she knew of the inexperience or lack of skill of the driver and assumed the risk or was guilty of negligence in riding with such a driver.[n7]

FOOTNOTES:

n1 Turner v. Johnson, 333 S.W.2d 749 (Ky. 1960); Constantin v. Bankers Fire & Marine Ins. Co., 129 So. 2d 269 (La. Ct. App. 3d Cir. 1961); Bogen v. Bogen, 220 N.C. 648, 18 S.E.2d 162 (1942); Hall v. Hall, 63 S.D. 343, 258 N.W. 491 (1935).

n2 § 582.

n3 Saxby v. Cadigen, 266 Wis. 391, 63 N.W.2d 820 (1954).

n4 Turner v. Johnson, 333 S.W.2d 749 (Ky. 1960); Constantin v. Bankers Fire & Marine Ins. Co., 129 So. 2d 269 (La. Ct. App. 3d Cir. 1961); Corbett v. Curtis, 225 A.2d 402 (Me. 1967); Maybee v. Maybee, 79 Utah 585, 11 P.2d 973 (1932).

n5 Burnett v. Cockrill, 145 So. 398 (La. Ct. App. 1st Cir. 1933); Holland v. Pitocchelli, 299 Mass. 554, 13 N.E.2d 390 (1938).

n6 Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954); Lloyd v. Noakes, 96 Pa. Super. 164, 1929 WL 3721 (1929).

n7 Sargent v. Williams, 152 Tex. 413, 258 S.W.2d 787 (1953); Smith v. Tatum, 199 Va. 85, 97 S.E.2d 820 (1957).

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8 Am Jur 2d Automobiles and Highway Traffic § 579

§ 579 Riding with driver with learner's permit

Generally, one who is licensed to operate a motor vehicle, and who voluntarily accompanies a driver who has just received a learner's permit for the purpose of instructing the new driver, assumes the risk of the learner's inexperience and may not, where the doctrine of assumption of risk is a bar to recovery, recover damages for personal injuries caused by the lack of skill or inexperience of the learner.[n1] However, the question of assumption of risk in such circumstances may be one for the jury.[n2]

Although a relevant statute may establish a presumption of the right to control on the part of a supervising adult, this presumption does not translate into an irrebuttable presumption of control so as to impute negligence or establish contributory negligence as a matter of law without regard for exigent circumstances or general negligence principles.[n3]

FOOTNOTES:

n1 Richards v. Richards, 324 S.W.2d 400 (Ky. 1959).

n2 Sand v. Mahnan, 248 Cal. App. 2d 679, 56 Cal. Rptr. 691 (4th Dist. 1967); Chalmers v. Willis, 247 Md. 379, 231 A.2d 70 (1967); Savone v. Donges, 122 A.D.2d 34, 504 N.Y.S.2d 474 (2d Dep't 1986) (licensed driver did not warn or otherwise communicate with learner-driver, who proceeded into intersection and collided with other car); Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

n3 Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995) (defendant was not entitled to a directed verdict).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 580

§ 580 Riding with driver known to be careless or reckless

Mere knowledge on the part of a guest passenger that the driver is careless or reckless, or has on past occasions been so, does not establish negligence in riding with that driver, provided that the guest used the degree of care that an ordinarily prudent person would have used under like or similar circumstances.[n1] However, knowledge that the driver had shown a propensity to drive carelessly or recklessly may be a circumstance requiring the guest to be vigilant.[n2] A person who rides in a motor vehicle driven by another whom he knows or should know to be a careless or reckless driver is negligent if the act of voluntarily riding along amounts to a failure to exercise reasonable care or ordinary care for his or her own safety.[n3] A guest may not acquiesce in negligent driving and still retain the right to recover against the driver or owner for resulting injuries.[n4]

The last-clear-chance doctrine does not apply if a guest in a motor vehicle is injured by the reckless driving that the guest encouraged or acquiesced in, as the driver, knowing of the guest's negligence in participating in such reckless driving, may not be viewed as having had the later opportunity to avoid the injury.[n5]

FOOTNOTES:

n1 Ward v. Barringer, 123 Ohio St. 565, 9 Ohio L. Abs. 580, 176 N.E. 217 (1931).

n2 Daniel v. Tower Trucking Co., 205 S.C. 333, 32 S.E.2d 5 (1944).

n3 Bogen v. Bogen, 220 N.C. 648, 18 S.E.2d 162 (1942); Sargent v. Williams, 152 Tex. 413, 258 S.W.2d 787 (1953).

n4 Bogen v. Bogen, 220 N.C. 648, 18 S.E.2d 162 (1942).

n5 Kansas City Southern Ry. Co. v. Ellzey, 275 U.S. 236, 48 S. Ct. 80, 72 L. Ed. 259 (1927).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 581

§ 581 Riding with driver who engages in racing

A guest passenger who is a willing participant in unlawful racing may be found guilty of negligence as a matter of law.[n1] In order for a passenger in a racing vehicle to be barred from recovery for injuries received in a collision during the race on the ground that he or she "acquiesced"in the race, the passenger must have done more than merely fail to speak up, remonstrate or leave the vehicle; there must have been some participation or involvement in the racing.[n2] Furthermore, whether a plaintiff passenger acquiesced in the driver's participation in the race may be a question of fact for the jury, as to whether the plaintiff's conduct was willful or wanton.[n3]

If a guest protests about the racing and does all that can be reasonably expected for his or her own safety, the guest is, as a matter of law, not contributorily negligent.[n4]

FOOTNOTES:

n1 Bugh v. Webb, 231 Ark. 27, 328 S.W.2d 379, 84 A.L.R.2d 444 (1959); Roberts v. King, 102 Ga. App. 518, 116 S.E.2d 885 (1960); Lessen v. Allison, 25 Ill. App. 2d 395, 166 N.E.2d 806 (3d Dist. 1960).

n2 Harrington v. Collins, 40 N.C. App. 530, 253 S.E.2d 288 (1979), judgment aff'd, 298 N.C. 535, 259 S.E.2d 275 (1979).

n3 Harrington v. Collins, 40 N.C. App. 530, 253 S.E.2d 288 (1979), judgment aff'd, 298 N.C. 535, 259 S.E.2d 275 (1979) (no willful or wanton conduct where plaintiff did not leave car on cold night in rural area).

n4 French v. Tebben, 53 Idaho 701, 27 P.2d 474 (1933).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 582

§ 582 Riding in defective or unsafe vehicle

A person riding in a motor vehicle driven by another generally takes the vehicle as it is, and assumes the risk of injury from defects that the owner did not know of,[n1] and assumes those risks that arise out of the owner's mistaken judgment that the motor vehicle is safe to ride in.[n2]

Thus, a guest may be deemed to assume the risk of accidents resulting from a defect not known to the owner, involving the steering mechanism,[n3] the brakes,[n4] or a tire[n5] or a spring,[n6] However, a guest does not assume the risk of injury from defects in the motor vehicle known to the owner but unknown to the guest.[n7] Nor does a guest assume the risk of defects in the vehicle which are known to him, if the guest was riding in the vehicle under compulsion.[n8] A guest is not negligent as a matter of law in having voluntarily assumed a position of danger in riding in a motor vehicle with knowledge that it has a defective door, and is not automatically barred from recovering for injuries sustained if the door swings open.[n9]

FOOTNOTES:

n1 Marple v. Haddad, 103 W. Va. 508, 138 S.E. 113, 61 A.L.R. 1248 (1927).

n2 Kemp v. Stephenson, 139 Misc. 38, 247 N.Y.S. 650 (Mun. Ct. 1931).

n3 Doggett v. Lacey, 121 Cal. App. 395, 9 P.2d 257 (2d Dist. 1932).

n4 Clise v. Prunty, 108 W. Va. 635, 152 S.E. 201 (1930).

n5 Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951); Monsour v. Farris, 181 Miss. 803, 181 So. 326 (1938); Townsend v. Cotten, 1937 OK 347, 180 Okla. 128, 68 P.2d 790 (1937).

n6 O'Shea v. Lavoy, 175 Wis. 456, 185 N.W. 525, 20 A.L.R. 1008 (1921) (overruled in part on other grounds by, McConville v. State Farm Mut. Auto. Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962)).

N7 Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951); Marple v. Haddad, 103 W. Va. 508, 138 S.E. 113, 61 A.L.R. 1248 (1927).

n8 Russo v. State, 166 Misc. 316, 2 N.Y.S.2d 350 (Ct. Cl. 1938).

n9 Zimmer v. Little, 138 Pa. Super. 374, 10 A.2d 911 (1940) (door defect viewed by court as not as obviously dangerous as defects in steering, brakes and the like).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Liability of owner or operator of motor vehicle for accident resulting from alleged breaking of or defect in steering mechanism, 23 A.L.R.2d 539

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8 Am Jur 2d Automobiles and Highway Traffic § 583

§ 583 Riding in vehicle without lights or with improper lights

A person who rides in a motor vehicle driven by another at nighttime with both headlights out may be barred from recovering for injuries in a collision with a vehicle coming from the opposite direction, which were proximately caused by the lack of proper lights.[n1] Guests, in such jurisdictions, have been similarly barred from recovery for injuries proximately resulting from the lack of proper lights on the vehicles in which they were riding, in intersection collisions,[n2] or in collisions with vehicles traveling in the same direction,[n3] or with parked or standing vehicles,[n4] or railroad trains.[n5] However, a guest is not barred from recovering for injuries sustained in an accident proximately resulting from the lack of proper lights on the vehicle in which he or she is riding, unless it is shown that the guest knew or should have known, that the lights were not adequate, and yet voluntarily remained in the vehicle without complaining about the lights.[n6] This rule is particularly apt in the case of rear lights on motor vehicles, since they are unlikely to be noticed by the guest while en route.[n7]

FOOTNOTES:

n1 Sloan v. Gulf Refining Co. of Louisiana, 139 So. 26 (La. Ct. App. 2d Cir. 1924) (under either contributory negligence or assumption of risk).

n2 Rapolla v. Goulart, 105 Cal. App. 417, 287 P. 562 (4th Dist. 1930) (both headlights out).

n3 Laffey v. Mullen, 275 Mass. 277, 175 N.E. 736 (1931) (overruled in part on other grounds by, Reynolds v. Sullivan, 330 Mass. 549, 116 N.E.2d 128 (1953)) (poor headlight on motorcycle).

n4 Sugru v. Highland Park Yellow Cab Co., 251 Ill. App. 99, 1928 WL 4197 (2d Dist. 1928) (both headlights out); Allen v. Porter, 19 Wash. 2d 503, 143 P.2d 328 (1943) (inadequate headlight on motorcycle).

n5 See Am. Jur. 2d, Railroads § 398.

n6 American Indem. Co. v. Solomon, 231 F.2d 853 (5th Cir. 1956); Judkins v. Sprague, 152 Minn. 1, 187 N.W. 705 (1922).

n7 Howell v. Murdock, 156 Va. 669, 158 S.E. 886 (1931).

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8 Am Jur 2d Automobiles and Highway Traffic § 584

§ 584 Riding with driver whose vision is obscured

A guest riding in a motor vehicle from which vision is obscured by such conditions as smoke, dust, atmospheric conditions, or a dirty windshield, should observe a heightened degree of caution that reflects the added danger,[n1] although the passenger is not required to exercise the same degree of care as the driver.[n2]

The particular circumstances may impose a duty on the guest to look and listen,[n3] to warn the driver of dangers,[n4] to protest or remonstrate against the speed at which he or she is driving,[n5] or to do everything reasonably possible to make the driver stop the vehicle.[n6] However, in other cases, in the light of the particular circumstances involved, the guest may not be under a duty to protest against the driver's conduct[n7] or to warn the driver against the dangers involved.[n8] Thus, a guest is not negligent in riding in a motor vehicle in which he or she is unable to keep a lookout for sudden danger because of inclement weather, ice on the windshield, and the failure of the windshield wiper on his or her side to work, where visibility on the driver's side is reasonably clear.[n9]

The failure of a guest to exercise proper care for his or her own safety by riding in a motor vehicle in which vision is obscured may be negligent, so as to bar or diminish recovery for injuries proximately causeded by a collision with another moving[n10] or parked or standing vehicle,[n11] or with some other object.[n12]

FOOTNOTES:

n1 Sumner v. Griswold, 338 Ill. App. 190, 86 N.E.2d 844 (2d Dist. 1949); Waring v. Dubuque Elec. Co., 192 Iowa 1240, 186 N.W. 42 (1922); Curtiss v. Fahle, 157 Kan. 226, 139 P.2d 827 (1943); Hisle v. Balkcom, 328 S.W.2d 20 (Mo. 1959); Cox v. Polson Logging Co., 18 Wash. 2d 49, 138 P.2d 169 (1943).

n2 §§ 775 et seq.

n3 Curtiss v. Fahle, 157 Kan. 226, 139 P.2d 827 (1943); Nashville, C. & St. L. Ry. v. Barnes, 177 Tenn. 690, 152 S.W.2d 1023 (1941).

n4 Walker v. Loop Fish & Oyster Co., 211 F.2d 777 (5th Cir. 1954); Louisiana & Arkansas Ry. Co. v. Jackson, 95 F.2d 369 (C.C.A. 5th Cir. 1938); Curtiss v. Fahle, 157 Kan. 226, 139 P.2d 827 (1943); Lorance v. Smith, 173 La. 883, 138 So. 871 (1931); Peasley v. White, 129 Me. 450, 152 A. 530, 73 A.L.R. 1017 (1930).

n5 Walker v. Loop Fish & Oyster Co., 211 F.2d 777 (5th Cir. 1954); Mason v. Banta, 166 Kan. 445, 201 P.2d 654 (1949); Adams v. Hutchinson, 113 W. Va. 217, 167 S.E. 135 (1932); Sprague v. Hauck, 3 Wis. 2d 616, 89 N.W.2d 226 (1958).

n6 Highton v. Pennsylvania R. Co., 132 Pa. Super. 559, 1 A.2d 568 (1938).

n7 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953) (guest's side of windshield was iced over).

n8 Jinks v. McClure, 344 So. 2d 675 (La. Ct. App. 3d Cir. 1977) (guest had no time to warn driver of heavy smoke from fire); Murphy v. Smith, 307 Mass. 64, 29 N.E.2d 726 (1940); Huston v. Robinson, 144 Neb. 553, 13 N.W.2d 885 (1944) (dust obstructing driver's vision).

n9 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953).

n10 Walker v. Loop Fish & Oyster Co., 211 F.2d 777 (5th Cir. 1954); Curtiss v. Fahle, 157 Kan. 226, 139 P.2d 827 (1943); Incret v. Chicago, M., St. P. & P. R. Co., 107 Mont. 394, 86 P.2d 12 (1938).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947 to 949.

n11 Presley v. Schenebeck, 194 Ark. 1069, 110 S.W.2d 5 (1937).

n12 Adams v. Hutchinson, 113 W. Va. 217, 167 S.E. 135 (1932).

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8 Am Jur 2d Automobiles and Highway Traffic § 585

§ 585 Riding in overcrowded vehicle

The failure of a guest to exercise ordinary care for his or her own safety may consist of voluntarily riding in an overcrowded motor vehicle.[n1]

In an action brought by a guest against the driver or owner of a motor vehicle for injuries sustained in an accident proximately resulting from the overcrowded condition of the vehicle, it a guest may be negligent as a matter of law in riding in such a vehicle under the circumstances.[n2] Ordinarily, however, the question of the negligence of the guest in such respects has been held to be one for the jury.[n3]

In most cases involving an action by one injured while riding in an allegedly overcrowded motor vehicle, against one other than the driver or owner of the vehicle, the question of the negligence of the guest has been held to be for the determination of the jury,[n4] although in a few such cases, the guest was found negligent as a matter of law under the circumstances.[n5] However, in other such cases, the courts have determined that under the circumstances there was no evidence of negligence on the part of the guest in so riding, or that the evidence was insufficient to justify the submission of the question of the guest's negligence to the jury.[n6]

FOOTNOTES:

n1 Donnell v. Pruitt, 265 S.W.2d 784 (Ky. 1954).

n2 Lorance v. Smith, 173 La. 883, 138 So. 871 (1931); Atwood v. Holland, 267 N.C. 722, 148 S.E.2d 851 (1966); McIntyre v. Pope, 326 Pa. 172, 191 A. 607 (1937).

n3 Coy v. Hoover, 272 S.W.2d 449 (Ky. 1954); Carlson v. P.F. Collier & Son Corp., 190 Wash. 301, 67 P.2d 842 (1937).

n4 Presley v. Schenebeck, 194 Ark. 1069, 110 S.W.2d 5 (1937); Tennessee Products & Chemical Corp. v. Miller, 282 S.W.2d 52 (Ky. 1955); Edwards v. Washkuhn, 11 Wash. 2d 425, 119 P.2d 905 (1941); Mitchell v. Raymond, 181 Wis. 591, 195 N.W. 855 (1923).

n5 Lavigne v. Nelson, 91 N.H. 304, 18 A.2d 832 (1941).

n6 Williams v. Palmer, 277 Ala. 188, 168 So. 2d 220 (1964); Carpenter v. Anderson, 301 Mass. 550, 17 N.E.2d 898 (1938); Walker v. Crosen, 168 Va. 410, 191 S.E. 753 (1937).

A trial court properly granted summary judgment on the defense of contributory negligence of an automobile passenger who shared the passenger seat of a two-seat car with a second passenger at the time of the accident that killed the second passenger, where there was no evidence tending to establish that such overcrowding as resulted from the shared seat had no effect on the driver's ability to control the vehicle, which went out of control at 55-60 m.p.h. in a 35-m.p.h. zone. Thompson v. Michael, 315 S.C. 268, 433 S.E.2d 853 (1993).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 586

§ 586 Riding in unusual position or position of danger

A guest passenger does not necessarily act negligently merely by riding in an unusual position in the vehicle.[n1] However, depending on the circumstances of the case, the plaintiff who was riding on or in the unusual position may be found contributorily negligent.[n2] In an action against the owner or operator of a motor vehicle by one injured while riding on or in some unusual position thereon, the question of the negligence of such plaintiff is often one for the jury to determine under the particular facts and cirumstances.[n3] In other such cases, however, under the circumstances the plaintiff was negligent as a matter of law.[n4]

In cases against someone other than the owner or operator of the vehicle, the question of the negligence of the plaintiff in riding on or in some unusual position on the vehicle has been one of fact for the jury.[n5]

However, in other cases involving an action by one injured while riding on or in some unusual position of a motor vehicle, the plaintiff has been found negligent as a matter of law.[n6] Merely riding in the back of a pick-up truck and doing nothing to distract the driver does not constitute contributory negligence that bars recovery against the driver.[n7]

FOOTNOTES:

n1 Skinner v. Jernigan, 250 N.C. 657, 110 S.E.2d 301 (1959).

n2 Billeaud v. Poledore, 603 So. 2d 754 (La. Ct. App. 1st Cir. 1992), writ denied, 608 So. 2d 176 (La. 1992) (laborer acted unreasonably in choosing to ride in dangerous position atop pipe while driver executed turning maneuvers); Evans v. Travelers Ins. Co., 351 So. 2d 783 (La. Ct. App. 1st Cir. 1977); O'Dell v. Whitworth, 618 S.W.2d 681 (Mo. Ct. App. W.D. 1981); Handley v. Halladay, 92 N.M. 76, 582 P.2d 1289 (1978).

n3 Yates v. J.H. Krumlinde & Co., 22 Cal. App. 2d 387, 71 P.2d 298 (1st Dist. 1937) (running board); Crane Auto Parts, Stewart Ave. Branch v. Patterson, 90 Ga. App. 257, 82 S.E.2d 666 (1954) (running board); Hebert v. Allen, 241 Iowa 684, 41 N.W.2d 240 (1950) (running board); Paducah Ry. Co. v. Nave, 204 Ky. 733, 265 S.W. 289 (1924) (running board); Richardson v. State for Use of Cox, 203 Md. 426, 101 A.2d 213, 44 A.L.R.2d 231 (1953) (riding in rear of truck); Blaser v. Coleman, 358 Mo. 157, 213 S.W.2d 420 (1948) (riding on top of load); Hill v. Sparks, 546 S.W.2d 473 (Mo. Ct. App. 1976); Vandell v. Sanders, 85 N.H. 143, 155 A. 193, 80 A.L.R. 550 (1931) (running board); Schomaker v. Havey, 291 Pa. 30, 139 A. 495, 61 A.L.R. 1241 (1927) (running board).

n4 De Winne v. Waldrep, 101 Ga. App. 570, 114 S.E.2d 455 (1960) (riding in rear of pickup truck being driven across open fields); Prather's Adm'r v. Allen, 291 Ky. 353, 164 S.W.2d 402 (1942) (running board); Hall v. Ziegler, 361 Pa. 228, 64 A.2d 767 (1949) (riding on bumper); Valente v. Lindner, 340 Pa. 508, 17 A.2d 371 (1941) (running board).

n5 Miller v. Pillow, 337 Mich. 262, 59 N.W.2d 283 (1953) (riding in rear of truck); Guile v. Greenberg, 197 Minn. 635, 268 N.W. 418 (1936) (riding on front fender); Gifford v. Pennsylvania R. Co., 119 N.J.L. 397, 196 A. 679 (N.J. Ct. Err. & App. 1938) (running board); Oakman v. Ogilvie, 185 S.C. 118, 193 S.E. 920 (1937) (running board).

n6 Taylor v. Morgan, 54 Ga. App. 426, 188 S.E. 44 (1936) (running board); Rudolph v. Lavigne, 92 N.H. 490, 32 A.2d 815 (1943) (running board).

Due to a guest's willful negligence, the doctrine of last clear chance did not apply and a guest was contributorily negligent as a matter of law where the guest, who insisted in riding on top of the car over the driver's objection, refused to get into the car, and while spinning his body around on top of the car, fell from the top as the driver negotiated a slight curve in the roadway. Handley v. Halladay, 92 N.M. 76, 582 P.2d 1289 (1978).

n7 Old Second Nat. Bank of Aurora v. Baumann, 86 Ill. App. 3d 547, 41 Ill. Dec. 802, 408 N.E.2d 224 (2d Dist. 1980).

In an action by the administrator of an estate against a railroad arising out of an accident in which the passenger riding on a cab protector of a dump truck was killed when he struck top of railroad bridge, although the truck did not come into contact with the bridge, the passenger was not contributorily negligent where he reasonably refrained from sitting in bed of truck because of dangerous tools that were lying on stones, that he seated himself on the cab protector to minimize the chance of being knocked off.

Marinelli v. Montour R. Co., 278 Pa. Super. 403, 420 A.2d 603 (1980).

Similarly, though it is not safe to take a seating position partially upon the console between two front bucket seats, and the person so sitting may even be negligent, that negligence will not bar or reduce recovery unless it is demonstrated that it proximately caused the accident, particularly where there is not evidence that the seating position obstructed the driver's view or interfered with her control over the driving mechanism. Duncan v. Wescott, 142 Vt. 471, 457 A.2d 277 (1983).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 587

§ 587 Riding with portion of body extended outside vehicle

Where a passenger rides in a motor vehicle with some portion of the body extended outside the vehicle, the passenger has a duty to anticipate danger that might result from that position. [n1]

In some cases involving an action to recover damages for injuries to the plaintiff's arm or hand extended outside a motor vehicle driven by another, under the circumstances the plaintiff may be found not negligent, [n2] or the question of negligence may be one for the jury. [n3] However, the circumstances may be clear enough to warrant holding the plaintiff negligent as a matter of law. [n4] In various circumstances where a guest in a motor vehicle has been was riding with a foot or leg extending out of the door or some other opening in the vehicle, and an accident occurs, a finding that the plaintiff was free of negligence in riding in that position may be proper, and thus it is a matter for the jury to determine, not for the court as a matter of law. [n5] The question of the plaintiff's negligence in sitting on the back of a truck with legs hanging over the edge is one for the jury, if the plaintiff's legs are injured by a collision with an approaching vehicle. [n6]

FOOTNOTES:

n1 Piatek v. Swindell, 84 N.H. 402, 151 A. 262 (1930).

n2 Miracle v. Cavins, 254 Ky. 644, 72 S.W.2d 25 (1934); Bruno v. Fontan, 338 So. 2d 713 (La. Ct. App. 4th Cir. 1976), writ refused, 341 So. 2d 895 (La. 1977); Benson v. Metropolitan Cas. Ins. Co. of N. Y., 79 So. 2d 345 (La. Ct. App. 2d Cir. 1955).

n3 Kovalish v. Smith, 357 Pa. 219, 53 A.2d 534 (1947).

n4 Black v. City of Berea, 137 Ohio St. 611, 19 Ohio Op. 427, 32 N.E.2d 1, 132 A.L.R. 1391 (1941).

n5 McCaffrey v. Lukens, 67 Pa. Super. 231, 1917 WL 3350 (1917).

n6 Wilkerson v. Sanderson, 233 Ky. 493, 26 S.W.2d 1 (1930).

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Extension of hand, arm, or other portion of body from motor vehicle as contributory negligence, 40 A.L.R.2d 233

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8 Am Jur 2d Automobiles and Highway Traffic § 588

§ 588 Jumping or falling from moving vehicle; child passengers

A motor vehicle guest who jumps into the public way while the vehicle is in motion is generally chargeable with negligence.[n1] However, the question whether a guest is negligent in jumping from a moving motor vehicle is generally one for the jury if there is evidence that the driver ordered the guest to jump,[n2] or if the guest jumped, or attempted to jump, from the moving vehicle believing that a collision with another vehicle was imminent.[n3]

A guest whose carelessness causes the door of a motor vehicle in which he or she is riding to fly open and the guest to fall out, is negligent.[n4] However, if the door of the moving vehicle flies open because of the wanton or reckless manner of operation of the vehicle by the driver, the guest is not negligent or chargeable with having assumed the risk, absent evidence that the passenger knew that the driver was going to operate the vehicle in such a manner.[n5]

In matters involving a child passenger, the child's capacity to understand and avoid the danger will be a factor in determining negligence.[n6]

FOOTNOTES:

n1 Heinis v. Lawrence, 160 Neb. 652, 71 N.W.2d 127, 52 A.L.R.2d 1428 (1955); Nix v. Williams, 35 A.D.2d 188, 316 N.Y.S.2d 321 (4th Dep't 1970).

In an action for damages incurred when plaintiff-passenger fell out of driver's car while trying to close the car door, a jury verdict for driver was supported by credible evidence within the purview of the comparative negligence statute verdict where the jury could have found driver was not negligent or, if he was, that his fault was less than that of passenger where car door appeared to have been shut before car was set in motion, and jury would have been justified in finding passenger attempted to close door before driver stopped car and that she used her left hand to do so instead of her right which was closer to the door. Manzo v. Malone, 407 A.2d 310 (Me. 1979).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947 to 949.

n2 Morris v. Sanders, 55 S.W.2d 594 (Tex. Civ. App. Beaumont 1932).

n3 Beck v. Browning, 129 Tex. 7, 101 S.W.2d 545 (Comm'n App. 1937).

n4 Rushing v. Mulhearn Funeral Home, 200 So. 52 (La. Ct. App. 2d Cir. 1941); Kent v. Miller, 167 Va. 422, 189 S.E. 332 (1937).

n5 Hay v. Nance, 14 Alaska 625, 119 F. Supp. 763 (Terr. Alaska 1954).

n6 Kilpack v. Wignall, 604 P.2d 462 (Utah 1979) (seven-year-old boy as a matter of law was not contributorily negligent for jumping from running board of hay truck while attempting to land on a hay bale).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 589

§ 589 Remaining in stopped or stalled vehicle; standing near disabled vehicle

A guest who remains in a motor vehicle that has stopped or stalled on the traveled portion of a highway, [n1] or on a railroad crossing, [n2] may be held guilty of negligence when the vehicle is struck by another vehicle or a train. However, this is not so under all circumstances, as where a passenger remains in the vehicle for only a minute or so after it was stopped. [n3] and in some cases the negligence of the guest in remaining in the stopped or stalled vehicle may be one for the jury. [n4]

A passenger plaintiff may also be negligent when he or she stands near a disabled vehicle on a roadway. [n5]

FOOTNOTES:

n1 Mills v. Mealey, 274 F. Supp. 4 (W.D. Va. 1967), judgment aff'd, 393 F.2d 934 (4th Cir. 1968); Martin v. Sweeney, 207 Md. 543, 114 A.2d 825 (1955).

n2 See Am. Jur. 2d, Railroads § 400.

n3 Remmenga v. Selk, 150 Neb. 401, 34 N.W.2d 757 (1948) (country highway at night).

n4 Fitch v. Bay State St. R. Co., 237 Mass. 65, 129 N.E. 423, 15 A.L.R. 234 (1921) (no negligence where driver stopped on a street car track in order to assist his guests, one of whom was blind and the other a sufferer from paralysis, to reach their home).

n5 Thomas v. Deloatch, 45 N.C. App. 322, 263 S.E.2d 615 (1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 590

§ 590 Injury by vehicle from which guest has alighted

In a number of cases involving an action by a guest to recover for injuries sustained when struck by the motor vehicle in which the guest had been riding after alighting, under the circumstances the question of negligence was one for the jury, [n1] Where the plaintiff alighted from the vehicle to retrieve a package of cigarettes, and sustained injuries when the vehicle lurched backwards, hitting him, as he bent over to search for the cigarettes, recovery was not precluded under the principle that one riding with a driver known to be intoxicated cannot recover from that driver, since the hazard incurred by passenger of a drunk driver would not ordinarily involve being struck by the vehicle, and thus the plaintiff's riding with the defendant was not a subjection to the risk that ultimately caused the harm. [n2] However, in a few such cases, the guest was negligent as a matter of law in assuming a dangerous position in connection with the vehicle from which the guest had alighted. [n3]

A guest who, in alighting from a motor vehicle, does not clear his or her clothing from the vehicle before closing the door, is negligent when the driver starts up the vehicle not knowing the guest's clothing is caught. [n4]

FOOTNOTES:

n1 Shinofield v. Curtis, 245 Iowa 1352, 66 N.W.2d 465, 50 A.L.R.2d 964 (1954).

n2 Preece v. Harless, 662 S.W.2d 839 (Ky. Ct. App. 1983).

n3 Liebelt v. Krause, 235 Minn. 547, 51 N.W.2d 667 (1952); Lepak v. Farmers Mut. Auto. Ins. Co., 262 Wis. 1, 53 N.W.2d 710 (1952).

n4 Swank v. Jordan, 71 So. 2d 636, 43 A.L.R.2d 1277 (La. Ct. App. 2d Cir. 1954).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947 to 949.

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8 Am Jur 2d Automobiles and Highway Traffic § 591

§ 591 Generally

Motorists are required to exercise reasonable care to avoid collisions with bicyclists.[n1] At the same time, bicyclists are required to exercise ordinary or reasonable care for their own safety,[n2] and motorists may properly act on the assumption that bicyclists will exercise ordinary care and caution according to the circumstances, and will not negligently and carelessly expose themselves to danger.[n3] However, because of the inherent differences in the two types of vehicles, more is required from the vehicle driver to fully discharge the duty than from the bicycle rider.[n4]

While a motorist approaching a child on a bicycle is not the insurer of the safety of the child,[n5] a motorist who sees a child on a bike ahead is held to a very high standard of care,[n6] since a child's actions may be sudden and unpredictable.[n7]

Additional precautions may be required if, under the circumstances, it may be reasonably apprehended that if the motorist approaches a child on a bicycle without a warning, the child may place him- or herself in a position of peril through fright or bewilderment.[n8] A presumption of negligence is not raised merely because of an injury to a child riding on a bicycle that was caused by a collision with a motorist; rather, the issue of the motorist's negligence is generally one for the jury unless the facts are not in dispute and are susceptible of only one reasonable inference.[n9]

Thus, motorists who have observed the requisite duty of care toward bicyclists who were sharing the highway have been found, in various instances, not to have been negligent.[n10] Conversely, recovery for injury to or death of a bicyclist has been sustained in various cases[n11] such as when a motorist strikes a bicyclist who is proceeding in the same direction as the motorist,[n12] even though the collision occurs when the bicycle turns or swerves from its course.[n13] A motorist may be found liable for an injury to or death of a bicyclist if the motorist passed so close to the bicyclist that the latter fell or swerved into the driver's path,[n14] or if the motorist turned suddenly into a bicyclist, casusing a collision.[n15]

A motorist may be found negligent in striking a bicyclist who is proceeding in the opposite direction.[n16] Thus, a driver who pulls out of the line of traffic in trying to pass a motorist traveling in front may be found negligent in striking a bicyclist traveling in the opposite direction.[n17]

A motorist's failure to exercise reasonable care to avoid collision with a bicyclist at an intersection may also give rise to liability,[n18] such as where the motorist cuts the corner in turning at an intersection,[n19] or if the bicyclist has the right of way.[n20]

A motorist may be found negligent in a collision with a bicyclist if the motorist has failed to keep a proper lookout.[n21]

FOOTNOTES:

n1 Longie v. Exline, 659 F. Supp. 177 (D. Md. 1987); Rogers v. Phillips, 206 Mass. 308, 92 N.E. 327 (1910); Oswald by Thies v. Law, 445 N.W.2d 840 (Minn. Ct. App. 1989); Simpson v. Snellenburg, 96 N.J.L. 518, 115 A. 403, 24 A.L.R. 503 (N.J. Ct. Err. & App. 1921); Calahan v. Moll, 160 Wis. 523, 152 N.W. 179 (1915).

n2 § 592.

n3 Lemmon v. Broadwater, 30 Del. 472, 7 Boyce 472, 108 A. 273 (Super. Ct. 1919) (disapproved of on other grounds by, Bennett v. Andree, 252 A.2d 100 (Del. 1969)).

n4 Luther v. State, 177 Ind. 619, 98 N.E. 640 (1912).

n5 Moore v. State Farm Mut. Auto. Ins. Co., 499 So. 2d 146 (La. Ct. App. 2d Cir. 1986).

n6 Buckley v. Exxon Corp., 390 So. 2d 512 (La. 1980).

n7 Jones v. Hawkins, 708 So. 2d 749 (La. Ct. App. 2d Cir. 1998), as amended on reh'g, (Apr. 9, 1998) and writ granted, 723 So. 2d 959 (La. 1998) and writ granted, 723 So. 2d 425 (La. 1998) and amended in part, rev'd in part on other grounds, 731 So. 2d 216 (La. 1999).

n8 Hunt v. Los Angeles Ry. Corp., 110 Cal. App. 456, 294 P. 745 (1st Dist. 1930); Buckley v. Exxon Corp., 390 So. 2d 512 (La. 1980).

The degree of care that a driver is required to exercise in relation to a child riding a bicycle in plain view upon public road is commensurate with the danger which may be presented by the disposition of the child suddenly to move from a position of safety outside pathway of vehicle and into a place of danger in such pathway in response to an impulse and without the exercise of judgment or caution. Fratzke v. Meyer, 398 N.W.2d 200 (Iowa Ct. App. 1986).

n9 Miles v. State, for Use of Wistling, 174 Md. 292, 198 A. 724 (1938); Rogers v. Phillips, 206 Mass. 308, 92 N.E. 327 (1910); Simpson v. Snellenburg, 96 N.J.L. 518, 115 A. 403, 24 A.L.R. 503 (N.J. Ct. Err. & App. 1921); Portsmouth Transit Co. v. Brickhouse, 200 Va. 844, 108 S.E.2d 385, 78 A.L.R.2d 147 (1959).

n10 Bell v. Leatherwood, 206 Ga. App. 550, 425 S.E.2d 679 (1992) (driver whose car was struck on side by bicycle which came into street from private driveway); Moore v. State Farm Mut. Auto. Ins. Co., 499 So. 2d 146 (La. Ct. App. 2d Cir. 1986); Dorsey v. Buchanan, 52 N.C. App. 597, 279 S.E.2d 92 (1981).

n11 Gibbs v. U.S., 886 F. Supp. 239 (N.D. N.Y. 1995) (Postal Service automobile struck minor's bicycle as automobile was entering alley and minor was crossing alley's opening on sidewalk).

n12 Fraser v. Stellinger, 52 Cal. App. 2d 564, 126 P.2d 653 (1st Dist. 1942).

A motorist may be negligent in failing to sound his or her horn before attempting to pass a bicyclist traveling in the same direction, although the locality is one in which a statute relating to passing does not require such a signal to be given. Straub v. Schadeberg, 243 Wis. 257, 10 N.W.2d 146, 147 A.L.R. 476 (1943).

n13 Johnson v. Shattuck, 125 Conn. 60, 3 A.2d 229 (1938); Rogers v. Phillips, 206 Mass. 308, 92 N.E. 327 (1910); Van Dyke v. Atlantic Greyhound Corp., 218 N.C. 283, 10 S.E.2d 727 (1940).

Where a motorist is about to overtake and pass a child "zigzagging"on a bicycle, ordinary care demands that a greater distance be maintained than with respect to other vehicles. Barclay v. O'Dell, 266 Minn. 393, 123 N.W.2d 681 (1963).

n14 Stockfisch v. Fox, 275 Mich. 630, 267 N.W. 754 (1936).

n15 Tennessee Mill & Feed Co. v. Giles, 211 Ala. 44, 99 So. 84 (1924).

n16 Thixton v. Palmer, 210 Ky. 838, 276 S.W. 971, 44 A.L.R. 1379 (1925); Reardon v. Marston, 310 Mass. 461, 38 N.E.2d 644 (1941).

n17 Sawyer v. Winterholder, 195 S.W.2d 659 (Mo. 1946).

n18 Hamel v. Sweatt, 256 Mass. 581, 153 N.E. 12 (1926); Mosely v. Connor, 318 Pa. 17, 177 A. 817 (1935).

The driver of a truck may be found negligent for approaching an intersection at a rapid speed and turning suddenly, and without warning, from the paved road directly upon a cyclist. Roth v. Chatlos, 97 Conn. 282, 116 A. 332, 22 A.L.R. 1554 (1922).

n19 Johnson v. Railway Exp. Agency, 131 F.2d 1009 (C.C.A. 7th Cir. 1942); Calahan v. Moll, 160 Wis. 523, 152 N.W. 179 (1915).

A truck driver was found negligent in making a right turn and striking a bicyclist who was standing on the shoulder of the road. Ziparo v. Hartwells Garage, 75 A.D.2d 997, 429 N.Y.S.2d 104 (4th Dep't 1980).

n20 Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994); Zanzonico v. Yellow Cab Co., 4 N.J. Misc. 458, 133 A. 84 (Sup. Ct. 1926).

n21 Reynolds v. City of New Orleans, 671 So. 2d 1033 (La. Ct. App. 4th Cir. 1996); Okland v. Wolf, 258 Mont. 35, 850 P.2d 302 (1993).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
5. Bicyclists

8 Am Jur 2d Automobiles and Highway Traffic § 592

§ 592 Negligence of bicyclists

A person riding on a bicycle in a roadway in the same manner and mode as a motorist has the same obligations and duties as that of a motorist.[n1] and a bicyclist's use of the road in a proper and legal manner does not create a basis for a finding of contributory negligence.[n2] Thus, the fact that a bicycle is used by a child in the public way solely for the purpose of play will not preclude or diminish recovery if, while exercising proper care, the child is injured through the negligence of a motorist.[n3]

Bicyclists are required to exercise ordinary care for their own safety, which means the caution that prudent persons of like age, intelligence, and experience would exercise under the same or similar circumstances,[n4] and recovery for injuries sustained in a collision with a motorist may be barred or diminished if the bicyclist fails to exercise the requisite care, and the negligence contributed to the accident.[n5]

Where a child is riding a bicycle, negligence is measured by different standards than in the case of an adult rider,[n6] so that a child bicyclist may be too young to be chargeable with negligence.[n7]

Although a bicyclist need not keep a special lookout for motorists under all circumstances,[n8] a lookout must be kept as ordinary care requires.[n9]

A bicyclist may be found negligent for failing to keep a proper lookout for motorists while entering a highway[n10] or an intersection[n11] Although bicyclists, to avoid a collision or to avoid being run over, are not ordinarily required to look behind for motorists approaching from the rear,[n12] an adult bicyclist who turns in front of an approaching motorist without having looked to observe the motorist, may be negligent as a matter of law.[n13] However, even though a bicyclist does not maintain a proper lookout, recovery for injuries sustained when struck by a motorist will not be barred or diminished if the failure to keep a lookout was not a contributing cause of the accident.[n14]

It is not negligence per se for a bicyclist to carry a passenger on the handlebars of the her bicycle or upon the frame,[n15] although such a situation will require the exercise of greater care on the part of the bicyclist.[n16] The operation of a bicycle with only one hand on the handlebars in direct violation of an ordinance is negligent, and will preclude or diminish recovery where it is the proximate cause of a collision with a motorist.[n17]

FOOTNOTES:

n1 Bird v. Black, 420 So. 2d 1280 (La. Ct. App. 3d Cir. 1982).

n2 Maxwell v. Gossett, 126 Ariz. 98, 612 P.2d 1061 (1980); Ziparo v. Hartwells Garage, 75 A.D.2d 997, 429 N.Y.S.2d 104 (4th Dep't 1980).

A bicyclist struck by a cab was not contributorily negligent as a matter of law where the cyclist was riding in the curb lane and the collision was the result of an illegal right turn by the cab. Williams v. Anderson, 485 A.2d 198 (D.C. 1984).

n3 Wilson v. U.S., 874 F. Supp. 128 (M.D. La. 1995); Robertson v. Penn, 472 So. 2d 927 (La. Ct. App. 1st Cir. 1985), writ denied, 476 So. 2d 353 (La. 1985); Coope v. Scannell, 238 Mass. 288, 130 N.E. 494 (1921).

n4 Valenzuela v. Bracamonte, 126 Ariz. 472, 616 P.2d 932 (Ct. App. Div. 2 1980); King v. Casad, 122 Ill. App. 3d 566, 78 Ill. Dec. 101, 461 N.E.2d 685 (4th Dist. 1984); Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994); Pedersen v. Balzan, 117 A.D.2d 933, 499 N.Y.S.2d 239 (3d Dep't 1986); Rasmussen v. Garthus, 12 Wis. 2d 203, 107 N.W.2d 264 (1961).

n5 Arceneaux v. Wallis, 654 So. 2d 1117 (La. Ct. App. 4th Cir. 1995); Lewis v. Brumbles, 83 N.C. App. 90, 349 S.E.2d 323 (1986); Middleton v. Glenn, 393 Pa. 360, 143 A.2d 14 (1958).

n6 As to the negligence of children, generally, see §§ 479 to 481.

n7 Chu v. Bowers, 275 Ill. App. 3d 861, 212 Ill. Dec. 113, 656 N.E.2d 436 (3d Dist. 1995); Smith v. Trahan, 398 So. 2d 572 (La. Ct. App. 1st Cir. 1980).

n8 Huey v. Dykes, 203 Ala. 231, 82 So. 481 (1919); Hauskins v. Buck Co., 113 Cal. App. 176, 298 P. 137 (3d Dist. 1931).

n9 LeBlanc v. Fidelity Fire & Cas. Ins. Co., 633 So. 2d 891 (La. Ct. App. 1st Cir. 1994); McFarland By and Through McFarland v. King, 216 Neb. 92, 341 N.W.2d 920 (1983); Taylor v. Bohemia, Inc., 70 Or. App. 143, 688 P.2d 1374 (1984); Parker v. Cartier, 105 A. 393 (R.I. 1919).

Even though a motorist slowed to allow a bicyclist to cross a two-lane highway and signaled the bicyclist to cross, the bicyclist was negligent in failing to keep a proper lookout for oncoming traffic. Hanks v. Melancon, 338 So. 2d 1215 (La. Ct. App. 3d Cir. 1976).

A bicyclist is guilty of contributory negligence in suddenly changing course from the shoulder of the highway to the paved portion of the way without warning to a vehicle immediately approaching from the rear. Van Dyke v. Atlantic Greyhound Corp., 218 N.C. 283, 10 S.E.2d 727 (1940).

n10 Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994); Simpson v. Whitman, 147 A.D. 642, 132 N.Y.S. 801 (2d Dep't 1911).

n11 Valenzuela v. Bracamonte, 126 Ariz. 472, 616 P.2d 932 (Ct. App. Div. 2 1980); Ude v. Fuller, 187 Mich. 483, 153 N.W. 769 (1915); Smith v. Ellwood City Ice Co., 311 Pa. 147, 166 A. 560 (1933); Jamieson v. Gerth, 61 S.D. 514, 249 N.W. 921 (1933).

n12 Hart v. Farris, 218 Cal. 69, 21 P.2d 432 (1933).

n13 Lowe v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967).

n14 Straub v. Schadeberg, 243 Wis. 257, 10 N.W.2d 146, 147 A.L.R. 476 (1943).

n15 Linehan v. Morton, 221 Ill. App. 70, 1921 WL 1726 (1st Dist. 1921), cert. denied.

n16 Linehan v. Morton, 221 Ill. App. 70, 1921 WL 1726 (1st Dist. 1921), cert. denied.

n17 Hunter v. Long's Baggage Transfer Co., 170 Va. 83, 195 S.E. 521 (1938).

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Automobiles and Highway Traffic
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8 Am Jur 2d Automobiles and Highway Traffic § 593

§ 593 Violation of traffic regulations or rules of the road

A violation of a statute or rule of the road that is a proximate cause of the injuries complained of establishes a prima facie case of contributory negligence [n1] but it is not negligent for a bicyclist to fail to obey a statute or traffic regulation that, by its very nature, can have no application to cyclists. [n2]

A bicyclist may be held negligent as failing to observe the rules of the road where the cyclist overtakes a motorist on his or her right side, in violation of law, [n3] or cuts corners, [n4] or travels in the wrong direction on the road or highway. [n5] Although a bicyclist may be negligent for failing to stay to the right in meeting an approaching motorist as required by statute, [n6] it is not negligence, as a matter of law, for a bicyclist to proceed in the center of the street instead of keeping close to the right-hand curb. [n7]

The failure of a bicyclist entering a public highway or street to yield the right of way to motorists on the roadway may constitute negligence, thereby precluding or diminishing recovery. [n8] However, if the bicyclist is an infant, it is a question of fact for the jury, and not a question of law for the court, whether or not the cyclist had sufficient mental and physical capacity to be capable of complying with the rule at issue, in light of the bicyclist's age, intelligence, and experience. [n9]

A bicyclist who disregards a traffic signal and collides with a motor vehicle at an intersection may be found negligent. [n10] Similarly, a bicyclist riding in a city street's "neutral ground"bus lane at the time of a collision is negligent if the municipal code prohibits bicyclists, like other vehicles, from driving on neutral ground. [n11]

The fact that the rider of a bicycle was holding on to a moving motor vehicle at the time of an accident resulting in his or her injury or death constitutes negligence affecting the right to and amount of recovery against the owner or driver of the motor vehicle, at least if the negligence was a proximate cause of the accident. [n12]

Hitching on to a motor vehicle in violation of an ordinance has been held not to constitute negligence per se, [n13] but there is authority to the contrary. [n14]

FOOTNOTES:

n1 Longie v. Exline, 659 F. Supp. 177 (D. Md. 1987).

n2 Blitstein v. Capital District Transportation Authority, 81 A.D.2d 981, 439 N.Y.S.2d 768 (3d Dep't 1981).

n3 McCoy v. Home Oil & Gas Co., 48 S.W.2d 113 (Mo. Ct. App. 1932).

Evidence that a bicyclist, first being overtaken by and then overtaking a truck which was on his left, was unable to turn with the truck when it turned right at an intersection, has been held not to show contributory negligence of the bicyclist as a matter of law. Jackson v. Geiger, 4 N.J. Misc. 723, 134 A. 288 (Sup. Ct. 1926), aff'd, 103 N.J.L. 490, 135 A. 917 (N.J. Ct. Err. & App. 1927).

n4 Atkinson v. Molstein, 122 Conn. 611, 191 A. 344 (1937).

n5 Rosenthal v. County of Pima, 164 Ariz. 98, 791 P.2d 365 (Ct. App. Div. 2 1990); Johnston v. Brown, 468 N.E.2d 597 (Ind. Ct. App. 1984).

n6 Longie v. Exline, 659 F. Supp. 177 (D. Md. 1987); Hart v. Warners, 363 Mich. 527, 110 N.W.2d 632 (1961).

n7 Green v. Pedigo, 75 Cal. App. 2d 300, 170 P.2d 999 (2d Dist. 1946).

n8 La Mont v. Anderson, 1 A.D.2d 729, 146 N.Y.S.2d 744 (3d Dep't 1955); Williams v. Clinton, 236 S.C. 373, 114 S.E.2d 490 (1960).

Bicycle which is driven onto public streets is subject to rules-of-the-road while in process of entering the street, as well as after it has entered the street and becomes part of traffic. Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

n9 Locklin v. Fisher, 264 A.D. 452, 36 N.Y.S.2d 162 (3d Dep't 1942).

n10 Alabama Lumber & Building Material Ass'n v. Mason, 230 Ala. 168, 160 So. 232 (1935); Clark v. De Beer, 188 So. 517 (La. Ct. App. 2d Cir. 1939).

n11 Baker v. City of New Orleans, 555 So. 2d 659 (La. Ct. App. 4th Cir. 1989), writ denied, 558 So. 2d 603 (La. 1990).

n12 Francisco v. Diaz, 181 So. 47 (La. Ct. App., Orleans 1938); Wade v. Buchanan, 306 Mass. 318, 28 N.E.2d 421 (1940).

n13 Rotter v. Detroit United Ry., 205 Mich. 212, 171 N.W. 514 (1919).

n14 Shutz v. Edgerton, 126 Wash. 128, 217 P. 707 (1923).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
5. Bicyclists

8 Am Jur 2d Automobiles and Highway Traffic § 594

§ 594 Lack of proper equipment

The absence of proper lights on a bicycle in the nighttime, as required by statute or ordinance, may constitute negligence barring or diminishing recovery if the bicyclist is struck by a motorist, if the absence of lighting was a proximate cause of the injury.[n1] The absence of proper lights on the bicycle will not preclude or diminish recovery, however, if the scene of the accident was well illuminated by street lights,[n2] or if alternate lights that clearly rendered the bicyclist visible were present,[n3] or if the motorist saw the bicycle in spite of the absence of lights,[n4] or if the motorist would have been unable to see the bicycle even if it had been equipped with lights.[n5] In most cases, the absence of proper lights on a bicycle does not constitute negligence as a matter of law,[n6] particularly if the bicyclist is a minor,[n7] but it is a question for the jury whether the absence of proper lights played a role in causing the collision with the motorist.[n8] A bicycle equipped with defective or ineffective brakes may support a finding of negligence barring or diminishing recovery by an injured bicyclist, if the condition was a contributing cause of the accident.[n9] In the absence of statutory requirement, a person is not conclusively negligent for failing to equip a bicycle with a horn, bell, or other warning device.[n10] The failure of a bicyclist to wear a helmet does not ordinarily constitute negligence.[n11]

FOOTNOTES:

n1 Johnson v. Railway Exp. Agency, 131 F.2d 1009 (C.C.A. 7th Cir. 1942); Longie v. Exline, 659 F. Supp. 177 (D. Md. 1987); Zachary v. Travelers Indem. Co., 533 So. 2d 1300 (La. Ct. App. 3d Cir. 1988); Haskins v. Carolina Power and Light Co., 47 N.C. App. 664, 267 S.E.2d 587 (1980); Everest v. Riecken, 26 Wash. 2d 542, 174 P.2d 762 (1946).

A statute requiring a red light visible from approximately 500 feet to the rear of a vehicle not specifically required to be equipped with lights, applies to a bicycle, and violation of the statute ordinarily constitutes negligence per se. Morris v. Stone, 33 Ohio App. 2d 101, 62 Ohio Op. 2d 171, 292 N.E.2d 891 (10th Dist. Franklin County 1972).

The fact that a bicyclist is traveling on a highway on a bicycle at night without a lighted headlamp or that two people were traveling on the bicycle, even though negligence, is not the proximate cause of a collision where a motorist proceeding in the same direction and traveling at high speed was blinded by lights for a period of at least 250 feet and ran into the rear of the bicycle, especially where there was evidence that the bicycle had a reflecting taillight which was visible at night from an automobile at a distance of 170 feet. Maier v. Minidoka County Motor Co., 61 Idaho 642, 105 P.2d 1076 (1940).

n2 La Count v. Pasarich, 205 Cal. 181, 270 P. 210 (1928).

n3 Landis v. Wick, 154 Or. 199, 59 P.2d 403 (1936).

n4 Anderson v. Sterrit, 95 Kan. 483, 148 P. 635 (1915).

n5 Hoxie v. Bardwell, 287 Mass. 121, 191 N.E. 640 (1934).

n6 Taylor v. Yukoweic, 273 A.D. 915, 77 N.Y.S.2d 620 (2d Dep't 1948); Masters v. Alexander, 424 Pa. 65, 225 A.2d 905 (1967).

n7 Morris v. Stone, 33 Ohio App. 2d 101, 62 Ohio Op. 2d 171, 292 N.E.2d 891 (10th Dist. Franklin County 1972); Bauman by Chapman v. Crawford, 104 Wash. 2d 241, 704 P.2d 1181 (1985).

n8 Hoxie v. Bardwell, 287 Mass. 121, 191 N.E. 640 (1934); Brown v. Tanner, 281 Mich. 150, 274 N.W. 744 (1937); Bauman by Chapman v. Crawford, 104 Wash. 2d 241, 704 P.2d 1181 (1985).

n9 Zachary v. Travelers Indem. Co., 533 So. 2d 1300 (La. Ct. App. 3d Cir. 1988).

n10 Longie v. Exline, 659 F. Supp. 177 (D. Md. 1987); Green v. Pedigo, 75 Cal. App. 2d 300, 170 P.2d 999 (2d Dist. 1946).

n11 Walden v. State, 250 Mont. 132, 818 P.2d 1190 (1991).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
5. Bicyclists

8 Am Jur 2d Automobiles and Highway Traffic § 595

§ 595 Riding on sidewalk

Absent a prohibiting statute, it is not unlawful for a person to ride a bicycle on the sidewalk.[n1] Furthermore, where a statute prohibiting riding a bicycle on the sidewalk does exist, violating the ordinance is not negligence per se[n2] and it will not preclude or diminish recovery by a bicyclist struck by a motorist crossing the sidewalk unless the act was a proximate cause of the injury.[n3] However, if a child rides a bicycle rapidly on the sidewalk, with head lowered, and runs into the side of a vehicle crossing over the sidewalk, recovery may be barred on the ground that the child's conduct is contributory negligence.[n4]

FOOTNOTES:

n1 Gibson v. Arrowhead Conditioning Co., Inc., 253 N.J. Super. 648, 602 A.2d 800 (Law Div. 1991).

n2 Reynolds v. Tyler, 65 Or. App. 173, 670 P.2d 223 (1983).

n3 Hackert v. Prescott, 165 Minn. 134, 205 N.W. 893 (1925).

n4 Jordan v. Crowell, 171 So. 477 (La. Ct. App. 2d Cir. 1937).

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C. Persons Injured
6. Motorcyclists, Moped Riders, and Other Cyclists

8 Am Jur 2d Automobiles and Highway Traffic § 596

§ 596 Generally

The drivers of automobiles or trucks owe to motorcyclists the duty of using reasonable care to avoid colliding with or injuring them.[n1] In like manner, motorcyclists are required to exercise reasonable or ordinary care for their own safety,[n2] and the drivers of automobiles or trucks have the right to act upon the assumption that motorcyclists will exercise ordinary care and caution according to the circumstances, and will not negligently and carelessly expose themselves to danger.[n3]

A motorist may be negligent for failing to maintain a careful and proper lookout for motorcyclists.[n4]

In view of a motorist's duty toward motorcyclists, recovery by a motorcyclist has, under the circumstances of the particular cases, been sustained[n5] as where the motorcyclist was injured in a collision with a motor vehicle at an intersection,[n6] where, for example, the driver of the automobile failed to yield the right of way,[n7] or where the motorist cut the corner in turning at the intersection.[n8] Similarly, liability has been recognized for injury to or death of a motorcyclist who was struck by a vehicle proceeding in the same direction,[n9] or by a vehicle proceeding in the opposite direction where the driver of the vehicle was negligent in turning into the motorcycle's lane of traffic.[n10]

FOOTNOTES:

n1 Van House v. Acorn Steel Co., 144 F.2d 204 (C.C.A. 3d Cir. 1944); Turner v. Modern Beauty Supply Co., 152 Fla. 3, 10 So. 2d 488 (1942); White v. Vandevelde, 284 Mich. 669, 279 N.W. 899 (1938).

n2 § 597.

n3 Lemmon v. Broadwater, 30 Del. 472, 7 Boyce 472, 108 A. 273 (Super. Ct. 1919) (disapproved of on other grounds by, Bennett v. Andree, 252 A.2d 100 (Del. 1969)).

n4 Lopa v. McGee, 373 Pa. Super. 85, 540 A.2d 311 (1988).

n5 Lopa v. McGee, 373 Pa. Super. 85, 540 A.2d 311 (1988).

n6 Cogswell v. Frazier, 183 Md. 654, 39 A.2d 815 (1944).

n7 Turner v. Modern Beauty Supply Co., 152 Fla. 3, 10 So. 2d 488 (1942); Doyle v. Telegraph Pub. Co., 93 N.H. 61, 35 A.2d 394 (1943).

n8 Greenfield v. Bruskas, 41 N.M. 346, 68 P.2d 921 (1937).

n9 Picou v. Ferrara, 483 So. 2d 915 (La. 1986); Casto v. Hansen, 123 Or. 20, 261 P. 428 (1927).

n10 Lewis v. Shackleford, 203 Ark. 500, 157 S.W.2d 509 (1942); Pitcher v. Daugherty, 177 Md. 145, 8 A.2d 917 (1939); Addair v. Bryant, 168 W. Va. 306, 284 S.E.2d 374 (1981).

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8 Am Jur 2d Automobiles and Highway Traffic § 597

§ 597 Negligence of motorcyclist

Recovery of damages for injuries sustained in an accident by a motorcyclist may be barred or diminished if the motorcyclist was negligent in causing the accident.[n1]

A motorcyclist who is driving in a lawful manner may, under the circumstances, be deemed free of negligence contributing to the accident causing his or her injuries[n2] if the motorcyclist has exercised the degree of care that prudent persons of like age, intelligence, and experience would exercise under the same or similar circumstances.[n3]

A minor who is riding a motorized vehicle such as a moped[n4] or a dirt bike[n5] on the public roadway is held to an adult standard of reasonable care. Motor vehicle laws and rules of the road apply to operators of motorcycles and mopeds to the extent practicable.[n6]

The question whether a motorcyclist was negligent that proximately contributed to injuries from a collision with another motorist is usually a question for the jury, but when the material facts are undisputed and only one inference may be drawn from them by reasonable minds, the question is one of law for the court.[n7]

A motorcyclist may be negligent in failing to keep a proper lookout for other vehicles on the road.[n8] Upon entering an intersection, a motorcyclist must observe with reasonable care,[n9] but does not have an absolute duty to discover another motorist, unless the vehicle is in such plain view that by looking with reasonable care the motorcyclist should have seen it in time to avoid a collision.[n10] A motorcyclist entering an intersection is not negligent in assuming that a motorist who is stopped in the intersection at a flashing red light, will remain stopped and that it is thus safe to enter the intersection.[n11] A motorcyclist is not negligent in failing to sound a horn where, under the circumstances, the other vehicle appeared unexpectedly and there was no time to sound any warning.[n12]

FOOTNOTES:

n1 Thompson v. Platt, 116 Ill. App. 3d 662, 72 Ill. Dec. 480, 452 N.E.2d 733 (3d Dist. 1983); Elliott v. U.S. Fidelity & Guar. Co., 568 So. 2d 155 (La. Ct. App. 2d Cir. 1990); Deskins v. T.H. Nichols Line Contractor, Inc., 234 Va. 185, 361 S.E.2d 125 (1987).

A motorcyclist, who pled guilty to a charge of driving without a license and admitted that he was "legally blind,"assumed the risk of personal injury when he chose to drive a motorcycle upon a public highway, and could not recover for injuries he sustained in an accident. Bryan v. McClellan Enterprises, Inc., 191 Ga. App. 646, 382 S.E.2d 423 (1989).

n2 Picou v. Ferrara, 483 So. 2d 915 (La. 1986); Huerta v. Van Cleve, 29 Ohio Misc. 2d 30, 504 N.E.2d 1239 (C.P. 1985); Runge v. Prairie States Ins. of Sioux Falls, 393 N.W.2d 538 (S.D. 1986).

n3 Schroeder v. Baumgarteker, 202 Cal. 626, 262 P. 740 (1927); Hunt v. Los Angeles Ry. Corp., 110 Cal. App. 456, 294 P. 745 (1st Dist. 1930).

n4 Terre Haute First Nat. Bank v. Stewart, 455 N.E.2d 362 (Ind. Ct. App. 1983).

n5 Demeri by Demeri v. Morris, 194 N.J. Super. 554, 477 A.2d 426 (Law Div. 1983).

n6 Rosas v. Danilson, 387 N.W.2d 767 (Iowa 1986).

n7 Thompson v. Platt, 116 Ill. App. 3d 662, 72 Ill. Dec. 480, 452 N.E.2d 733 (3d Dist. 1983); Morris v. Laaker, 213 Neb. 868, 331 N.W.2d 807 (1983); Graham v. Crist, 146 W. Va. 156, 118 S.E.2d 640 (1961).

n8 Thompson v. Platt, 116 Ill. App. 3d 662, 72 Ill. Dec. 480, 452 N.E.2d 733 (3d Dist. 1983); Elliott v. U.S. Fidelity & Guar. Co., 568 So. 2d 155 (La. Ct. App. 2d Cir. 1990).

n9 Railway Exp. Agency, Inc., of Va. v. Moore, 201 Va. 928, 114 S.E.2d 626 (1960).

n10 Railway Exp. Agency, Inc., of Va. v. Moore, 201 Va. 928, 114 S.E.2d 626 (1960).

n11 Tucker v. Lirette, 400 So. 2d 647 (La. 1981).

n12 Wagner v. City of Chicago, 254 Ill. App. 3d 842, 193 Ill. Dec. 676, 626 N.E.2d 1227 (1st Dist. 1993), judgment aff'd, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995).

SUPPLEMENT:

Cases

Allegation that motorist made left-hand turn in front of motorcyclist, causing motorcyclist to fall from motorcycle while trying to avoid collision with motorist, was sufficient to demonstrate facts and conditions from which motorist's negligence and the causation of the accident by that negligence could have been reasonably inferred, and thus motorist was not entitled to judgment as a matter of law in motorcyclist's action for damages. Homan v. Herzig, 55 A.D.3d 1413, 865 N.Y.S.2d 189 (4th Dep't 2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 598

§ 598 Speeding

A motorcyclist's violation of the statutory speed limit is usually itself sufficient evidence of negligence.[n1] Thus, under the circumstances, the excessive speed of a motorcyclist may constitute negligence barring or diminishing recovery for injuries sustained in a collision with other motorists,[n2] as where the motorcyclist proceeds at an excessive rate of speed on a dark and rainy night.[n3]

The determination of whether a motorcyclist was traveling at an excessive speed at the time of the accident is one for the jury.[n4] In order to recover for negligence, the motorcyclist's excessive speed must have been a proximate or contributing cause of the injury.[n5]

FOOTNOTES:

n1 Wagner v. City of Chicago, 254 Ill. App. 3d 842, 193 Ill. Dec. 676, 626 N.E.2d 1227 (1st Dist. 1993), judgment aff'd, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995).

n2 Drope v. Owens, 298 Ark. 69, 765 S.W.2d 8 (1989); Elliott v. U.S. Fidelity & Guar. Co., 568 So. 2d 155 (La. Ct. App. 2d Cir. 1990).

n3 Davis v. Jeffreys, 197 N.C. 712, 150 S.E. 488 (1929); Graham v. Crist, 146 W. Va. 156, 118 S.E.2d 640 (1961).

n4 Wagner v. City of Chicago, 254 Ill. App. 3d 842, 193 Ill. Dec. 676, 626 N.E.2d 1227 (1st Dist. 1993), judgment aff'd, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995).

n5 Roper v. Archibald, 680 S.W.2d 743 (Mo. Ct. App. S.D. 1984).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 599

§ 599 Lack of required equipment

It is negligent to fail to equip a motorcycle with a brake, horn, or bell, as required by statute, and thus will preclude or diminish recovery for injuries sustained in a collision resulting from an emergency produced by an omission of a motorcyclist to signal his or her approach,[n1] at least to the extent that the violation was a proximate cause of the accident.[n2] Similarly, a motorcyclist's failure to have or use a headlight, if the omission proximately contributes to the accident, will preclude or diminish recovery.[n3]

A motorcyclist's operation of a motorcycle without wearing protective headgear, in violation of statute, constitutes negligence as a matter of law, imposing liability on the motorcyclist for his or her own injuries to the extent that the violation was a proximate cause of the harm.[n4] However, in the absence of a statute so requiring, a motorcyclist has no duty to wear protective headgear[n5] and a failure to do so will neither constitute contributory negligence[n6] nor will it operate as an implied consent to relieve motorists of their duty to use reasonable care toward the motorcyclist.[n7]

Negligence may not be predicated on the cyclist's failure to wear reflective clothing in the absence of a statute requiring such clothing.[n8]

FOOTNOTES:

n1 Green v. Gaydon, 174 Ga. App. 796, 331 S.E.2d 106 (1985); Corning v. Maynard, 179 Iowa 1065, 162 N.W. 564 (1917).

n2 Green v. Gaydon, 174 Ga. App. 796, 331 S.E.2d 106 (1985).

n3 Green v. Gaydon, 174 Ga. App. 796, 331 S.E.2d 106 (1985); Lopa v. McGee, 373 Pa. Super. 85, 540 A.2d 311 (1988).

n4 Green v. Gaydon, 174 Ga. App. 796, 331 S.E.2d 106 (1985); Landry v. Doe, 597 So. 2d 14 (La. Ct. App. 1st Cir. 1992).

n5 Kealoha v. County of Hawaii, 74 Haw. 308, 844 P.2d 670 (1993).

n6 Mayes v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993).

n7 Mayes v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993).

n8 Rosas v. Danilson, 387 N.W.2d 767 (Iowa 1986).

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8 Am Jur 2d Automobiles and Highway Traffic § 600

§ 600 Motorcycle passengers

It is not negligence per se for a motorcyclist to carry a passenger on a seat provided for that purpose,[n1] although this action will require the exercise of greater care by the operator of the motorcycle.[n2] Even when a passenger is carried on a motorcycle in violation of an ordinance, it is up to the jury to determine whether the violation was the cause of the accident.[n3]

The driving of a motorcycle without providing hand-grips for the use of the person in the rear, as required by statute, has will constitute negligence by the driver, although the failure will not defeat or diminish recovery against the driver of another motor vehicle for injuries sustained in a collision therewith unless the jury finds that the failure was a proximate cause of the collision.[n4]

A motorcycle passenger who, at the time of the accident, had no opportunity to say or do anything to avoid the motorcyclist's collision with another vehicle is not culpable and will be found free of negligence.[n5]

FOOTNOTES:

n1 Suarez v. Katon, 299 Mich. 38, 299 N.W. 798 (1941).

n2 Linehan v. Morton, 221 Ill. App. 70, 1921 WL 1726 (1st Dist. 1921), cert. denied; Tindle v. Denny, 3 N.C. App. 567, 165 S.E.2d 351 (1969).

n3 Suarez v. Katon, 299 Mich. 38, 299 N.W. 798 (1941); Bredemeyer v. Johnson, 179 Wash. 225, 36 P.2d 1062 (1934).

n4 Elliott v. Zellar, 192 Misc. 350, 80 N.Y.S.2d 319 (Sup 1948).

n5 Stewart v. City of Omaha, 242 Neb. 240, 494 N.W.2d 130 (1993) (disapproved on other grounds of by, Henery v. City of Omaha, 263 Neb. 700, 641 N.W.2d 644 (2002)); Luck v. Tellier, 222 A.D.2d 783, 634 N.Y.S.2d 814 (3d Dep't 1995).

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8 Am Jur 2d Automobiles and Highway Traffic § 601

§ 601 Rescuers

An operator of a motor or other vehicle must use due care to avoid causing injuries, not only to other motorists and vehicles traveling on the highway,[n1] but also to other occupants of his or her own vehicle,[n2] pedestrians,[n3] children,[n4] persons boarding and alighting from public conveyances,[n5] and any other persons lawfully using the way.[n6]

The rescue doctrine under which persons are held justified in assuming greater risks in the protection of human life, where they would not be under other circumstances,[n7] applies to a person who stands in or on a highway or street in order to warn approaching motorists of a dangerous situation caused by a vehicle stalled or stopped on or across the road.[n8] Where a person using a light of some sort attempted to warn approaching motorists of a vehicle stalled or stopped on or across the road at night, the courts in some cases have upheld the determination of the trier of fact that there was no contributory negligence such as would bar recovery on the part of such person.[n9] Moreover, where a person having no light attempted, merely by waving his or her arms or the like, to warn approaching motorists of such a stalled vehicle, the courts in several cases have held that under the circumstances such person was not guilty of contributory negligence as a matter of law, the question being one for the determination of the jury.[n10] However, the doctrine is inapplicable to one who is at the scene of an action neither for the purpose of rescue nor for the purpose of warning others of danger.[n11]

FOOTNOTES:

n1 As to duty with regard to bicyclists and motorcyclists, see § 422.

n2 § 557.

n3 § 442.

n4 §§ 503 et seq.

n5 §§ 510 et seq.

n6 Sheldon v. James, 175 Cal. 474, 166 P. 8, 2 A.L.R. 1493 (1917); Stringer v. Frost, 116 Ind. 477, 19 N.E. 331 (1889); Crawford v. McElhinney, 171 Iowa 606, 154 N.W. 310 (1915); Melville v. Rollwage, 171 Ky. 607, 188 S.W. 638 (1916); Gerhard v. Ford Motor Co., 155 Mich. 618, 119 N.W. 904 (1909); Moebus v. Hermann, 108 N.Y. 349, 15 N.E. 415 (1888); Humes v. Schaller, 39 R.I. 519, 99 A. 55 (1916); Deputy v. Kimmell, 73 W. Va. 595, 80 S.E. 919 (1914).

n7 Am. Jur. 2d, Negligence §§ 649 et seq.

n8 Guca v. Pittsburgh Rys. Co., 367 Pa. 579, 80 A.2d 779 (1951).

The decedent clearly assumed the risk of his position voluntarily, and was not exempt from such risks on the theory that he was a rescuer, where it appeared that a wrecking truck belonging to the defendant was attempting to retrieve an automobile which had gone off the road, and that the decedent came from a nearby residence, and voluntarily rendered assistance to the defendant by giving warning to approaching motorists, and an automobile descending a mountain slipped and skidded, striking the deceased and inflicting injuries from which he died; whether the deceased was considered a mere onlooker or a volunteer, the duty of the defendant toward him was no greater. Cooper v. Teter, 123 W. Va. 372, 15 S.E.2d 152 (1941).

n9 Bates v. Hayden, Nat. Cas. Co., Intervenor, 188 So. 751 (La. Ct. App., Orleans 1939); Lashley v. Dawson, 162 Md. 549, 160 A. 738 (1932).

n10 Hanson v. Aldrich, 199 Iowa 168, 201 N.W. 778 (1925); Hanser v. Youngs, 212 Mich. 508, 180 N.W. 409 (1920); Guca v. Pittsburgh Rys. Co., 367 Pa. 579, 80 A.2d 779 (1951).

n11 A plaintiff who rescued no one but who arrived at the scene of an accident five minutes later when a crowd had already gathered could not rely on the rescue doctrine to recover, from the negligent drivers involved in that accident, for injuries plaintiff received when a third negligent driver ignored flares and crashed into one of the stalled vehicles. Stevenson v. Delahaye, 310 So. 2d 651 (La. Ct. App. 1st Cir. 1975).

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8 Am Jur 2d Automobiles and Highway Traffic § 602

§ 602 Persons working on or about motor vehicles standing on highway

The operator of a motor vehicle approaching a person who is working on a vehicle standing in the highway owes that person a duty of reasonable care to avoid injuring him or her.[n1] The motorist has a duty of observing whether there are any persons around or about the standing vehicle, and must maintain control of over their own vehicle so as to avoid striking persons.[n2] The fact that a motor vehicle stops in plain view on the highway should put the operator of another motor vehicle on notice that caution should be used to avoid injuring persons around or about the stopped vehicle.[n3]

Observation: A person working in or near a motor vehicle on the highway is required to exercise reasonable care for his or her own safety,[n4] and whether a person has complied with this requirement must depend upon all the circumstances of the case.[n5]

The negligence of a person working on or about a motor vehicle may be grounded on the fact that the vehicle was standing on the traveled portion of the way in violation of statute,[n6] or without necessary lights or flares being displayed.[n7] The mere fact that the person was standing or walking in the traveled portion of the road does not itself create negligence that will bar or diminish recovery for injuries sustained when struck by another motorist,[n8] but the question of negligence is one of fact for the jury.[n9] Furthermore, the mere fact that a person working on or about a motor vehicle in the traveled portion of the way is standing wholly or in part outside the line of the vehicle does not indicate negligence.[n10]

However, a motorist is not liable for injuries sustained by a pedestrian working on or about a vehicle in the highway who suddenly steps into his or her path,[n11] or who fails to step out of the way after having neglected to keep a proper lookout for approaching motorists.[n12] Even though a person engaged about a vehicle in the highway does not exercise proper care for his or her own safety, this negligence does not bar or diminish recovery for injuries sustained if he or she, or the vehicle, is struck by another vehicle, if the negligence does not contribute to the person's injuries,[n13] or if the other motorist has the last clear chance to avoid the accident, where that doctrine applies[n14]

Liability may be imposed on a motorist for injuries sustained when he or she collides with a person working on or about a motor vehicle parked in or alongside the highway, if he or she has neglected to exercise proper care after having been blinded by the headlights of the parked vehicle,[n15] or of another vehicle that is parked[n16] or approaching.[n17]

The application of the brakes in such a manner and under such circumstances as to cause the motor vehicle to skid into a person working on or about another motor vehicle parked in or alongside the highway may constitute negligence rendering the operator of the former vehicle liable for injuries proximately resulting therefrom,[n18] although not where he or she is presented with an emergency situation and then applies the brakes in a timely effort to stop.[n19]

FOOTNOTES:

n1 Daughraty v. Tebbets, 122 Me. 397, 120 A. 354, 34 A.L.R. 1507 (1923); Shearer v. Puent, 166 Minn. 425, 208 N.W. 182 (1926); Grein v. Gordon, 280 Pa. 576, 124 A. 737, 34 A.L.R. 1511 (1924); McVey v. Whittington, 248 S.C. 447, 151 S.E.2d 92, 27 A.L.R.3d 1 (1966); Stanley v. Tomlin, 143 Va. 187, 129 S.E. 379 (1925).

n2 Shearer v. Puent, 166 Minn. 425, 208 N.W. 182 (1926); Lentz v. Northwestern Nat. Cas. Co., 11 Wis. 2d 462, 105 N.W.2d 759 (1960); Gilbert v. Reid, 10 Wis. 2d 398, 102 N.W.2d 750 (1960).

The operator of a car approaching a stationary car or team should be charged with the duty of observing whether any person or persons are connected with the standing vehicle, and should have his car or team under such control as to avoid an accident with any person or persons who may be around about such car or team, or who attempt to cross the road in front of the oncoming car, provided such person or persons are themselves in the exercise of due care. Daughraty v. Tebbets, 122 Me. 397, 120 A. 354, 34 A.L.R. 1507 (1923).

n3 Stanley v. Tomlin, 143 Va. 187, 129 S.E. 379 (1925).

However, a driver of an automobile is not required to stop the automobile or check his or her speed every time he or she sees a red light on the highway, at risk of being chargeable with negligence; whether or not negligence can be predicated from such a failure must always depend on the circumstances. An approaching driver may rightfully assume that a red light at one side of the highway marks the limit of danger and that the other side of the highway is clear; it is only when the light blocks the highway, or is so placed as to indicate that the passage is so narrow as not to afford a safe passage within the speed limit, that the driver is chargeable with negligence if he or she does not approach with the vehicle under control. Martin v. Puget Sound Elec. Ry., 136 Wash. 663, 241 P. 360 (1925).

n4 Daughraty v. Tebbets, 122 Me. 397, 120 A. 354, 34 A.L.R. 1507 (1923); Evans v. Jones, 286 A.D. 921, 141 N.Y.S.2d 857 (4th Dep't 1955); Susser v. Wiley, 350 Pa. 427, 39 A.2d 616 (1944); Humes v. Schaller, 39 R.I. 519, 99 A. 55 (1916); See v. Willett, 58 Wash. 2d 39, 360 P.2d 592 (1961); Long v. Steffen, 194 Wis. 179, 215 N.W. 892, 61 A.L.R. 1155 (1927); Schacht v. Quick, 178 Wis. 330, 190 N.W. 87, 25 A.L.R. 130 (1922).

n5 See v. Willett, 58 Wash. 2d 39, 360 P.2d 592 (1961).

n6 § 890.

n7 § 906.

n8 Campbell v. Haas, 2 La. App. 753, 1925 WL 3470 (1st Cir. 1925); Fabricius v. Vieira, 70 Cal. App. 277, 233 P. 397 (3d Dist. 1924); Sahms v. Marcus, 239 Mich. 682, 214 N.W. 969 (1927).

n9 Daughraty v. Tebbets, 122 Me. 397, 120 A. 354, 34 A.L.R. 1507 (1923); Stigers v. Harlow, 419 S.W.2d 41 (Mo. 1967); Humes v. Schaller, 39 R.I. 519, 99 A. 55 (1916); McVey v. Whittington, 248 S.C. 447, 151 S.E.2d 92, 27 A.L.R.3d 1 (1966); Cowles v. Zahn, 206 Va. 743, 146 S.E.2d 200 (1966); Long v. Steffen, 194 Wis. 179, 215 N.W. 892, 61 A.L.R. 1155 (1927).

n10 Roberts v. Freihofer Baking Co., 283 Pa. 573, 129 A. 574 (1925); McVey v. Whittington, 248 S.C. 447, 151 S.E.2d 92, 27 A.L.R.3d 1 (1966).

n11 Grein v. Gordon, 280 Pa. 576, 124 A. 737, 34 A.L.R. 1511 (1924); Myers v. West Coast Fast Freight, 42 Wash. 2d 524, 256 P.2d 840 (1953).

n12 Bergstrom v. Ove, 39 Wash. 2d 78, 234 P.2d 548 (1951).

n13 Albertson v. Ansbacher, 102 Misc. 527, 169 N.Y.S. 188 (App. Term 1918); McVey v. Whittington, 248 S.C. 447, 151 S.E.2d 92, 27 A.L.R.3d 1 (1966).

n14 Smith v. Spirek, 196 Iowa 1328, 195 N.W. 736 (1923).

n15 Paul v. Garman, 310 Ill. App. 447, 34 N.E.2d 884 (2d Dist. 1941).

n16 Hanson v. Manning, 213 Iowa 625, 239 N.W. 793 (1931).

n17 Graves v. Kern County Transp. Corp., 112 Cal. App. 261, 296 P. 902 (4th Dist. 1931); Jondahl v. Campbell, 61 N.D. 555, 238 N.W. 697 (1931).

n18 Nirenstein v. Sachs, 117 Conn. 343, 167 A. 822 (1933).

n19 Byron v. O'Connor, 130 Me. 90, 153 A. 809 (1931); Bergstrom v. Ove, 39 Wash. 2d 78, 234 P.2d 548 (1951).

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8 Am Jur 2d Automobiles and Highway Traffic § 603

§ 603 Injury by backing vehicle

A motorist may be liable for injuries sustained by a person working on or about a vehicle standing in the highway, if the motorist carelessly backs the vehicle into the person.[n1] Liability may also extend to an injured person who is attempting to assist or direct the movement of the vehicle,[n2] or was a guest or about to be a guest in the vehicle, if the operator was aware of his or her general presence.[n3] However, recovery may be denied if the backing vehicle either slides down-grade on a slippery surface or backs down because of defective equipment.[n4]

FOOTNOTES:

n1 Melikian v. Independent Paper Stock Co., 8 Cal. App. 2d 166, 47 P.2d 539 (2d Dist. 1935).

n2 Henshaw v. Belyea, 220 Cal. 458, 31 P.2d 348 (1934); Hanson v. Weckerle, 18 Cal. App. 2d 214, 63 P.2d 322 (3d Dist. 1936).

n3 Vicaro v. New Amsterdam Cas. Co., 160 So. 177 (La. Ct. App. 1st Cir. 1935).

n4 Dahlman v. Petrovich, 102 Pa. Super. 454, 156 A. 897 (1931), aff'd, 307 Pa. 298, 161 A. 550 (1932); General Acc. Fire & Life Assur. Corp. v. Henneman, 207 Wis. 464, 240 N.W. 803 (1932).

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8 Am Jur 2d Automobiles and Highway Traffic § 604

§ 604 Injury by stuck or stalled vehicle

The operator of a motor vehicle that is stuck in the mud or snow or in a ditch owes the duty of exercising ordinary care to avoid injury to one who helps to extricate it.[n1] A person lending assistance under these circumstances is generally not considered to be a volunteer in any sense that would reduce the degree of care required to be exercised by the operator of the stuck vehicle.[n2] If the operator of a stuck motor vehicle without warning negligently drives into the person assisting the extrication, the operator is liable for injuries sustained, insofar as the helper has not assumed the risk by voluntarily taking on a dangerous position.[n3] However, if the person assisting the extrication of a stuck motor vehicle voluntarily takes on a position that he or she knows is dangerous, the person assumes the risks incident to those dangers.[n4] Furthermore, the operator of a stalled motor vehicle who has solicited the assistance of another to push the vehicle in order to help get it started, is entitled to anticipate that the person pushing would guard against the hazards involved, and the operator has no obligation to warn the helper against apparent or foreseeable dangers.[n5]

It is common practice, in attempting to extricate motor vehicles from mud or snow, to use a "rocking"movement to apply engine power alternately in forward and reverse gears while the vehicle is being pushed from the outside in the same directions.[n6] Because of the commonly recognized dangers involved in such an operation, recovery for injuries sustained by someone assisting in the operation from the outside of the vehicle is generally denied,[n7] sometimes on the ground that the assistant has assumed known risks.[n8] It is commonly recognized that frequently during the course of such an operation the vehicle will skid sideways or "fishtail."Because "fishtailing"is something that might typically be expected in the course of the operation, the mere increase in power causing the vehicle to "fishtail"does not, in itself, render the operator of the vehicle negligent toward the helper when the vehicle slides sideways.[n9] Moreover, it is commonly recognized that once the wheels of the stuck vehicle get free of the mud or snow and hit firm ground, the vehicle moves at a faster pace, and the operator of the vehicle is not ordinarily liable for injuries sustained by someone who, in assisting the extrication, is in the way at the time of the sudden acceleration.[n10]

Another method employed to extricate motor vehicles from snow and to keep them from skidding on ice is to place burlap bags or other coarse material under the wheels. It has been held that the operator of a motor vehicle stuck in snow or ice who puts the wheels in motion before one placing burlap bags under the wheels has signaled him to do so is liable for the injuries sustained by the latter when his hand is dragged under the wheel.[n11]

A person who stands on the running board of a vehicle stuck in a ditch to keep it from tipping over when put in motion may recover for injuries sustained when thrown from the running board by the sudden lunge of the vehicle when put in motion, even though the person was aware that such a lunge was necessary in order to get the vehicle out of the ditch, where no warning was given as to the time when such a lunge would take place.[n12]

FOOTNOTES:

n1 Saliba v. Saliba, 178 Ark. 250, 11 S.W.2d 774, 61 A.L.R. 1348 (1928).

n2 Saliba v. Saliba, 178 Ark. 250, 11 S.W.2d 774, 61 A.L.R. 1348 (1928).

n3 Smith v. Gillum, 253 S.W.2d 582 (Ky. 1952).

n4 Liebelt v. Krause, 235 Minn. 547, 51 N.W.2d 667 (1952).

n5 Hensley v. Pirzchalski, 212 Md. 471, 129 A.2d 691 (1957).

n6 Besco v. Franken, 257 Minn. 346, 101 N.W.2d 431 (1960).

n7 Osborn v. Osborn, 1960 OK 90, 353 P.2d 1, 3 A.L.R.3d 775 (Okla. 1960).

n8 Besco v. Franken, 257 Minn. 346, 101 N.W.2d 431 (1960).

n9 Besco v. Franken, 257 Minn. 346, 101 N.W.2d 431 (1960).

n10 Phillips v. Ashby, 229 Ark. 1030, 320 S.W.2d 260 (1959).

n11 Siblik v. Motor Transport Co., 262 Wis. 242, 55 N.W.2d 8 (1952), holding that the mere fact that the burlap bags clung to the plaintiff's gloves was not a superseding or intervening cause of his injuries.

n12 Bramlett v. Hulsey, 98 Ga. App. 39, 104 S.E.2d 614 (1958).

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8 Am Jur 2d Automobiles and Highway Traffic § 605

§ 605 Persons working in street or highway

The duty of the operator of a motor vehicle to use reasonable care to avoid injuries to pedestrians lawfully using the roadway[n1] extends to construction or maintenance workers.[n2] Where these workers are in the roadway in the performance of their duties, and in plain view, motorists have the duty to take notice of them and to avoid running them down.[n3] A motorist may be under a statutory duty to yield the right of way to vehicles and pedestrians who are obviously engaged in work on a highway in a construction or maintenance area that is marked by official traffic control devices.[n4]

When warned of the presence of workers, a motorist must be aware that they may not constantly attend to traffic, and thus must operate their vehicle accordingly.[n5] In determining whether a motorist is negligent in striking a worker in the street, consideration must be given to the fact that the workers are not in the street as idle bystanders; their employment makes it necessary that they occupy a portion of the street to carry out their work.[n6] However, a motorist owes no heightened duty of care to highway workers where there are no warning signs, lights, or cones in the area of construction, the workers are not plainly visible to the motorist, and the motorist is proceeding at a lawful rate of speed.[n7] A motorist who is unaware of the presence of workers on the highway is negligent in failing to sound the horn before passing a vehicle stopped on the highway.[n8]

The fact that a motorist is traveling within the speed limit allowed by law does not insulate the motorist from negligence in striking some one engaged in construction work on the road.[n9]

A motorist confronted with a sudden emergency is not excused from liability for negligence in approaching workers engaged in repairing a road, if the negligence itself created the emergency.[n10] Liability may be imposed upon a motorist for negligence in applying the brakes in a manner and under circumstances that cause the vehicle to skid into a repairperson.[n11]

A highway worker who is injured by a truck that is not in compliance with a truck-load regulation, is not within the class of persons protected by the regulation, as required for the violation to constitute negligence per se, if the regulation provides for governmental enforcement but does not provide a private right of action.[n12]

A worker merely in the act of crossing or walking along the street has the same status as a pedestrian, and thus the driver of a motor vehicle at least owes to the worker a degree of care that the driver would owe to an ordinary pedestrian under the same circumstances.[n13]

FOOTNOTES:

n1 §§ 441 et seq.

n2 Byrd v. Galbraith, 172 Ark. 219, 288 S.W. 717 (1926); Mugge v. Brackin, 63 Fla. 229, 63 Fla. 234, 58 So. 128 (1912); King v. Morgan, 873 S.W.2d 272 (Mo. Ct. App. W.D. 1994); Chaney v. Moore, 101 W. Va. 621, 134 S.E. 204, 47 A.L.R. 800 (1926).

n3 Woods v. Wisdom, 133 Cal. App. 694, 24 P.2d 863 (4th Dist. 1933); Leoni v. McMillan, 287 Ill. App. 579, 5 N.E.2d 742 (1st Dist. 1936); Bacle v. Wade, 607 So. 2d 927 (La. Ct. App. 2d Cir. 1992); Nehring v. Charles M. Monroe Stationery Co., 191 S.W. 1054 (Mo. Ct. App. 1917); Murray v. Atlantic Coast Line R. Co., 218 N.C. 392, 11 S.E.2d 326 (1940).

n4 Sterba v. Jay, 249 Kan. 270, 816 P.2d 379 (1991).

n5 Viretto v. Tricarico, 116 Conn. 718, 165 A. 345 (1933); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

In an action for injuries sustained by the plaintiff in a collision between a power mower he was operating on the highway and a truck belonging to the defendant, where the evidence indicated that the operator of the truck, when he arrived at a point a quarter of a mile distant from the place of collision realized from the surroundings that workers were engaged on the road ahead and observed that the wheels of the power mower were turned indicating that the plaintiff might be going across the road for the purpose of cutting grass on the opposite side, the jury was justified in finding that the driver of the vehicle did not exercise ordinary care to have his truck under the control necessary to avoid a collision with the power mower when it actually did attempt to cross the road. Ledford v. Southeastern Motor Truck Lines, 29 Tenn. App. 675, 200 S.W.2d 981 (1946).

n6 Golden v. Hill, 81 Pa. Super. 128, 1923 WL 3604 (1923).

n7 Vouniseas v. Triboro Bridge & Tunnel Authority, 194 A.D.2d 665, 599 N.Y.S.2d 128 (2d Dep't 1993).

n8 Brooks v. Allred, 573 So. 2d 1301 (La. Ct. App. 2d Cir. 1991).

n9 Mecham v. Crump, 137 Cal. App. 200, 30 P.2d 568 (3d Dist. 1934).

n10 Chaney v. Moore, 101 W. Va. 621, 134 S.E. 204, 47 A.L.R. 800 (1926).

n11 National Biscuit Co. v. Wilson, 256 Ala. 241, 54 So. 2d 492 (1951).

n12 Ettinger v. Denny Chancler Equipment Co., Inc., 139 Or. App. 103, 910 P.2d 420 (1996).

n13 Sprinkle v. Davis, 111 F.2d 925, 128 A.L.R. 1101 (C.C.A. 4th Cir. 1940).

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8 Am Jur 2d Automobiles and Highway Traffic § 606

§ 606 Duty of workers

Although a construction or maintenance worker engaged in the performance of tasks in the street or highway is not free to utterly disregard the danger presented by passing vehicles, the duty of care or vigilance for the worker is not the same as that of an ordinary pedestrian crossing a street or highway.[n1] Such a person must be judged by a more generous standard than is an ordinary pedestrian who has no care other than his or her own safety.[n2] The worker may assume that a motorist will use reasonable care for the safety of those busily engaged in work in the street or highway, in proportion to the hazard of the situation,[n3] and that the motorist will approach the workers with his or her vehicle under reasonable control, and will not run them down.[n4] The worker need not keep a constant lookout for approaching motorists, and a failure to do so does not necessarily constitute negligence.[n5]

That a civil engineer, who, while squatting to determine a level on a construction job, was struck by a backing truck approaching from behind him, was so absorbed in his duties that he apparently did not see or hear the truck, does not establish his contributory negligence as a matter of law.[n6]

The violation of a statute requiring a road repair vehicle to display a white light in a manner visible to oncoming traffic constitutes negligence per se, since the statute was enacted for the public safety.[n7] The presence in a street or highway of barriers, signs, or other evidences of the presence of workers may charge motorists with knowledge that the workers may not constantly attend to traffic, and thus affects the question of what constitutes reasonable care on the part of a worker for his or her own safety.[n8] The worker still has the duty of exercising such care as a reasonably prudent or careful person would exercise under the same circumstances[n9] and may even be negligent as a matter of law for the failure to exercise that duty.[n10] If the facts are disputed on the degree of care exercised by the worker, and contrary inferences may reasonably be drawn therefrom, the issue of negligence of the injured party properly becomes one for the jury.[n11]

If the particular task or activity of a worker at the time of injury is one where he or she is free to take the necessary precautions for the worker's own safety, such as walking across the street or highway on some errand, the rule that a worker in the street or highway is not required to exercise the same degree of care as an ordinary pedestrian will not apply.[n12]

A worker on a construction crew installing underground cables along a highway was negligent where he had left his place of work and was crossing the highway when struck by a car and thus had lost his special status as highway worker and where, as an ordinary pedestrian, he failed to yield the right of way and to maintain reasonable lookout for oncoming traffic before stepping onto the highway.[n13] Moreover, the rule will not apply if the worker is found to have unnecessarily assumed a position of danger.[n14]

Even though a worker in the highway may not have exercised the proper amount of care for his or her own safety, the worker is not barred from recovering for injuries sustained when struck by a motorist who had the last clear chance to avoid the accident.[n15]

FOOTNOTES:

n1 Scott v. City and County of San Francisco, 91 Cal. App. 2d 887, 206 P.2d 45 (1st Dist. 1949); Brooks v. Allred, 573 So. 2d 1301 (La. Ct. App. 2d Cir. 1991); Koppang v. Sevier, 106 Mont. 79, 75 P.2d 790 (1938); Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983), opinion aff'd, 310 N.C. 148, 310 S.E.2d 347 (1984); Switzer v. Johnson, 432 S.W.2d 164 (Tex. Civ. App. Houston 1st Dist. 1968); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939); White v. Sands, 197 Va. 617, 90 S.E.2d 835 (1956); Knowles v. Stargel, 261 Wis. 106, 52 N.W.2d 387 (1952).

n2 Copertino v. Chrobak, 346 Pa. 49, 29 A.2d 504 (1943); Riley v. Tsagarakis, 50 R.I. 62, 145 A. 12 (1929).

n3 Viretto v. Tricarico, 116 Conn. 718, 165 A. 345 (1933); Myers v. Pearce, 102 Ga. App. 235, 115 S.E.2d 842 (1960); Ferrairs v. Hewes, 301 Mass. 116, 16 N.E.2d 674 (1938); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939); Chaney v. Moore, 101 W. Va. 621, 134 S.E. 204, 47 A.L.R. 800 (1926).

n4 Murray v. Atlantic Coast Line R. Co., 218 N.C. 392, 11 S.E.2d 326 (1940).

n5 Monahan v. Flannery, 755 F.2d 678 (8th Cir. 1985); Combs v. U.S., 122 F. Supp. 280 (E.D. N.C. 1954); Byrd v. Galbraith, 172 Ark. 219, 288 S.W. 717 (1926); Armenta v. Churchill, 42 Cal. 2d 448, 267 P.2d 303 (1954); O'Donnell v. Lange, 162 Mich. 654, 127 N.W. 691 (1910); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); McCarty v. Hedges, 212 Or. 497, 321 P.2d 285 (1958); Ledford v. Southeastern Motor Truck Lines, 29 Tenn. App. 675, 200 S.W.2d 981 (1946).

n6 Daughtry v. Cline, 224 N.C. 381, 30 S.E.2d 322, 154 A.L.R. 789 (1944).

n7 Economy Fire & Cas. Co. v. Craft General Contractors, Inc., 7 Ohio App. 3d 335, 455 N.E.2d 1037 (10th Dist. Franklin County 1982).

n8 Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

n9 Myers v. Pearce, 102 Ga. App. 235, 115 S.E.2d 842 (1960); O'Donnell v. Lange, 162 Mich. 654, 127 N.W. 691 (1910); White v. Sands, 197 Va. 617, 90 S.E.2d 835 (1956); Chaney v. Moore, 101 W. Va. 621, 134 S.E. 204, 47 A.L.R. 800 (1926).

n10 Hoelmer v. Sutton, 207 Minn. 140, 290 N.W. 225 (1940); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

n11 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942); Ledford v. Southeastern Motor Truck Lines, 29 Tenn. App. 675, 200 S.W.2d 981 (1946); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

n12 Brooks v. Allred, 573 So. 2d 1301 (La. Ct. App. 2d Cir. 1991); Copertino v. Chrobak, 346 Pa. 49, 29 A.2d 504 (1943); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939); Gunning v. King, 249 Wis. 176, 23 N.W.2d 602 (1946).

n13 Brooks v. Smith, 27 N.C. App. 223, 218 S.E.2d 489 (1975).

n14 Brooks v. Allred, 573 So. 2d 1301 (La. Ct. App. 2d Cir. 1991); Richardson v. Henry F. Davis & Co., 94 Minn. 315, 102 N.W. 868 (1905).

n15 Sprinkle v. Davis, 111 F.2d 925, 128 A.L.R. 1101 (C.C.A. 4th Cir. 1940).

Where an employee of a street railway company, while working in the road, was struck from the rear by defendant's automobile, it was held to be proper to submit the case to the jury under the doctrine of last clear chance, where the evidence showed that the plaintiff, while engaged in his work in broad daylight on the street, was standing with his back to the defendant's automobile when it was approaching him. Hutt v. C.J. Harris Lumber Co., 253 S.W. 472 (Mo. Ct. App. 1923).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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8 Am Jur 2d Automobiles and Highway Traffic § 607

§ 607 Police and firefighters

The "fireman's rule"is a widely recognized rule which, where it is followed, prevents firefighters and police officers injured in the course of their duties from recovering from those whose negligence proximately caused their injuries [n1] or from the owner or occupant of premises who is responsible for creating the condition requiring their presence on the property. [n2] The fireman's rule has been applied to preclude recovery against negligent motorists for injuries suffered by police officers which were reasonably foreseeable in the course of their duties on the highway. [n3] The rule applies when a police officer is responding to or investigating an automobile accident [n4] and where an officer is injured as a result of a motorist's actions in negligently stopping on the highway. [n5] The rule has also been applied to injuries caused to a police officer by the willful or wanton misconduct of an intoxicated motorist. [n6] However, the fireman's rule is not a bar to a police officer's claim for injuries sustained in the course of responding to an accident scene where the injuries are the result of independent acts of negligence that have no connection with the cause of the officer's presence at the scene. [n7]

FOOTNOTES:

n1 Am. Jur. 2d, Fires §§ 51, 52.

n2 Am. Jur. 2d, Premises Liability §§ 426 to 431.

n3 Matarese v. Nationwide Mut. Ins. Co., 141 N.H. 311, 682 A.2d 258 (1996); Aetna Cas. & Sur. Co. v. Vierra, 619 A.2d 436 (R.I. 1993).

n4 England v. Tasker, 129 N.H. 467, 529 A.2d 938 (1987); Aetna Cas. & Sur. Co. v. Vierra, 619 A.2d 436 (R.I. 1993).

n5 Steelman v. Lind, 97 Nev. 425, 634 P.2d 666 (1981).

n6 Holden v. Chunestudey, 101 Cal. App. 3d 959, 161 Cal. Rptr. 925 (3d Dist. 1980).

n7 Schreiber v. Cherry Hill Const. Co., Inc., 105 Md. App. 462, 660 A.2d 970 (1995); Wietecha v. Peoronard, 102 N.J. 591, 510 A.2d 19 (1986); Duda v. Griffin, 165 A.D.2d 298, 567 N.Y.S.2d 194 (3d Dep't 1991); Aetna Cas. & Sur. Co. v. Vierra, 619 A.2d 436 (R.I. 1993).

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8 Am Jur 2d Automobiles and Highway Traffic § 608

§ 608 Traffic officers

In general, the duty imposed upon a motorist to properly operate an automobile is no greater in the case of persons on the street or highway directing or warning traffic than it is with regard to any person who is lawfully using the road, and thus the motorist must drive with reasonable care for the safety of all users of the road,[n1] and may be held liable for injuries sustained when running down a traffic officer who is performing his or her duties in the public way and exercising proper care for his or her own safety.[n2]

However, if the motorist is aware, or reasonably should be aware, of the presence on the highway of a person whose duty it is to direct traffic, the motorist is presumed to know that such a person cannot exercise as high a degree of care for his or her own safety as can an ordinary pedestrian, and the motorist must thus exercise reasonable care, in the light of such knowledge, to avoid harm.[n3]

A police officer directing traffic may be subject to the fireman's rule[n4] which precludes recovery for injuries proximately resulting from the job of directing traffic where that is the very purpose for being on the scene.[n5]

However, in cases where the fireman's rule has not been applied to prevent recovery by "official"traffic directors, such as police officers or flagpersons, a special status has been recognized for the degree of care that such a person is required to exercise for his or her own safety.[n6] Thus traffic directors must be judged by a standard more liberal than in the case of an ordinary pedestrian, who has no care other than his or her own safety, in determining whether he or she has been contributorily negligent when struck by a motorist.[n7] When stationed at a post in a proper place and attending to work duties, a traffic director is entitled to assume that an oncoming motorist will avoid running him or her down.[n8] The traffic director cannot act with a complete disregard for his or her own safety, as there is a duty to use reasonable care under the circumstances to avoid being run over,[n9] which requires the caution dictated by the exigencies of the situation[n10] and that might be expected of an officer engaged in similar duties.[n11] Where the officer neglects to perform that duty and as a result is involved in an accident with a motorist, the officer may be precluded from recovering damages for any injuries sustained, or the damages may be diminished in accordance with the officer's proportional degree of fault.[n12]

A traffic director is not required to anticipate that a motorist will operate a vehicle in a negligent manner, but, on the contrary, may assume that motor vehicles will be driven with due care for the safety of other lawful users of the road.[n13] Thus, a traffic director is entitled to assume that motorists will see and obey his or her signals;[n14] be aware of the officer's presence;[n15] not drive on the wrong side of the street or otherwise contrary to law;[n16] use reasonable care with respect to lookout, speed, and control;[n17] give warning of their approach and intentions;[n18] drive in a manner to avoid striking the traffic director;[n19] and not move a standing vehicle in a manner that endangers the officer.[n20]

It is usually a question of fact for determination by the jury, whether a motorist was negligent in causing injury to one who was directing traffic [n21] and whether the contributory negligence of someone struck by a motor vehicle while directing traffic will bar or diminish recovery [n22]

For claims of negligence arising out of the operation of motor vehicles, the principles discussed above have been applied to police and traffic officers, [n23] toll collectors, [n24] highway flag workers, [n25] flag workers at railroad crossings, [n26] and load checkers. [n27]

FOOTNOTES:

n1 Louisville Ry. Co. v. Offutt's Adm'x, 246 Ky. 508, 55 S.W.2d 391 (1932); Meyers v. Tribel, 7 N.J. Super. 278, 73 A.2d 72 (App. Div. 1950); Clark v. Turner, 505 S.W.2d 941 (Tex. Civ. App. Amarillo 1974).

n2 Botbyl v. Mackus, 261 Mich. 150, 246 N.W. 158 (1933).

In an action to recover for an injury to a mounted traffic officer, a verdict for the plaintiff was sustained where there was evidence that the driver of a truck disregarded a traffic signal at a busy street intersection and drove the truck into a mounted traffic officer with such violence that the horse and rider were knocked down and injured. Ellison v. Standard Refrigerator Co., 77 Pa. Super. 477, 1921 WL 2349 (1921).

n3 Cavagnaro v. City of Napa, 86 Cal. App. 2d 517, 195 P.2d 25 (3d Dist. 1948); Karras v. Keller, 148 So. 2d 915, 98 A.L.R.2d 1166 (La. Ct. App. 1st Cir. 1963); Vontress v. Ready Mixed Concrete Co., 170 Neb. 789, 104 N.W.2d 331 (1960); McCabe v. Smith, 295 N.Y. 959, 68 N.E.2d 48 (1946).

n4 § 607.

n5 Martin v. Gaither, 219 Ga. App. 646, 466 S.E.2d 621 (1995).

n6 Beyrent v. Kaplan, 315 Pa. 353, 172 A. 651, 92 A.L.R. 1515 (1934).

n7 Radtke v. Loud, 98 So. 2d 891 (Fla. Dist. Ct. App. 3d Dist. 1957).

n8 Morris v. Banko, 5 Ohio L. Abs. 710, 1927 WL 3200 (Ct. App. 8th Dist. Cuyahoga County 1927); Beyrent v. Kaplan, 315 Pa. 353, 172 A. 651, 92 A.L.R. 1515 (1934).

n9 Fitzsimons v. Isman, 166 A.D. 262, 151 N.Y.S. 552 (1st Dep't 1915), aff'd, 219 N.Y. 610, 114 N.E. 1067 (1916).

n10 Louisville Ry. Co. v. Offutt's Adm'x, 246 Ky. 508, 55 S.W.2d 391 (1932).

n11 Xenodochius v. Fifth Avenue Coach Co., 129 A.D. 26, 113 N.Y.S. 135 (2d Dep't 1908).

n12 Anderson v. Clesi, 143 La. 570, 78 So. 943 (1918); Meyers v. Tribel, 7 N.J. Super. 278, 73 A.2d 72 (App. Div. 1950).

A traffic officer was held contributorily negligent where, after informing a motorist that her car was improperly parked and that she must move on, he walked behind the vehicle and was injured when it backed up, it appearing that that was the only way the motorist could comply with the officer's request to move on. Terrebonne v. Huger, 14 La. App. 679, 130 So. 835 (Orleans 1930).

As to the effect of negligence of an injured party to bar or diminish his recovery, see §§ 947 to 949.

n13 Goodsell v. Brighenti, 128 Conn. 581, 24 A.2d 834 (1942); Tanner v. Pennsylvania Truck Lines, 363 Pa. 136, 69 A.2d 366 (1949).

n14 Cavagnaro v. City of Napa, 86 Cal. App. 2d 517, 195 P.2d 25 (3d Dist. 1948).

n15 Morris v. Banko, 5 Ohio L. Abs. 710, 1927 WL 3200 (Ct. App. 8th Dist. Cuyahoga County 1927); Beyrent v. Kaplan, 315 Pa. 353, 172 A. 651, 92 A.L.R. 1515 (1934).

n16 West v. Morgan, 345 Pa. 61, 27 A.2d 46 (1942).

n17 Jones v. Hedges, 123 Cal. App. 742, 12 P.2d 111 (1st Dist. 1932) (disapproved of on other grounds by, Prescott v. Ralph's Grocery Co., 42 Cal. 2d 158, 265 P.2d 904 (1954)).

n18 Cavagnaro v. City of Napa, 86 Cal. App. 2d 517, 195 P.2d 25 (3d Dist. 1948).

n19 Karras v. Keller, 148 So. 2d 915, 98 A.L.R.2d 1166 (La. Ct. App. 1st Cir. 1963).

n20 Pfaff v. H.T. Smith Express Co., 120 Conn. 553, 181 A. 621 (1935).

n21 Meyers v. Tribel, 7 N.J. Super. 278, 73 A.2d 72 (App. Div. 1950); Beyrent v. Kaplan, 315 Pa. 353, 172 A. 651, 92 A.L.R. 1515 (1934).

n22 Meyers v. Tribel, 7 N.J. Super. 278, 73 A.2d 72 (App. Div. 1950).

n23 Pensyl v. Gibb, 182 Neb. 573, 156 N.W.2d 27 (1968); Herring v. Garnett, 463 S.W.2d 52 (Tex. Civ. App. Houston 1st Dist. 1971), writ refused n.r.e., (June 2, 1971).

n24 Sutton v. Public Service Interstate Transp. Co., 157 F.2d 947 (C.C.A. 2d Cir. 1946) (applying New Jersey law); Anderson v. George A. Hormel & Co., 18 La. App. 398, 136 So. 906 (1st Cir. 1931).

n25 DiPaolo v. Johnson, 15 Ill. App. 3d 735, 305 N.E.2d 194 (1st Dist. 1973); Troncatti v. Smereczniak, 428 Pa. 7, 235 A.2d 345 (1967).

n26 Davies v. Barnes, 201 Ala. 120, 77 So. 612 (1917); Crook v. Broche, 214 Wis. 245, 252 N.W. 565 (1934).

n27 Vontress v. Ready Mixed Concrete Co., 170 Neb. 789, 104 N.W.2d 331 (1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
C. Persons Injured
7. Other Persons

8 Am Jur 2d Automobiles and Highway Traffic § 609

§ 609 Equestrians, and drivers of horse-drawn vehicles

A motorist is ordinarily under a duty to exercise reasonable care to avoid injuring persons riding along a highway on horseback,[n1] or in a horse-drawn vehicle.[n2] However, in meeting and passing a horseback rider, or a horse-drawn vehicle, unless the horse shows signs of fright or that its rider or driver has lost control of it, a motorist is ordinarily under no obligation to stop[n3] or to take special steps to avoid a collision.[n4] When the horse shows signs of fright, it the motorist must slow up, bring the vehicle to a stop, or do whatever is reasonably required to avoid a collision or injury to others.[n5] Furthermore, if a horse remains obstinately in the center of the road, the motorist must bring the vehicle to a full stop, if necessary, in order to avoid striking the animal.[n6] However, if a motorist is, in other respects, driving with due care and a horse turns suddenly into the path of the motor vehicle so quickly that the motorist cannot avoid striking it, the motorist is not negligent as a matter of law.[n7]

The driver of a horse-drawn vehicle, or a horseback rider, when approached by a motor vehicle, must exercise the care of a reasonably prudent person, taking into consideration all the circumstances,[n8] otherwise the driver will be deemed negligent.[n9]

The driver of a horse-drawn vehicle who refuses to yield the road when a motor vehicle attempts to pass from behind will be barred from recovering damages for injuries sustained when struck by the vehicle,[n10] unless there was room in the road for the motor vehicle to pass without the driver of the horse-drawn vehicle yielding.[n11]

FOOTNOTES:

n1 Mortenson v. Hindahl, 247 Minn. 356, 77 N.W.2d 185 (1956).

In Kentucky, pursuant to statute, a motorist has a special duty of care in approaching a traveler riding on the back of a mule. Robinson v. Lunsford, 330 S.W.2d 423, 77 A.L.R.2d 1248 (Ky. 1959).

n2 Indiana Springs Co. v. Brown, 165 Ind. 465, 74 N.E. 615 (1905); Ware v. Saufley, 194 Ky. 53, 237 S.W. 1060, 24 A.L.R. 500 (1922); Pease v. Cochran, 42 S.D. 130, 173 N.W. 158, 5 A.L.R. 936 (1919).

n3 Pease v. Cochran, 42 S.D. 130, 173 N.W. 158, 5 A.L.R. 936 (1919).

n4 Mortenson v. Hindahl, 247 Minn. 356, 77 N.W.2d 185 (1956).

n5 McIntyre v. Orner, 166 Ind. 57, 76 N.E. 750 (1906); Indiana Springs Co. v. Brown, 165 Ind. 465, 74 N.E. 615 (1905); Rose v. Edmonds, 271 Ky. 36, 111 S.W.2d 427 (1937); Pease v. Cochran, 42 S.D. 130, 173 N.W. 158, 5 A.L.R. 936 (1919).

n6 Ware v. Saufley, 194 Ky. 53, 237 S.W. 1060, 24 A.L.R. 500 (1922).

n7 Mortenson v. Hindahl, 247 Minn. 356, 77 N.W.2d 185 (1956); Matson v. Dawson, 185 Neb. 686, 178 N.W.2d 588 (1970); Green v. Pool, 421 S.W.2d 439 (Tex. Civ. App. Tyler 1967).

n8 Millsaps v. Brogdon, 97 Ark. 469, 134 S.W. 632 (1911); Indiana Springs Co. v. Brown, 165 Ind. 465, 74 N.E. 615 (1905); Arrington v. Horner, 88 Kan. 817, 129 P. 1159 (1913); Ware v. Saufley, 194 Ky. 53, 237 S.W. 1060, 24 A.L.R. 500 (1922).

n9 Dreier v. McDermott, 157 Iowa 726, 141 N.W. 315 (1913); Arrington v. Horner, 88 Kan. 817, 129 P. 1159 (1913).

n10 Ware v. Saufley, 194 Ky. 53, 237 S.W. 1060, 24 A.L.R. 500 (1922).

n11 Savoy v. McLeod, 111 Me. 234, 88 A. 721 (1913).

REFERENCE: West's Key Number Digest, Automobiles [westkey]160(1) to 160(6), 161, 162(1), 162(5) to 162(8), 165, 181(.5), 181(1), 181(2), 181(4), 181(5), 181(7)
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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
D. Persons Liable, in General
1. In General; Driver of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 610

§ 610 Driver's liability to owner

The enactment of statutes imposing liability upon the owner of a motor vehicle for the negligent acts of another operating a vehicle [n1] is not intended to defeat or limit the liability of a servant or agent, driving the motor vehicle of his or her master or principal, for his or her own tort resulting in injury to the master or principal. [n2] Moreover, such a statute does not affect the liability of the driver of a motor vehicle to the owner thereof for any misfeasance resulting in negligent damage to the vehicle [n3] or injury to the owner him- or herself. [n4]

FOOTNOTES:

n1 § 640.

n2 Bush v. Oliver, 86 Idaho 380, 386 P.2d 967 (1963); Urquhart v. McEvoy, 204 Misc. 426, 126 N.Y.S.2d 539 (Sup 1953).

n3 Kurzon v. Union Ry. Co. of New York City, 21 N.Y.S.2d 310 (City Ct. 1940).

n4 Lamoureaux v. Crowe, 6 A.D.2d 930, 176 N.Y.S.2d 22 (3d Dep't 1958).

As to the owner's right to indemnification from one whom he has allowed to drive his motor vehicle, where the owner has been held liable to an injured third person because of the negligence of the driver, see § 626.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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D. Persons Liable, in General
1. In General; Driver of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 611

§ 611 Imputing occupant's negligence to driver

There is authority to the effect that the negligence of a passenger or guest in a motor vehicle in failing to keep a proper lookout is imputable to the driver, in determining the latter's negligence in an action brought by him or her against a third person, where a duty in this regard had been assumed by the passenger or guest.[n1] The same result has also been reached in other cases, upon the theory that the driver's duty of lookout is not one that may be delegated to others.[n2]

FOOTNOTES:

n1 Bixby v. Boston & M. R. R., 94 N.H. 107, 47 A.2d 575, 165 A.L.R. 590 (1946); Cooper v. Bondoni, 1992 OK CIV APP 10, 841 P.2d 608 (Ct. App. Div. 2 1992).

n2 Capretz v. Chicago Great Western R. Co., 157 Minn. 29, 195 N.W. 531 (1923).

Related References:
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411.

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
D. Persons Liable, in General
1. In General; Driver of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 612

§ 612 Joint and several liability

Where the negligence of two or more persons concurs in causing an injury to person or property by a motor vehicle, the injured or aggrieved person may hold each, any, or all liable for the entire damage, the liability being joint and several,[n1] whether or not they have acted in concert[n2] or according to a plan or agreement.[n3] However, only one satisfaction can be had for the wrong.[n4]

The negligence of one joint tortfeasor is no excuse for that of the other.[n5] In these circumstances it is immaterial that the negligence of one person was greater, or contributed more, than that of the other.[n6] Thus, where a defendant's negligence is one of the proximate causes of the injury, the concurring or participating negligence of another is not a defense.[n7]

Where there is no evidence of an explicit or implicit agreement, joint liability cannot be imposed under a concerted-action theory.[n8] Joint and several liability may also be imposed under the aiding an abetting theory, where persons are acting in concert.[n9] However, an exception to the general rule of several liability, the "successive-tortfeasor"doctrine, imposes joint and several liability on the original tortfeasor for the full extent of injuries caused by both the original tortfeasor and the successive tortfeasor because it is foreseeable as a matter of law that the original injury, such as that suffered from a car accident, may lead to a causally-distinct additional injury, but the successive tortfeasor is only responsible for the second injury or for the distinct enhancement of the first injury.[n10]

An underinsured-motorist carrier and the tortfeasor are codebtors in solido and are jointly and severally liable for damages recoverable as a result of the tortfeasor's negligence.[n11]

FOOTNOTES:

n1 Williams v. Standard Supply Co., 312 F. Supp. 1047 (E.D. N.C. 1970); Walker v. U-Haul Co., Inc., 300 So. 2d 289 (Fla. Dist. Ct. App. 4th Dist. 1974); Thompson v. Korn, 48 A.D.2d 1007, 368 N.Y.S.2d 923 (4th Dep't 1975); Johnson v. Heintz, 73 Wis. 2d 286, 243 N.W.2d 815 (1976).

n2 Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2006) (found acting in concert); Ruthardt v. Tennant, 252 La. 1041, 215 So. 2d 805 (1968); Reilley v. Byard, 146 W. Va. 292, 119 S.E.2d 650 (1961).

n3 Treanor v. B. P. E. Leasing, Inc., 158 N.W.2d 4 (Iowa 1968).

n4 Sexton v. American Aggregates, 60 Mich. App. 524, 231 N.W.2d 449 (1975); Craig v. Gage County, 190 Neb. 320, 208 N.W.2d 82 (1973).

n5 Chaisson v. J. Ray McDermott & Co., 324 So. 2d 844 (La. Ct. App. 1st Cir. 1975); Monje v. Figuerola, 43 Misc. 2d 163, 250 N.Y.S.2d 622 (N.Y. City Civ. Ct. 1964); Green v. Sellers, 1966 OK 65, 413 P.2d 522 (Okla. 1966).

n6 Refrigerated Transport Co., Inc. v. Paraday, 135 Ga. App. 533, 218 S.E.2d 272 (1975); Kirby Lumber Corp. v. Walters, 277 S.W.2d 796 (Tex. Civ. App. Beaumont 1955).

n7 Bryant v. Travelers Ins. Co., 88 So. 2d 480 (La. Ct. App. 2d Cir. 1956); Reilley v. Byard, 146 W. Va. 292, 119 S.E.2d 650 (1961).

n8 Blakeslee v. Wadsworth, 37 A.D.3d 1021, 831 N.Y.S.2d 556 (3d Dep't 2007) (involving an alleged passing contest).

n9 Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2006).

n10 Payne v. Hall, 2006-NMSC-029, 139 N.M. 659, 137 P.3d 599 (2006).

n11 Cincinnati Ins. Co. v. Samples, 192 S.W.3d 311 (Ky. 2006).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
D. Persons Liable, in General
2. Owner of Vehicle
a. Co-Owners

8 Am Jur 2d Automobiles and Highway Traffic § 613

§ 613 Generally

The mere fact that a motor vehicle is owned jointly or in common by two or more persons does not operate to render one of the co-owners, who was absent at the time, liable for injury or damage resulting from the negligent operation of the vehicle by another co-owner who is using the vehicle for his or her own purposes.[n1] Joint ownership of a motor vehicle alone does not make the co-owners partners, and even if it did, a partner is liable as such for the torts of a co-partner only where the latter is engaged in prosecuting the work or business of the firm.[n2] Moreover, although by statute in many jurisdictions, an owner is held liable for the injuries resulting from the negligent operation of a motor vehicle by one who is operating the vehicle with the permission of the owner, the circumstance that the vehicle is jointly owned is not sufficient to establish that the operation by one of the co-owners is with the permission of the other.[n3]

The liability of a co-owner of a motor vehicle for the negligent operation of the vehicle by the other co-owner may, however, be predicated upon the existence of a joint enterprise between him or her and the other co-owner.[n4] The presence in a jointly owned motor vehicle of the driver's co-owner raises a presumption of joint possession and therefore a joint control, so as to render the one who is not driving liable for the negligence of the other in the operation of the vehicle.[n5]

Observation: As a general matter, one co-owner does not have a superior right of control over a vehicle as compared to another co-owner.[n6]

FOOTNOTES:

n1 Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936); Hamilton v. Vioue, 90 Wash. 618, 156 P. 853 (1916).

n2 § 718.

n3 § 650.

n4 § 713.

n5 Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936).

Related References:

Operation and Control of Vehicles, 8 Am. Jur. Proof of Facts 581.

n6 Zedella v. Gibson, 165 Ill. 2d 181, 209 Ill. Dec. 27, 650 N.E.2d 1000 (1995).

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(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 614

§ 614 Generally

With few exceptions, at common law, the owner of a motor vehicle is not liable for its negligent operation by another using it with his or her permission,[n1] unless the operator was acting as his or her agent or servant,[n2] or unless the owner was present in the vehicle and maintained some control over its operation[n3] or entrusted its operation to an incompetent or unfit person,[n4] or unless the owner and driver were engaged in a joint enterprise[n5] or partnership activity.[n6] In other words, liability for the negligent use of a motor vehicle cannot generally be predicated against the owner at common law, merely because of the ownership of the vehicle.[n7]

In many states, by statute, the owner of a motor vehicle is made liable for its negligent operation by any person to whom he has granted permission to use or operate his vehicle, whether in the owner's business or otherwise, which statutes have the purpose and effect of changing the general common-law rule of nonliability in such cases.[n8] Moreover, a number of states have adopted the so-called "family-purpose"doctrine under which the owner of a motor vehicle purchased and maintained for the pleasure of his or her family is liable for injuries inflicted by the negligent operation of the vehicle while it is being used by members of the family for their own pleasure.[n9]

In any case, the owner of a motor vehicle is generally held liable only for such acts of the driver as he or she would be primarily liable for if the owner were operating the vehicle.[n10] Where the owner is sought to be held liable for injuries sustained by a gratuitous guest riding in his motor vehicle while it is being driven by a third person, the owner is usually accorded the benefit of a guest statute limiting his or her liability to cases of gross negligence, or willful or wanton misconduct.[n11]

FOOTNOTES:

n1 Maya v. General Motors Corp., 953 F. Supp. 1245 (D.N.M. 1996) (applying New Mexico law); Holman v. McMullan Trucking, 684 So. 2d 1309 (Ala. 1996); Peterson v. Feldman, 7 Ariz. App. 75, 436 P.2d 169 (1968); Mullally v. Carvill, 234 Ark. 1041, 356 S.W.2d 238 (1962); DuBois v. Rose, 217 Ill. App. 3d 277, 160 Ill. Dec. 150, 576 N.E.2d 1104 (5th Dist. 1991); Jones v. Western Preferred Cas. Co., 633 So. 2d 667 (La. Ct. App. 1st Cir. 1993), writ denied, 635 So. 2d 1123 (La. 1994); Ulrigg v. Jones, 274 Mont. 215, 907 P.2d 937 (1995); Haggerty v. Cedeno, 279 N.J. Super. 607, 653 A.2d 1166 (App. Div. 1995); Morris v. Snappy Car Rental, Inc., 84 N.Y.2d 21, 614 N.Y.S.2d 362, 637 N.E.2d 253 (1994).

n2 § 668.

n3 § 616.

n4 § 617.

n5 § 713.

n6 § 718.

n7 Alamo Rent-A-Car, Inc. v. Hamilton, 216 Ga. App. 659, 455 S.E.2d 366 (1995); Felix v. Turner Unified School Dist. No. 202, 22 Kan. App. 2d 849, 923 P.2d 1056, 113 Ed. Law Rep. 460 (1996); Toscano v. Spriggs, 343 Md. 320, 681 A.2d 61 (1996); Potts v. Pardee, 220 N.Y. 431, 116 N.E. 78, 8 A.L.R. 785 (1917).

n8 § 661.

n9 § 632.

n10 Stephen v. Spaulding, 32 Cal. App. 2d 326, 89 P.2d 683 (2d Dist. 1939); McHugh v. Brown, 50 Del. 154, 125 A.2d 583 (1956).

n11 § 551.

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8 Am Jur 2d Automobiles and Highway Traffic § 615

§ 615 Stolen vehicle

The owner of a motor vehicle is under no duty to a person injured by a thief's operation of a stolen vehicle,[n1] absent "special circumstances"affecting the foreseeability of the theft and the thief's negligent operation of the vehicle.[n2]

Practice Tip: The leaving of keys in the ignition is not a "special circumstance."[n3]

FOOTNOTES:

n1 Hosking v. San Pedro Marine, Inc., 98 Cal. App. 3d 98, 159 Cal. Rptr. 369 (2d Dist. 1979); Whaley v. Anderson, 461 N.W.2d 913 (Minn. 1990); Gerken v. Hawkins Const. Co., 243 Neb. 157, 498 N.W.2d 97 (1993); Phifer v. State, 204 A.D.2d 612, 612 N.Y.S.2d 225 (2d Dep't 1994); Cruz v. Middlekauff Lincoln-Mercury, Inc., 909 P.2d 1252 (Utah 1996).

Related References:
Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition, 70 A.L.R.4th 276.

n2 Hosking v. San Pedro Marine, Inc., 98 Cal. App. 3d 98, 159 Cal. Rptr. 369 (2d Dist. 1979); Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630 (Minn. 1978); Hill v. Yaskin, 75 N.J. 139, 380 A.2d 1107 (1977) (automobile left unattended, with key either over sun visor or under floor mat, in high-crime area); Garvey v. Vawter, 805 S.W.2d 601 (Tex. App. Beaumont 1991); Cruz v. Middlekauff Lincoln-Mercury, Inc., 909 P.2d 1252 (Utah 1996).

n3 Hosking v. San Pedro Marine, Inc., 98 Cal. App. 3d 98, 159 Cal. Rptr. 369 (2d Dist. 1979).

Related References:
Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 A.L.R.3d 787.

Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Stolen Vehicle, 13 Am. Jur. Proof of Facts 3d 405.

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8 Am Jur 2d Automobiles and Highway Traffic § 616

§ 616 Effect of presence of owner

An owner's presence in his or her automobile is properly considered when determining the owner's liability for damages resulting from the negligent operation of the vehicle.[n1] However, where the owner's motor vehicle is being driven by another, and the owner is a passenger therein at the time an accident occurs, the measure of liability and responsibility of the owner, in the absence of any relationship of partnership[n2] or joint enterprise,[n3] is to be determined by the common-law principles applicable to the relation of master and servant or principal and agent.[n4] In other words, the owner of a motor vehicle is charged with the negligence of the driver only when he or she has the right to exercise control over and direct the driver to such an extent that the doctrine of respondeat superior may be invoked.[n5] The mere presence of the owner in his or her motor vehicle while it is being driven by another in a negligent manner does not necessarily make him or her liable for an injury caused thereby,[n6] since ownership of the motor vehicle alone, in many jurisdictions, is not evidence of a joint venture or a relationship of principal and agent or master and servant.[n7] Another relationship, determining the matter of control, may govern the situation, or the owner may by word or action have expressly or impliedly transferred his or her right of control to the driver.[n8] Where, however, the owner is not merely riding as a guest, but his or her motor vehicle is being driven with his or her consent and under his or her direction and control, the owner is liable for injuries to third persons caused by the negligent operation of the vehicle.[n9] The "owner-occupant doctrine"is applicable when an owner is a passenger in his or her own car, and the negligence of the driver may be imputed to the owner because the owner has the legal right to control the automobile.[n10] Furthermore, that the owner does not exercise control or is physically incapable of exercising control is of no consequence, because the right of the owner to control the operation of the car can be inferred from the presence of the owner in the car.[n11]

Many jurisdictions subscribe to the rule that the presence of an owner in his or her motor vehicle, while it is being driven by another, creates a rebuttable presumption or inference that the owner has control of its operation and of the driver as his or her agent or servant,[n12] and is therefore liable for the negligence of the driver, under the doctrine of respondeat superior.[n13] However, while the liability of the owner of a motor vehicle for the negligence of one who drives while the owner is present may be predicated upon a presumption or inference arising from the facts of ownership and presence, those facts are more often viewed in connection with other facts and circumstances, such as, the relationship between the owner of the motor vehicle and the driver, the strength of the inference or presumption of control being the strongest when the driver is the spouse[n14] or child[n15] of the owner. The owner's presence in a motor vehicle operated by one who is not a member of the family is not as strong evidence that it is being operated for the owner and under the owner's direction and control as when the vehicle is being driven by a member of the family.[n16]

It should be noted that in some jurisdictions, the liability imposed by statute upon the owner of a motor vehicle for its negligent operation while being used or operated by another person with his permission is limited to cases where the owner is not present and ceases to apply when the owner enters the vehicle.[n17]

FOOTNOTES:

n1 Sutton v. Sanders, 556 N.E.2d 1362 (Ind. Ct. App. 1990).

Related References:
Fact that passenger in negligently operated motor vehicle is owner as affecting passenger's liability to or rights against third person -- modern cases, 37 A.L.R.4th 565.

n2 § 718.

n3 § 713.

n4 Selles v. Smith, 4 N.Y.2d 412, 176 N.Y.S.2d 267, 151 N.E.2d 838 (1958).

Related References:
Motor Vehicle Collisions -- Agency Relationship, 8 Am. Jur. Trials 1.

n5 Kruutari v. Hageny, 75 F. Supp. 610 (W.D. Mich. 1948); Berryman v. Quinlan, 29 Cal. App. 2d 608, 85 P.2d 202 (1st Dist. 1938).

Related References:
Liability of Motor Vehicle Passenger for Accident, 50 Am. Jur. Proof of Facts 2d 677.

Operation and Control of Vehicle, 8 Am. Jur. Proof of Facts 551.

n6 Hathaway v. Mathews, 85 Cal. App. 31, 258 P. 712 (2d Dist. 1927); Floyd v. Colonial Stores, Inc., 121 Ga. App. 852, 176 S.E.2d 111 (1970); Sowada v. Motzko, 256 Minn. 395, 98 N.W.2d 182 (1959); Payne v. Kinder, 147 W. Va. 352, 127 S.E.2d 726 (1962).

n7 § 1123.

n8 Beam v. Pittsburgh Rys. Co., 366 Pa. 360, 77 A.2d 634 (1951) (overruled in part by, Smalich v. Westfall, 440 Pa. 409, 269 A.2d 476 (1970)).

n9 Hudkins v. Egan, 364 Ill. App. 3d 587, 301 Ill. Dec. 486, 847 N.E.2d 145 (2d Dist. 2006); Kaley v. Huntley, 333 Mo. 771, 63 S.W.2d 21 (1933); Riley v. Speraw, 42 Ohio App. 207, 12 Ohio L. Abs. 421, 181 N.E. 915 (5th Dist. Muskingum County 1931).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 730 (Liability of owner -- Operation by another -- Under the direction and for the use of owner -- Owner present).

n10 Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006).

n11 Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006).

n12 § 1123.

n13 Jones v. Cary, 219 Ind. 268, 37 N.E.2d 944 (1941); Atwood v. Garcia, 167 Miss. 144, 147 So. 813 (1933); Ross v. Burgan, 163 Ohio St. 211, 56 Ohio Op. 218, 126 N.E.2d 592, 50 A.L.R.2d 1275 (1955); Rankin v. Nash-Texas Co., 129 Tex. 396, 105 S.W.2d 195 (Comm'n App. 1937).

n14 § 636.

n15 § 635.

n16 Ross v. Burgan, 163 Ohio St. 211, 56 Ohio Op. 218, 126 N.E.2d 592, 50 A.L.R.2d 1275 (1955).

n17 § 644.

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b. Owner's Liability where Vehicle Operated by Another
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8 Am Jur 2d Automobiles and Highway Traffic § 617

§ 617 Effect of entrusting vehicle to incompetent or reckless driver

The owner of an automobile who entrusts its operation to a person whom the owner knows, or by the exercise of due care should know, to be incompetent, reckless, or unfit to drive, may be held liable for any resulting injury or damage proximately caused by the borrower's negligence.[n1]

Caution: An individual who is without the right to permit or prohibit the use of the vehicle at the time of an accident ordinarily cannot be liable for negligent entrustment.[n2]

In order to prevail on a theory of negligent entrustment, the plaintiff must show that the person entrusting a vehicle to another knew, or should have known in the exercise of ordinary care, that the person to whom the vehicle was entrusted was reckless or incompetent.[n3] It is not sufficient for a plaintiff asserting claim for negligent entrustment of a motor vehicle to show constructive knowledge, i.e., that the entrustor should have known the person being entrusted was not competent.[n4] The entrustor of vehicle must have actual knowledge of incompetence, if any, of person to whom vehicle is entrusted in order to be held liable.[n5] A claim for negligent entrustment must be predicated on the car owner's knowledge of the driver's driving habits at the time that the owner gave the driver permission to drive the car.[n6] Consent to relinquish control is a necessary element,[n7] and a plaintiff must prove, among other elements, that the driver was negligent on the occasion in question and that the driver's negligence proximately caused the accident.[n8] An entrustor is not liable for negligent entrustment merely because he or she, by the exercise of reasonable care and diligence, could have ascertained the fact of the incompetency of the driver.[n9]

Under the theory of negligent entrustment, liability is imposed on a vehicle owner or permitter because of his or her own independent negligence and not the negligence of the driver.[n10] Likewise, under the theory of negligent entrustment, liability does not rest upon imputed negligence or upon ownership or agency; it rests upon the combined negligence of the owner and the driver -- negligence of the owner in entrusting the vehicle to an incompetent driver, and negligence of the driver in its operation.[n11]

FOOTNOTES:

n1 Day v. Williams, 670 So. 2d 914 (Ala. 1995); Talbott v. Csakany, 199 Cal. App. 3d 700, 245 Cal. Rptr. 136 (4th Dist. 1988); West v. Granny's Rocker Niteclub, Inc., 268 Ill. App. 3d 207, 205 Ill. Dec. 559, 643 N.E.2d 850 (5th Dist. 1994); Thompson v. Three Guys Furniture Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996); Woodson v. Porter Brown Limestone Co., Inc., 916 S.W.2d 896 (Tenn. 1996).

Related References:

Negligent entrustment of motor vehicle to unlicensed driver, 55 A.L.R.4th 1100.

Negligent entrustment: Bailor's liability to bailee injured through his own negligence or incompetence, 12 A.L.R.4th 1062.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 718 (Negligent entrustment of vehicle -- General form).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 720 (Negligent entrustment of vehicle -- To inexperienced and unlicensed minor -- Minor employed as truck driver).

n2 Broadwater v. Dorsey, 344 Md. 548, 688 A.2d 436 (1997).

n3 Acuna v. Kroack, 212 Ariz. 104, 128 P.3d 221 (Ct. App. Div. 2 2006); Rook v. Moseley, 236 Ark. 290, 365 S.W.2d 718 (1963); Henderson v. Professional Coatings Corp., 72 Haw. 387, 819 P.2d 84 (1991); Brown v. Unknown Driver, 925 So. 2d 583 (La. Ct. App. 4th Cir. 2006); Thompson v. Three Guys Furniture Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996); Barger v. Mizel, 1967 OK 38, 424 P.2d 41 (Okla. 1967); Rimer v. City of Collegedale, Tenn., 835 S.W.2d 22 (Tenn. Ct. App. 1992); Bartley v. Budget Rent-A-Car Corp., 919 S.W.2d 747 (Tex. App. Amarillo 1996), writ denied, (Dec. 13, 1996); Caouette v. Martinez, 71 Wash. App. 69, 856 P.2d 725 (Div. 2 1993); Iaquinta v. Allstate Ins. Co., 180 Wis. 2d 661, 510 N.W.2d 715 (Ct. App. 1993); Jack v. Enterprise Rent-A-Car Co. of Los Angeles, 899 P.2d 891 (Wyo. 1995).

n4 Western Industries, Inc. v. Poole, 280 Ga. App. 378, 634 S.E.2d 118 (2006).

n5 Fletcher v. Hatcher, 278 Ga. App. 91, 628 S.E.2d 169 (2006); Johnson v. Owens, 639 N.E.2d 1016 (Ind. Ct. App. 1994).

n6 Acuna v. Kroack, 212 Ariz. 104, 128 P.3d 221 (Ct. App. Div. 2 2006).

n7 Parrilla v. King County, 138 Wash. App. 427, 157 P.3d 879 (Div. 1 2007).

n8 Shupe v. Lingafelter, 192 S.W.3d 577 (Tex. 2006).

n9 Western Industries, Inc. v. Poole, 280 Ga. App. 378, 634 S.E.2d 118 (2006).

n10 Allen v. Toledo, 109 Cal. App. 3d 415, 167 Cal. Rptr. 270 (4th Dist. 1980); Snowhite v. State, Use of Tennant, 243 Md. 291, 221 A.2d 342, 19 A.L.R.3d 1155 (1966); Swicegood v. Cooper, 341 N.C. 178, 459 S.E.2d 206 (1995).

n11 Day v. Williams, 670 So. 2d 914 (Ala. 1995); Ridgeway v. Whisman, 210 Ga. App. 169, 435 S.E.2d 624 (1993); McCarty v. Lynn, 67 Ohio App. 3d 369, 587 N.E.2d 312, 17 U.C.C. Rep. Serv. 2d 112 (3d Dist. Marion County 1990).

SUPPLEMENT:

Cases

Vehicle owner's son's exercise of control over vehicle that owner purchased for son's use, rather than ownership of vehicle, was necessary prerequisite to liability under theory of negligent entrustment for death of 14-year-old unlicensed driver, to whom son entrusted vehicle, who was killed when she lost control of vehicle; overruling *Vilas v. Steavenson,* 242 Neb. 801, 496 N.W.2d 543. DeWester v. Watkins, 275 Neb. 173, 745 N.W.2d 330 (2008).

Theory of negligent entrustment provides that the owner or one in control of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200

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8 Am Jur 2d Automobiles and Highway Traffic § 618

§ 618 Parent's entrustment of vehicle to minor child

While in the absence of statute a parent is not, by reason of the parent and child relationship, liable for mere negligence of a minor child in the operation of a motor vehicle, even though such vehicle belongs to the parent, where there is nothing to charge the parent upon principles of respondeat superior,[n1] if a parent permits his or her minor child to drive the motor vehicle with knowledge that the child is an incompetent, inexperienced, or reckless driver, the parent is liable for injuries inflicted by the child's negligent operation of the vehicle.[n2] Such liability does not arise out of the imputation of negligence of the child to the parent, but out of the negligence of the parent in placing in the hands of the child an instrumentality which would be dangerous in the hands of such incompetent, unskilled, and inexperienced person.[n3]

Parents who do not have legal duty to supervise a child, who has reached the age of majority, are not liable for negligent supervision in a personal-injury action, even where one of the parents' cars is used.[n4]

In most cases, the evidence is in conflict as to whether the child to whom the use of a motor vehicle was entrusted was in fact incompetent or reckless, so the question becomes one of fact for the determination of the jury.[n5] However, it has been held that a parent is not liable for entrusting his or her minor child with the operation of a motor vehicle on the theory that such child was incompetent or reckless, merely because the child had been arrested at one time for speeding,[n6] or had been involved in an accident several years before.[n7]

Illustration: The fact that a father had knowledge that his 16-year-old daughter was an inexperienced driver was insufficient to hold the father liable for negligent entrustment of his automobile to the daughter, who failed to yield the right of way to plaintiff, causing an accident; at that age, virtually everyone is a comparatively inexperienced driver, and evidence indicated the father's belief that his daughter was a safe and fit driver and that he had no reason to believe otherwise.[n8]

In some states, apart from any question of the entrustment of a vehicle to an inexperienced child, the person who signs a child's application for an operator's license assumes liability for the child's negligence or willful misconduct in the operation of a motor vehicle.[n9] However, the negligence of a minor arising out of a motor vehicle accident may not be imputed to parents who did not sign the minor's application for an operator's license, which was obtained by the minor's falsifying of parents' signatures.[n10]

FOOTNOTES:

n1 § 628.

n2 Gardiner v. Solomon, 200 Ala. 115, 75 So. 621 (1917); Smith v. Callahan, 34 Del. 129, 144 A. 46, 64 A.L.R. 830 (1928); Arkin v. Page, 287 Ill. 420, 123 N.E. 30, 5 A.L.R. 216 (1919); Bradley v. Schmidt, 223 Ky. 784, 4 S.W.2d 703, 57 A.L.R. 1100 (1928) (overruled by, Keeney v. Smith, 521 S.W.2d 242 (Ky. 1975)); Dortman v. Lester, 380 Mich. 80, 155 N.W.2d 846 (1968); Doran v. Thomsen, 76 N.J.L. 754, 71 A. 296 (N.J. Ct. Err. & App. 1908); Bock v. Sellers, 66 S.D. 450, 285 N.W. 437 (1939); King v. Smythe, 140 Tenn. 217, 204 S.W. 296 (1918); Seinsheimer v. Burkhart, 132 Tex. 336, 122 S.W.2d 1063 (Comm'n App. 1939); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939); Blair v. Broadwater, 121 Va. 301, 93 S.E. 632 (1917).

n3 Elms v. Flick, 100 Ohio St. 186, 126 N.E. 66 (1919).

n4 Hallquist v. Smith, 189 S.W.3d 173 (Mo. Ct. App. E.D. 2006), reh'g and/or transfer denied, (Apr. 25, 2006).

n5 Buckingham v. Gilbert, 29 Ohio App. 216, 163 N.E. 306 (1st Dist. Butler County 1928).

n6 Mayer v. Johnson, 148 S.W.2d 454 (Tex. Civ. App. Amarillo 1941), writ dismissed, judgment correct; Kimble v. Muller, 417 P.2d 178 (Wyo. 1966).

n7 Ward v. Koors, 6 Ohio Op. 435, 22 Ohio L. Abs. 3, 33 N.E.2d 669 (Ct. App. 2d Dist. Montgomery County 1936).

n8 Deitchman v. Weiner, 893 F. Supp. 1508 (D. Kan. 1995).

n9 § 719.

n10 Alfieri v. Martelli, 647 A.2d 52 (Del. 1994).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 619

§ 619 Unlicensed or underage driver

The owner of a motor vehicle who knowingly entrusts it to a minor who is forbidden by statute to operate a motor vehicle because of his age is guilty of negligence and is liable for damages proximately resulting from the minor's negligent operation of the motor vehicle.[n1] However, the mere fact that one lends his motor vehicle to another who does not have a license to drive, but who meets the age requirements for an operator's license, does not render the owner liable for injuries caused by such person in the operation of the vehicle, in the absence of proof that he or she was incompetent to the knowledge of the owner.[n2]

In several jurisdictions, statutes have been enacted which make it unlawful to permit an unlicensed, underage, or otherwise unauthorized person to operate a motor vehicle.[n3] In a number of cases, it has been held that negligence per se, or as a matter of law, is shown by the violation of a statute making it unlawful to permit a person under a specified age to operate a motor vehicle.[n4] It has been said that the licensing statutes in effect render a person under the age specified incompetent to drive a motor vehicle as a matter of law, so that a person who knowingly permits such a person to drive is negligent as a matter of law.[n5] In one case, however, it has been held that the violation of such a statute is not actionable negligence, if the unlicensed minor is a competent and experienced driver.[n6] In a few cases, it has been held that the violation of a statute making it unlawful to permit an unlicensed person to operate a motor vehicle is negligence per se or as a matter of law,[n7] but in most cases it has been held that the violation of such a statute is merely evidence of negligence,[n8] or prima facie evidence of negligence.[n9]

In several jurisdictions, statutes have been enacted which make one jointly and severally liable with an underage person allowed to operate one's motor vehicle or a motor vehicle under one's control.[n10]

In a number of cases, the courts have held that a lack of a driver's license was not a proximate cause of the injury or damage, and have therefore concluded that the one entrusting a motor vehicle to an unauthorized person could not be found liable on the basis of the violation of a statute prohibiting such entrustment.[n11] A stricter doctrine has been evolved in some cases, wherein it has been held that where the entrustment of a motor vehicle to an unauthorized person in violation of a statute is shown and it is also shown that the negligence of the operator caused the injury or damage, a causal connection exists between the entrustment to the unauthorized person and the injury or damage.[n12]

In a number of cases involving the operation of one's motor vehicle by an unlicensed or underage person, it has been held that there is no civil liability under such a statute unless the alleged violator knew that the permittee was unauthorized to drive.[n13]

Observation: A statute proscribing allowing an unlicensed driver to operate a vehicle will not impose liability on the seller of a car who fails to ensure that the buyer is licensed and insured, since no law prohibits unlicensed persons from owning a vehicle.[n14]

One cannot be held liable for damage caused by an unlicensed or underage person operating the former's motor vehicle, unless it is shown that permission was granted to take the vehicle.[n15] It is not necessary to prove that express consent to drive the motor vehicle was given, but such consent may be implied from past conduct.[n16] Whether consent was given for the operation of the motor vehicle in question is ordinarily for the jury.[n17]

The fact that an unlicensed or underage person who has been granted permission to operate a motor vehicle deviates from the course on which he or she is permitted to operate does not relieve the owner of the motor vehicle from liability for the driver's negligent operation of his or her motor vehicle.[n18]

FOOTNOTES:

n1 Vilas v. Steavenson, 242 Neb. 801, 496 N.W.2d 543 (1993); Schultz v. Morrison, 91 Misc. 248, 154 N.Y.S. 257 (Sup 1915), aff'd, 172 A.D. 940, 156 N.Y.S. 1144 (4th Dep't 1916).

Related References:
Negligent entrustment of motor vehicle to unlicensed driver, 55 A.L.R.4th 1100.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 720 (Negligent entrustment of vehicle -- To inexperienced and unlicensed minor -- Minor employed as truck driver).

n2 Lutfy v. Lockhart, 37 Ariz. 488, 295 P. 975 (1931); Greeley v. Cunningham, 116 Conn. 515, 165 A. 678 (1933); Pugliese v. McCarthy, 10 N.J. Misc. 601, 160 A. 81 (Sup. Ct. 1932).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 721 (Negligent entrustment of vehicle -- To unlicensed operator -- Employee operating truck).

n3 § 262.

n4 Carter v. Montgomery, 226 Ark. 989, 296 S.W.2d 442 (1956); Amador v. Lea's Auto Sales & Leasing, Inc., 916 S.W.2d 845 (Mo. Ct. App. S.D. 1996).

Related References:
Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R.2d 978.

n5 Amador v. Lea's Auto Sales & Leasing, Inc., 916 S.W.2d 845 (Mo. Ct. App. S.D. 1996).

n6 Panzico v. Price, 647 So. 2d 1154 (La. Ct. App. 2d Cir. 1994), on reh'g, 658 So. 2d 1310 (La. Ct. App. 2d Cir. 1995), writ denied, 660 So. 2d 853 (La. 1995).

n7 Mundy v. Pirie-Slaughter Motor Co., 146 Tex. 314, 206 S.W.2d 587 (1947).

n8 Le Blanc v. Pierce Motor Co., 307 Mass. 535, 30 N.E.2d 684 (1940); Rau v. Kirschenman, 208 N.W.2d 1 (N.D. 1973).

n9 Owens v. Carmichael's U-Drive Autos, 116 Cal. App. 348, 2 P.2d 580 (1st Dist. 1931).

n10 McHugh v. Brown, 50 Del. 154, 125 A.2d 583 (1956); Gordon v. Rose, 54 Idaho 502, 33 P.2d 351, 93 A.L.R. 984 (1934); Jacobs v. Hobson, 148 Kan. 107, 79 P.2d 861 (1938); Falender v. Hankins, 296 Ky. 396, 177 S.W.2d 382 (1944).

n11 Enlow v. Blaney, 527 So. 2d 1178 (La. Ct. App. 3d Cir. 1988), writ denied, 532 So. 2d 151 (La. 1988).

n12 Mundy v. Pirie-Slaughter Motor Co., 146 Tex. 314, 206 S.W.2d 587 (1947).

n13 Jones v. Western Preferred Cas. Co., 633 So. 2d 667 (La. Ct. App. 1st Cir. 1993), writ denied, 635 So. 2d 1123 (La. 1994); Hagans v. Constitution State Service Co., 455 Pa. Super. 231, 687 A.2d 1145 (1997).

n14 Pizzonia v. Colonial Motors, Inc., 433 Pa. Super. 9, 639 A.2d 1185 (1994).

n15 Fitiles v. Umlah, 322 Mass. 325, 77 N.E.2d 212 (1948); Prewitt v. Walker, 231 Miss. 860, 97 So. 2d 514 (1957); Vilas v. Steavenson, 242 Neb. 801, 496 N.W.2d 543 (1993) (no liability for owner who entrusted to licensed son who allowed unlicensed friend to drive).

n16 Lowder v. Holley, 120 Utah 231, 233 P.2d 350 (1951).

n17 Abbs v. Redmond, 64 Idaho 369, 132 P.2d 1044 (1943).

n18 Shrout v. Rinker, 148 Kan. 820, 84 P.2d 974 (1938); Strout v. Polakewich, 139 Me. 134, 27 A.2d 911 (1942); Sedlacek v. Ahrens, 165 Mont. 479, 530 P.2d 424 (1974).

SUPPLEMENT:

Cases

There was no evidence that, at the time employer entrusted its vehicle to employee, he was an unlicensed, incompetent, or reckless driver or that employer knew or should have known employee was an unlicensed, incompetent, or reckless driver, as was required for motorist to establish employer's liability for collision with employee, who fell asleep at the wheel, under a negligent entrustment theory; employee was a licensed driver, and employee's driving record before was hired by employer included only citations for driving without liability insurance and for a collision in which employee rear-ended a vehicle at a stoplight, and the only incident involving employer's vehicles was for exceeding the speed limit by about five miles per hour. Goodyear Tire and Rubber Co. v. Mayes, 236 S.W.3d 754 (Tex. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 620

§ 620 Driver intoxicated or likely to become intoxicated

One who negligently entrusts an automobile to a noticeably intoxicated driver may be held liable for injuries to third parties caused by the intoxicated driver's negligent operation of the automobile,[n1] if the injuries are result of the negligence of the driver and the negligence was caused by the intoxication.[n2] One may also be liable for entrusting a vehicle to a person who is likely to become intoxicated.[n3]

In the case of entrusting a vehicle to a habitual drunkard, it must also be shown that the person entrusting the vehicle knew that the person entrusted with the vehicle was likely to drive while drunk.[n4]

FOOTNOTES:

n1 Ridgeway v. Whisman, 210 Ga. App. 169, 435 S.E.2d 624 (1993); Snodgrass v. Baumgart, 25 Kan. App. 2d 812, 974 P.2d 604 (1999).

n2 Wagner v. Schlue, 255 N.J. Super. 391, 605 A.2d 294 (Law Div. 1992).

n3 Meachum v. Faw, 112 N.C. App. 489, 436 S.E.2d 141 (1993).

Related References:
Liability based on entrusting automobile to one who is intoxicated or known to be excessive user of intoxicants, 19 A.L.R.3d 1175 (superseded by Liability Based on Entrusting Automobile to One Who is Intoxicated or Known to be Excessive User of Intoxicants, 91 A.L.R.5th 1).

Failure to Protect the Public From an Intoxicated Driver, 34 Am. Jur. Trials 499.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 719 (Negligent entrustment of vehicle -- To alcoholic).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1429 (Instruction -- Liability of owner of vehicle -- For intoxication or willful misconduct of driver).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1430 (Instruction -- Liability for negligence in hiring and entrusting vehicle to alcoholic).

n4 Murray v. Pasotex Pipe Line Co., 161 F.2d 5 (C.C.A. 5th Cir. 1947) (applying Texas law); Laughlin v. Rose, 200 Va. 127, 104 S.E.2d 782 (1958).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 621

§ 621 Operation by independent contractor

The owner of a motor vehicle is not liable at common law for injuries or damage resulting from the negligent operation of his vehicle by one having the status of an independent contractor,[n1] such as a garageman or mechanic,[n2] or one who has, independently of the orders and control of the owner with regard to the operation of the motor vehicle, undertaken to sell it.[n3] An exception to this rule is established where the independent contractor operates the motor vehicle under a highway permit or franchise granted to the owner.[n4] It is also to be noted that in a number of jurisdictions statutes have been enacted which render the owner of a motor vehicle liable for the negligent operation of his vehicle by one to whom he has granted permission to operate or use it, which statutes have been held to apply to the operation of one's motor vehicle by an independent contractor.[n5] If the performance of the contract requires driving a vehicle, the person employing the independent contractor is required to investigate the independent contractor's competency to drive,[n6] including whether the contractor has proper insurance and registration.[n7]

Whether one driving a motor vehicle owned by another is the agent or servant of the latter or an independent contractor is determined by the general principles applicable to that phase of the law.[n8]

FOOTNOTES:

n1 Burgess v. Cahill, 26 Cal. 2d 320, 158 P.2d 393, 159 A.L.R. 1304 (1945); Harfred Auto Imports, Inc. v. Yaxley, 343 So. 2d 79, 8 A.L.R.4th 259 (Fla. Dist. Ct. App. 1st Dist. 1977); Lonero v. Dillick, 208 S.W.3d 323 (Mo. Ct. App. E.D. 2006).

n2 § 622.

n3 § 624.

n4 § 721.

n5 § 640.

n6 Mireles v. Ashley, 201 S.W.3d 779 (Tex. App. Amarillo 2006), reh'g overruled, (June 5, 2006).

n7 Puckrein v. ATI Transport, Inc., 186 N.J. 563, 897 A.2d 1034 (2006).

n8

Related References:
See Am. Jur. 2d, Independent Contractors §§ 5 et seq.

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8 Am Jur 2d Automobiles and Highway Traffic § 622

§ 622 Garageman or mechanic

At common law, the owner of a motor vehicle is not liable for the negligent operation of his vehicle by a garageman or mechanic to whom he has turned it over for repairs, since the garageman or mechanic is deemed to be an independent contractor.[n1] Neither is the owner liable for the negligence of a mechanic or garageman driving the motor vehicle for testing purposes in connection with repairs or service,[n2] even though such operation results in a benefit to the owner and the route used is under his or her direction.[n3] The fact that the owner has given specific instructions concerning the vehicle to be driven has been held not to make the owner liable for the negligence of the garageman or mechanic driving the vehicle.[n4] In a few cases, however, under the special circumstances, the owner of a motor vehicle has been held liable for damages caused by the negligence of a garageman or mechanic.[n5]

The owner of a motor vehicle is not liable for damage caused by his or her vehicle when being picked up for transportation to a garage for storage or servicing, or when being returned to the owner, through the negligence of an employee of the garage, such employee being regarded as the servant of the garage operator rather than of the vehicle owner.[n6] However, where the negligent operation of the motor vehicle by a garage employee has been under the specific direction of the owner, and was such as not to be within the contemplation of the contract between the owner and the garage, the owner has been held liable for damage resulting from such operation.[n7] In several cases, the courts, in holding an owner liable for negligent operation by a garage employee, have stressed the fact that delivery of the vehicle by such employee was merely an accommodation to the owner.[n8]

In a number of jurisdictions, statutes have been enacted which make the owner of a motor vehicle liable for its negligent operation by one using it with his permission, and have been held applicable to vehicles operated while in the custody of garagemen.[n9]

FOOTNOTES:

n1 Segler v. Callister, 167 Cal. 377, 139 P. 819 (1914); Kohler v. Sheffert, 250 Iowa 899, 96 N.W.2d 911 (1959); Green v. Hatcher, 236 Miss. 830, 105 So. 2d 624 (1958); Ford v. Fox, 8 N.J. Super. 80, 73 A.2d 270 (App. Div. 1950); Trolio v. McLendon, 4 Ohio App. 2d 30, 33 Ohio Op. 2d 52, 211 N.E.2d 65 (7th Dist. Mahoning County 1965), judgment rev'd on other grounds, 9 Ohio St. 2d 103, 38 Ohio Op. 2d 287, 224 N.E.2d 117 (1967); Nawrocki v. Cole, 41 Wash. 2d 474, 249 P.2d 969, 35 A.L.R.2d 799 (1952).

Related References:
Liability of owner of motor vehicle for negligence of garageman or mechanic, 8 A.L.R.4th 265.

n2 Segler v. Callister, 167 Cal. 377, 139 P. 819 (1914); Smilowitz v. Russell, 464 So. 2d 556 (Fla. 1985); Miller v. Shegogue, 221 Md. 292, 157 A.2d 272 (1960).

n3 Mulroy v. Tarulli, 190 A.D. 637, 180 N.Y.S. 427 (1st Dep't 1920).

n4 Nawrocki v. Cole, 41 Wash. 2d 474, 249 P.2d 969, 35 A.L.R.2d 799 (1952).

n5 Chute v. Morey, 234 Mass. 387, 125 N.E. 574 (1920).

n6 Hotel Storage, Inc. v. Fesler, 120 Ga. App. 672, 172 S.E.2d 174, 41 A.L.R.3d 1049 (1969); Kohler v. Sheffert, 250 Iowa 899, 96 N.W.2d 911 (1959); Pancake v. Cull, 338 S.W.2d 391 (Ky. 1960); Green's Ex'rs v. Smith, 146 Va. 442, 131 S.E. 846, 44 A.L.R.1175 (1926), reh'g denied, 146 Va. 442, 132 S.E. 839, 44 A.L.R.1175 (1926).

n7 Marron v. Bohannan, 104 Conn. 467, 133 A. 667, 46 A.L.R. 838 (1926); Janik v. Ford Motor Co., 180 Mich. 557, 147 N.W. 510 (1914).

n8 Marron v. Bohannan, 104 Conn. 467, 133 A. 667, 46 A.L.R. 838 (1926).

n9 § 654.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 623

§ 623 Operation of rented or hired vehicle

The general common-law principle which denies the liability of an owner of a motor vehicle for the negligence of one to whom he or she has loaned it[n1] applies, in the absence of statute, where the vehicle is rented to another, the owner not being liable at common law for the negligence of a lessee[n2] who is in no way under the supervision of the owner in respect to the manner of operation of the vehicle.[n3] Likewise, the bailor of a motor vehicle generally is not liable to third persons for injuries resulting from the negligent operation of the vehicle by the bailee,[n4] unless, at the time of the bailment, the bailor knew or ought to have known that the bailee was an incompetent driver.[n5] However, where there is no reason to suspect incompetence, the owner is not liable.[n6]

In a number of states, statutes have been enacted which make the owner of a motor vehicle liable for its negligent operation by one to whom he has granted permission to use such vehicle, and have been held to render the owner liable for the negligent operation of his vehicle by one to whom he has rented it.[n7]

An owner may be liable under federal highway regulations.[n8]

FOOTNOTES:

n1 § 1011.

n2 Kline v. Wheels by Kinney, Inc., 464 F.2d 184 (4th Cir. 1972) (applying North Carolina law); Kruutari v. Hageny, 75 F. Supp. 610 (W.D. Mich. 1948); McWilliams v. Griffin, 132 Neb. 753, 273 N.W. 209, 110 A.L.R. 1039 (1937); Orose v. Hodge Drive-It-Yourself Co., 132 Ohio St. 607, 9 Ohio Op. 10, 9 N.E.2d 671, 111 A.L.R. 954 (1937).

n3 Hornstein v. Southern Boulevard Ry. Co., 79 Misc. 34, 138 N.Y.S. 1080 (App. Term 1913).

As to whether a driver furnished with a leased vehicle, or the lessor himself as the operator of a leased vehicle, is an employee of the lessee so that the latter will be charged with the negligence of such furnished driver or the lessor, under the doctrine of respondeat superior, see 691 to 693.

Related References:
Construction and application of statute imposing liability expressly upon motor vehicle lessor for damage caused by operation of vehicle, 41 A.L.R.4th 993.

Construction and effect of motor vehicle leasing contracts, 43 A.L.R.3d 1283.

n4 Hertz Driv-Ur-Self System of Colorado v. Hendrickson, 109 Colo. 1, 121 P.2d 483 (1942).

n5 Neubrand v. Kraft, 169 Iowa 444, 151 N.W. 455 (1915).

n6 Osborn v. Hertz Corp., 205 Cal. App. 3d 703, 252 Cal. Rptr. 613 (3d Dist. 1988); Collette v. Ledet, 640 So. 2d 757 (La. Ct. App. 3d Cir. 1994), writ denied, 644 So. 2d 641 (La. 1994); Burkholder v. Genway Corp., 432 Pa. Super. 36, 637 A.2d 650 (1994).

n7 § 652.

n8 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

As to liability of holder of highway permit, see § 721.

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8 Am Jur 2d Automobiles and Highway Traffic § 624

§ 624 Operation of vehicle by one who has undertaken to sell it for owner

The responsibility of an owner, other than a dealer,[n1] for negligence during the demonstration of a motor vehicle by one who has undertaken to sell it for the owner, depends upon the relation between the owner and the person thus undertaking to sell the vehicle. If that relation is not one of principal and agent, but one of independent contractor, the owner of the car is not liable for negligence when it is being thus demonstrated.[n2]

FOOTNOTES:

n1 As to the liability of a dealer where vehicle is operated by or for prospective purchaser, see § 625.

n2 Bell v. State, 153 Md. 333, 138 A. 227, 58 A.L.R. 1051 (1927); Potchasky v. Marshall, 211 A.D. 236, 207 N.Y.S. 562 (3d Dep't 1925).

Related References:
Liability of employer for negligent operation of motor vehicle by automobile salesman, 53 A.L.R.2d 631.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1425 (Instruction -- Liability of owner of vehicle for negligence of sales representative demonstrating used car).

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8 Am Jur 2d Automobiles and Highway Traffic § 625

§ 625 Dealer's liability where vehicle operated by or for prospective purchaser

At common law, a dealer who holds a motor vehicle for purposes of sale is not liable for injuries or damage resulting from negligence in the operation of the dealer's vehicle by a prospective purchaser,[n1] or one acting for a prospective purchaser,[n2] who is seeking to determine whether to purchase such vehicle. However, although there is some authority to the contrary,[n3] the presence of the motor vehicle dealer or his or her representative has been held to result in the dealer's liability for the prospective purchaser's negligence.[n4]

A motor vehicle dealer who places one of his or her vehicles in the hands of a prospective purchaser, or one acting for the latter, whom he or she knows, or in the exercise of reasonable care should know, to be incompetent to operate the vehicle safely is liable for injuries caused by the driver's incompetence.[n5] In general, unless there are facts and circumstances which might reasonably put the dealer on inquiry, he or she is not obliged to test the competency and skill of the customer before entrusting him or her with an instrumentality which, even though it may become highly dangerous by improper use and operation, is not inherently dangerous.[n6]

Practice Tip: In the absence of knowledge to the contrary, the dealer may rely on the driver's license as evidence of the competency of the driver,[n7] but a dealer may have the duty to determine if the driver's license is valid.[n8]

It should be noted that in a number of jurisdictions, statutes have been enacted which render the owner of a motor vehicle liable for its negligent operation by another who is using or operating it with the owner's permission, which statutes include use or operation of a motor vehicle by a prospective purchaser.[n9]

FOOTNOTES:

n1 West v. Wall, 191 Ark. 856, 88 S.W.2d 63 (1935); Sproll v. Burkett Motor Co., 223 Iowa 902, 274 N.W. 63 (1937); Foley v. John H. Bates, Inc., 295 Mass. 557, 4 N.E.2d 349 (1936); Saums v. Parfet, 270 Mich. 165, 258 N.W. 235 (1935); Hill v. Harrill, 203 Tenn. 123, 310 S.W.2d 169 (1957).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1425 (Liability of owner of vehicle for negligence of sales representative demonstrating used car).

n2 Flaherty v. Helfont, 123 Me. 134, 122 A. 180 (1923); Roy v. Hammett Motors, 187 Miss. 362, 192 So. 570 (1940).

n3 See Barnett v. Globe Indem. Co., 557 So. 2d 300 (La. Ct. App. 4th Cir. 1990); and Universal Underwriters Ins. Co. v. Hoxie, 375 Mich. 102, 133 N.W.2d 167 (1965), both holding an automobile dealer not liable for negligence of prospective purchaser driving car on demonstration drive, although dealer's representative was riding in car.

n4 Jack Ward Chevrolet, Inc. v. Mikel, 525 N.E.2d 349 (Ind. Ct. App. 1988) (agency-like relationship); Dahnke v. Meggitt, 63 Ohio App. 252, 16 Ohio Op. 553, 26 N.E.2d 223 (6th Dist. Erie County 1939); Robbins v. Greene, 43 Wash. 2d 315, 261 P.2d 83 (1953).

n5 Crockett v. U.S., 116 F.2d 646 (C.C.A. 4th Cir. 1940); Siebel v. Shapiro, 58 Cal. App. 2d 509, 137 P.2d 56 (1st Dist. 1943); Grimmett v. Burke, 21 Kan. App. 2d 638, 906 P.2d 156 (1995).

As to the liability of the owner of a motor vehicle entrusting its operation to an incompetent driver, generally, see § 617.

n6 Brown v. Fields, 160 Or. 23, 83 P.2d 144 (1938).

n7 Brown v. Fields, 160 Or. 23, 83 P.2d 144 (1938).

n8 Rogers v. Wheeler, 864 S.W.2d 892 (Ky. 1993).

n9 § 652.

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8 Am Jur 2d Automobiles and Highway Traffic § 626

§ 626 Owner's right to indemnity from operator

Where the owner of a motor vehicle, without fault on his or her own part, becomes liable to an injured person because of the negligence of one permitted to operate his or her vehicle, the owner is entitled to indemnity from the operator or such operator's employer to whom the vehicle was bailed,[n1] in the absence of an agreement to the contrary between the owner and the bailee.[n2] Thus, where the owner's liability is merely derivative from the acts of the operator of the vehicle, pursuant to the provisions of a statute which imposes liability upon the owner for the negligent operation of his or her motor vehicle by a third person whom he or she permits to use it,[n3] it is proper to implead the operator as a party defendant by serving a third-party complaint.[n4] Also, where the owner is compelled by the statute to pay the amount of the judgment recovered against him or her, the owner may recover over against the operator of the vehicle,[n5] unless the owner has undertaken by contract to protect the operator against liability for negligence in the operation of the vehicle.[n6]

Under a statute imputing liability to the owner of a motor vehicle for injuries caused by a driver operating it with his permission, which contains a provision that in the event a recovery is had under the provisions of such statute the owner of the motor vehicle is subrogated to all the rights of the injured party, it has been held that an owner liable to an injured third party for injuries caused by the negligence of the person operating a vehicle with his permission is entitled to indemnity from the driver or his employer to whom the vehicle was bailed.[n7]

Since an employee is liable for his or her own negligence if he or she injures a third person while acting for, or on the business of his or her employer,[n8] when his or her negligent operation of the employer's motor vehicle or a motor vehicle in the service of the employer has resulted in injury or damage to a third person for which the employer has been held liable, the employer may hold the employee liable for the compensation which the employer has been compelled to make to the person injured or damaged.[n9] Domestic servants or employees constitute no exception to this rule charging the employee with liability to his employer for acts of negligence causing loss or damage to the employer.[n10] Also, a registered owner of an automobile, which was actually the property of the defendant husband and wife, was entitled to assert a claim of equitable indemnity against them for amounts incurred in the settlement of a damage action against all three parties arising out of the defendant husband's operation of the automobile, where it was stipulated that the amount of the settlement made by the plaintiff was a reasonable compromise of the potential liability of the parties in that action.[n11]

FOOTNOTES:

n1 Lunderberg v. Bierman, 241 Minn. 349, 63 N.W.2d 355, 43 A.L.R.2d 865 (1954); Traub v. Dinzler, 309 N.Y. 395, 131 N.E.2d 564 (1955); Millard v. Baker, 76 S.D. 529, 81 N.W.2d 892 (1957).

Related References:
Right of motor vehicle owner liable to injured third person because of negligence of one permitted to drive, to indemnity from the latter or the latter's employer to whom vehicle was bailed, 43 A.L.R.2d 879.

n2 Gorham v. Arons, 282 A.D. 147, 121 N.Y.S.2d 669 (1st Dep't 1953), judgment aff'd, 306 N.Y. 782, 118 N.E.2d 600 (1954).

n3 § 640.

n4 Lunderberg v. Bierman, 241 Minn. 349, 63 N.W.2d 355, 43 A.L.R.2d 865 (1954); Traub v. Dinzler, 309 N.Y. 395, 131 N.E.2d 564 (1955).

n5 Kramer v. Morgan, 85 F.2d 96 (C.C.A. 2d Cir. 1936).

n6 § 658.

n7 Dalton v. Baldwin, 64 Cal. App. 2d 259, 148 P.2d 665 (2d Dist. 1944).

n8

Related References:
As to the liability of an employee for his own negligence, generally, see Am. Jur. 2d, Employment Relationship § 409.

n9 Huey v. Dykes, 203 Ala. 231, 82 So. 481 (1919); McGonigle v. Gryphan, 201 Wis. 269, 229 N.W. 81 (1930).

n10 Darman v. Zilch, 56 R.I. 413, 186 A. 21, 110 A.L.R. 826 (1936).

n11 Jenne v. Wheeler, 44 Cal. App. 3d Supp. 11, 118 Cal. Rptr. 471 (App. Dep't Super. Ct. 1974).

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8 Am Jur 2d Automobiles and Highway Traffic § 627

§ 627 Generally

At common law, the mere fact of a family relationship between the owner of a motor vehicle and the person driving it at the time of an accident does not impose liability upon the owner for the negligence of the driver.[n1] Thus, one who loans a motor vehicle to his or her child,[n2] brother,[n3] or his or her father[n4] or mother,[n5] is not liable, at common law, for injuries caused by the negligence of such person or the employee of such person in operating the vehicle. Nor is a husband or wife, merely by virtue of the marital relationship, liable for injuries caused by his or her spouse's negligent operation of the other's motor vehicle.[n6] While statutes frequently make the owner of a motor vehicle liable for the permissive use thereof,[n7] and such statutes have been construed to render the owner liable for the negligent operation of his or her vehicle by a family member,[n8] aside from such statutes, the owner's liability for the negligent operation of the motor vehicle by a member of his or her family must depend upon the theory that the one driving was acting as the owner's agent or servant,[n9] or was otherwise subject to his or her control,[n10] or upon the theory of personal negligence on the part of the owner in entrusting the operation of his or her vehicle to a family member incompetent or unfit to drive.[n11]

FOOTNOTES:

n1 Spence v. Fisher, 184 Cal. 209, 193 P. 255, 14 A.L.R. 1083 (1920); Smith v. Callahan, 34 Del. 129, 144 A. 46, 64 A.L.R. 830 (1928); Pratt v. Cloutier, 119 Me. 203, 110 A. 353, 10 A.L.R. 1434 (1920); McNeil v. Powers, 266 Mass. 446, 165 N.E. 385 (1929); Carr v. Orrill, 86 N.H. 226, 166 A. 270 (1933); Trice v. Bridgewater, 125 Tex. 75, 81 S.W.2d 63, 100 A.L.R. 1014 (Comm'n App. 1935); Ritter v. Hicks, 102 W. Va. 541, 135 S.E. 601, 50 A.L.R. 1505 (1926); Hopkins v. Droppers, 184 Wis. 400, 198 N.W. 738, 36 A.L.R. 1156 (1924).

n2 § 628.

n3 Parsons v. Wisner, 113 N.Y.S. 922 (App. Term 1909).

n4 Osber v. Yeggerman, 38 Ohio App. 498, 10 Ohio L. Abs. 550, 176 N.E. 123 (1st Dist. Hamilton County 1930).

n5 Carr v. Orrill, 86 N.H. 226, 166 A. 270 (1933).

n6 § 629.

n7 § 640.

n8 § 652.

n9 Gordon v. Rose, 54 Idaho 502, 33 P.2d 351, 93 A.L.R. 984 (1934).

Related References:
Motor Vehicle Collisions -- Agency Relationship, 8 Am. Jur. Trials 1.

n10 Cohen v. Borgenecht, 83 Misc. 28, 144 N.Y.S. 399 (App. Term 1913).

n11 § 617.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 628

§ 628 Child of owner

Liability cannot be imposed upon the owner of a motor vehicle for injuries resulting from the negligent operation of such vehicle by his child merely by reason of the relationship between the owner and the driver,[n1] in the absence of statutory provision changing the common-law rule.[n2] A parent may be held liable for his or her own negligence in entrusting his or her motor vehicle to a child who is known to be reckless, careless, or incompetent, so as to be chargeable with negligence of that child in the operation of such vehicle,[n3] but apart from this rule, a parent's liability at common law for the negligent operation of the motor vehicle by a child depends upon whether at the time of the injury complained of the parent and child were engaged in a joint adventure,[n4] or the child was operating such vehicle as the agent or servant of his or her parent.[n5]

The mere fact of relationship of parent and child does not make the child the agent or servant of the parent in driving a motor vehicle owned by the parent.[n6] However, as to third persons, a child may, whether a minor or an adult, become, by particular arrangement, the agent or servant of its parent, so as to charge the parent with liability for the child's negligent operation of the parent's motor vehicle.[n7] It is not necessary that there be an express contract of employment or an express agreement for compensation in order that a child be deemed the agent or servant of the parent in the operation of the latter's motor vehicle,[n8] but the agency or master and servant relationship may be implied[n9] from previous conduct.[n10] Merely because the parent is present in his or her motor vehicle while it is being driven by his or her child does not, however, establish the relationship of principal and agent or master and servant between the parent and the child, so as to render the parent liable for its negligent operation,[n11] unless the child is driving in furtherance of the parent's business,[n12] or under his or her direction and control.[n13] In a number of cases it has been held that where a child is operating his or her parent's motor vehicle in order to deliver a message for his parent,[n14] or for the convenience or pleasure of members of the family,[n15] a principal and agent or master and servant relationship arises between the parent and the child so as to render the former liable for the negligent operation of such vehicle by the latter.

Even though the relationship of principal and agent or master and servant exist between the parent and the child, the parent cannot be held responsible for the negligent operation of his or her motor vehicle by such child unless he or she was acting at the time within the scope of his or her employment.[n16] The parent cannot be held liable for the negligent operation of the motor vehicle by his or her child while the child is engaged in some private matter of his or her own.[n17] The question of liability, if any, in cases where there may be an issue of fact as to the nature of the mission in which the child may be engaged (other than his or her personal ends and pleasure) is to be determined upon the facts of each particular case.[n18]

A parent cannot, apart from statute, be held liable for the negligent operation of his or her motor vehicle by a child who has taken such vehicle for a purpose of his or her own, and without the parent's knowledge or consent,[n19] or against the parent's command.[n20]

Where the child has attained the age of majority, no claim for negligent supervision can be maintained against the parent.[n21]

In those jurisdictions which have adopted the so-called "family-purpose"doctrine, a parent may be held liable for the negligent operation of his motor vehicle by his child using such vehicle for his own pleasure.[n22]

FOOTNOTES:

n1 McMahan v. Berry, 319 Ark. 88, 890 S.W.2d 242 (1994); Gordon v. Rose, 54 Idaho 502, 33 P.2d 351, 93 A.L.R. 984 (1934); Dortman v. Lester, 3 Mich. App. 600, 143 N.W.2d 130 (1966), judgment rev'd on other grounds, 380 Mich. 80, 155 N.W.2d 846 (1968); Cade v. McDanel, 451 Pa. Super. 368, 679 A.2d 1266 (1996).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1412 (Instruction -- Members of family -- Parent and child).

n2 § 640.

n3 § 618.

n4 § 713.

n5 McMahan v. Berry, 319 Ark. 88, 890 S.W.2d 242 (1994); Jacobsen v. Dailey, 228 Minn. 201, 36 N.W.2d 711, 11 A.L.R.2d 1429 (1949); Wirth v. Gabry, 120 N.J.L. 432, 200 A. 556 (N.J. Sup. Ct. 1938), judgment aff'd, 122 N.J.L. 95, 4 A.2d 281 (N.J. Ct. Err. & App. 1939); Mitchell v. Ellmaker, 134 Pa. Super. 583, 4 A.2d 592 (1939); Bluth v. Neeson, 127 Tex. 462, 94 S.W.2d 407 (1936); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

As to the master's liability for the negligent operation of his motor vehicle by a servant, see § 662.

n6 Boes v. Howell, 24 N.M. 142, 173 P. 966 (1918).

n7 Parker v. Wilson, 179 Ala. 361, 60 So. 150 (1912); Griffin v. Russell, 144 Ga. 275, 87 S.E. 10 (1915).

n8 Parker v. Wilson, 179 Ala. 361, 60 So. 150 (1912); Woods v. Clements, 113 Miss. 720, 74 So. 422 (1917); Doran v. Thomsen, 76 N.J.L. 754, 71 A. 296 (N.J. Ct. Err. & App. 1908).

n9 Woods v. Clements, 113 Miss. 720, 74 So. 422 (1917).

n10 Denison v. McNorton, 228 F. 401 (C.C.A. 6th Cir. 1916).

n11 Zeeb v. Bahnmaier, 103 Kan. 599, 176 P. 326, 2 A.L.R. 883 (1918); Reiter v. Grober, 173 Wis. 493, 181 N.W. 739, 18 A.L.R. 362 (1921).

Related References:
Fact that passenger in negligently operated motor vehicle is owner as affecting passenger's liability to or rights against third person -- modern cases, 37 A.L.R.4th 565.

n12 Stellmach v. Olson, 242 Ill. App. 3d 61, 184 Ill. Dec. 928, 614 N.E.2d 129 (2d Dist. 1993); Trice v. Bridgewater, 125 Tex. 75, 81 S.W.2d 63, 100 A.L.R. 1014 (Comm'n App. 1935).

n13 Smith v. Spirek, 196 Iowa 1328, 195 N.W. 736 (1923); Kaley v. Huntley, 333 Mo. 771, 63 S.W.2d 21 (1933); Kremlacek v. Sedlacek, 190 Neb. 460, 209 N.W.2d 149 (1973).

n14 Griffin v. Russell, 144 Ga. 275, 87 S.E. 10 (1915); Broadstreet v. Hall, 168 Ind. 192, 80 N.E. 145 (1907); Atkins v. Points, 148 La. 958, 88 So. 231 (1921); King v. Smythe, 140 Tenn. 217, 204 S.W. 296 (1918).

n15 Van Blaricom v. Dodgson, 220 N.Y. 111, 115 N.E. 443 (1917).

n16 Denison v. McNorton, 228 F. 401 (C.C.A. 6th Cir. 1916).

n17 Stellmach v. Olson, 242 Ill. App. 3d 61, 184 Ill. Dec. 928, 614 N.E.2d 129 (2d Dist. 1993); Doran v. Thomsen, 76 N.J.L. 754, 71 A. 296 (N.J. Ct. Err. & App. 1908).

n18 Trice v. Bridgewater, 125 Tex. 75, 81 S.W.2d 63, 100 A.L.R. 1014 (Comm'n App. 1935).

n19 Sultzbach v. Smith, 174 Iowa 704, 156 N.W. 673 (1916).

n20 Stellmach v. Olson, 242 Ill. App. 3d 61, 184 Ill. Dec. 928, 614 N.E.2d 129 (2d Dist. 1993); Sultzbach v. Smith, 174 Iowa 704, 156 N.W. 673 (1916); Hays v. Hogan, 273 Mo. 1, 200 S.W. 286 (1917).

n21 Covell v. Olsen, 65 Mass. App. Ct. 359, 840 N.E.2d 555 (2006); Hallquist v. Smith, 189 S.W.3d 173 (Mo. Ct. App. E.D. 2006), reh'g and/or transfer denied, (Apr. 25, 2006).

n22 § 635.

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8 Am Jur 2d Automobiles and Highway Traffic § 629

§ 629 Spouse of owner

The mere fact of a spousal relationship is insufficient to impose liability upon one spouse, as the owner of a vehicle, due to the other spouse's negligent driving of that vehicle.[n1] In the absence of a statute imposing liability for the use of a motor vehicle by members of the owner's family,[n2] a spouse can be held liable for the negligent operation of his or her motor vehicle by the other spouse only under the theory of negligent entrustment,[n3] or under the theory that the spouse, in driving the motor vehicle, was, at the time of the injury complained of, acting as the owner's agent or servant,[n4] or was engaged in a joint adventure with the owner,[n5] or that the owner otherwise had control over the operation of the vehicle.

The mere fact of the husband and wife relationship does not establish a principal and agent relationship between spouses when one spouse operates the other's motor vehicle.[n6] Also, the mere fact that the owner is present in his or her motor vehicle at the time of its negligent operation by the owner's spouse does not establish the relationship of principal and agent or master and servant between the spouses so as to render the owner liable for the vehicle's operation;[n7] rather, it must be shown that the driver was operating the vehicle under the owner's direction and control.[n8]

In a number of jurisdictions the so-called "family-purpose"doctrine has been adopted, which renders the owner of a motor vehicle liable for injuries inflicted by the negligent operation of the vehicle while it is being used by members of the family for their own pleasure.[n9]

FOOTNOTES:

n1 Bourland v. Baker, 141 Ark. 280, 216 S.W. 707, 20 A.L.R. 525 (1919); Wolf v. Sulik, 93 Conn. 431, 106 A. 443, 4 A.L.R. 356 (1919); Martin v. Brown, 240 La. 674, 124 So. 2d 904 (1960); Foster v. Campbell, 355 Mo. 349, 196 S.W.2d 147 (1946); Potts v. Pardee, 220 N.Y. 431, 116 N.E. 78, 8 A.L.R. 785 (1917); Hagans v. Constitution State Service Co., 455 Pa. Super. 231, 687 A.2d 1145 (1997); Landry v. Richmond, 45 R.I. 504, 124 A. 263, 32 A.L.R. 1500 (1924).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1409 (Instruction -- Members of family -- Husband and wife).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1410 (Instruction -- Members of family -- Husband and wife -- Negligence not imputed).

n2 § 640.

n3 § 617.

n4 Hutchins v. Haffner, 63 Colo. 365, 167 P. 966 (1917); Landry v. Richmond, 45 R.I. 504, 124 A. 263, 32 A.L.R. 1500 (1924); Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1428 (Instruction -- Liability of owner of vehicle -- For conduct of spouse engaged in owner's business).

n5 § 713.

n6 Pierce v. Horvath, 142 Ind. App. 278, 233 N.E.2d 811 (1968); Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936).

n7 Crawford v. McElhinney, 171 Iowa 606, 154 N.W. 310 (1915); Sherman v. Korff, 353 Mich. 387, 91 N.W.2d 485 (1958); Strouse v. Baltimore & O. R. Co., 76 Ohio App. 327, 32 Ohio Op. 37, 64 N.E.2d 257 (9th Dist. Wayne County 1944); Rodgers v. Saxton, 305 Pa. 479, 158 A. 166, 80 A.L.R. 280 (1931); Porter v. Wilson, 357 P.2d 309 (Wyo. 1960).

Related References:
Fact that passenger in negligently operated motor vehicle is owner as affecting passenger's liability to or rights against third person -- modern cases, 37 A.L.R.4th 565.

n8 Johnson v. Newman, 168 Ark. 836, 271 S.W. 705 (1925); Cowart v. Lewis, 151 Miss. 221, 117 So. 531, 61 A.L.R. 1229 (1928).

As to the effect of the owner's presence in the motor vehicle on his liability for the acts of the driver, generally, see § 616.

n9 § 632.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 630

§ 630 Liability to guest of member of family

It follows from the general rules which govern the liability of an owner for the negligent operation of his motor vehicle by his child,[n1] that a relationship of parent and child is not sufficient at common law to render a parent liable for injury to a child's guest resulting from the child's negligent operation of the parent's motor vehicle.[n2] A parent may, however, be held liable for injury to a child's guest, through the child's negligence in the operation of the parent's motor vehicle, on the ground that the parent was negligent in entrusting the vehicle to a person known to be incompetent.[n3] In one jurisdiction, the parent has been held liable for injury to a child's guest through the child's negligence in the operation of a motor vehicle on the theory that the parent has entrusted a dangerous instrumentality to the child,[n4] although other courts have uniformly denied application of the dangerous instrumentality theory to the operation of motor vehicles.[n5]

In general, the liability of a parent for injury to a child's guest, resulting from the child's negligent operation of the parent's motor vehicle, is dependent upon whether the child was acting as the parent's agent or servant in operating the parent's motor vehicle and had authority to invite others to ride, or whether the parent consented to or ratified the tortious act.[n6] Where such is the case, the parent may be held liable for injuries to a child's guest.[n7] However, where a guest statute or comparable common-law rule prevails in the jurisdiction, the liability of the parent under such circumstances is limited to cases where the injuries have resulted from the child's gross negligence or wanton or willful misconduct, or the like.[n8]

FOOTNOTES:

n1 § 628.

n2 White v. Seitz, 342 Ill. 266, 174 N.E. 371 (1930); Field v. Evans, 262 Mass. 315, 159 N.E. 751 (1928); Mugleston v. Glaittli, 123 Utah 238, 258 P.2d 438 (1953).

n3 Rush v. McDonnell, 214 Ala. 47, 106 So. 175 (1925); Smith v. Nealey, 162 Wash. 160, 298 P. 345 (1931).

As to liability for entrusting one's vehicle to an incompetent or reckless driver, generally, see § 617.

n4 Greene v. Miller, 102 Fla. 767, 136 So. 532 (1931).

n5 § 403.

n6 Mugleston v. Glaittli, 123 Utah 238, 258 P.2d 438 (1953).

n7 Johnson v. Smith, 143 Minn. 350, 173 N.W. 675 (1919); Tyree v. Tudor, 181 N.C. 214, 106 S.E. 675 (1921).

n8 § 551.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 631

§ 631 Liability for acts of third person allowed to drive by member of family

In order to charge the owner of a motor vehicle with liability for the negligence of a third person whom a member of his family permits to operate the vehicle, where such member has not been delegated to obtain a driver, it is necessary to establish that the owner would have been liable for the personal negligence of the member of the family.[n1] In other words, there must be a relationship of principal and agent or master and servant in order to hold the owner liable.[n2] If such a relationship exists, the owner's liability is then determined by the principles which, in the ordinary master-and-servant cases, determine the liability of the master for the acts of a third person whom the servant has permitted to drive.[n3]

Under many of the statutes which render the owner of a motor vehicle liable for its negligent operation by another with his permission,[n4] it has been held that the owner may be held liable for its negligent operation by a third person whom his permittee has allowed to drive.[n5]

FOOTNOTES:

n1 Thixton v. Palmer, 210 Ky. 838, 276 S.W. 971, 44 A.L.R. 1379 (1925).

As to the liability of the owner of a motor vehicle for its negligent operation by a member of his family, see § 627.

n2 Malmstrom v. Bridges, 8 Cal. App. 2d 5, 47 P.2d 336 (1st Dist. 1935).

Related References:
Motor Vehicle Collisions -- Agency Relationship, 8 Am. Jur. Trials 1.

n3 § 655.

n4 § 640.

n5 § 655.

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8 Am Jur 2d Automobiles and Highway Traffic § 632

§ 632 Generally

The family-purpose doctrine is founded on the theory the driver of a family car, in pursuit of recreation or pleasure, is engaged in the owner's business and is viewed as either the agent or servant of the owner.[n1]

Caution: The "family-purpose"doctrine is not applicable where there is no family.[n2]

To sustain a claim against vehicle's owner under the family-purpose doctrine, plaintiff in action arising out of automobile collision was required to show that:[n3]

(1)defendant owned or had an interest in or control over the vehicle,

(2)defendant made the vehicle available for family use,

(3)driver was a member of defendant's immediate household at the time of the collision, and

(4)driver drove the vehicle with defendant's permission or acquiescence.

Mere ownership of a vehicle, without more, is insufficient to establish the owner's liability for the negligence of another driver;[n4] however, if the car was not provided for the general use and convenience of the family, there is no relationship of principal and agent at the time of the wreck to impose liability on the owner under the family-purpose doctrine.[n5]

The mere fact that the vehicle was purchased for business purposes does not prevent its coming within the "family-purpose"doctrine where it is used for family pleasure,[n6] but where it is maintained for business purposes and not for the pleasure and convenience of the family, the "family-purpose"doctrine is inapplicable.[n7] If there is a question of whether or not the purpose for which the vehicle was owned, maintained, or provided was for the use or convenience of the family, a jury question is presented.[n8] Moreover, in order to render the "family-purpose"doctrine applicable, it must be shown that, at the time of the accident in question, the motor vehicle involved was being used with the permission, either express or implied, of the owner.[n9] The doctrine is not applicable where the members of the family must obtain special permission each time they use the vehicle,[n10] or where the vehicle is taken surreptitiously and in violation of orders.[n11]

The "family-purpose"doctrine has been expressly rejected in many jurisdictions.[n12] However, in many states, including some which have expressly rejected the family-purpose doctrine, the practical results accomplished by the doctrine are secured by statutes which in effect hold the owner responsible for all injuries negligently inflicted while his motor vehicle is being used by another with the owner's consent, express or implied,[n13] including members of his family.[n14]

FOOTNOTES:

n1 Nelson v. Johnson, 1999 ND 171, 599 N.W.2d 246 (N.D. 1999); Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632 (Ct. App. 2006).

n2 Hiter v. Shelp, 129 Ga. App. 401, 199 S.E.2d 832 (1973) (no family where defendant wife lacked capacity to contract valid common-law marriage).

n3 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007); Patterson v. Lopez, 279 Ga. App. 840, 632 S.E.2d 736 (2006).

n4 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007).

n5 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007); Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632 (Ct. App. 2006).

n6 Watson v. Burley, 105 W. Va. 416, 143 S.E. 95, 64 A.L.R. 839 (1928).

n7 Greene v. Jenkins, 224 Ga. App. 640, 481 S.E.2d 617 (1997); Redding v. Barker, 33 Tenn. App. 132, 230 S.W.2d 202 (1950).

n8 Daniel v. Patrick, 333 S.W.2d 504 (Ky. 1960); Coffman v. McFadden, 68 Wash. 2d 954, 416 P.2d 99 (1966).

n9 Greene v. Jenkins, 224 Ga. App. 640, 481 S.E.2d 617 (1997); Camper v. Minor, 915 S.W.2d 437 (Tenn. 1996).

n10 Duckworth v. Oliver, 112 Ga. App. 371, 145 S.E.2d 115 (1965); Gray v. Amos, 869 S.W.2d 925 (Tenn. Ct. App. 1993).

n11 Kurtz v. Williams, 136 Ga. App. 628, 222 S.E.2d 145 (1975); Todd v. Hargis, 299 Ky. 841, 187 S.W.2d 739 (1945); Dow v. Legg, 120 Neb. 271, 231 N.W. 747, 74 A.L.R. 5 (1930); Marriner v. Somay, 114 N.J.L. 164, 176 A. 149 (N.J. Sup. Ct. 1935), aff'd, 116 N.J.L. 411, 184 A. 818 (N.J. Ct. Err. & App. 1936); Truck Ins. Exchange v. Alliance Plumbing, Inc., 274 Or. 435, 547 P.2d 90 (1976); Long v. Tomlin, 22 Tenn. App. 607, 125 S.W.2d 171 (1938).

n12 Winfrey v. Austin, 260 Ala. 439, 71 So. 2d 15 (1954); Bieker v. Owens, 234 Ark. 97, 350 S.W.2d 522 (1961); Smith v. Callahan, 34 Del. 129, 144 A. 46, 64 A.L.R. 830 (1928); Gordon v. Rose, 54 Idaho 502, 33 P.2d 351, 93 A.L.R. 984 (1934); Parrino v. Landon, 8 Ill. 2d 468, 134 N.E.2d 311 (1956); Pierce v. Horvath, 142 Ind. App. 278, 233 N.E.2d 811 (1968); Houlahan v. Brockmeier, 258 Iowa 1197, 141 N.W.2d 545 (1966), opinion supplemented, 258 Iowa 1197, 141 N.W.2d 924 (1966); Daily v. Schneider, 118 Kan. 295, 234 P. 951 (1925); Traders & General Ins. Co. v. Robison, 289 So. 2d 178 (La. Ct. App. 1st Cir. 1973); Robinson v. Warren, 129 Me. 172, 151 A. 10 (1930); Toscano v. Spriggs, 343 Md. 320, 681 A.2d 61 (1996); Dennis v. Glynn, 262 Mass. 233, 159 N.E. 516 (1928); Grimes v. Labreck, 108 N.H. 26, 226 A.2d 787 (1967); Cherwien v. Geiter, 272 N.Y. 165, 5 N.E.2d 185 (1936); Ross v. Burgan, 163 Ohio St. 211, 56 Ohio Op. 218, 126 N.E.2d 592, 50 A.L.R.2d 1275 (1955); Cade v. McDanel, 451 Pa. Super. 368, 679 A.2d 1266 (1996); Seinsheimer v. Burkhart, 132 Tex. 336, 122 S.W.2d 1063 (Comm'n App. 1939); Reid v. Owens, 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).

n13 § 640.

n14 § 652.

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8 Am Jur 2d Automobiles and Highway Traffic § 633

§ 633 Vehicle owned by member other than head of family

The "family-purpose"doctrine has been held applicable to situations where the motor vehicle in question is owned by one other than the head of the family, as where it is owned by a daughter, son, or mother.[n1] However, there is authority that the doctrine is inapplicable to situations where the motor vehicle in question is owned by one other than the head of the family.[n2]

Illustration: A minor driver's mother was not liable under the family-purpose doctrine for a minor's conduct in his own vehicle, where the minor purchased the car from funds he earned, paid for its upkeep, and paid for insurance, the fact that the title was held in the stepfather's name could not be imputed to the mother, and the fact that the insurance was in the mother's and stepfather's name did not establish an agency relationship between the mother and the minor with respect to the use of the vehicle.[n3]

FOOTNOTES:

n1 McNamara v. Prather, 277 Ky. 754, 127 S.W.2d 160 (1939); Campbell v. Paschal, 290 S.C. 1, 347 S.E.2d 892 (Ct. App. 1986).

Related References:
Comment Note. -- Modern status of family-purpose doctrine with respect to motor vehicles, 8 A.L.R.3d 1191.

n2 Dashtpeyma v. Wade, 285 Ga. App. 361, 646 S.E.2d 335 (2007); Walston v. White, 213 Ga. App. 441, 444 S.E.2d 855 (1994).

n3 Dashtpeyma v. Wade, 285 Ga. App. 361, 646 S.E.2d 335 (2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 634

§ 634 Title to vehicle

Whether the family-purpose doctrine applies in a particular case depends on who owns the car.[n1] Mere ownership of a vehicle, without more, is insufficient to establish the owner's liability for the negligence of another driver, but when an owner of a vehicle maintains the vehicle for the use and convenience of his or her family.[n2] Thus, where an owner does not furnish the vehicle for general use and convenience of the family, the owner is not liable under the family-purpose doctrine for a driver's use of a vehicle titled in the owner's name.[n3] In some jurisdictions, the fact that a parent has title to a motor vehicle is, in and of itself, sufficient to justify the application of the "family-purpose"doctrine where the doctrine is otherwise applicable,[n4] even though the vehicle has been entirely paid for by the child in question,[n5] and the child has beneficial ownership thereof.[n6]

However, in other jurisdictions, a parent is not liable under the family-purpose doctrine for a minor's conduct in his or her own vehicle, where the minor purchased the car from funds he or she earned, paid for the car's upkeep and insurance,[n7] even where the fact that the title was held in stepfather's name could not be imputed to mother, and the fact that the insurance was in the mother's and the stepfather's name did not establish an agency relationship between mother and minor with respect to the use of the vehicle.[n8] Similarly, the parents of a motorist involved in an automobile accident were found not liable for son's alleged negligence under the family-purpose doctrine, even though the car was titled in the father's name and the parents paid for title to car and insurance, where the parents did not retain the right to exercise authority and control over the son's use of the vehicle and the son paid maintenance costs.[n9] Finally, the parents of an adult son who was involved in automobile accident could not be held liable under the family-purpose doctrine, although the son lived with his parents and they made the car and insurance payments on his behalf, the ownership was the dispositive issue, the car was titled under the son's name and used exclusively by him, and he and his parents shared good-faith belief that the car was his.[n10]

FOOTNOTES:

n1 Arizpe v. Vankirk, 204 Or. App. 372, 129 P.3d 718 (2006), review denied, 340 Or. 672, 136 P.3d 742 (2006).

n2 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007).

n3 Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632 (Ct. App. 2006).

n4 Appelhans v. Kirkwood, 148 Colo. 92, 365 P.2d 233 (1961).

Related References:
Comment Note. -- Modern status of family-purpose doctrine with respect to motor vehicles, 8 A.L.R.3d 1191.

n5 Appelhans v. Kirkwood, 148 Colo. 92, 365 P.2d 233 (1961).

n6 Ferguson v. Hurford, 132 Colo. 507, 290 P.2d 229 (1955).

n7 Dashtpeyma v. Wade, 285 Ga. App. 361, 646 S.E.2d 335 (2007).

n8 Dashtpeyma v. Wade, 285 Ga. App. 361, 646 S.E.2d 335 (2007).

n9 Williams v. Gant, 218 Ga. App. 493, 462 S.E.2d 179 (1995).

n10 Arizpe v. Vankirk, 204 Or. App. 372, 129 P.3d 718 (2006), review denied, 340 Or. 672, 136 P.3d 742 (2006).

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8 Am Jur 2d Automobiles and Highway Traffic § 635

§ 635 Owner's child

The owner of a motor vehicle kept for the pleasure and convenience of the owner's family is liable under the family-purpose doctrine, for an injury caused by the vehicle while it is being occupied and used with the owner's express or implied permission by members of his or her family, who are being driven by one of his or her children.[n1] The owner of a motor vehicle kept for the pleasure and convenience of the owner's family is also liable, under the family-purpose doctrine, for any injury caused by it while it is being used by one of his or her children alone.[n2]

Even if a parent owns the car, it must be determined whether the parent provided the car for the general use and convenience of the family, and if the car was not provided for the general use and convenience of the family, there is no relationship of principal and agent at the time of the wreck to impose liability on the parent under the family-purpose doctrine.[n3] However, in the context of determining a parent's liability under the family-purpose doctrine for damages caused by a child, if the child uses the vehicle to go to and from work, the vehicle is being used for "family purpose."[n4]

Where the child is not a part of the immediate household, the parent owning the vehicle is not liable under the family-purpose doctrine.[n5] So too, where a child is in the custody of his mother, his parents being divorced, the possibility of occasional brief visits to his father, in the absence of exceptional circumstances, does not authorize the conclusion that the father's personal motor vehicle is in any wise maintained for the child's use and convenience within the meaning of the "family-purpose"doctrine.[n6]

Observation: Father was not liable under the family-purpose doctrine for an accident in which his son, who had used the father's pickup truck for transportation to work at a store, backed the truck into the store manager while using the truck at the manager's request to move merchandise from storage, since the manager's request converted the family purpose of work transit into the commercial purpose of store through manager.[n7]

FOOTNOTES:

n1 Stowe v. Morris, 147 Ky. 386, 144 S.W. 52 (1912); Russell v. Luevano, 234 Neb. 581, 452 N.W.2d 43 (1990).

Related References:
Comment Note. -- Modern status of family-purpose doctrine with respect to motor vehicles, 8 A.L.R.3d 1191.

n2 Harmon v. Haas, 61 N.D. 772, 241 N.W. 70, 80 A.L.R. 1131 (1932); Watson v. Burley, 105 W. Va. 416, 143 S.E. 95, 64 A.L.R. 839 (1928).

n3 Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632 (Ct. App. 2006).

n4 Whitley v. Ditta, 209 Ga. App. 553, 434 S.E.2d 108 (1993).

n5 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007); Greene v. Jenkins, 224 Ga. App. 640, 481 S.E.2d 617 (1997); McCray v. Hunter, 157 Ga. App. 509, 277 S.E.2d 795 (1981).

n6 Daniel v. Patrick, 333 S.W.2d 504 (Ky. 1960); Taylor v. Brinkman, 118 N.C. App. 96, 453 S.E.2d 560 (1995).

n7 Shank v. Phillips, 193 Ga. App. 393, 388 S.E.2d 5 (1989).

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8 Am Jur 2d Automobiles and Highway Traffic § 636

§ 636 Owner's spouse

A husband may be held liable, under the family-purpose doctrine, for the negligent operation by his wife of a motor vehicle kept and maintained by him for the pleasure and convenience of his family, where she has his express or implied permission to use such vehicle.[n1] The fact that in the particular jurisdiction the motor vehicle is viewed as community property does not detract from the liability of the husband under the family-purpose doctrine for the negligent operation of such vehicle by his wife.[n2]

Caution: However, because the husband has control and management of the community property, no consent of his wife, express or implied, to his use of the community vehicle registered in his name can add anything to his existing right to use it, and the wife cannot be held liable, in the absence of proof of an agency relationship, for injuries sustained as a result of his negligence.[n3]

Likewise, a wife may be held liable, under the family-purpose doctrine, for the negligent operation by her husband of a motor vehicle kept and maintained by her for the pleasure and convenience of the family, where he has the express or implied permission of his wife to use such vehicle.[n4]

FOOTNOTES:

n1 Hutchins v. Haffner, 63 Colo. 365, 167 P. 966 (1917); Hexter v. Burgess, 52 Ga. App. 819, 184 S.E. 769 (1936).

n2 Mortensen v. Knight, 81 Ariz. 325, 305 P.2d 463 (1956).

n3 Shepardson v. McLellan, 59 Cal. 2d 83, 27 Cal. Rptr. 884, 378 P.2d 108 (1963).

n4 Goldstein v. Johnson, 64 Ga. App. 31, 12 S.E.2d 92 (1940); Wiebe v. Seely, 215 Or. 331, 335 P.2d 379 (1959).

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8 Am Jur 2d Automobiles and Highway Traffic § 637

§ 637 Relative not in immediate family

In general, the owner of a motor vehicle is not liable under the "family-purpose"doctrine for the negligent operation of the vehicle by a relative who is not a member of his or her immediate family.[n1] Thus, a father who owned the vehicle that his son was driving at the time his son was involved in a collision that allegedly injured two other motorists could not be vicariously liable to the other motorists under the family-purpose doctrine, where the son was not a member of the father's immediate household.[n2] In addition, liability has been denied under the "family-purpose"doctrine where the motor vehicle in question was being driven by a nephew,[n3] brother,[n4] stepdaughter,[n5] son-in-law,[n6] or brother-in-law.[n7] The rationale of such cases is that the driver was not a member of the owner's "family"within the meaning of the "family-purpose"doctrine.[n8] Circumstances may arise, however, where any one of such relatives may be considered a member of the family and render the owner liable under the "family-purpose"doctrine,[n9] the question being ordinarily one of fact for the jury.[n10]

FOOTNOTES:

n1 Schneider v. Schneider, 160 Md. 18, 152 A. 498, 72 A.L.R. 449 (1930); Smith v. Burns, 71 Or. 133, 135 P. 200 (1913).

Related References:
Comment Note. -- Modern status of family-purpose doctrine with respect to motor vehicles, 8 A.L.R.3d 1191.

n2 Hicks v. Newman, 283 Ga. App. 352, 641 S.E.2d 589 (2007).

n3 Samples v. Shaw, 47 Ga. App. 337, 170 S.E. 389 (1933).

n4 Wingard v. Brinson, 212 Ga. App. 640, 442 S.E.2d 485 (1994).

n5 Wolfson v. Rainey, 51 Ga. App. 493, 180 S.E. 913 (1935).

n6 Harvey v. Taylor, 193 Ga. App. 172, 387 S.E.2d 403 (1989).

n7 Jones v. Golick, 46 Nev. 10, 206 P. 679 (1922).

n8 Bryant v. Keen, 43 Ga. App. 251, 158 S.E. 445 (1931); Jones v. Golick, 46 Nev. 10, 206 P. 679 (1922).

n9 Levy v. Rubin, 181 Ga. 187, 182 S.E. 176 (1935).

n10 Hewitt v. Fleming, 172 S.C. 266, 173 S.E. 808 (1934).

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8 Am Jur 2d Automobiles and Highway Traffic § 638

§ 638 Employee

As a general rule, the owner of a motor vehicle may not be held liable under the "family-purpose"doctrine for the negligent operation of his or her vehicle by an employee whom he or she has permitted to borrow such vehicle for the latter's own pleasure.[n1] The fact that the employee or servant boards in the home of his or her employer does not make him or her a member of the employer's "family"within the meaning of the family-purpose doctrine.[n2] In order to extend the "family-purpose"doctrine to an employer with whom an employee makes his or her home, there being no ties of blood between them, it is essential to show that the employer was under obligation to support the employee; that the motor vehicle causing the injury was maintained by the employer; that the employee had general authority to use it for his or her own convenience; and that he or she was using it for the purpose for which it was maintained at the time his or her actionable negligence arose.[n3]

FOOTNOTES:

n1 Higgans v. Deskins, 263 S.W.2d 108, 52 A.L.R.2d 346 (Ky. 1953).

Related References:
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n2 Higgans v. Deskins, 263 S.W.2d 108, 52 A.L.R.2d 346 (Ky. 1953).

n3 McDowell v. Davis, 8 Ariz. App. 33, 442 P.2d 856 (1968), judgment rev'd on other grounds, 104 Ariz. 69, 448 P.2d 869 (1968); Hogg v. MacDonald, 128 Neb. 6, 257 N.W. 274 (1934).

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8 Am Jur 2d Automobiles and Highway Traffic § 639

§ 639 Third person, with permission of member of family

The owner of a motor vehicle who has consented to its use by a member of his family for that person's pleasure may be held liable, under the family-purpose doctrine, for the negligent operation of the vehicle by a third person permitted to drive by such member of the family, who is present in the vehicle.[n1] It is reasoned that even though the motor vehicle was driven by a third person, it was still being used for family purposes when the member of the family was present and enjoying its use.[n2] The fact that the owner of the motor vehicle has specifically instructed the member of his family not to allow another to drive does not relieve the owner from liability for the negligent operation of the vehicle by a third person.[n3]

However, the owner of a motor vehicle who has consented to its use by a member of his family for the latter's own pleasure is not liable, under the family-purpose doctrine, for the negligent operation of such vehicle by a third person permitted to drive by the latter, where the driver is not accompanied by any member of the family.[n4]

FOOTNOTES:

n1 Wu Chen v. Bernadel, 101 Conn. App. 658, 922 A.2d 1142 (2007); Dixon v. Phillips, 135 Ga. App. 161, 217 S.E.2d 331 (1975), judgment aff'd, 236 Ga. 271, 223 S.E.2d 678 (1976).

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n2 Thixton v. Palmer, 210 Ky. 838, 276 S.W. 971, 44 A.L.R. 1379 (1925).

n3 Turner v. Hall's Adm'x, 252 S.W.2d 30 (Ky. 1952), stating that the purposes of the "family-purpose"doctrine would be destroyed entirely if a father could relieve himself of responsibility for the negligent operation of his motor vehicle by his son by specific instructions known only to himself and his son.

n4 Blanchard v. Cribbs, 222 Ga. App. 435, 474 S.E.2d 298 (1996); Griffith v. Fannin, 306 Ky. 279, 206 S.W.2d 965 (1947).

SUPPLEMENT:

Cases
Owner of vehicle was not liable to passenger, under family purpose doctrine, for passenger's injuries allegedly sustained in accident when she rode in car with driver who was friend of owner's son, where driver was operating vehicle purely for benefit of himself and passenger, and passenger had never met owner or owner's family. Strine v. Walton, 323 S.W.3d 480 (Tenn. Ct. App. 2010), appeal denied, (Aug. 25, 2010).

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8 Am Jur 2d Automobiles and Highway Traffic § 640

§ 640 Generally

With few exceptions, the owner of a motor vehicle is not liable at common law for the negligent operation of the vehicle by a person to whom he or she has loaned it, so long as the latter is not operating the vehicle as an agent or employee of the owner.[n1] However, in a number of states, statutes have been enacted which render the owner of a motor vehicle liable for the negligence of anyone operating his or her vehicle with his or her permission, express or implied, whether in the business of the owner or otherwise,[n2] The purpose of such statutes is to place upon the owner of a motor vehicle liability for injuries in its operation by another with his or her permission, express or implied, and thus hold the owner answerable for failure to place the instrumentality in proper hands.[n3] It is also to ensure access the by injured party to a financially responsible defendant.[n4]

Such statutes impose liability upon an owner irrespective of the condition of liability under the common-law rule[n5] that the negligent operator should be the agent or employee of the owner, that is, acting in the business of the owner.[n6] In effect, they make the one who uses a motor vehicle with the consent of the owner his or her agent or employee for the purpose of holding him or her liable for an injury caused as a result of its negligent operation,[n7] and dispense with the common-law requirement of actual agency as a condition of the owner's liability.[n8] These statutes do not, however, make the driver the agent with all the legal incidents thereof;[n9] rather, they define the owner's liability in cases where the principle of respondeat superior would otherwise be inapplicable.[n10] Indeed, it has been said that the basis of liability under such a statute is simply legislative fiat.[n11]

Practice Tip: The proceeds of a settlement by a negligent automobile driver with an injured party are applied first to offset the vicarious liability of the car's owner.[n12]

FOOTNOTES:

n1 §§ 614 to 626.

n2 Marquez v. Enterprise Rent-A-Car, 53 Cal. App. 4th 319, 61 Cal. Rptr. 2d 557 (2d Dist. 1997) (affirmative showing of owner's consent required); Johnston v. Johnson, 225 Iowa 77, 279 N.W. 139, 118 A.L.R. 233 (1938); North v. Kolomyjec, 199 Mich. App. 724, 502 N.W.2d 765 (1993); Flaugh v. Egan Chevrolet, 202 Minn. 615, 279 N.W. 582 (1938); Naso v. Lafata, 4 N.Y.2d 585, 176 N.Y.S.2d 622, 152 N.E.2d 59 (1958); Dreher v. Budget Rent-A-Car System, Inc., 272 Va. 390, 634 S.E.2d 324 (2006) (applying New York law).

As to the statutory liability of the owner of a motor vehicle for entrusting its operation to an underage or unlicensed driver, see § 619.

Related References:
Construction and application of statute imposing liability expressly upon motor vehicle lessor for damage caused by operation of vehicle, 41 A.L.R.4th 993.

n3 Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183, 112 A.L.R. 407 (1937).

n4 Griffin v. La, 229 A.D.2d 468, 645 N.Y.S.2d 528 (2d Dep't 1996).

n5 § 614.

n6 Souza v. Corti, 22 Cal. 2d 454, 139 P.2d 645, 147 A.L.R. 861 (1943); Bisoni v. Carlson, 171 Kan. 631, 237 P.2d 404 (1951); Moore v. Palmer, 350 Mich. 363, 86 N.W.2d 585 (1957); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943); Naso v. Lafata, 4 N.Y.2d 585, 176 N.Y.S.2d 622, 152 N.E.2d 59 (1958).

n7 Secured Finance Co. v. Chicago, R.I. & P. Ry. Co., 207 Iowa 1105, 224 N.W. 88, 61 A.L.R. 855 (1929) (overruled in part by, Stuart v. Pilgrim, 247 Iowa 709, 74 N.W.2d 212 (1956)); Sarine v. American Lumbermen's Mut. Casualty Co. of Illinois, 258 A.D. 653, 17 N.Y.S.2d 754 (2d Dep't 1940).

n8 Jones v. King, 113 F.2d 522 (App. D.C. 1940).

n9 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942); Jacobsen v. Dailey, 228 Minn. 201, 36 N.W.2d 711, 11 A.L.R.2d 1429 (1949).

Related References:
Motor Vehicle Collisions -- Agency Relationship, 8 Am. Jur. Trials 1.

n10 Souza v. Corti, 22 Cal. 2d 454, 139 P.2d 645, 147 A.L.R. 861 (1943).

n11 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942).

n12 Lindgren v. Baker Engineering Corp., 197 Cal. App. 3d 1351, 243 Cal. Rptr. 476 (4th Dist. 1988).

SUPPLEMENT:

Cases
Rental car company had no duty to refuse to rent a car to a driver who failed to produce proof that he was insured under his own automobile liability insurance and, thus, could not be held liable for negligence per se or negligent entrustment to a motorist who was struck by a rental car, where company was acting in accordance with financial responsibility statutes and was operating as a self-insurer. Enterprise Leasing Co. South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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West's Key Number Digest, Automobiles [westkey]192(1)
Validity, Construction, and Application of Graves Amendment (49 U.S.C.A. § 30106) Governing Rented or Leased Motor Vehicle Safety and Responsibility, 29 A.L.R. Fed. 2d 223
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Complicity Rule in MotorVehicle Accident Cases: Employer's Authorization or Ratification of Driver's Conduct, 19 Am. Jur. Proof of Facts 3d 437
"Permissive" Use of Automobile -- Use Within Scope of Permission Granted, 18 Am. Jur. Proof of Facts 3d 433
Punitive Damages in MotorVehicle Accident Litigation, 17 Am. Jur. Proof of Facts 3d 311
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Am. Jur. Legal Forms 2d § 33:44
Am. Jur. Pleading and Practice Forms, Automobile Insurance § 14
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 124, 142, 663 to 669, 728, 737, 745 to 747, 1170, 1189, 1194 to 1196
Am. Jur. Pleading and Practice Forms, Private Franchise Contracts § 10
Gorchynksy, Rent-A-Defendant: Current Developments Concerning Vicarious Liability Statutes in the Motor Vehicle Rental and Leasing Industry, 34 Transp. L.J. 431 (2007)
Martin, Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies, 18 U. Fla. J.L. & Pub. Pol'y 153 (2007)

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8 Am Jur 2d Automobiles and Highway Traffic § 641

§ 641 Validity of statutes

The constitutionality of statutes imposing liability upon the owner of a motor vehicle for its negligent operation by another with the owner's permission, express or implied, whether in the business of the owner or otherwise,[n1] has been sustained on the ground that they constitute a valid exercise of the police power.[n2] They have also been upheld against attacks on their constitutionality on the ground that they are arbitrary or oppressive,[n3] impair the obligation of contract,[n4] deny the owner equal protection of the law,[n5] or deprive a person of liberty or property without due process of law.[n6] However, statutes which impose liability upon the owner of a motor vehicle, even though it is taken without his consent or knowledge, have been held void as in violation of due process and of the equal protection of the laws.[n7]

FOOTNOTES:

n1 § 640.

n2 Young v. Masci, 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933); Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Bisoni v. Carlson, 171 Kan. 631, 237 P.2d 404 (1951); Bowerman v. Sheehan, 242 Mich. 95, 219 N.W. 69, 61 A.L.R. 859 (1928); Graham v. Dunkley, 13 Misc. 3d 790, 827 N.Y.S.2d 513 (Sup 2006).

n3 Bowerman v. Sheehan, 242 Mich. 95, 219 N.W. 69, 61 A.L.R. 859 (1928).

n4 Bowerman v. Sheehan, 242 Mich. 95, 219 N.W. 69, 61 A.L.R. 859 (1928).

n5 Young v. Masci, 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933); Bridgeford v. U-Haul Co., 195 Neb. 308, 238 N.W.2d 443 (1976) (statute imposing liability on owners-lessors of trucks).

n6 Young v. Masci, 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933); Budget Rent-A-Car System, Inc. v. Chappell, 407 F.3d 166 (3d Cir. 2005), cert. denied, 126 S. Ct. 567, 163 L. Ed. 2d 463 (U.S. 2005); Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Bowerman v. Sheehan, 242 Mich. 95, 219 N.W. 69, 61 A.L.R. 859 (1928).

n7 Frankel v. Cone, 214 Ga. 733, 107 S.E.2d 819 (1959) (disapproved of by, Lott Invest. Corp. v. Gerbing, 242 Ga. 90, 249 S.E.2d 561 (1978)); Daugherty v. Thomas, 174 Mich. 371, 140 N.W. 615 (1913).

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8 Am Jur 2d Automobiles and Highway Traffic § 642

§ 642 Strict or liberal construction of statutes

Statutes imposing liability upon the owner of a motor vehicle for the negligent acts of another to whom he or she has granted permission to use or operate his or her vehicle, even though such vehicle is not used in the business of the owner,[n1] must be strictly construed, since they give a new right of action and a remedy against one who would not otherwise be liable.[n2] However, this does not mean that the courts may thwart, by narrow and strained interpretation, the palpable intent of the legislature to impose a new liability consonant with new conditions, and the courts are not required to deny recovery in a case which, both by the wording of the statute and the purposes of its enactment, is within its tenor.[n3]

FOOTNOTES:

n1 § 640.

n2 Kruutari v. Hageny, 75 F. Supp. 610 (W.D. Mich. 1948); Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183, 112 A.L.R. 407 (1937).

n3 Baugh v. Rogers, 24 Cal. 2d 200, 148 P.2d 633, 152 A.L.R. 1043 (1944).

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8 Am Jur 2d Automobiles and Highway Traffic § 643

§ 643 Nature of liability; owner's liability with regard to that of operator

The liability of the owner of a motor vehicle under a statute imposing liability upon him or her for the negligence of another operating it with the former's permission is derivative, the negligence of the operator of the vehicle being imputed to the owner.[n1] Where a driver is not negligent, an owner cannot be held liable.[n2]

A statute that makes a vehicle's owner liable for injuries resulting from a permissive driver's negligence in use or operation of vehicle imposes vicarious liability upon the owner,[n3] and such liability may be strict.[n4]

The imposition by statute of a new liability against the owner of a motor vehicle has no effect upon the liability of the operator; the injured person may sue the operator alone, the owner alone, or both jointly.[n5] Where the action is brought against the owner alone, he or she may, if without fault, secure indemnity from the operator,[n6] but where the action is brought against the operator alone, in the absence of agreement providing therefor, he or she may not secure indemnity from the owner.[n7] The adjudication of negligence in the action brought against the operator alone is not res judicata and does not establish liability of the owner as a matter of law where the owner was not a party to the action.[n8]

Although the owner of an automobile, under the theory of imputed negligence, may be liable with the operator for injuries resulting from the operator's negligent operation of the automobile, the intent of the legislature is to encourage the joinder of owner and the operator in a single suit where possible, and to subrogate the owner to the claim of the injured party for any damages recovered from the owner.[n9] The liability of an owner is not coextensive with that of the driver, and settlement of a claim as to the owner discharges the driver only to the extent of payment made.[n10]

FOOTNOTES:

n1 Hessler v. Nelipowitz, 55 N.Y.S.2d 692 (Mun. Ct. 1945).

n2 Ortiz v. City of New York, 39 A.D.3d 359, 833 N.Y.S.2d 490 (1st Dep't 2007), leave to appeal denied (N.Y. June 28, 2007).

n3 Estate of Villanueva ex rel. Villanueva v. Youngblood, 927 So. 2d 955 (Fla. Dist. Ct. App. 2d Dist. 2006), review granted, 939 So. 2d 1061 (Fla. 2006) and review dismissed as improvidently granted, 959 So. 2d 215 (Fla. 2007); Dreher v. Budget Rent-A-Car System, Inc., 272 Va. 390, 634 S.E.2d 324 (2006) (applying New York law).

n4 Estate of Villanueva ex rel. Villanueva v. Youngblood, 927 So. 2d 955 (Fla. Dist. Ct. App. 2d Dist. 2006), review granted, 939 So. 2d 1061 (Fla. 2006) and review dismissed as improvidently granted, 959 So. 2d 215 (Fla. 2007).

n5 Holland v. Kodimer, 11 Cal. 2d 40, 77 P.2d 843 (1938); Hatch v. Lovejoy, 142 Misc. 137, 254 N.Y.S. 35 (Sup 1931).

n6 § 626.

n7 § 658.

n8 De Laurentis v. Firemans Fund Indem. Co., 5 Misc. 2d 706, 165 N.Y.S.2d 942 (Sup 1956).

n9 Kemp v. Barnett, 62 Cal. App. 3d 245, 132 Cal. Rptr. 823 (1st Dist. 1976).

n10 Kemp v. Barnett, 62 Cal. App. 3d 245, 132 Cal. Rptr. 823 (1st Dist. 1976).

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8 Am Jur 2d Automobiles and Highway Traffic § 644

§ 644 Presence of owner as precluding application of statute

There is authority to the effect that a statute imposing liability upon the owner of a motor vehicle for its negligent operation by another, using or operating it with his or her permission, in the business of such owner or otherwise, fixes the liability of absentee owners only.[n1] In other words, the statute ceases to apply when the owner of the motor vehicle is present during its operation,[n2] the common-law rule then being applicable.[n3] However, there is other authority, under somewhat similar statutes, which has not limited the application of such statutes to absentee owners.[n4]

FOOTNOTES:

n1 Urquhart v. McEvoy, 204 Misc. 426, 126 N.Y.S.2d 539 (Sup 1953).

n2 Gochee v. Wagner, 257 N.Y. 344, 178 N.E. 553 (1931) (overruled by, Kalechman v. Drew Auto Rental, Inc., 33 N.Y.2d 397, 353 N.Y.S.2d 414, 308 N.E.2d 886 (1973)).

n3 § 616.

n4 Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943).

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8 Am Jur 2d Automobiles and Highway Traffic § 645

§ 645 Vehicles subject to statute

Statutes imposing liability upon the owner of a motor vehicle for its negligent operation by another generally apply to motor vehicles of all types.[n1] Thus, a statute would apply to construction equipment, such as an excavator.[n2] A statute may also apply to any vehicle that is driven in the jurisdiction.[n3]

FOOTNOTES:

n1 Mull v. Equitable Life Assur. Soc. of U.S., 444 Mich. 508, 510 N.W.2d 184 (1994); Liberty Highway Co. v. Callahan, 24 Ohio App. 374, 4 Ohio L. Abs. 830, 157 N.E. 708 (6th Dist. Lucas County 1926).

n2 Martinez v. Hitachi Const. Machinery Co., Ltd., 15 Misc. 3d 244, 829 N.Y.S.2d 814 (Sup 2006).

n3 Dreher v. Budget Rent-A-Car System, Inc., 272 Va. 390, 634 S.E.2d 324 (2006) (applying New York law).

SUPPLEMENT:

Cases
Vehicle lessors, their assignees, and their agents are vicariously liable as "owners" under the Vehicle and Traffic Law in an action commenced prior to the effective date of the Graves Amendment to the federal traffic safety law, which bars actions to recover damages against certain lessors of vehicles that are predicated upon the negligence of their lessees, and preempts all state laws that purport to authorize such actions. 49 U.S.C.A. § 30106. Zegarowicz v. Ripatti, 77 A.D.3d 650, 911 N.Y.S.2d 69 (2d Dep't 2010).

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8 Am Jur 2d Automobiles and Highway Traffic § 646

§ 646 Place of operation

A statute imposing liability upon the owner of a motor vehicle for its negligent operation by another, in the absence of language limiting its application to the operation of motor vehicles on public highways, applies to the negligent operation of a motor vehicle on private property. [n1]

Under the traditional rule that liability for injuries inflicted in the use of a motor vehicle must be determined by the law of the place where the accident occurred, [n2] the owner of a motor vehicle who lends it to another is not liable under the law of his or her state, making an owner liable for the negligent operation of his or her vehicle by another driving with his or her permission, where such negligent operation occurs in a sister state. [n3] On the other hand, in those jurisdictions in which the traditional conflict-of-laws rule applies, the liability imposed by the law of the state in which an accident occurred on the owner of the motor vehicle, for the negligence of one driving it with his or her permission, will be enforced by the courts of another state, even though such owner is a resident of the state of the forum and the lending of the vehicle took place there. [n4]

Statutes imposing liability upon one renting automobiles for the negligence of those to whom the automobiles are rented have been held to create a liability of a contractual nature. [n5] Since the courts of one state will enforce rights of action on contracts arising in other jurisdictions unless they contravene their own law, or their own fundamental and important public policy imperatively requires their nonenforcement, [n6] where the laws of a state impose the aforementioned liability, an action may be maintained against a lessor of an automobile, arising out of injuries received outside the state by reason of the negligence of the lessee, even though the state where the accident occurred imposed no liability in such case upon the lessor unless he or she was negligent in renting a defective vehicle and in failing to disclose the defect. [n7]

FOOTNOTES:

n1 Webster v. Zevin, 77 Cal. App. 2d 855, 176 P.2d 960 (2d Dist. 1947).

n2 § 404.

n3 Cherwien v. Geiter, 272 N.Y. 165, 5 N.E.2d 185 (1936).

n4 Masci v. Young, 109 N.J.L. 453, 162 A. 623, 83 A.L.R. 869 (N.J. Ct. Err. & App. 1932), aff'd, 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933).

n5 Levy v. Daniels' U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163, 61 A.L.R. 846 (1928).

n6

Related References:
Am. Jur. 2d, Conflict of Laws §§ 21 et seq.

n7 Levy v. Daniels' U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163, 61 A.L.R. 846 (1928).

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8 Am Jur 2d Automobiles and Highway Traffic § 647

§ 647 What constitutes "operation"or "negligence in operation"

Where a driver is not negligent, an owner cannot be held liable.[n1] Statutes imposing liability upon an owner of a motor vehicle for injuries resulting from negligence in its use or operation, by a person operating or using it with the permission of the owner, ordinarily embrace and most frequently involve actual driving, but one may be operating or using a motor vehicle in this context without being actually engaged in driving the vehicle.[n2] For example, negligence in operation may exist on the part of one into whose control the motor vehicle has been delivered by the owner, although the former was not actually driving the vehicle at the time of the accident from which the liability of the owner arose.[n3] The user may be found guilty of negligence in operation so as to render the owner liable, where he or she fails adequately to protect one who offers his or her assistance in repairing the vehicle when it is in a disabled condition on the highway,[n4] However, where a motor vehicle with no operator in it was on an aligning machine in a garage and rolled backward colliding with another vehicle parked in the street, it was held that the vehicle was not in "operation"within the meaning of the statute.[n5] The loading or unloading of a truck has been held not to constitute "operation"under such a statute,[n6] although there is also authority for the contrary view.[n7]

"Negligence in operation"within the meaning of such a statute has been held not to include willful misconduct or intoxication of the permittee of the owner, in the absence of an express declaration to that effect in the statute.[n8] In other words, the owner of a motor vehicle is not liable for injuries resulting from the willful misconduct or intoxication of the permittee,[n9] although he is liable for his permittee's negligent acts, whether such negligence is ordinary or gross.[n10] However, there is other authority to the effect that the owner of a motor vehicle is liable not only for the ordinary or gross negligence of his permittee, but for his willful or wanton misconduct as well.[n11]

FOOTNOTES:

n1 Ortiz v. City of New York, 39 A.D.3d 359, 833 N.Y.S.2d 490 (1st Dep't 2007), leave to appeal denied (N.Y. June 28, 2007).

n2 Elfeld v. Burkham Auto Renting Co., 299 N.Y. 336, 87 N.E.2d 285, 13 A.L.R.2d 370 (1949); Fireman's Fund Am. Ins. Companies v. Olin of New York, Inc., 84 Misc. 2d 504, 376 N.Y.S.2d 800 (Sup 1975) (entering a car is part of use or operation).

Related References:
What Constitutes "Use"or "Operation"Within Statute Making Owner of Motor Vehicle Liable for Negligence in its Use or Operation, 103 A.L.R.5th 339.

n3 § 655.

n4 Eckert v. G.B. Farrington Co., 262 A.D. 9, 27 N.Y.S.2d 343 (4th Dep't 1941), order aff'd, 287 N.Y. 714, 39 N.E.2d 932 (1942).

n5 Blake v. Salmonson, 188 Misc. 97, 67 N.Y.S.2d 607 (Mun. Ct. 1946).

n6 Glens Falls Ins. Co. v. Consolidated Freightways, 242 Cal. App. 2d 774, 51 Cal. Rptr. 789 (1st Dist. 1966).

n7 Melchert v. Melchert, 519 N.W.2d 223 (Minn. Ct. App. 1994).

n8 Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183, 112 A.L.R. 407 (1937).

n9 Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183, 112 A.L.R. 407 (1937).

n10 Goodwin v. Goodwin, 5 Cal. App. 2d 644, 43 P.2d 332 (2d Dist. 1935).

n11 Peyton v. Delnay, 348 Mich. 238, 83 N.W.2d 204 (1957).

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8 Am Jur 2d Automobiles and Highway Traffic § 648

§ 648 Who is an "owner"within meaning of statute

In general, the "owner"of a motor vehicle within the meaning of a statute making the owner of such vehicle liable for injury resulting from its negligent operation by another, with the consent of the owner, is determined under the general law.[n1] The term means the real owner, that is, one who has title to the motor vehicle, and does not include a person in possession of the vehicle, such as one with whom it has been left for repairs.[n2] In some cases involving a determination of who is an owner within the meaning of a statute making an owner vicariously liable for the negligent operation of a vehicle by another, the courts have stated, that for purposes of the statute, there may be more than one owner of the vehicle.[n3]

In a number of cases involving a determination of who is an owner within the meaning of a statute making an owner liable for the negligent operation of a vehicle by another, the courts have applied a statutory definition of "owner,"meaning any person or entity having possession of a vehicle, under a lease or otherwise, for a certain period of time.[n4]

An owner has been defined as a vehicle leasing company,[n5] a titleholder,[n6] the registered owner of the vehicle and, in limited circumstances, the holder of a security interest in the vehicle,[n7] but a car rental company's parent corporation and insurance subsidiary were not owners for liability purposes.[n8]

In defining the term "owner,"as used in a statutory provision imposing liability on the owner of a motor vehicle for damages arising out of the negligent operation of the vehicle by another, the courts in a number of cases have mentioned or applied another statutory provision defining that term as the holder of legal title to the vehicle.[n9] However, it has been held that the retention of legal title as security for the payment of the purchase price of a vehicle which has been entrusted to the purchaser does not render the titleholder an owner, for purposes of this statute.[n10] Also, some such statutes expressly provide that a conditional vendor or chattel mortgagee out of possession is not deemed an owner within the meaning of such a statute.[n11]

It has been held that one who has a motor vehicle registered in his or her name as owner cannot, after the vehicle has been involved in an accident, deny the truth of the statement as to ownership.[n12] Moreover, the term "owner"has been held to include one who has sold his or her motor vehicle to an automobile dealer but has not consummated the transfer of his or her license.[n13]

Because of the dealer's unique situation, however, and the variety of situations under which vehicles are bought and sold by dealers, there are a great many cases involving dealers, and in a variety of circumstances the status of a dealer as owner, within the meaning of an ownership liability statute, has been held established or supportable,[n14] while the deal-

er's status as owner under the statute has been held not established or supportable under the circumstances involved in a number of other cases.[n15] Similarly, the status of nondealer vendors has been held to have been established, or to be supportable, under the particular circumstances involved,[n16] but has been held not established or supportable under the circumstances of other cases.[n17]

FOOTNOTES:

n1 City of St Joseph, for Use and Benefit of Fidelity Casualty Co., v. Grantham Motor Sales, 269 Mich. 260, 257 N.W. 701 (1934).

Related References:
Comment Note. -- Who is "owner"within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

Presumption and prima facie case as to ownership of vehicle causing highway accident, 27 A.L.R.2d 167.

n2 Daugherty v. Thomas, 174 Mich. 371, 140 N.W. 615 (1913).

n3 Stoddart v. Peirce, 53 Cal. 2d 105, 346 P.2d 774 (1959); Sexton v. Lauman, 244 Iowa 570, 57 N.W.2d 200, 37 A.L.R.2d 353 (1953); Messer v. Averill, 28 Mich. App. 62, 183 N.W.2d 802, 8 U.C.C. Rep. Serv. 1015 (1970); Location Auto Leasing Corp. v. Lembo Corp., 62 Misc. 2d 856, 310 N.Y.S.2d 365 (Sup 1970).

n4 Oppenheimer v. Gordon, 141 Cal. App. 2d 833, 297 P.2d 808 (2d Dist. 1956); Veasley v. CRST Intern., Inc., 553 N.W.2d 896 (Iowa 1996) (lessee as owner); Ketola v. Frost, 375 Mich. 266, 134 N.W.2d 183 (1965).

n5 Dreher v. Budget Rent-A-Car System, Inc., 272 Va. 390, 634 S.E.2d 324 (2006) (applying New York law).

n6 Them-Tuck Chung v. Pinto, 26 A.D.3d 428, 809 N.Y.S.2d 572 (2d Dep't 2006).

n7 Snyder v. Enterprise Rent-A-Car Co. of San Francisco (ERAC-SF), 392 F. Supp. 2d 1116 (N.D. Cal. 2005).

n8 Snyder v. Enterprise Rent-A-Car Co. of San Francisco (ERAC-SF), 392 F. Supp. 2d 1116 (N.D. Cal. 2005).

n9 Stroesser v. Hopper, 269 Minn. 96, 129 N.W.2d 913 (1964).

n10 Williams v. Davidson, 179 So. 2d 387 (Fla. Dist. Ct. App. 1st Dist. 1965); Craddock v. Bickelhaupt, 227 Iowa 202, 288 N.W. 109, 135 A.L.R. 474 (1939); Hunt v. Century Indem. Co., 58 R.I. 336, 192 A. 799, 112 A.L.R. 902 (1937).

n11 Altman v. Morris Plan Co., 58 Cal. App. 3d 951, 130 Cal. Rptr. 397 (1st Dist. 1976); Every v. Alonzo Haver, Inc., 279 A.D. 692, 107 N.Y.S.2d 991 (3d Dep't 1951).

n12 Shuba v. Greendonner, 271 N.Y. 189, 2 N.E.2d 536 (1936).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic, Form 692 (Allegation of registration of automobile by defendant).

n13 Samiof v. Kehn, 131 Misc. 764, 228 N.Y.S. 734 (County Ct. 1928).

See, also, Stoddart v. Peirce, 53 Cal. 2d 105, 346 P.2d 774 (1959), holding that a person who traded in an automobile to a car dealer and the dealer would be considered "owners,"along with the person to whom the dealer in turn sold the car, if they did not comply with the regula-

tions in connection with the transfer of the vehicle, but pointing out that failure to literally comply does not create a continuing disability, and such failure may be cured by subsequent compliance giving notice to the proper authorities of the transfers before an accident occurs.

n14 Meritplan Ins. Co. v. Universal Underwriters Ins. Co., 247 Cal. App. 2d 451, 55 Cal. Rptr. 561 (1st Dist. 1966) (vehicle sold to purchaser).

n15 Dodson v. Imperial Motors, Inc., 295 F.2d 609 (6th Cir. 1961) (applying Michigan law); Stoddart v. Peirce, 53 Cal. 2d 105, 346 P.2d 774 (1959).

n16 Ravn v. McCalley, 216 Ark. 921, 228 S.W.2d 61 (1950); Messer v. Averill, 28 Mich. App. 62, 183 N.W.2d 802, 8 U.C.C. Rep. Serv. 1015 (1970).

n17 Welle v. Prozinski, 258 N.W.2d 912 (Minn. 1977).

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8 Am Jur 2d Automobiles and Highway Traffic § 649

§ 649 Effect of infancy of owner

The infancy of the owner of a motor vehicle does not relieve him or her from liability under a statute imposing liability upon the owner of a motor vehicle for its negligent operation by another driving with the consent of the former, an infant being capable of giving the "consent"required by the statute. [n1] Nor does the right of an infant to disaffirm, upon reaching his majority, a contract under which he employs another as his agent, relieve him of responsibility for the negligence of the agent in driving a motor vehicle owned by him under such a statute, since the liability thus created does not arise from the relation of principal and agent but is based simply on the statute itself. [n2]

FOOTNOTES:

n1 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942).

n2 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942).

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8 Am Jur 2d Automobiles and Highway Traffic § 650

§ 650 Owner's permission or consent

The statutory liability of an owner of a motor vehicle, for injuries inflicted by another using his or her vehicle, is generally made dependent upon the other having the express or implied permission or consent of the owner to use such vehicle.[n1] To "permit,"as contemplated by such a statute, means to allow or consent to, and is the legal equivalent of stating that a thing was done with the consent and knowledge of the person charged, implying an intent to do the thing complained of; thus, knowledge and an active cooperation are required, and the passive happening of the event is not enough.[n2] "Express permission"necessarily includes prior knowledge of the intended use and an affirmative and active consent to it.[n3]

An implied permission or consent within the meaning of such a statute means a sufferance of use or a passive permission deduced from a failure to object to a known past, present, or intended future use under circumstances where the use should be anticipated.[n4] There is no formula which will aid the courts in deciding whether a motor vehicle was operated with the implied permission or consent of the owner; it is rather a question of fact for the jury, unless the evidence is such that only one reasonable conclusion is deducible therefrom.[n5] The fact that a vehicle owner either failed to monitor or supervise the use of its vehicles is a factor in determining implied permission for someone with access to it to use it such that an owner could be found liable when the vehicle is involved in an accident.[n6] In the absence of any statute to the contrary,[n7] the mere fact of family relationship between the owner and the user does not necessarily imply a consent of the owner to the use.[n8] Moreover, co-ownership of a motor vehicle has been held not to imply the permission or consent of one joint owner to the operation of the vehicle by the other.[n9]

FOOTNOTES:

n1 McKnight v. Gilzean, 29 Cal. App. 2d 218, 84 P.2d 213 (3d Dist. 1938); Koski v. Muccilli, 201 Minn. 549, 277 N.W. 229 (1938); Murphy v. Carnesi, 30 A.D.3d 570, 817 N.Y.S.2d 136 (2d Dep't 2006).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 728 (Complaint -- Liability of owner -- Operation by another -- With owner's knowledge, consent, and permission).

n2 Atwater v. Lober, 133 Misc. 652, 233 N.Y.S. 309 (County Ct. 1929).

n3 Bradford v. Sargent, 135 Cal. App. 324, 27 P.2d 93 (4th Dist. 1933).

n4 Bradford v. Sargent, 135 Cal. App. 324, 27 P.2d 93 (4th Dist. 1933).

n5 Peterson v. Grieger, Inc., 57 Cal. 2d 43, 17 Cal. Rptr. 828, 367 P.2d 420 (1961); Carr v. Sciandra, 281 A.D. 1072, 122 N.Y.S.2d 132 (4th Dep't 1953).

n6 Taylor v. Roseville Toyota, Inc., 138 Cal. App. 4th 994, 42 Cal. Rptr. 3d 68 (3d Dist. 2006).

n7 Hawkins v. Ermatinger, 211 Mich. 578, 179 N.W. 249 (1920) (statute providing that where motor vehicle is driven by a member of the family, consent to such use is conclusively presumed).

As to presumptions regarding permission or consent to use another's vehicle, see § 1125.

n8 Atwater v. Lober, 133 Misc. 652, 233 N.Y.S. 309 (County Ct. 1929).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic, § 1364 (Answer -- Stating parent's consent to operation of automobile given).

n9 § 653.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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§ 651 Terms or conditions of permission or consent

The owner of a motor vehicle is liable for negligence of another operating his or her vehicle only when such operation is within the terms of the permission or consent given for the use of the vehicle, and is not liable for negligent operation of the vehicle on an occasion outside the terms of such permission or consent.[n1] Where restrictions by the owner as to time, purpose, or area are involved, the owner's permission is considered terminated only where there has been a substantial violation of such restrictions, and it is a question of fact under all the circumstances whether such restrictions as to time, purpose, or area have been substantially violated before the occurrence of the accident so as to vitiate the owner's permission and thus absolve him or her from vicarious liability imposed by such a statute.[n2]

While the owner of a motor vehicle, in granting permission to another to operate it, may limit the purpose for which it can legally be used by the permittee and thus restrict his or her liability, the owner cannot limit the manner of its operation so as to escape liability.[n3] If this were not so, the owner's liability in almost every case could be defeated by some showing of violation of authority.[n4]

In certain circumstances an owner may revoke consent.[n5]

FOOTNOTES:

n1 Burgess v. Cahill, 26 Cal. 2d 320, 158 P.2d 393, 159 A.L.R. 1304 (1945); Krausnick v. Haegg Roofing Co., 236 Iowa 985, 20 N.W.2d 432, 163 A.L.R. 1413 (1945); Psota v. Long Island R. Co., 246 N.Y. 388, 159 N.E. 180, 62 A.L.R. 1163 (1927).

n2 Peterson v. Grieger, Inc., 57 Cal. 2d 43, 17 Cal. Rptr. 828, 367 P.2d 420 (1961).

n3 Arcara v. Moresse, 258 N.Y. 211, 179 N.E. 389 (1932).

n4 Henrietta v. Evans, 10 Cal. 2d 526, 75 P.2d 1051 (1938).

n5 Auto Club Ins. Co. v. Buerkel, 2006 WL 707732 (Mich. Ct. App. 2006), appeal denied, 477 Mich. 1039, 728 N.W.2d 227 (2007) (revocation of owner's boyfriend's permission to drive owner's car).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200

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§ 652 Person operating vehicle

The only express condition of the statutory liability of the owner of a motor vehicle for injury resulting from the negligence of another in the operation of the vehicle, with reference to such other person, is that he or she operate the vehicle with the permission, express or implied, of the owner.[n1] While permission for use is not implied merely from the existence of a family relationship between the owner of a motor vehicle and the person who used the vehicle,[n2] the owner of a motor vehicle may be held liable under the statute for the negligent acts of a member of his family or a relative, such as his son[n3] his wife,[n4] or his brother,[n5] where it appears that the use of the vehicle was with the permission or consent of the owner. Such a statute reaffirms the common-law liability of the owner of a motor vehicle for the negligent acts of an employee operating such vehicle.[n6] Moreover, an owner may be held liable for the negligent acts of an independent contractor to whom he or she has entrusted his or her vehicle, since liability under such a statute is not limited to the principles of agency.[n7]

Observation: Under a statute attributing negligence by user or operator of a vehicle to the owner, a plaintiff is not required to identify the driver of the vehicle in order to hold the owner liable; as long as evidence of ownership is presented, the driver, whoever it may be, is presumed to be operating the vehicle with the owner's permission.[n8]

The owner of a motor vehicle may be held liable for the negligent operation of his or her vehicle by a person who does not have a license[n9] or is underage.[n10] The fact that the driver violates the law in operating the vehicle does not vitiate the permission given to him or her by the owner to operate such vehicle.[n11]

Where the owner permits one to operate his vehicle, he may be liable for the negligence of such person in allowing another to gain control of, and negligently operate the vehicle.[n12]

A statute making the owner of a motor vehicle liable for injuries resulting from the negligent operation of his or her vehicle by another applies not only where the person using or operating the vehicle has borrowed it,[n13] but also where he or she has rented it,[n14] and those engaged in the business of leasing or renting motor vehicles are within the operation of such a statute and are liable for injuries caused by the negligence of the lessee.[n15]

FOOTNOTES:

n1 § 650.

n2 § 650.

n3 Fluegel v. Coudert, 244 N.Y. 393, 155 N.E. 683 (1927).

n4 Johnston v. Johnson, 225 Iowa 77, 279 N.W. 139, 118 A.L.R. 233 (1938).

n5 Pezzulla v. Kovach, 257 A.D. 894, 12 N.Y.S.2d 494 (3d Dep't 1939).

n6 § 662.

n7 Aarons v. Standard Varnish Works, 163 Misc. 84, 296 N.Y.S. 312 (Sup 1937), judgment aff'd, 254 A.D. 560, 3 N.Y.S.2d 910 (1st Dep't 1938).

Related References:
Liability for negligence of doorman or similar attendant in parking patron's automobile, 41 A.L.R.3d 1055.

n8 Horvath v. Lindenhurst Auto Salvage, Inc., 104 F.3d 540 (2d Cir. 1997).

n9 Shannon v. Samuels, 278 N.Y. 510, 15 N.E.2d 670 (1938).

n10 Elkinton v. California State Auto. Ass'n, Interstate Ins. Bureau, 173 Cal. App. 2d 338, 343 P.2d 396 (1st Dist. 1959).

n11 Peterson v. Grieger, Inc., 57 Cal. 2d 43, 17 Cal. Rptr. 828, 367 P.2d 420 (1961).

n12 Hergenrether v. East, 61 Cal. 2d 440, 39 Cal. Rptr. 4, 393 P.2d 164 (1964), (stolen vehicle left unlocked).

n13 Goschar v. Bauer, 13 N.Y.S.2d 328 (City Ct. 1939).

n14 Brooks v. McNutt Auto Delivery Co., 126 Misc. 730, 214 N.Y.S. 562 (Mun. Ct. 1926).

n15 Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927).

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§ 653 Co-owner

In a number of cases, it has been held that statutes imposing liability upon the owner of a motor vehicle for the negligent operation of the vehicle by a person using or operating it with his or her permission were not designed to make each co-owner of a motor vehicle liable for the consequences of the negligent operation of it by another co-owner.[n1] Of course, where one joint owner has the permission or consent of his co-owner to use the vehicle for a purpose unconnected with the joint ownership, the latter may be held liable for injuries resulting from its negligent operation by the former.[n2] Also, the question of consent by one co-owner of an automobile to its use by another co-owner has been held to be one of fact, which, in the absence of other evidence, is established inferentially by proof of co-ownership and use.[n3] A driver's negligence could not be imputed to an adult passenger's parent, even if he was a co-owner of the passenger's car, because the parent did not exercise any control or authority over the passenger's decisions in allowing another person to drive the car, and was not vicariously liable.[n4]

FOOTNOTES:

n1 Hamilton v. Vioue, 90 Wash. 618, 156 P. 853 (1916).

n2 Kangas v. Winquist, 207 Minn. 315, 291 N.W. 292 (1940).

n3 Payne v. Payne, 28 N.Y.2d 399, 322 N.Y.S.2d 238, 271 N.E.2d 220 (1971).

n4 Wille v. Courtney, 943 So. 2d 515 (La. Ct. App. 5th Cir. 2006), writ denied, 948 So. 2d 167 (La. 2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 654

§ 654 Garageman

By virtue of a statute making the owner of a motor vehicle liable for damage caused by his or her vehicle when operated by another with his or her permission or consent, an owner has been held liable for damage caused by the negligent operation of his vehicle by a garage employee, despite the fact that the garage may have had the vehicle as bailee for repairs or storage.[n1] For example, the owner may be held liable for the negligence of the garageman in driving the vehicle in connection with the purpose for which the vehicle was left with the garageman,[n2] or in delivering the vehicle to or from the garage,[n3] even though the driver transacts some personal business on such trip.[n4] However, the owner may not be held liable under the statute for the negligent operation of his motor vehicle by a garageman, where the garageman does not have permission, either express or implied, to drive the vehicle.[n5]

FOOTNOTES:

n1 Jones v. King, 113 F.2d 522 (App. D.C. 1940).

Related References:
Liability of owner of motor vehicle for negligence of garageman or mechanic, 8 A.L.R.4th 265.

n2 Zuckerman v. Parton, 260 N.Y. 446, 184 N.E. 49 (1933).

n3 Shannon v. Samuels, 278 N.Y. 510, 15 N.E.2d 670 (1938).

n4 Bloom v. American Beauty Nail Polish Co., 19 N.Y.S.2d 569 (Sup 1940), order aff'd, 261 A.D. 831, 26 N.Y.S.2d 317 (2d Dep't 1941).

n5 Hudson v. Lazarus, 217 F.2d 344 (D.C. Cir. 1954).

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8 Am Jur 2d Automobiles and Highway Traffic § 655

§ 655 Third person operating vehicle with permittee's consent

Under statutes making the owner of a motor vehicle liable for injuries resulting from its negligent operation while it is being used or operated by another with his or her permission, the owner is liable for the negligent acts of a third person operating the vehicle with the permittee's consent, where the permittee accompanies such driver.[n1] The owner is not relieved from liability under such circumstances, even though he or she had instructed his or her permittee not to allow another to drive.[n2] These rules apply in particular where the permittee granting consent to a third person to drive is a member of the owner's family.[n3]

An owner is not liable where the consent given to the third person by the permittee is contrary to an express agreement.[n4] Moreover, the owner of a motor vehicle has been held not liable for the negligent acts of a third person operating the vehicle with the permittee's, but without the owner's, consent, where the permittee was not present with the third person at the time,[n5] except where the consent of the owner as granted was so broad as to give the permittee the right to use the vehicle as if it were his own.[n6] However, there is other authority to the contrary, it being said that the owner of a motor vehicle may be responsible for its negligent operation by a subpermittee even though the permittee does not directly and personally supervise the subpermittee's driving.[n7]

The liability of the owner of a motor vehicle for its negligent operation by a subpermittee, operating such vehicle with the consent of the owner's permittee, is not affected by the fact that the permittee violated the law in allowing the subpermittee, who was unlicensed, to drive.[n8] The fact that the subpermittee violates the law in operating the vehicle does not vitiate the implied permission given by the owner to operate the vehicle.[n9]

FOOTNOTES:

n1 Burgess v. Cahill, 26 Cal. 2d 320, 158 P.2d 393, 159 A.L.R. 1304 (1945); Abel v. Dodge, 261 Iowa 1, 152 N.W.2d 823 (1967); Elfeld v. Burkham Auto Renting Co., 299 N.Y. 336, 87 N.E.2d 285, 13 A.L.R.2d 370 (1949).

n2 Souza v. Corti, 22 Cal. 2d 454, 139 P.2d 645, 147 A.L.R. 861 (1943); Cowan v. Strecker, 394 Mich. 110, 229 N.W.2d 302 (1975); Arcara v. Moresse, 258 N.Y. 211, 179 N.E. 389 (1932).

n3 Wu Chen v. Bernadel, 101 Conn. App. 658, 922 A.2d 1142 (2007); Haggard v. Frick, 6 Cal. App. 2d 392, 44 P.2d 447 (1st Dist. 1935); Abel v. Dodge, 261 Iowa 1, 152 N.W.2d 823 (1967); Bennett v. Nazzaro, 144 Misc. 450, 258 N.Y.S. 828 (Sup 1932), aff'd, 237 A.D. 866, 261 N.Y.S. 1018 (3d Dep't 1932).

n4 Morris v. Palmier Oil Co., Inc., 94 A.D.2d 911, 463 N.Y.S.2d 631 (3d Dep't 1983).

n5 Tanis v. Eding, 274 Mich. 288, 264 N.W. 375 (1936).

n6 Bennett v. Nazzaro, 144 Misc. 450, 258 N.Y.S. 828 (Sup 1932), aff'd, 237 A.D. 866, 261 N.Y.S. 1018 (3d Dep't 1932).

n7 Peterson v. Grieger, Inc., 57 Cal. 2d 43, 17 Cal. Rptr. 828, 367 P.2d 420 (1961).

n8 Peterson v. Grieger, Inc., 57 Cal. 2d 43, 17 Cal. Rptr. 828, 367 P.2d 420 (1961).

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8 Am Jur 2d Automobiles and Highway Traffic § 656

§ 656 Persons entitled to recover under statute

The statutes generally make the owner of the motor vehicle liable for death or injuries to person or property, so that the liability of the owner is not limited to the person who receives the actual injury.[n1] A father's action for loss of services constitutes an injury to person within the meaning of the statute.[n2]

The owner of a motor vehicle is not liable to the person it has permitted to use such vehicle, by reason of the negligence of a third person whom the permittee has invited to ride with him or her and whom the permittee has temporarily installed as driver.[n3]

FOOTNOTES:

n1 Psota v. Long Island R. Co., 246 N.Y. 388, 159 N.E. 180, 62 A.L.R. 1163 (1927).

As to statutory liability of an owner to a guest of a permittee of the owner, see § 655.

n2 Psota v. Long Island R. Co., 246 N.Y. 388, 159 N.E. 180, 62 A.L.R. 1163 (1927).

n3 Glennie v. Falls Equipment Co., 238 A.D. 7, 263 N.Y.S. 124 (4th Dep't 1933).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 657

§ 657 Liability of states and municipalities

Under the Federal Tort Claims Act,[n1] the United States is liable for injuries resulting from the negligent operation of its motor vehicles by persons acting within the scope of their employment for the United States.[n2] The United States is not liable under that Act, however, for injuries caused by the negligent operation of a motor vehicle where the operator was not engaged in the scope of his or her employment,[n3] was not an employee of the United States,[n4] or was not guilty of any negligence resulting in injury to another person.[n5]

While a state ordinarily is not responsible for injuries resulting from negligence in the operation of state-owned motor vehicles employed in the performance of state functions,[n6] it may validly waive its immunity from suit[n7] by enacting a tort claims act or similar statute.[n8] Where it has waived its immunity, a state may be held responsible for negligence in the operation of its motor vehicles.[n9] However, even under a statute waiving its sovereign immunity, a state will not be held responsible for negligence in the operation of state-owned motor vehicles when not engaged in state business[n10] or where the operator of a vehicle is not a state employee.[n11]

As a general rule, a municipality is not liable for injuries resulting from negligence in the operation of its motor vehicles while they are employed in a governmental capacity.[n12] On the other hand, a municipality will generally be held responsible for negligence in the operation of a motor vehicle employed in its private or proprietary capacity.[n13] Under statutes in effect in many jurisdictions, a municipality is liable for injuries resulting from negligence in the operation of city-owned motor vehicles for governmental purposes.[n14]

As a general rule, a municipality is not responsible for damages caused by negligence in the operation of its emergency motor vehicles employed in the performance of governmental functions,[n15] which immunity may be created by statute as an exception to a statutory waiver-of-immunity provision.[n16] However, a statute may grant immunity to public employees engaged in responding to an emergency without granting immunity to the public entity by which they are employed.[n17] When a municipality has adopted a police vehicular pursuit policy setting forth the specific conduct required of officers, the officers do not have discretion to ignore the policy and are not entitled to official immunity for their actions that do not conform to the policy.[n18]

One may not be able to assume that sovereign immunity has been waived by the purchase of motor vehicle insurance by a political subdivision,[n19] although there are cases to the contrary.[n20]

FOOTNOTES:

n1 28 U.S.C.A. § 1346(b).

n2 Witt v. U.S., 462 F.2d 1261 (2d Cir. 1972); Buechel v. U.S., 359 F. Supp. 486 (E.D. Mo. 1973).

n3 James v. U.S., 467 F.2d 832 (4th Cir. 1972); Dwyer v. Mott, 87 Misc. 2d 965, 386 N.Y.S.2d 312 (City Ct. 1976).

n4 Shippey v. U.S., 451 F.2d 184 (5th Cir. 1971).

n5 Pemberton v. Pan Am. World Airways, Inc., 423 F.2d 426 (5th Cir. 1970).

n6 Wells v. Southern Michigan Prison, Dept. of Corrections, 79 Mich. App. 166, 261 N.W.2d 245 (1977); Olmstead v. Britton, 48 A.D.2d 536, 370 N.Y.S.2d 269 (4th Dep't 1975); Specter v. Com., 462 Pa. 474, 341 A.2d 481 (1975).

n7 Seaberg v. State, 4 Conn. Cir. Ct. 116, 226 A.2d 401 (1966); State Farm Mut. Auto. Ins. Co. v. Lasker, 290 So. 2d 532 (Fla. Dist. Ct. App. 2d Dist. 1974).

n8 Woodard v. Laurens County, 265 Ga. 404, 456 S.E.2d 581 (1995); Maldonado v. Kelly, 768 So. 2d 906 (Miss. 2000); Bohl v. Buffalo County, 251 Neb. 492, 557 N.W.2d 668 (1997).

n9 Yarrow v. State, 53 Cal. 2d 427, 2 Cal. Rptr. 137, 348 P.2d 687 (1960); State v. Daley, 153 Ind. App. 330, 287 N.E.2d 552 (1972); Hryhorchuk v. Smith, 412 So. 2d 197 (La. Ct. App. 3d Cir. 1982), writ denied, 416 So. 2d 117 (La. 1982).

n10 Lundberg v. State, 25 N.Y.2d 467, 306 N.Y.S.2d 947, 255 N.E.2d 177 (1969); Wuorinen v. State Farm Mut. Auto. Ins. Co., 56 Wis. 2d 44, 201 N.W.2d 521 (1972).

n11 Estate of Burris v. State, 360 Md. 721, 759 A.2d 802 (2000).

n12 Brummett v. County of Sacramento, 21 Cal. 3d 880, 148 Cal. Rptr. 361, 582 P.2d 952, 4 A.L.R.4th 858 (1978); City of Macon v. Powell, 133 Ga. App. 907, 213 S.E.2d 63 (1975); Hryhorchuk v. Smith, 390 So. 2d 497 (La. 1980); Trommater v. State, 112 Mich. App. 459, 316 N.W.2d 459 (1982).

n13 Lusietto v. Kingan, 107 Ill. App. 2d 239, 246 N.E.2d 24 (3d Dist. 1969); Flannagan v. Lee, 56 Tenn. App. 600, 409 S.W.2d 385 (1966); City of Lamesa v. Hutchinson, 336 S.W.2d 861 (Tex. Civ. App. Eastland 1960), writ refused n.r.e., (Oct. 5, 1960).

n14 Muenchenbach v. Preble Cty., 91 Ohio St. 3d 141, 2001-Ohio-244, 742 N.E.2d 1128 (2001); Texas Dept. of Transp. v. Able, 35 S.W.3d 608 (Tex. 2000).

n15 Presley v. City of Odessa, 263 S.W.2d 293 (Tex. Civ. App. El Paso 1952), writ refused n.r.e., (Oct. 1, 1952); Lakoduk v. Cruger, 47 Wash. 2d 286, 287 P.2d 338 (1955).

n16 Corsentino v. Cordova, 4 P.3d 1082 (Colo. 2000).

n17 City of San Jose v. Superior Court, 166 Cal. App. 3d 695, 212 Cal. Rptr. 661 (1st Dist. 1985).

n18 Thompson v. City of Minneapolis, 707 N.W.2d 669 (Minn. 2006).

n19 Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472 (2006).

n20 Medlar v. Aetna Ins. Co., 127 Vt. 337, 248 A.2d 740 (1968).

SUPPLEMENT:

Cases

In order for a public employee's negligent or wrongful act or omission to be "in the operation of any motor vehicle," as would subject the public entity to statutory civil liability for injury caused by the act or omission, the vehicle must be in a state of being at work or in the exercise of some specific function by performing work or producing effects at the time and place the injury is inflicted; it is not sufficient that a motor vehicle somehow be involved in the series of events that results in the injury. Hernandez v. City of Pomona, 46 Cal. 4th 501, 94 Cal. Rptr. 3d 1, 207 P.3d 506 (2009).

Individual police officers could not be held civilly liable for suspect's death based on the manner in which they operated their vehicles during a high-speed chase, even assuming they acted without due care, due to their statutory immunity as drivers of an emergency vehicle during a pursuit. Hernandez v. City of Pomona, 46 Cal. 4th 501, 94 Cal. Rptr. 3d 1, 207 P.3d 506 (2009).

City police officers' alleged act of negligently creating a circumstance making it reasonable for them to use deadly force against suspect, through their operation of a high-speed pursuit that resulted in suspect crashing his automobile and fleeing on foot, was not within the "operation of any motor vehicle by an employee of the public entity" exception to city's general immunity for injury and death caused by operation of an authorized emergency vehicle during a pursuit, where the suspect died from gunshots fired after the officers pursued him on foot; because the officers' vehicle was not performing work or producing effects at the time the officers shot the suspect, the officers' alleged negligence in the pursuit was not an act or omission "in the operation of any motor vehicle" for purposes of the exception to the general immunity. Hernandez v. City of Pomona, 46 Cal. 4th 501, 94 Cal. Rptr. 3d 1, 207 P.3d 506 (2009).

The term "operation," as used in statute allowing recovery against state for injuries caused by the negligence of a state employee operating a motor vehicle, encompasses both parking incident to travel and movement. Hicks v. State, 287 Conn. 421, 948 A.2d 982 (2008).

Allegations that a state employee negligently operated an automobile generally do not fall within the doctrine of sovereign immunity, because negligence that arises from the ordinary operation of a motor vehicle is based on the breach of the duties every driver owes to every other driver; however, sovereign immunity will apply if the state employee's manner of driving a vehicle is unique to his employment such that a lawsuit alleging negligent driving could serve to control the state's actions and policies. Shirley v. Harmon, 342 Ill. Dec. 932, 933 N.E.2d 1225 (App. Ct. 2d Dist. 2010).

Statutory scheme prohibiting the issuance of a license to an individual when the Motor Vehicle Administration (MVA) has good cause to believe that the individual's driving of a motor vehicle on the highways would be inimical to public safety and welfare could not serve as foundation for negligence claim against MVA and MVA's Medical Advisory Board by next of kin of motorist and his three children, who were killed when driver with history of seizures and motor vehicle accidents drove into the back of their vehicle while allegedly suffering the effects of a seizure; the benefits of the statutory scheme, protection from an accident caused by an individual suffering a seizure while operating a motor vehicle, redounded to the general public rather than a particular class of persons. Pulliam v. Motor Vehicle Admin., 181 Md. App. 144, 955 A.2d 843 (2008).

City's sovereign immunity was waived for injuries directly resulting from negligent acts by police officer arising out of his operation of a motor vehicle within the course of his employment. Southers v. City of Farmington, 263 S.W.3d 603 (Mo. 2008), as modified on denial of reh'g, (Sept. 30, 2008).

An employee of a political subdivision who operates a motor vehicle is always immune from liability for negligence unless his or her acts were outside the scope of employment. Rogers v. Dayton, 118 Ohio St. 3d 299, 2008-Ohio-2336, 888 N.E.2d 1081 (2008).

A political subdivision is liable for the negligent operation of a motor vehicle by its employees within the scope of their employment except when the employee is on an emergency. Rogers v. Dayton, 118 Ohio St. 3d 299, 2008-Ohio-2336, 888 N.E.2d 1081 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 658

§ 658 Indemnification of operator

If the operator of a motor vehicle owned by another is compelled to pay a judgment rendered against him or her in an action brought by a third person for injuries resulting from the negligent operation of such vehicle, he or she may not, by reason of a statute imposing liability upon the owner for negligence in the operation of the vehicle by another, secure indemnification from the owner, because such a statute does not, by implication, provide for any such indemnification.[n1] In fact, if the owner is compelled to pay for the injuries inflicted by the negligence of the operator, the owner is entitled to be indemnified by the operator.[n2] However, the owner may, by contract, agree to indemnify the operator against his or her own negligence, so that an action may be maintained by the operator against the owner when the former is compelled to pay a judgment rendered against him in an action brought by a third person.[n3]

FOOTNOTES:

n1 Kennedy v. Travelers' Ins. Co., 127 Misc. 665, 217 N.Y.S. 261 (Sup 1926).

n2 § 626.

n3 Gorham v. Arons, 282 A.D. 147, 121 N.Y.S.2d 669 (1st Dep't 1953), judgment aff'd, 306 N.Y. 782, 118 N.E.2d 600 (1954).

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8 Am Jur 2d Automobiles and Highway Traffic § 659

§ 659 Owner present in vehicle

The presence of the owner in his or her motor vehicle while it is being driven by a member of his family creates a rebuttable presumption or inference that he or she has or retains control over its operation, by virtue of which the negligence of the driver is imputable to the owner in an action against a third person.[n1] Under this rule, the fact that the owner refrains from directing the operation of the vehicle does not change his or her right of control, nor prevent the driver's negligence from being imputed to the owner.[n2] Where the owner of the motor vehicle has relinquished all right of control over the driver, the presumption is overcome, and the negligence of the driver is not imputable to the owner in an action against a third person.[n3] The view has also been taken that where there is any evidence on the subject of control of the motor vehicle, it, rather than presumption, will determine whether the negligence of the driver is imputable to the owner.[n4]

The presumption of control resulting in imputation of a driver's negligence to an owner-passenger has been rejected by some authorities.[n5] Moreover, in some cases it has been held that although the owner of a motor vehicle is present while it is being operated by another who is a family member, the negligence of the driver is not imputable to him or her in the absence of a showing that the operation takes place by virtue of a relationship of agency or employment, or one in the nature thereof, involving the right to control the operation of the vehicle.[n6]

In a number of cases, it has been held that where a motor vehicle is owned jointly by the driver and his or her spouse who is a passenger therein, the negligence of the driver is not imputable to the spouse by reason of such joint ownership so as to bar an action by the latter against a third person or diminish the recovery in such an action.[n7] Also, generally, where one spouse is driving the motor vehicle of the other, the presumption is that the driver is in control of the vehicle, even with the owner present, and, in the absence of evidence to the contrary, the driver is solely responsible for its operation, and his or her negligence is not imputable to the other spouse so as to bar or diminish the recovery of the owner against a third person.[n8] However, where the spouse riding as a passenger has the right to control and direct the operation of the vehicle, or there is evidence indicating that they are engaged in a joint enterprise, the negligence of the driver is imputable to the spouse.[n9]

The right to control is the test in determining whether the owner of a motor vehicle who rides therein while it is being driven by one who is not a member of his family, or a relative, stands in such a relationship to the driver as to be chargeable with his negligence, and mere ownership of a motor vehicle negligently driven by another has been held not of itself to bar or diminish recovery by the owner against a third person for injuries sustained while riding in such vehicle.[n10] The driver's negligence has been held not imputable to the owner except where the driver is the owner's servant or agent or where the owner has some other right to control the operation of the vehicle,[n11] or where the driver and the owner are engaged in a joint enterprise.[n12] It has also been held, however, that control, or the right to control, is an in-

cident to ownership, and is deemed to be and continue in the owner of a motor vehicle in which he or she rides when it is being driven by another, in the absence of evidence tending to show that it has been transferred to the driver.[n13] Where the owner has relinquished control over the operation of the motor vehicle to the driver, and is merely a guest in his own vehicle, the negligence of the driver is not imputable to the owner in an action against a third person.[n14]

While the negligence of the driver of a motor vehicle may be imputed to the owner who was present at the time of an accident so as to bar an action by the owner against a third person, or diminish the recovery in such action, it is not imputable to the owner so as to defeat the latter's action against the driver or to diminish the recovery therein.[n15] The owner's negligence must be actual, and not derivative, in order to bar or diminish recovery against the driver, and even though the owner of the motor vehicle may have had the right to control its operation by the driver, this will not bar or diminish his or her right of recovery against the driver unless his or her right of control was negligently exercised.[n16]

FOOTNOTES:

n1 Knudson v. Boren, 261 F.2d 15 (10th Cir. 1958); Slutter v. Homer, 244 Md. 131, 223 A.2d 141 (1966) (rejected by, Watson v. Regional Transp. Dist., 762 P.2d 133 (Colo. 1988)); Parrish v. Walsh, 69 Ohio St. 2d 11, 23 Ohio Op. 3d 7, 429 N.E.2d 1176, 21 A.L.R.4th 454 (1982) (rejected by, Watson v. Regional Transp. Dist., 762 P.2d 133 (Colo. 1988)); Lindsey v. Fitzgerald, 157 Ga. App. 124, 276 S.E.2d 275 (1981); Siler v. Williford, 350 S.W.2d 704 (Ky. 1961).

Related References:
Fact that passenger in vehicle is owner as affecting right to recover from driver for injuries to, or death of, passenger incurred in consequence of driver's negligence, 21 A.L.R.4th 459.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1274 (Answer -- Agency -- Plaintiff's employee as operator of vehicle).

n2 Riggs v. F. Strauss & Son, 2 So. 2d 501 (La. Ct. App. 2d Cir. 1941).

n3 Floyd v. Colonial Stores, Inc., 121 Ga. App. 852, 176 S.E.2d 111 (1970); Babington v. Bogdanovic, 7 Ill. App. 3d 593, 288 N.E.2d 40 (4th Dist. 1972).

n4 Porter v. Wilson, 357 P.2d 309 (Wyo. 1960) (marital relationship alone not enough).

n5 Watson v. Regional Transp. Dist., 762 P.2d 133 (Colo. 1988).

n6 Roach v. Parker, 48 Del. 519, 107 A.2d 798 (Super. Ct. 1954); Gaspard v. LeMaire, 245 La. 239, 158 So. 2d 149 (1963); Bartek v. Glasers Provisions Co., 160 Neb. 794, 71 N.W.2d 466 (1955); Smalich v. Westfall, 440 Pa. 409, 269 A.2d 476 (1970); Painter v. Lingon, 193 Va. 840, 71 S.E.2d 355 (1952).

n7 Sherman v. Korff, 353 Mich. 387, 91 N.W.2d 485 (1958); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943).

n8 Rodgers v. Saxton, 305 Pa. 479, 158 A. 166, 80 A.L.R. 280 (1931).

n9 Lilegdon v. Hanuska, 85 Ill. App. 2d 262, 229 N.E.2d 314 (1st Dist. 1967); Lindquist v. Thierman, 216 Iowa 170, 248 N.W. 504, 87 A.L.R. 893 (1933); Archer v. Chicago, M., St. P. & P. Ry. Co., 215 Wis. 509, 255 N.W. 67, 95 A.L.R. 851 (1934).

n10 Johnson v. Los Angeles-Seattle Motor Exp., Inc., 222 Or. 377, 352 P.2d 1091 (1960).

n11 Phillips v. Foster, 252 Iowa 1075, 109 N.W.2d 604 (1961); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943).

n12 §§ 712 et seq.

n13 Spendlove v. Pacific Elec. Ry. Co., 30 Cal. 2d 632, 184 P.2d 873 (1947); Ter Haar v. Steele, 330 Mich. 167, 47 N.W.2d 65 (1951).

n14 Schweidler v. Caruso, 269 Wis. 438, 69 N.W.2d 611 (1955) (rejected by, Watson v. Regional Transp. Dist., 762 P.2d 133 (Colo. 1988)).

n15 Sorrell v. Moore, 251 N.C. 852, 112 S.E.2d 254 (1960); Sheehan v. Apling, 227 Or. 594, 363 P.2d 575 (1961); Darman v. Zilch, 56 R.I. 413, 186 A. 21, 110 A.L.R. 826 (1936).

n16 Sheehan v. Apling, 227 Or. 594, 363 P.2d 575 (1961).

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8 Am Jur 2d Automobiles and Highway Traffic § 660

§ 660 Owner not present in vehicle

At common law, the negligence of the driver of a motor vehicle involved in an accident, at a time when the vehicle is being used with the owner's permission but in his or her absence, and not in the owner's business, is generally not imputable to the owner so as to bar the latter's action for damages based on the negligence of a third person.[n1] However, where the driver at the time of the accident was acting as an agent or employee of the owner,[n2] or the owner had retained some direction or control over the action of the driver,[n3] the driver's negligence is imputable to the owner and either prevents him or her from recovering for damages based on the negligence of a third person or results in a proportional diminution of such damages. Nevertheless, the mere fact that the driver is the owner's employee is not sufficient to preclude or diminish recovery by the owner unless the driver was acting within the scope of his or her employment at the time of the accident.[n4]

The mere fact of a marital relationship between the driver and the absentee owner of a motor vehicle is not enough to charge the owner with the driver's negligence so as to bar or diminish his or her recovery against a third person for damages to the vehicle.[n5] The fact that the motor vehicle was used by husband and wife for family purposes and that the wife had gone to town for groceries does not establish that she was such a servant or agent of her husband as to impute her negligence to him in the absence of a statute to such effect.[n6]

FOOTNOTES:

n1 Morgan County v. Payne, 207 Ala. 674, 93 So. 628, 30 A.L.R. 1243 (1922); Mullally v. Carvill, 234 Ark. 1041, 356 S.W.2d 238 (1962); Axelrod v. Krupinski, 302 N.Y. 367, 98 N.E.2d 561 (1951); Ferris v. Patch, 119 Vt. 274, 126 A.2d 114, 63 A.L.R.2d 103 (1956).

n2 Towry v. Moore, 281 Ala. 644, 206 So. 2d 889 (1968); Wessels v. State, 194 Misc. 317, 86 N.Y.S.2d 590 (Ct. Cl. 1949).

n3 Morgan County v. Payne, 207 Ala. 674, 93 So. 628, 30 A.L.R. 1243 (1922); Maiswinkle v. Penn Jersey Auto Supply Co., 121 N.J.L. 349, 2 A.2d 593 (N.J. Sup. Ct. 1938).

n4 Cain v. Wickens, 81 N.H. 99, 122 A. 800, 30 A.L.R. 1246 (1923).

n5 Lee v. Layton, 95 Ind. App. 663, 167 N.E. 540 (1929); McMartin v. Saemisch, 254 Iowa 45, 116 N.W.2d 491 (1962); Nash v. Lang, 268 Mass. 407, 167 N.E. 762 (1929); Hessler v. Nelipowitz, 55 N.Y.S.2d 692 (Mun. Ct. 1945).

n6 McMartin v. Saemisch, 254 Iowa 45, 116 N.W.2d 491 (1962).

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8 Am Jur 2d Automobiles and Highway Traffic § 661

§ 661 Under statute making owner liable for negligence of driver

The enactment of a statute imposing liability upon the owner of a motor vehicle for its negligent operation by anyone using or operating it with his or her permission, in the owner's business or otherwise,[n1] has been held not to have the effect of imputing the negligence of the driver to the owner so as to bar an action against a third person to recover for damages or injuries sustained by the owner or to diminish the recovery in such an action.[n2] Similarly, it has been held that the enactment of a statute imposing liability upon one who signs a minor's application for a driver's license, for the negligence of such minor in the operation of a motor vehicle,[n3] does not have the effect of imputing the negligence of a minor driving another's motor vehicle to the owner thereof so as to bar or diminish the latter's action against a third person for damages sustained by the owner, merely because the owner had signed the minor's application for his license.[n4] However, in other jurisdictions, somewhat comparable statutes have been held to have the effect of imputing the negligence of the driver to the owner of the motor vehicle, thereby barring the owner from recovering from a third person, or diminishing such recovery, on the ground of the latter's negligence for injuries or damages sustained in the accident.[n5]

Even though statutes imposing vicarious liability upon the owner of a motor vehicle for its negligent operation by another may not have the effect of imputing the negligence of the driver to the owner so as to bar an action by him against a third person to recover for damages or injuries sustained by the owner, or to diminish the recovery in such an action, situations wherein the negligence of the driver might be imputed to the owner in the absence of such a statute are not affected, such as in the field of agency, master and servant, partnership, and joint venture.[n6]

FOOTNOTES:

n1 § 640.

n2 McMartin v. Saemisch, 254 Iowa 45, 116 N.W.2d 491 (1962); Frankle v. Twedt, 234 Minn. 42, 47 N.W.2d 482 (1951); Continental Auto Lease Corp. v. Campbell, 19 N.Y.2d 350, 280 N.Y.S.2d 123, 227 N.E.2d 28 (1967).

Related References:
Contributory negligence of driver of motor vehicle as imputable to owner under statute making owner responsible for negligence of driver, 11 A.L.R.2d 1437.

n3 § 719.

n4 Sizemore v. Bailey's Adm'r, 293 S.W.2d 165 (Ky. 1956).

n5 National Trucking & Storage Co. v. Driscoll, 64 A.2d 304 (Mun. Ct. App. D.C. 1949).

n6 McMartin v. Saemisch, 254 Iowa 45, 116 N.W.2d 491 (1962).

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8 Am Jur 2d Automobiles and Highway Traffic § 662

§ 662 Generally

At common law, the liability of the owner of a motor vehicle for injuries or damage inflicted by negligence of an employee or agent in the operation of the vehicle is governed by principles of respondeat superior,[n1] under which an employer or principal is liable for the negligent acts of the employee or agent committed within the scope of the employment, or in the execution of the employer's or principal's business.[n2] The relationship between the owner of the motor vehicle and one employed to drive it, as regards the former's liability for the latter's negligence, is the same as that between employer and employee generally.[n3] With regard to the owner's liability, it makes no difference whether the owner was present in the motor vehicle at the time of its negligent operation,[n4] so long as it was being driven in the scope of the employee-driver's employment or in furtherance of the owner/employer's business.[n5] However, mere theoretical control by an owner, whether by warnings, admonitions, or threats, over an employee driver is an unrealistic fiction which cannot support the imputation of liability to an innocent employer.[n6]

Generally, a motor vehicle is not a dangerous instrumentality,[n7] so the owner thereof is not liable for an employee-driver's negligence in its operation outside the scope of the employee's employment or for his or her own personal business or pleasure.[n8]

In cases involving a federal agency, the remedy under the Federal Tort Claims Act against the United States is exclusive, in order to protect the government drivers of motor vehicles against the hazard of being subjected to suits.[n9]

FOOTNOTES:

n1 Van Auker v. Steckley's Hybrid Seed Corn Co., 143 Neb. 24, 8 N.W.2d 451 (1943); White Oak Coal Co. v. Rivoux, 88 Ohio St. 18, 102 N.E. 302 (1913); Leuthold v. Goodman, 22 Wash. 2d 583, 157 P.2d 326 (1945).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 734 (Complaint, petition, or declaration -- Allegation -- Liability of employer -- Operation by employee -- Vehicle owned by employer).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 735 (Complaint, petition, or declaration -- Allegation -- Liability of employer -- Operation by employee -- Negligence causing accident).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 736 (Complaint, petition, or declaration -- Allegation -- Liability of employer -- Operation by employee -- Test run after repairs).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1414 (Instruction -- Imputed negligence -- Principal and agent; employer and employee).

n2

Related References:
Am. Jur. 2d, Employment Relationship §§ 373 et seq.

n3 Ulman v. Lindeman, 44 N.D. 36, 176 N.W. 25, 10 A.L.R. 1440 (1919); Elliott v. Harding, 107 Ohio St. 501, 1 Ohio L. Abs. 404, 140 N.E. 338, 36 A.L.R. 1128 (1923); Southwest Dairy Products Co. v. De Frates, 132 Tex. 556, 125 S.W.2d 282, 122 A.L.R. 854 (Comm'n App. 1939); Mitchell v. Churches, 119 Wash. 547, 206 P. 6, 36 A.L.R. 1132 (1922).

n4 Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936).

n5 § 664.

n6 Bibergal v. McCormick, 101 Misc. 2d 794, 421 N.Y.S.2d 978 (N.Y. City Civ. Ct. 1979).

n7 § 403.

n8 Corley v. Burger King Corp., 56 F.3d 709, 42 Fed. R. Evid. Serv. 811 (5th Cir. 1995) (applying Mississippi law); Symington v. Sipes, 121 Md. 313, 88 A. 134 (1913); Butler v. Mechanics' Iron Foundry Co., 259 Mass. 560, 156 N.E. 720, 54 A.L.R. 849 (1927); King v. Smythe, 140 Tenn. 217, 204 S.W. 296 (1918); Armstead v. Holbert, 146 W. Va. 582, 122 S.E.2d 43 (1961).

n9

Related References:
Am. Jur. 2d, Federal Tort Claims Act § 6.

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8 Am Jur 2d Automobiles and Highway Traffic § 663

§ 663 Existence of employment or agency relationship

To hold the owner of a motor vehicle liable for injuries resulting from its negligent operation on the ground that the operator was the owner's employee or agent, it must be established that at the time of the accident the operator was in fact the owner's employee or agent.[n1] If the operator was an independent contractor, the owner cannot be charged with liability for the negligence of the operator under the principle of respondeat superior,[n2] although in some jurisdictions the owner may be under statutory liability because of having given permission or consent to the operation of the vehicle by the independent contractor.[n3]

The general rules which determine when the relationship of employer and employee exists in order that one may be charged under the doctrine of respondeat superior for the negligence of another,[n4] apply in determining whether the person driving a motor vehicle causing injury to another was the employee of the owner; thus, the determination of an owner's liability rests generally upon the power and control which the owner has over the alleged employee.[n5] The manner, method, and means by which compensation is paid may also be a material factor in determining whether the relation exists.[n6]

The owner of a motor vehicle may not be held liable under the doctrine of respondeat superior for the negligent operation of such vehicle by an employee, where at the time of such operation, the employee is in the service of another.[n7]

The question of whether an employee is acting for his or her general employer in performing particular work for another is sometimes a question of law for the court, but more often presents a question of fact, or one of mixed fact and law.[n8]

In action arising from automobile accident, once a plaintiff satisfactorily presents an evidentiary showing of agency relationship between defendant owner and defendant driver, the owner may offer positive, contradicting evidence which, if believed, would establish the absence of an agency relationship; presentation of such evidence entitles the owner to a peremptory instruction that if the jury does believe the contrary evidence, it must find for the owner on the agency issue.[n9]

FOOTNOTES:

n1 Khoury v. Edison Elec. Illuminating Co., 265 Mass. 236, 164 N.E. 77, 60 A.L.R. 1159 (1928) (overruled in part by, Konick v. Berke, Moore Co., 355 Mass. 463, 245 N.E.2d 750 (1969)); Dowler v. Johnson, 225 N.Y. 39, 121 N.E. 487, 3 A.L.R. 146 (1918); Potts v. Pardee, 220 N.Y. 431, 116 N.E. 78, 8 A.L.R. 785 (1917); Combined Ins. Co. of America v. Sinclair, 584 P.2d 1034 (Wyo. 1978).

n2 McDonald v. Dodge, 231 Iowa 325, 1 N.W.2d 280 (1941); Khoury v. Edison Elec. Illuminating Co., 265 Mass. 236, 164 N.E. 77, 60 A.L.R. 1159 (1928) (overruled in part by, Konick v. Berke, Moore Co., 355 Mass. 463, 245 N.E.2d 750 (1969)); Bookwalter v. Prescott, 168 Ohio App. 3d 262, 2006-Ohio-585, 859 N.E.2d 978 (6th Dist. Lucas County 2006); American Nat. Ins. Co. v. Denke, 128 Tex. 229, 95 S.W.2d 370, 107 A.L.R. 409 (Comm'n App. 1936); James v. Tobin-Sutton Co., 182 Wis. 36, 195 N.W. 848, 29 A.L.R. 457 (1923).

n3 § 640.

n4

Related References:
Am. Jur. 2d, Employment Relationship §§ 373 et seq.

n5 Downes v. Norrell, 261 Ala. 430, 74 So. 2d 593 (1954); Hughes v. Jones, 206 Kan. 82, 476 P.2d 588 (1970); Wicklund v. North Star Timber Co., 205 Minn. 595, 287 N.W. 7 (1939); Hughes Engineering Co. v. Eubanks, 307 S.W.2d 603 (Tex. Civ. App. Fort Worth 1957); Fox v. Lavender, 89 Utah 115, 56 P.2d 1049, 109 A.L.R. 105 (1936); Rice v. Garl, 2 Wash. 2d 403, 98 P.2d 301 (1940).

n6 Hall v. Preferred Acc. Ins. Co. of N.Y., 204 F.2d 844, 40 A.L.R.2d 162 (5th Cir. 1953); Minor v. Stevens, 65 Wash. 423, 118 P. 313 (1911).

n7 Stone v. Bigley Bros., 285 A.D. 457, 137 N.Y.S.2d 924 (1st Dep't 1955), order aff'd, 309 N.Y. 132, 127 N.E.2d 913 (1955).

n8 Stone v. Bigley Bros., 285 A.D. 457, 137 N.Y.S.2d 924 (1st Dep't 1955), order aff'd, 309 N.Y. 132, 127 N.E.2d 913 (1955).

n9 Winston v. Brodie, 134 N.C. App. 260, 517 S.E.2d 203 (1999).

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8 Am Jur 2d Automobiles and Highway Traffic § 664

§ 664 Operation of vehicle within course and scope of employment, generally

At common law, the mere existence of a relationship of employer and employee between the owner of a motor vehicle and the person operating it at the time of the injuries complained of is not of itself sufficient to establish the liability of the owner/employer for the negligence of the driver; rather, for liability to attach, the employee must have been using or operating such vehicle within the course and scope of his or her employment or on the employer's business at the time of the accident.[n1] If a third person sustains injuries as a result of the negligent operation of an owner/employer's motor vehicle by an employee acting within the course and scope of his or her employment, the owner/employer may be held liable therefor.[n2] Where the employee was not acting within the course and scope of his or her employment, but was acting for his or her own personal pleasure or business, the owner/employer is not liable.[n3]

The effect of statutes making the owner of a motor vehicle liable for its negligent operation by another using or operating it with the former's express or implied permission or consent[n4] is to charge an owner/employer with liability for the negligent acts of an employee regardless of whether such vehicle is being used in the course and scope of employment or in furtherance of the owner/employer's business.[n5]

FOOTNOTES:

n1 Healey v. Cockrill, 133 Ark. 327, 202 S.W. 229 (1918); Halverson v. Blosser, 101 Kan. 683, 168 P. 863 (1917); Schneider v. Schneider, 160 Md. 18, 152 A. 498, 72 A.L.R. 449 (1930); Fleischner v. Durgin, 207 Mass. 435, 93 N.E. 801 (1911); Kayser v. Van Nest, 125 Minn. 277, 146 N.W. 1091 (1914); Danforth v. Fisher, 75 N.H. 111, 71 A. 535 (1908); White Oak Coal Co. v. Rivoux, 88 Ohio St. 18, 102 N.E. 302 (1913); Travelers Fire Ins. Co. v. Louis G. Freeman Co., 104 Ohio App. 226, 4 Ohio Op. 2d 382, 145 N.E.2d 217 (1st Dist. Hamilton County 1957); Gemma v. Rotondo, 62 R.I. 293, 5 A.2d 297, 122 A.L.R. 223 (1939); Louisville & N. R. Co. v. Marlin, 135 Tenn. 435, 186 S.W. 595 (1916).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1422 (Liability of employer for negligence of employee -- Burden of proof to show employee acting in scope of employment).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1426 (Effect of finding that employee acted within scope of employment).

n2 Johnson v. Coey, 237 Ill. 88, 86 N.E. 678 (1908); Crawford v. McElhinney, 171 Iowa 606, 154 N.W. 310 (1915); Halverson v. Blosser, 101 Kan. 683, 168 P. 863 (1917); Wyatt v. Hodson, 210 Ky. 47, 275 S.W. 15 (1925); Albert v. Munch, 141 La. 686, 75 So. 513 (1917);

Fleischner v. Durgin, 207 Mass. 435, 93 N.E. 801 (1911); Janik v. Ford Motor Co., 180 Mich. 557, 147 N.W. 510 (1914); Provo v. Conrad, 130 Minn. 412, 153 N.W. 753 (1915); Danforth v. Fisher, 75 N.H. 111, 71 A. 535 (1908); Paiewonsky v. Joffe, 101 N.J.L. 521, 129 A. 142, 40 A.L.R. 1335 (N.J. Ct. Err. & App. 1925); Rose v. Balfe, 223 N.Y. 481, 119 N.E. 842 (1918); Ulman v. Lindeman, 44 N.D. 36, 176 N.W. 25, 10 A.L.R. 1440 (1919); Stumpf v. Montgomery, 1924 OK 360, 101 Okla. 257, 226 P. 65, 32 A.L.R. 1490 (1924); Moon v. Matthews, 227 Pa. 488, 76 A. 219 (1910); Jones v. Hoge, 47 Wash. 663, 92 P. 433 (1907); Steffen v. McNaughton, 142 Wis. 49, 124 N.W. 1016 (1910).

n3 Healey v. Cockrill, 133 Ark. 327, 202 S.W. 229 (1918); Hickson v. W. W. Walker Co., 110 Conn. 604, 149 A. 400, 68 A.L.R. 1044 (1930); Arkin v. Page, 287 Ill. 420, 123 N.E. 30, 5 A.L.R. 216 (1919); Fisher v. Fletcher, 191 Ind. 529, 133 N.E. 834, 22 A.L.R. 1392 (1922); Symington v. Sipes, 121 Md. 313, 88 A. 134 (1913); Fleischner v. Durgin, 207 Mass. 435, 93 N.E. 801 (1911); Riley v. Roach, 168 Mich. 294, 134 N.W. 14 (1912); Kohlman v. Hyland, 54 N.D. 710, 210 N.W. 643, 50 A.L.R. 1437 (1926); White Oak Coal Co. v. Rivoux, 88 Ohio St. 18, 102 N.E. 302 (1913); Stumpf v. Montgomery, 1924 OK 360, 101 Okla. 257, 226 P. 65, 32 A.L.R. 1490 (1924); Wilford v. Crater Lake Motors, Inc., 277 Or. 709, 561 P.2d 1027 (1977); Lotz v. Hanlon, 217 Pa. 339, 66 A. 525 (1907); Jones v. Hoge, 47 Wash. 663, 92 P. 433 (1907); Ritter v. Hicks, 102 W. Va. 541, 135 S.E. 601, 50 A.L.R. 1505 (1926); Steffen v. McNaughton, 142 Wis. 49, 124 N.W. 1016 (1910).

n4 § 640.

n5 § 662.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 665

§ 665 What constitutes operation within course and scope of employment

Generally, the question of whether an employee-driver was acting within the scope of employment involves an inquiry into the contract of employment and the relation of his or her acts at the time of the accident to the service actually performed pursuant to the employment.[n1] Any use of the motor vehicle reasonably incidental to the performance of the employee's duties is ordinarily deemed to be within the scope of employment.[n2] The mere fact that the driver-employee may have disobeyed certain of the owner/employer's instructions does not necessarily establish the acts as outside the scope of employment.[n3]

FOOTNOTES:

n1 Steffen v. McNaughton, 142 Wis. 49, 124 N.W. 1016 (1910).

n2 House v. Fry, 30 Cal. App. 157, 157 P. 500 (2d Dist. 1916); Whimster v. Holmes, 190 S.W. 62 (Mo. Ct. App. 1916); Hartnet v. Hudson, 165 N.Y.S. 1034 (Sup 1917); Elliott v. O'Rourke, 40 R.I. 187, 100 A. 314 (1917).

n3 Claxton v. Page, 1942 OK 64, 190 Okla. 422, 124 P.2d 977 (1942); Moon v. Matthews, 227 Pa. 488, 76 A. 219 (1910).

SUPPLEMENT:

Cases
Driver was not acting in furtherance of his employer's business or for the accomplishment of the object for which employer hired driver, as was required to hold employer vicariously liable for driver's negligence, when, at 3:00 a.m., driver drove employer's truck to a nearby convenience store to purchase his father's cigarettes, fell asleep at the wheel, and hit motorist's truck head-on, even though driver had possession of employer's truck with employer's tires on board, had a morning delivery to make, was available via pager 24 hours a day, and was not restricted from using employer's truck for personal business. Goodyear Tire and Rubber Co. v. Mayes, 236 S.W.3d 754 (Tex. 2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 666

§ 666 Subsequent ratification of employee's acts by employer

The fact that an employee's use of the employer's motor vehicle at the time of an accident was not within the scope of employment does not prevent recovery against the employer for injuries negligently inflicted where the employer, with full knowledge of the facts, subsequently approves and ratifies the employee's use of such vehicle.[n1] Purely personal actions could not be held to be ratified.[n2]

FOOTNOTES:

n1 Dowler v. Johnson, 225 N.Y. 39, 121 N.E. 487, 3 A.L.R. 146 (1918); Jones v. Mutual Creamery Co., 81 Utah 223, 17 P.2d 256, 85 A.L.R. 908 (1932).

Related References:
As to the doctrine of ratification of acts of an employee outside the scope of his or her employment, generally, see Am. Jur. 2d, Employment Relationship § 375.

n2 Banks v. AJC Intern., Inc., 284 Ga. App. 22, 643 S.E.2d 780 (2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 667

§ 667 Liability for one teaching or supervising learning driver

If a person engaged in instructing another in the operation of a motor vehicle is an employee, and if the giving of such instruction is within the scope of such person's employment, liability for injury or damage resulting from negligence in the performance of the instruction may be imposed upon the employer under the doctrine of respondeat superior.[n1]

FOOTNOTES:

n1 Easton v. United Trade School Contracting Co., 173 Cal. 199, 159 P. 597 (1916); Greenie v. Nashua Buick Co., 85 N.H. 316, 158 A. 817 (1932).

Related References:
Liability, for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

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8 Am Jur 2d Automobiles and Highway Traffic § 668

§ 668 Driver permitted or hired to drive by employee or agent

Where one employed to drive a motor vehicle has the employer's express or implied authority to employ another as an assistant, the employer is liable at common law for the assistant's negligent operation of the vehicle.[n1] However, the owner of a motor vehicle is ordinarily not liable for the negligent operation of such vehicle by one permitted to operate it by the owner's employee who was entrusted with the vehicle, where the employee had no authority, express or implied, to permit another to drive or to hire assistants.[n2]

As an exception to the general rule of nonliability, the owner may be liable for the negligent operation of his or her vehicle by one to whom an employee, without authority, delegated the power to operate such vehicle, where the employee was negligent in allowing a substitute without skill or experience to operate the vehicle, and did not properly supervise or control the conduct of the substitute,[n3] or where the employee is present, because the driver is considered the alter ego of the employee.[n4] However, some courts have refused to recognize the alter ego exception, holding that even though the employee is present, the employer is not liable unless the employee was negligent in selecting a driver inexperienced or incompetent, or in supervising or controlling such driver,[n5] particularly where the employee has been instructed not to permit another to drive.[n6]

An owner of a motor vehicle may be liable for its negligent operation by one whom an employee has permitted to drive under statutes imposing liability on the owner of a motor vehicle for its negligent operation by any person using or operating it with his or her permission, express or implied.[n7]

FOOTNOTES:

n1 Gates v. Daley, 54 Cal. App. 654, 202 P. 467 (2d Dist. 1921); Gold Coast Parking, Inc. v. Brownlow, 362 So. 2d 288 (Fla. Dist. Ct. App. 3d Dist. 1978); Kirk v. Showell, Fryer & Co., 276 Pa. 587, 120 A. 670 (1923).

n2 White v. J.E. Levi & Co., 137 Ga. 269, 73 S.E. 376 (1911); Butler v. Mechanics' Iron Foundry Co., 259 Mass. 560, 156 N.E. 720, 54 A.L.R. 849 (1927); White v. Consumers Finance Service, 339 Pa. 417, 15 A.2d 142 (1940); Jones v. Mutual Creamery Co., 81 Utah 223, 17 P.2d 256, 85 A.L.R. 908 (1932).

n3 Nu Grape Bottling Co. v. Knott, 47 Ga. App. 539, 171 S.E. 151 (1933); Forker v. Pomponio, 60 N.J. Super. 278, 158 A.2d 849, 5 A.L.R.3d 263 (App. Div. 1960); Hall v. McDonald, 229 Wis. 472, 282 N.W. 561 (1938).

n4 Keen v. Clarkson, 56 Ariz. 437, 108 P.2d 573 (1940); Farrell v. Pinson Transfer Co., 293 S.W.2d 170 (Ky. 1956).

n5 Grant v. Knepper, 245 N.Y. 158, 156 N.E. 650, 54 A.L.R. 845 (1927); Potter v. Golden Rule Grocery Co., 169 Tenn. 240, 84 S.W.2d 364 (1935).

n6 Carter v. Bishop, 209 Ga. 919, 76 S.E.2d 784 (1953); Butler v. Mechanics' Iron Foundry Co., 259 Mass. 560, 156 N.E. 720, 54 A.L.R. 849 (1927).

n7 § 640.

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 669

§ 669 Liability to person whom employee permits to ride

The owner of a motor vehicle may be liable for injuries sustained by a third person riding in the vehicle with the permission of the employee-driver even though the latter does not have express permission to allow others to ride with him or her, where such third person is riding with the employee-driver for the purpose of rendering necessary assistance in the scope of his or her employment. [n1]

Where the employee does not violate any instructions of the owner of the motor vehicle in permitting or inviting a person to ride in the vehicle, the employer is liable under the doctrine of respondeat superior for injuries resulting from the employee's negligence in the operation of the vehicle, so long as the vehicle was being operated within the scope of employment, [n2] particularly where the invitee or permittee is riding with the knowledge and consent of the owner of the vehicle. [n3]

However, the owner of a motor vehicle is not liable, under the doctrine of respondeat superior, for injuries resulting from an employee's negligent operation of the vehicle, to a person invited or permitted to ride therein by the employee contrary to the employer's instructions. [n4] The mere fact that an employee has possession of the employer's motor vehicle does not give implied or any other kind of authority to invite or permit others to ride with him or her, since it is not ordinarily in the interest of the employer to give free rides to others and incur the risks incident to doing so. [n5]

However, the owner/employer may be liable for injuries sustained by such third person as a result of the wanton, willful, or reckless misconduct of the employee-driver acting within the scope of employment. [n6] However, in some other cases the contrary result was reached. [n7]

Automobile guest statutes, which exist in many states, [n8] do not relieve the owner of a motor vehicle from liability under the doctrine of respondeat superior for injuries sustained by a third person riding therein with the permission of an employee-driver, except to the extent that the owner's liability is limited to injuries caused by the employee-driver's gross negligence, willful or wanton misconduct, recklessness, or the like, within the meaning of such guest statutes. [n9]

Statutes imposing liability on the owner of a motor vehicle for its negligent operation by anyone using or operating it with his or her express or implied permission [n10] have not changed the rule that an owner of a motor vehicle is not liable to third persons invited to ride by the owner's employee contrary to instructions or without authorization, and injured through the negligence of the employee-driver. [n11]

FOOTNOTES:

n1 East Coast Freight Lines v. Mayor and City Council of Baltimore, 190 Md. 256, 58 A.2d 290, 2 A.L.R.2d 386 (1948); Burmaster v. State, 7 N.Y.2d 65, 195 N.Y.S.2d 385, 163 N.E.2d 742 (1959); Antonen v. Swanson, 74 S.D. 1, 48 N.W.2d 161, 28 A.L.R.2d 1 (1951).

n2 Paiewonsky v. Joffe, 101 N.J.L. 521, 129 A. 142, 40 A.L.R. 1335 (N.J. Ct. Err. & App. 1925); Crowell v. Duncan, 145 Va. 489, 134 S.E. 576, 50 A.L.R. 1425 (1926).

n3 Wright v. Wright, 229 N.C. 503, 50 S.E.2d 540 (1948).

n4 Hall v. Atchison, T. & S. F. Ry. Co., 349 F. Supp. 326 (D. Kan. 1972); Union Gas & Elec. Co. v. Crouch, 123 Ohio St. 81, 9 Ohio L. Abs. 60, 174 N.E. 6, 74 A.L.R. 160 (1930).

n5 East Coast Freight Lines v. Mayor and City Council of Baltimore, 190 Md. 256, 58 A.2d 290, 2 A.L.R.2d 386 (1948); White v. Brainerd Service Motor Co., 181 Minn. 366, 232 N.W. 626 (1930).

Related References:
Doctrine of apparent authority as applicable where relationship is that of master and servant, 2 A.L.R.2d 406.

n6 Lipscomb v. News Star World Pub. Corp., 5 So. 2d 41 (La. Ct. App. 2d Cir. 1941); Oswald v. Weiner, 218 S.C. 206, 62 S.E.2d 311 (1950).

n7 Cunningham v. Bell, 149 Ohio St. 103, 36 Ohio Op. 455, 77 N.E.2d 918 (1948).

n8 § 550.

n9 Oswald v. Weiner, 218 S.C. 206, 62 S.E.2d 311 (1950).

n10 § 640.

n11 Bindert v. Elmhurst Taxi Corp., 168 Misc. 892, 6 N.Y.S.2d 666 (Mun. Ct. 1938).

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8 Am Jur 2d Automobiles and Highway Traffic § 670

§ 670 Liability to fellow servant of employee

At common law, the owner of a motor vehicle is not liable for injuries to an employee resulting from the negligent operation of the vehicle by a fellow employee, while such employees are engaged in the same common or general employment.[n1] In such a case, the employee assumes the risk of a fellow employee's negligence in operating the vehicle,[n2] particularly where a workers' compensation law provides that the exclusive remedy of an employee injured by the negligence of another employee is the right to compensation or benefits under such law.[n3] Since an employee cannot maintain an action against a fellow employee,[n4] he or she cannot maintain a common-law action to recover for such injuries against the employer under the doctrine of respondeat superior.[n5]

FOOTNOTES:

n1 Fay v. De Camp, 257 N.Y. 407, 178 N.E. 677 (1931).

Related References:
As to the fellow-servant doctrine, generally, see Am. Jur. 2d, Employment Relationship §§ 340 et seq.

n2 Glennie v. Falls Equipment Co., 238 A.D. 7, 263 N.Y.S. 124 (4th Dep't 1933).

n3

Related References:
Am. Jur. 2d, Workers' Compensation §§ 50 et seq.

n4 Seebeck v. Finetta, 179 A.D.2d 805, 580 N.Y.S.2d 874 (2d Dep't 1992).

n5 Roberts v. Gagnon, 1 A.D.2d 297, 149 N.Y.S.2d 743 (3d Dep't 1956).

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8 Am Jur 2d Automobiles and Highway Traffic § 671

§ 671 Generally

If an employee, who is authorized to use the employer's motor vehicle in the latter's business, departs or deviates from such business without the authorization, permission, or consent of the employer, the employee is deemed to have left his or her employment and the employer is not liable for the employee's negligent operation of the motor vehicle during the time of such departure or deviation.[n1] However, not every departure or deviation from the direct line of duty will relieve the employer from liability, because a slight or incidental turning aside from the direct pursuit of the employer's purposes does not necessarily take the driver out of his or her employment.[n2] The employer's liability does not terminate until there has been a marked departure or deviation from the employee's line of duty.[n3] The controlling time for entrustment, where a third party sues an employer under a negligent entrustment theory for injuries inflicted by an employee driving the employer's vehicle, is not the time of the accident, but rather the time at which the employer entrusted the vehicle to the employee.[n4]

Except where the employee's departure or deviation is either slight or very marked, the question of whether the employer is liable is generally one of fact for the jury.[n5]

The determination of the driver's intention to serve him- or herself or the employer is an important factor in deciding the employer's liability for the negligent operation of his or her motor vehicle by such employee-driver, since if the driver is pursuing the employer's interests, under a reasonable, if mistaken, impression as to the physical or temporal ambit of authority, the employer is liable.[n6]

The special-mission doctrine is an exception to the general rule that an employer is not liable for a collision in which an employee is involved while on his way to or from work, and under this doctrine, the mission must be a special or uncustomary one, made at the employer's request or direction.[n7] However, the doctrine does not apply where the employee undertakes personal errands completely unrelated to work.[n8]

Companies whose employees sometimes drive on business should not be vicariously liable for every intentional, tortious act of an employee with the employee's vehicle simply because there is some tenuous connection to the business.[n9] Regardless of where and when the injury occurs, an employer will not be held liable for intentional misconduct by an employee if the misconduct does not arise from the conduct of the employer's enterprise but instead arises from employee's personal malice or as the result of personal compulsion.[n10]

FOOTNOTES:

n1 Healey v. Cockrill, 133 Ark. 327, 202 S.W. 229 (1918); Retail Merchants Ass'n and Associated Retail Credit Men of Tulsa v. Peterman, 1940 OK 49, 186 Okla. 560, 99 P.2d 130 (1940).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1423 (Instruction -- Liability of employer for negligence of employee -- Employee on own business).

n2 Fleischner v. Durgin, 207 Mass. 435, 93 N.E. 801 (1911); Kohlman v. Hyland, 54 N.D. 710, 210 N.W. 643, 50 A.L.R. 1437 (1926).

n3 Healey v. Cockrill, 133 Ark. 327, 202 S.W. 229 (1918); Eakin's Adm'r v. Anderson, 169 Ky. 1, 183 S.W. 217 (1916); Guthrie v. Holmes, 272 Mo. 215, 198 S.W. 854 (1917); Leuthold v. Goodman, 22 Wash. 2d 583, 157 P.2d 326 (1945).

n4 Green v. Texas Electrical Wholesalers, Inc., 651 S.W.2d 4 (Tex. App. Houston 1st Dist. 1982), writ dismissed by agreement, (Mar. 2, 1983).

n5 Hickson v. W. W. Walker Co., 110 Conn. 604, 149 A. 400, 68 A.L.R. 1044 (1930); Nelson v. Nelson, 282 Minn. 487, 166 N.W.2d 70 (1969); Stevens v. Moore, 211 S.C. 498, 46 S.E.2d 73 (1948); Adams v. South Carolina Power Co., 200 S.C. 438, 21 S.E.2d 17 (1942); McKeage v. Morris & Co., 265 S.W. 1059 (Tex. Civ. App. Waco 1924).

n6 Baker Driveaway Co. v. Clark, 162 F.2d 181 (C.C.A. 4th Cir. 1947); Frankle v. Twedt, 234 Minn. 42, 47 N.W.2d 482 (1951).

n7 Banks v. AJC Intern., Inc., 284 Ga. App. 22, 643 S.E.2d 780 (2007).

n8 Banks v. AJC Intern., Inc., 284 Ga. App. 22, 643 S.E.2d 780 (2007); Finholt v. Cresto, 143 Idaho 894, 155 P.3d 695 (2007) (called special errand exception).

n9 Kephart v. Genuity, Inc., 136 Cal. App. 4th 280, 38 Cal. Rptr. 3d 845 (3d Dist. 2006), review denied, (May 10, 2006).

n10 Kephart v. Genuity, Inc., 136 Cal. App. 4th 280, 38 Cal. Rptr. 3d 845 (3d Dist. 2006), review denied, (May 10, 2006).

SUPPLEMENT:

Cases
Under Georgia law, if an employee commits an act entirely disconnected from his master's business, and injury to another results from the act, the servant may be liable, but the master is not liable. Doe v. Fulton-DeKalb Hosp. Authority, 628 F.3d 1325 (11th Cir. 2010).

Employer was not liable for motorist's fatal injuries under theories of negligent hiring and supervision of employee, who was driving while intoxicated when he collided with motorist's car and who was not in course and scope of his employment at time of collision; employee's job did not require him to drive and did not place him near highway exit where he killed motorist, nor did it play a part in motorist being in a place where employer could reasonably anticipate her injury as a result of employing someone like employee who had alcohol and driving under the influence (DUI) problems. Ovecka v. Burlington Northern S.F. Railway Co., 145 N.M. 113, 2008-NMCA-140, 194 P.3d 728 (Ct. App. 2008), cert. granted, (Oct. 6, 2008).

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8 Am Jur 2d Automobiles and Highway Traffic § 672

§ 672 Trip for employee's personal business or errand

An employer is not liable under the theory of respondeat superior for an employee's negligent operation of the employer's vehicle where the employee was using the vehicle in pursuit of his or her own independent business interests having no connection with the employer's business, [n1] or to carry out a personal shopping trip or other personal errand for the employee's own convenience, [n2] although the contrary result has also been reached. [n3]

The question of whether a driver/employee was acting in the scope of his or her employment is generally for the jury. [n4] An employee may be found to have been acting within the scope of employment where the deviation for personal purposes was of such a minor nature as to be merely incidental to the business purpose, [n5] or where the allegedly personal errand on which the employee was engaged was actually undertaken for business purposes, or that business and personal purposes were combined. [n6]

FOOTNOTES:

n1 Smith v. Associated Pipe Line Contractors, Inc., 357 F. Supp. 493 (W.D. La. 1972), judgment aff'd, 475 F.2d 1139 (5th Cir. 1973); Chamberlain v. Riddle, 155 Pa. Super. 507, 38 A.2d 521 (1944).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

n2 Land v. Shaffer Trucking, Inc., 290 Ala. 243, 275 So. 2d 671 (1973); Fernandez v. Lloyd McKee Motors, Inc., 90 N.M. 433, 564 P.2d 997 (Ct. App. 1977).

n3 S. & C. Transport Co. v. Barnes, 191 Ark. 205, 85 S.W.2d 721 (1935); Dove v. National Freight, Inc., 138 Ga. App. 114, 225 S.E.2d 477 (1976).

n4 Nipper v. Brandon Co., 262 Ark. 17, 553 S.W.2d 27 (1977); Thornton v. Parker, 100 Ohio App. 3d 743, 654 N.E.2d 1282 (10th Dist. Franklin County 1995).

n5 Atnip v. U.S., 245 F. Supp. 386 (E.D. Tenn. 1965); Westberg v. Willde, 14 Cal. 2d 360, 94 P.2d 590 (1939); Jackson v. Scheiber, 209 N.C. 441, 184 S.E. 17 (1936).

n6 Bullock v. Miner, 225 Ark. 897, 286 S.W.2d 328 (1956); Vanderlippe v. Midwest Studios, 137 Neb. 289, 289 N.W. 341 (1939).

SUPPLEMENT:

Cases

In the absence of special circumstances, a servant in going to and from work in an automobile acts only for his own purposes and not for those of his employer for vicarious liability purposes. Hunter v. Modern Continental Const. Co., Inc., 287 Ga. App. 689, 652 S.E.2d 583 (2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 673

§ 673 Pleasure trips

An employee-driver whose search for amusement takes him or her away from the area where his or her duties are ordinarily performed is generally not acting within the scope of employment, and the employer is not liable under the principle of respondeat superior for injuries resulting from the negligent operation of the motor vehicle by such employee during the course of such deviation or departure.[n1] Upon a showing that the employee was merely indulging in a joyride in the employer's motor vehicle, the employee may be outside the scope of employment as a matter of law,[n2] although not in every case.[n3] For example, where an employee's purpose of seeking amusement is combined with a trip undertaken in the employer's business interest, the employer may be liable under the doctrine of respondeat superior for the employee's negligent driving at such time.[n4]

FOOTNOTES:

n1 Kirchoffner v. U.S., 765 F. Supp. 598 (D.N.D. 1991); Griffin v. Hertz Drivurself Stations, 309 Ill. App. 580, 33 N.E.2d 635 (1st Dist. 1941); Symington v. Sipes, 121 Md. 313, 88 A. 134 (1913); Danforth v. Fisher, 75 N.H. 111, 71 A. 535 (1908); Kelly v. Green, 296 S.W.2d 576 (Tex. Civ. App. Eastland 1956), writ refused n.r.e., (Feb. 13, 1957).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1427 (Instruction -- Employee not acting in scope of employment).

n2 Sauer v. Iskowich, 80 Ill. App. 2d 202, 224 N.E.2d 21 (2d Dist. 1967); Johnson v. Lowrey, 70 So. 2d 212 (La. Ct. App. 2d Cir. 1954); Rogers v. Town of Black Mountain, 224 N.C. 119, 29 S.E.2d 203 (1944).

Related References:
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n3 Robertson v. Spitler, 153 Minn. 395, 190 N.W. 992 (1922); Edwards v. Benedict, 79 Ohio App. 134, 34 Ohio Op. 494, 47 Ohio L. Abs. 473, 70 N.E.2d 471 (2d Dist. Franklin County 1946).

n4 Clift v. Donegan, 237 Ala. 304, 186 So. 476 (1939); Snowhite v. State, Use of Tennant, 243 Md. 291, 221 A.2d 342, 19 A.L.R.3d 1155 (1966).

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8 Am Jur 2d Automobiles and Highway Traffic § 674

§ 674 Becoming intoxicated during period of use of vehicle

Although the mere fact that an employee drinks or becomes intoxicated while operating the employer's motor vehicle does not, in and of itself, justify the conclusion that the employee was outside the scope of his or her employment,[n1] generally, an employer is not liable as a matter of law for an employee's drinking incidents outside the scope of employment,[n2] and the employer exercises no control over the employee's activities.[n3]

Where the evidence is in conflict on the issue whether the drinking took the employee outside the ordinary area of his or her duties, or caused the employee to abandon the employer's service, the question of scope of employment is one of fact.[n4]

FOOTNOTES:

n1 Sloma v. Pfluger, 125 Ill. App. 2d 347, 261 N.E.2d 323 (2d Dist. 1970); Gier v. Gleason, 189 Neb. 156, 201 N.W.2d 388 (1972); Chalmers v. Harris Motors, Inc., 104 N.H. 111, 179 A.2d 447 (1962); Rigsby v. Pitner, 334 S.W.2d 837 (Tex. Civ. App. Houston 1960), writ refused n.r.e., (June 22, 1960).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

n2 Kane Furniture Corp. v. Miranda, 506 So. 2d 1061 (Fla. Dist. Ct. App. 2d Dist. 1987); Cunningham v. Petrilla, 30 A.D.3d 996, 817 N.Y.S.2d 468 (4th Dep't 2006).

n3 Cunningham v. Petrilla, 30 A.D.3d 996, 817 N.Y.S.2d 468 (4th Dep't 2006).

n4 Phoenix Blue Diamond Express v. Mendez, 103 F.2d 66 (C.C.A. 9th Cir. 1939); Rau v. Smuda, 175 Minn. 328, 221 N.W. 232 (1928).

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8 Am Jur 2d Automobiles and Highway Traffic § 675

§ 675 Social visits to relatives or friends

Where an employee-driver leaves his or her business duties and is, at the time of an accident, driving outside the regular area of employment to visit friends or relatives, the employee is not, as a matter of law, acting within the scope of employment and the employer is not liable.[n1] If the trip is undertaken for business purposes, the fact that the employee takes the opportunity to make visits en route does not necessarily take the employee out of the scope of employment.[n2] Any conflict in evidence regarding the use is left to the trier of fact.[n3]

FOOTNOTES:

n1 Freeza v. Schauer Tool & Die Co., 322 Mich. 293, 33 N.W.2d 799 (1948) (overruled in part by, Moore v. Palmer, 350 Mich. 363, 86 N.W.2d 585 (1957)); Heard v. McDonald, 1935 OK 155, 172 Okla. 180, 43 P.2d 1026 (1935).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

n2 Oil Daily, Inc. v. Faulkner, 282 F.2d 14 (10th Cir. 1960); Conway v. Hudspeth, 229 Ark. 735, 318 S.W.2d 137 (1958); Bergeron v. Firestone Tire & Rubber Co., Inc., 482 So. 2d 54 (La. Ct. App. 5th Cir. 1986), writ denied, 484 So. 2d 136 (La. 1986); Parker v. Matheson Motor Car Co., 241 Pa. 461, 88 A. 653 (1913).

n3 U.S. v. Wibye, 191 F.2d 181 (9th Cir. 1951); Freeza v. Schauer Tool & Die Co., 322 Mich. 293, 33 N.W.2d 799 (1948) (overruled in part by, Moore v. Palmer, 350 Mich. 363, 86 N.W.2d 585 (1957)).

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8 Am Jur 2d Automobiles and Highway Traffic § 676

§ 676 Errand or service for fellow employee

An employer is not liable for the negligent operation of his or her motor vehicle by an employee, under the doctrine of respondeat superior, where the employee was operating the vehicle for the purpose of assisting a fellow worker and where this use of the motor vehicle had no relation to the employer's business, even if the employee being served was authorized to direct the work of the driver, [n1] particularly where the employee being served was without supervisory authority. [n2]

FOOTNOTES:

n1 Morris v. Thomas, 188 So. 166 (La. Ct. App., Orleans 1939).

Related References:
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n2 Sharp v. Faulkner, 292 Ky. 179, 166 S.W.2d 62 (1942).

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8 Am Jur 2d Automobiles and Highway Traffic § 677

§ 677 Going to assistance of others

In some cases, courts have held as a matter of law that a driver/employee is acting outside the scope of employment when the employee interrupts his or her ordinary duties to go to the assistance of another party observed to be in distress and that the employer is not liable for the employee's negligence in the operation of a motor vehicle during the course of such deviation or departure from employment,[n1] although, courts in other cases have held differently based on the notion of "Good Samaritan"acts.[n2] The issue of whether the employee has abandoned his or her employment in aiding another traveler is generally for the jury.[n3]

FOOTNOTES:

n1 Balinovic v. Evening Star Newspaper Co., 113 F.2d 505 (App. D.C. 1940); Brill v. Davajon, 51 Ill. App. 2d 445, 201 N.E.2d 253 (1st Dist. 1964); Bindert v. Elmhurst Taxi Corp., 168 Misc. 892, 6 N.Y.S.2d 666 (Mun. Ct. 1938).

Related References:
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n2 Marshall v. Nugent, 222 F.2d 604, 58 A.L.R.2d 251 (1st Cir. 1955); Jack Cole Co. v. Hoff, 274 S.W.2d 658, 51 A.L.R.2d 1 (Ky. 1954).

n3 Boalbey v. Smith, 339 Ill. App. 466, 90 N.E.2d 238 (4th Dist. 1950); Maple v. Tennessee Gas Transmission Co., 30 Ohio Op. 2d 471, 94 Ohio L. Abs. 398, 201 N.E.2d 299 (Ct. App. 7th Dist. Carroll County 1963).

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8 Am Jur 2d Automobiles and Highway Traffic § 678

§ 678 Giving ride to third person

Where an employee uses the employer's motor vehicle during regular hours of employment to give a ride to a third person, where the transportation is afforded purely for the employee or the passenger and not for any business of the employer, and where the trip takes the vehicle outside the geographical ambit of the employee's duties, the employee is generally, as a matter of law, acting outside the scope of his or her duties and the employer is not liable for the negligent operation of the vehicle during such deviation or departure for employment. [n1]

Observation: Federal regulations making a lessee of a commercial motor vehicle vicariously liable for injuries to the traveling public by virtue of the negligent operation of a vehicle leased to it and operated under its certificate of necessity may preempt the common law unauthorized passenger doctrine and render an employer/lessee liable for injuries sustained by an unauthorized passenger riding in the vehicle driven by an employee. [n2]

Where the evidence is in conflict, the question of whether the employee-driver acted within the scope of his or her employment by giving a give a ride to a third person is for the trier of fact. [n3]

Where the person being transported by an employee is employed by the same employer, it does not justify holding the employer liable, unless such transportation was afforded as incident to or in furtherance of the employer's business. [n4]

FOOTNOTES:

n1 United Transport, Inc. v. Wilson, 228 Ark. 1058, 312 S.W.2d 191 (1958); Banks v. AJC Intern., Inc., 284 Ga. App. 22, 643 S.E.2d 780 (2007); Martin v. Mud Supply Co., 111 So. 2d 375 (La. Ct. App., Orleans 1959), judgment aff'd, 239 La. 616, 119 So. 2d 484 (1959); Riverside Industries of Philadelphia v. Watkins, 195 So. 2d 844 (Miss. 1967).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

n2 Smith v. Johnson, 862 F. Supp. 1287 (M.D. Pa. 1994).

n3 Elliott v. Leavitt, 122 Ga. App. 622, 178 S.E.2d 268 (1970); Tullier v. Capitol Const. Co., 190 So. 2d 880 (Miss. 1966).

n4 Hickson v. W. W. Walker Co., 110 Conn. 604, 149 A. 400, 68 A.L.R. 1044 (1930); Usher v. Stafford, 227 Iowa 443, 288 N.W. 432 (1939); Keeney v. City of Salem, 150 Or. 667, 47 P.2d 852 (1935).

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8 Am Jur 2d Automobiles and Highway Traffic § 679

§ 679 Geographical or temporal extent of deviation

The mere showing that at the time of an accident an employee operating the employer's motor vehicle was slightly off the direct route he or she would ordinarily follow is not sufficient to require a finding that the employee was acting outside the scope of the employment, so as to relieve the employer from liability for such accident under the doctrine of respondeat superior,[n1] particularly where the deviation may have been made for the employer's purposes.[n2] The mere fact that the employee was, at the time of the accident, proceeding toward a business destination by a route somewhat longer than absolutely necessary does not require the conclusion that the employee had abandoned his or her employment, at least where the employee had not received specific instructions as to the route to be followed.[n3] In some cases even a showing that the employee had been given specific instructions as to the route to be taken has not necessarily required a finding of abandonment of employment by the choice of a different route.[n4] However, where, at the time of the accident, the employee was traveling away from the business destination, the employee is usually not acting within the scope of the employment.[n5]

Where the accident occurs after the employee's authority to use the motor vehicle has expired, the employee may be held as a matter of law not to have been acting in the scope of his or her employment.[n6]

FOOTNOTES:

n1 Peters v. Pima Mercantile Co., 42 Ariz. 454, 27 P.2d 143 (1933); Perry v. Haritos, 100 Conn. 476, 124 A. 44 (1924); Brown & Root, Inc. v. Continental Southern Lines, Inc., 228 Miss. 15, 87 So. 2d 257 (1956), error overruled, 228 Miss. 15, 87 So. 2d 926 (1956).

Related References:
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n2 Adkins v. L.L. Cole & Son, 213 Ark. 585, 211 S.W.2d 885 (1948); Rabaut v. Venable, 285 Mich. 111, 280 N.W. 129 (1938).

n3 Klatt v. Commonwealth Edison Co., 55 Ill. App. 2d 120, 204 N.E.2d 319 (2d Dist. 1964), judgment aff'd in part, rev'd in part on other grounds, 33 Ill. 2d 481, 211 N.E.2d 720 (1965); Pennebaker v. Parker, 232 Miss. 725, 100 So. 2d 363 (1958) (wherein evidence was conflicting as to employee's right to select alternate route).

n4 Wilburn v. McRee, 193 F.2d 425 (10th Cir. 1951).

n5 Hensley v. Golden, 302 Ky. 856, 196 S.W.2d 739 (1946); Goff v. St. Bernard Coal Co., 174 Tenn. 558, 129 S.W.2d 205 (1939).

n6 Ranthum v. Ferguson, 202 Minn. 209, 277 N.W. 547 (1938); Gulla v. Straus, 154 Ohio St. 193, 42 Ohio Op. 261, 93 N.E.2d 662 (1950).

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8 Am Jur 2d Automobiles and Highway Traffic § 680

§ 680 Effect of employer's consent or lack of consent

The respondeat superior doctrine has no application when an employee engages on a personal and private trip which has no connection with his master's business.[n1] However, under statutory provisions imposing liability upon the owner of a motor vehicle for its negligent operation by anyone using or operating it with his or her express or implied permission,[n2] an employer loaning a motor vehicle to an employee for the latter's own personal purposes may be liable for its negligent operation.[n3] Nevertheless, both at common law,[n4] and under such a statute,[n5] an employer is not liable for the negligent operation of the motor vehicle by an employee who uses it for his or her own personal purposes without the employer's permission.

Where the employee is acting within the general area of the duties for which he or she was hired and for the promotion of the employer's business, the employee is acting within the scope of the employment although, at the time of the accident, he or she may have been exceeding the actual authority delegated or acting in violation of express instructions.[n6] However, some courts have held as a matter of law that the employer could not be found liable where the employee's operation of the vehicle was for an unauthorized purpose, although intended for the employer's benefit.[n7]

FOOTNOTES:

n1 Alford v. Noonan, 259 F.2d 113 (2d Cir. 1958); Thompson v. Curry, 36 Ala. App. 334, 56 So. 2d 359 (1951); Easterling v. Man-O-War Automotive, Inc., 223 S.W.3d 852 (Ky. Ct. App. 2007); Asher v. Good, 198 So. 2d 434 (La. Ct. App. 4th Cir. 1966); Goodyear Tire and Rubber Co. v. Mayes, 50 Tex. Sup. Ct. J. 886, 2007 WL 1713400 (Tex. 2007).

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n2 § 640.

n3 Leahy v. Kaszubski, 123 N.Y.S.2d 246 (Sup 1953), judgment aff'd, 283 A.D. 947, 130 N.Y.S.2d 221 (2d Dep't 1954).

n4 Sykes v. Babijuice Corp., 63 So. 2d 65 (Fla. 1953); Miceli v. Williams, 293 S.W.2d 136 (Mo. Ct. App. 1956); Darlow v. Drake Bakeries, Inc., 2 A.D.2d 749, 153 N.Y.S.2d 243 (2d Dep't 1956), judgment aff'd, 2 N.Y.2d 983, 163 N.Y.S.2d 598, 143 N.E.2d 338 (1957).

n5 Darlow v. Drake Bakeries, Inc., 2 A.D.2d 749, 153 N.Y.S.2d 243 (2d Dep't 1956), judgment aff'd, 2 N.Y.2d 983, 163 N.Y.S.2d 598, 143 N.E.2d 338 (1957).

n6 Trojan v. Brennan, 117 N.J.L. 110, 187 A. 138 (N.J. Ct. Err. & App. 1936); Poundstone v. Whitney, 189 Wash. 494, 65 P.2d 1261 (1937).

n7 McCammon v. Edmunds, 114 Cal. App. 36, 299 P. 551 (2d Dist. 1931); Stauffer v. Schilpin, 167 Minn. 301, 208 N.W. 1004 (1926).

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8 Am Jur 2d Automobiles and Highway Traffic § 681

§ 681 Resumption of employment after departure or deviation

Where an employee, whose duties include the operation of a motor vehicle, departs from the regular course of performance of such duties on a personal errand but not under circumstances showing a complete abandonment of the employment, and then returns to the regular course of employment after completing the errand and proceeds with the duties of his or her employment, the employer is liable for an injury resulting to a third person from the subsequent negligence of the employee in the operation of the vehicle within the course of employment.[n1] Where the deviation or departure is not to such physical or temporal extent as to constitute a total abandonment, the employer may liable for the negligent operation of the vehicle by the employee while in the course of returning to the ordinary physical ambit of his or her duties.[n2] Even where there is a distinct departure, the employer may be liable for the employee's negligent operation of the vehicle while on the way back to work,[n3] although some courts have held that the employment had not been resumed where the employee, at the time of the accident, had not yet returned either to the point of departure, or to the general area where the employment duties would have been performed.[n4]

Where an employee obtains possession of the employer's motor vehicle without the employer's consent, the mere fact that the employee is, at the time of an accident, in the process of returning to the place where the vehicle was obtained does not justify a finding that he or she is acting within the scope of employment so as to render the employer liable for its negligent operation.[n5]

Where an employee undertakes a personal errand in the employer's motor vehicle with the latter's permission, in returning the vehicle after accomplishing the private purpose, with the immediate intention of resuming the employment duties, the employee may be within the scope of employment so as to render the employer liable for the negligent operation of such vehicle while the employee is so returning,[n6] although in other cases a driver returning to the area of employment after an authorized deviation was held not to be acting with the scope of employment.[n7]

FOOTNOTES:

n1 Richards v. McCall, 187 Ark. 61, 58 S.W.2d 432 (1933); Vansant v. Holbrook's Adm'r, 285 Ky. 88, 146 S.W.2d 337 (1940); Taylor v. Lumpkin, 391 So. 2d 74 (La. Ct. App. 4th Cir. 1980).

Related References:
Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

n2 Klatt v. Commonwealth Edison Co., 55 Ill. App. 2d 120, 204 N.E.2d 319 (2d Dist. 1964), judgment aff'd in part, rev'd in part, 33 Ill. 2d 481, 211 N.E.2d 720 (1965); Welsh v. Feyka, 119 Pa. Super. 44, 179 A. 810 (1935).

n3 Hahn v. Aetna Finance Co., 251 Minn. 315, 87 N.W.2d 588 (1958); Larkins v. Utah Copper Co., 169 Or. 499, 127 P.2d 354 (1942).

n4 Cannon v. U.S., 243 F.2d 71 (5th Cir. 1957); Barela v. De Baca, 68 N.M. 104, 359 P.2d 138 (1961); Caldwell v. Adams, 51 Tenn. App. 373, 367 S.W.2d 804 (1962); Foote v. Grant, 55 Wash. 2d 797, 350 P.2d 870 (1960); Nelson v. Broderick & Bascom Rope Co., 53 Wash. 2d 239, 332 P.2d 460 (1958).

n5 Brown v. Sheffield, 121 Ga. App. 383, 173 S.E.2d 891 (1970); Gier v. Gleason, 189 Neb. 156, 201 N.W.2d 388 (1972).

n6 Baker Driveaway Co. v. Clark, 162 F.2d 181 (C.C.A. 4th Cir. 1947); Sanford v. Charles H. Totty Co., 110 N.J.L. 262, 164 A. 458 (N.J. Ct. Err. & App. 1933).

n7 Schneider v. McAleer, 39 Ariz. 190, 4 P.2d 903 (1931); Ruff v. Farley Machine Works Co., 151 Kan. 349, 99 P.2d 789 (1940).

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8 Am Jur 2d Automobiles and Highway Traffic § 682

§ 682 Outside regular working hours with employer's consent

An employer who loans his or her motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable, under the rules of respondeat superior, for the employee's negligent operation of the vehicle during the period of permissive use,[n1] even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes.[n2] However, in some jurisdictions, under statutory provisions imposing liability upon the owner of a motor vehicle for its negligent operation by anyone operating or using it with the owner's permission,[n3] the permission given by an employer to an employee to operate the former's motor vehicle for the latter's personal purposes is sufficient to hold the employer liable for its negligent operation.[n4]

An employer is liable for a third party's injuries sustained in a collision with an employee driving the employer's vehicle after normal working hours where the car is part of the employee's compensation and the accident occurred while the employee was driving home from a function that the employee was required to attend on behalf of the employer.[n5]

Even though an employee has obtained possession of the employer's motor vehicle for the purpose of carrying out business duties after regular working hours, the employer may be found not liable for the negligent operation of the vehicle by the employee after hours on the theory that the employee has deviated from or abandoned the business use for personal purposes.[n6] However, the employer may be liable even though the employee had deviated from the business errand for personal purposes if, at the time of the accident, the personal errand had been completed or abandoned and the business trip resumed,[n7] although there are cases holding to the contrary.[n8]

FOOTNOTES:

n1 Sharp v. Egler, 658 F.2d 480 (7th Cir. 1981); Snodgrass v. Jones, 755 F. Supp. 826 (C.D. Ill. 1991), judgment aff'd, 957 F.2d 482 (7th Cir. 1992) (wherein employee was on 24-hour call but on a nonwork frolic); Collins v. Everidge, 161 Ga. App. 708, 289 S.E.2d 804 (1982); Seedkem South, Inc. v. Lee, 391 So. 2d 990 (Miss. 1980); Chavez v. Ronquillo, 94 N.M. 442, 612 P.2d 234 (Ct. App. 1980); Gill v. Schaap, 601 P.2d 545 (Wyo. 1979).

Related References:
Employee's operation of employer's vehicle outside regular working hours as within scope of employment, 51 A.L.R.2d 120.

n2 Atlanta Blue Print & Photo Reproduction Co. v. Kemp, 130 Ga. App. 778, 204 S.E.2d 515 (1974); Weldon v. Federal Chemical Co., 378 S.W.2d 633 (Ky. 1964); Johns v. Hunt Lumber Co., 250 So. 2d 543 (La. Ct. App. 2d Cir. 1971); Thayer v. Chrysler Leasing Corp., 5 N.C. App. 453, 168 S.E.2d 692 (1969); Palmer v. Van Petten Lumber Co., 265 Or. 347, 509 P.2d 420 (1973); Goodyear Tire and Rubber Co. v. Mayes, 50 Tex. Sup. Ct. J. 886, 2007 WL 1713400 (Tex. 2007).

n3 § 640.

n4 Leahy v. Kaszubski, 123 N.Y.S.2d 246 (Sup 1953), judgment aff'd, 283 A.D. 947, 130 N.Y.S.2d 221 (2d Dep't 1954).

n5 Chappell v. Junior Achievement of Greater Atlanta, Inc., 157 Ga. App. 41, 276 S.E.2d 98 (1981).

n6 Kirchoffner v. U.S., 765 F. Supp. 598 (D.N.D. 1991); Grant v. Jones, 168 Ga. App. 690, 310 S.E.2d 272 (1983); Murphy v. Urso, 88 Ill. 2d 444, 58 Ill. Dec. 828, 430 N.E.2d 1079 (1981); Seedkem South, Inc. v. Lee, 391 So. 2d 990 (Miss. 1980); Shuman Estate v. Weber, 276 Pa. Super. 209, 419 A.2d 169 (1980); J & C Drilling Co. v. Salaiz, 866 S.W.2d 632 (Tex. App. San Antonio 1993).

n7 Schoenith, Inc. v. Forrester, 260 Ala. 271, 69 So. 2d 454 (1953); Butler v. Baker, 90 Ohio App. 3d 143, 628 N.E.2d 98 (10th Dist. Franklin County 1993).

n8 McNeill v. Spindler, 191 Va. 685, 62 S.E.2d 13 (1950).

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8 Am Jur 2d Automobiles and Highway Traffic § 683

§ 683 Outside regular business hours contrary to employer's instructions

Where an employee is given the general possession of the employer's motor vehicle but is instructed not to use it except for business purposes, the employer is not liable for its negligent operation by the employee outside regular working hours and for the employee's personal purposes.[n1] However, even though an employee is using the employer's motor vehicle after regular working hours on what was superficially a social or nonbusiness occasion, the employee might be found to be acting in the scope of employment when he or she attempts to promote the employer's business at the same time.[n2]

FOOTNOTES:

n1 Smith v. Grimes, 798 F. Supp. 798 (D.D.C. 1992); Neihaus v. Southwestern Groceries, Inc., 127 Ariz. 287, 619 P.2d 1064 (Ct. App. Div. 2 1980); Rabideau v. State, 391 So. 2d 283 (Fla. Dist. Ct. App. 1st Dist. 1980), decision aff'd, 409 So. 2d 1045 (Fla. 1982); Gill Plumbing Co., Inc. v. Macon, 187 Ga. App. 481, 370 S.E.2d 657 (1988); Cain v. Doe, 378 So. 2d 549 (La. Ct. App. 4th Cir. 1979); McAllister v. Graham, 287 S.C. 455, 339 S.E.2d 154 (Ct. App. 1986); Daniels v. White Consol. Industries, Inc., 692 S.W.2d 422 (Tenn. Ct. App. 1985); Lane v. Messer, 731 P.2d 488 (Utah 1986).

n2 State of Md. to Use and Benefit of Gaegler v. Thomas, 173 F. Supp. 568 (D. Md. 1959); Becker v. Brummel, 319 Ill. App. 499, 48 N.E.2d 419 (1st Dist. 1943); Massey v. Berlo Vending Co., 329 S.W.2d 772 (Mo. 1959); Chavez v. Ronquillo, 94 N.M. 442, 612 P.2d 234 (Ct. App. 1980) (wherein employee was not found to have been prospecting for new business); Shahan v. Jones, 115 W. Va. 749, 177 S.E. 774 (1934).

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8 Am Jur 2d Automobiles and Highway Traffic § 684

§ 684 Outside regular business hours, vehicle obtained without employer's knowledge or consent

Where an employee obtains initial possession of an employer's motor vehicle without the knowledge or consent of the employer, after regular working hours, the use of the vehicle is usually not in the scope of employment and the employer is not liable as a matter of law for its negligent operation by the employee.[n1] Where the evidence is in conflict, the question of whether the employee had taken the motor vehicle after regular working hours without permission and used it for personal purposes is one for the jury.[n2]

FOOTNOTES:

n1 Lancaster v. Canuel, 193 A.2d 555 (D.C. 1963); Alford v. Parker's Mechanical Constructors, Inc., 241 So. 2d 759 (Fla. Dist. Ct. App. 1st Dist. 1970); Coffee Chrysler-Plymouth-Dodge, Inc. v. Nasworthy, 198 Ga. App. 757, 403 S.E.2d 453 (1991); Johnson v. Parkchester Realty Corp., 325 So. 2d 374 (La. Ct. App. 4th Cir. 1976); Texas Motors, Inc. v. McBee, 465 S.W.2d 234 (Tex. Civ. App. Houston 14th Dist. 1971); Gill v. Schaap, 601 P.2d 545 (Wyo. 1979).

n2 Leming v. Oilfields Trucking Co., 44 Cal. 2d 343, 282 P.2d 23, 51 A.L.R.2d 107 (1955).

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8 Am Jur 2d Automobiles and Highway Traffic § 685

§ 685 To and from meals

An employee, while using the employer's motor vehicle to go from work to a place where the employee intends to eat, is not ordinarily within the scope of his or her employment, in the absence of some special benefit to the employer, and therefore the employer is not liable for the negligent operation of the motor vehicle during such a trip.[n1] The mere fact that the employer permits the employee to use the employer's motor vehicle to go to meals does not change this rule and render the employer liable under the doctrine of respondeat superior for the employee's negligence while so doing, where there is nothing to indicate benefit to the employer,[n2] although in some jurisdictions under such circumstances the employer could be statutorily liable as an owner for the negligence of one whom he or she permits to operate the vehicle.[n3] In a few cases, however, where the employer permitted the employee to use the motor vehicle to go to meals, the courts have held the employee to be the scope of employment while so traveling on the theory that the employer would not have so consented unless he or she derived a business benefit from the use of the vehicle.[n4] In any event, where an employee is involved in an accident while proceeding to get a meal in the course of a business errand undertaken in the course of employment, the employee generally has not left the scope of employment because this use of the vehicle is a normal incident of the business errand, or because the employer derives some special business benefit from this use of the vehicle,[n5] but not where the employee's deviation is beyond the scope of his or her authority.[n6]

An employee returning to work from a meal in the employer's motor vehicle is generally not acting within the scope of employment,[n7] unless the employer received some special business benefit from the employee's use of the vehicle in going to and from meals.[n8] This rule is not changed by reason of the fact that the employee was driving with the employer's permission at the time of the accident,[n9] except in those jurisdictions which have statutes imposing liability upon the owner of a motor vehicle for the negligence of another whom he or she permits to operate such vehicle.[n10]

FOOTNOTES:

n1 Alford v. Noonan, 259 F.2d 113 (2d Cir. 1958); Hightower Box & Tank Co. v. Snoddy, 255 Ala. 224, 50 So. 2d 737 (1951); Gordon v. National Union Fire Ins. Co. of Pittsburgh, Pa., 411 So. 2d 1094 (La. Ct. App. 4th Cir. 1982), writ denied, 415 So. 2d 943 (La. 1982) and writ denied, 415 So. 2d 946 (La. 1982); State ex rel. City Motor Co., Inc. v. District Court of Eighth Judicial Dist., In and For Cascade County, 166 Mont. 52, 530 P.2d 486 (1975); Fernandez v. Lloyd McKee Motors, Inc., 90 N.M. 433, 564 P.2d 997 (Ct. App. 1977); Andrews v. Houston Lighting & Power, 820 S.W.2d 411 (Tex. App. Houston 14th Dist. 1991), writ denied, (Apr. 22, 1992); Commercial Union Ins. Co. of New York v. St. Paul Fire & Marine Ins. Co., 211 Va. 373, 177 S.E.2d 625 (1970).

Related References:

Employer's liability for employee's negligence in operating employer's car in going to or from work or meals, 52 A.L.R.2d 350.

n2 Wise v. Grainger Bros. Co., 124 Neb. 391, 246 N.W. 733 (1933); Miller v. Hoefgen, 51 N.M. 319, 183 P.2d 850 (1947).

n3 § 640.

n4 Embry v. Reserve Natural Gas Co. of Louisiana, 12 La. App. 97, 124 So. 572 (2d Cir. 1929); Elliott v. Leavitt, 122 Ga. App. 622, 178 S.E.2d 268 (1970); Conklin v. Sampson, 55 N.D. 375, 213 N.W. 847 (1927).

n5 Moran v. Borden Co., 309 Ill. App. 391, 33 N.E.2d 166 (1st Dist. 1941); Fowser Fast Freight v. Simmont, 196 Md. 584, 78 A.2d 178 (1951).

n6 Benevento v. Poertner Motor Car Co., 235 N.Y. 125, 139 N.E. 213 (1923).

n7 Stone v. Reed, 247 S.W.2d 325 (Mo. Ct. App. 1952); Southwest Dairy Products Co. v. De Frates, 132 Tex. 556, 125 S.W.2d 282, 122 A.L.R. 854 (Comm'n App. 1939).

n8 Mandelbaum v. United States, 251 F.2d 748 (2d Cir. 1958); Southern Bell Tel. & Tel. Co. v. Wallace, 133 Ga. App. 213, 210 S.E.2d 347 (1974); Mech v. Storrs, 169 Md. 150, 179 A. 525 (1935); Ely v. Rice Bros., 26 Tenn. App. 19, 167 S.W.2d 355 (1942) (holding that whether employee had returned to employer's service at time of accident was question for jury).

n9 Bourgeois v. Mississippi School Supply Co., 170 Miss. 310, 155 So. 209 (1934); Bloom v. Krueger, 182 Wis. 29, 195 N.W. 851 (1923).

n10 § 640.

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(3) Operation at Other Times

8 Am Jur 2d Automobiles and Highway Traffic § 686

§ 686 To work and from work

Even when driving a vehicle furnished by the employer, the employee is generally not in the course and scope of employment, for purposes of respondeat superior liability, while going to [n1] and returning from work [n2] unless he or she is directed by his or her employer or is furthering the employer's business. [n3] although in some jurisdictions, the employer may be liable under a statute imposing liability upon the owner of a motor vehicle for its negligent operation by another with his or her permission. [n4] Even where an employee would normally be acting in the scope of employment by traveling to work in the employer's motor vehicle, the employer is not liable for the employee's negligence under the doctrine of respondeat superior where, at the time of the accident, the employee left the direct route to work and was pursuing a personal errand. [n5] Where, however, the employee's duties are not to be performed at any particular central plant or office, but require travel on an indefinite route or area, the employee's services are usually deemed to start when he or she leaves for work, [n6] and the employee is considered in the employer's service, until actually reaching home. [n7] Also, if the employer has a special interest in having the employee or vehicle transported to the place of business at the start of the day's work, the employee may be in the scope of employment while in transit. [n8]

The fact that the employee has the employer's permission to drive the motor vehicle home does not render the employer liable under the doctrine of respondeat superior, [n9] although an employer may be liable under such circumstances in a jurisdiction which has a statute imposing liability upon an owner of a motor vehicle for its negligent operation by a person using it with the owner's permission. [n10]

Imposition of vicarious liability on an employer for an employee's negligence under the doctrine of respondeat superior applies to a situation involving a employee's commuting when: [n11]

(1)the employee is engaged in a special errand or mission on the employer's behalf;

(2)the employer requires the employee to drive his or her personal vehicle to work so that the vehicle may be used for work-related tasks; and

(3)the employee is on-call.

FOOTNOTES:

n1 Carroll v. Americal Corp., 207 Ga. App. 651, 428 S.E.2d 811 (1993); Braddy v. Collins Plumbing & Const., Inc., 204 Ga. App. 862, 420 S.E.2d 806 (1992); Sharp v. W. & W. Trucking Co., 421 S.W.2d 213 (Mo. 1967); Carreras v. McGuire, 87 A.D.2d 790, 449 N.Y.S.2d 506 (1st Dep't 1982); Bell v. VPSI, Inc., 205 S.W.3d 706 (Tex. App. Fort Worth 2006).

Related References:
Employer's liability for employee's negligence in operating employer's car in going to or from work or meals, 52 A.L.R.2d 350.

n2 Smith v. Grimes, 798 F. Supp. 798 (D.D.C. 1992); Fred A. York, Inc. v. Moss, 176 Ga. App. 350, 335 S.E.2d 618 (1985); Hengels v. Gilski, 127 Ill. App. 3d 894, 83 Ill. Dec. 101, 469 N.E.2d 708 (1st Dist. 1984); Reed v. Arthur, 556 So. 2d 937 (La. Ct. App. 3d Cir. 1990); Brown v. Wolfe, 525 So. 2d 355 (La. Ct. App. 1st Cir. 1988), writ denied, 530 So. 2d 569 (La. 1988); Bell v. VPSI, Inc., 205 S.W.3d 706 (Tex. App. Fort Worth 2006); Whitehead v. Variable Annuity Life Ins. Co., 801 P.2d 934 (Utah 1989).

n3 Re-Mark Chemical Co. v. Ross, 101 So. 2d 163 (Fla. Dist. Ct. App. 3d Dist. 1958); Bell v. VPSI, Inc., 205 S.W.3d 706 (Tex. App. Fort Worth 2006).

n4 § 640.

n5 Campbell v. Warner, 234 N.Y. 645, 138 N.E. 481 (1923).

n6 Reed v. Parra, 203 Cal. 430, 264 P. 757 (1928); Duffee v. Rader, 178 Ga. App. 517, 344 S.E.2d 258 (1986); Chisos Mining Co. v. Huerta, 141 Tex. 289, 171 S.W.2d 867 (1943).

n7 International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Hatas, 287 Ala. 344, 252 So. 2d 7 (1971); Duffee v. Rader, 178 Ga. App. 517, 344 S.E.2d 258 (1986); State v. Gibbs, 166 Ind. App. 387, 336 N.E.2d 703 (1975).

n8 Watson v. Ben, 459 So. 2d 230 (La. Ct. App. 3d Cir. 1984); Cooper v. General Standard, Inc., 674 S.W.2d 117 (Mo. Ct. App. W.D. 1984); Fitzgerald v. Lyons, 39 A.D.2d 473, 336 N.Y.S.2d 940 (4th Dep't 1972); Gebert v. Clifton, 553 S.W.2d 230 (Tex. Civ. App. Houston 14th Dist. 1977), dismissed, (Sept. 27, 1977).

n9 Adomaities v. Hopkins, 95 Conn. 239, 111 A. 178 (1920); Kunkel v. Vogt, 354 Pa. 279, 47 A.2d 195 (1946).

n10 § 640.

n11 Carter v. Reynolds, 175 N.J. 402, 815 A.2d 460 (2003).

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8 Am Jur 2d Automobiles and Highway Traffic § 687

§ 687 Overnight trips

Where the employee's employment involves an overnight trip, the employee is acting in the scope of employment while proceeding to his or her lodging away from home.[n1] An employee may not be acting within the scope of employment where the employee detours from the direct route to lodging for a personal errand,[n2] although a slight detour does not necessarily preclude a finding that the employee was acting in the course of employment,[n3] nor does the case where after a detour for a personal errand, the employee had returned to the direct route or otherwise resumed employment,[n4] although the contrary result has also been reached.[n5]

FOOTNOTES:

n1 Crawford Transport Co. v. Wireman, 280 S.W.2d 163 (Ky. 1955).

n2 Beckwith v. Standard Oil Co., 281 S.W.2d 852 (Mo. 1955); McLamb v. Beasley, 218 N.C. 308, 11 S.E.2d 283 (1940).

n3 El Paso Natural Gas Co. v. Lackey, 186 F.2d 155 (5th Cir. 1951); Blair v. Greene, 247 Ala. 104, 22 So. 2d 834 (1945).

n4 Shields v. Oxnard Harbor Dist., 46 Cal. App. 2d 477, 116 P.2d 121 (2d Dist. 1941); Great American Tea Co. v. Van Buren, 218 Ind. 462, 33 N.E.2d 580 (1941).

n5 Futch v. W. Horace Williams Co., 26 So. 2d 776 (La. Ct. App. 1st Cir. 1946).

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8 Am Jur 2d Automobiles and Highway Traffic § 688

§ 688 Generally

In order to hold an employer liable for injuries inflicted by its motor vehicle while being driven by or for a salesperson or collector, the relationship of employer and employee must exist, and the employee must, at the time, have been acting within the scope of employment.[n1] Thus, recovery against an alleged employer may be defeated by showing that the salesperson or collector, under the terms of his or her employment, was an independent contractor rather than an employee.[n2] The most important factor in determining whether the relationship between the driver of the motor vehicle and the alleged employer was one of principal and independent contractor is the element of the control of the work done by the salesperson or collector.[n3]

Notwithstanding the relationship of employer and employee between the owner of a motor vehicle and the driver/salesperson or driver/collector, the owner/employer is not liable for the negligent operation of its vehicle by the driver/salesman or driver/collector outside the scope of employment.[n4] An employer is generally not liable for the negligent operation of its motor vehicle by a salesperson driving for his or her own personal pleasure.[n5]

A dealership's failure to follow its voluntarily enacted policy of sending a salesman on test drives did not expose it to liability in a motorist's personal-injury action arising from an accident with a test driver of a truck, because no one relied on the dealership's policy, the dealership did not undertake a duty owed by someone else, and the failure to observe the in-house policy did not increase the risk of harm to the injured motorist.[n6]

FOOTNOTES:

n1 Stern v. International Ry. Co., 167 A.D. 503, 153 N.Y.S. 520 (4th Dep't 1915), aff'd, 220 N.Y. 284, 115 N.E. 759, 2 A.L.R. 487 (1917).

As to liability of an employer for a salesperson's negligent operation of his or her own motor vehicle, see § 695.

n2 Magee v. Hargrove Motor Co., 50 Idaho 442, 296 P. 774 (1931).

n3 Gomillion v. Forsythe, 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169 (1950).

Related References:
As to indicia of relationship of principal and independent contractor, generally, see Am. Jur. 2d, Independent Contractors §§ 5 to 26.

n4 Slattery v. O'Meara, 120 Conn. 465, 181 A. 610 (1935).

n5 Glennie v. Falls Equipment Co., 238 A.D. 7, 263 N.Y.S. 124 (4th Dep't 1933).

n6 Morgan v. Scott, 2006 WL 2457378 (Ky. Ct. App. 2006), review granted, (Apr. 11, 2007) and review granted, (June 13, 2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 689

§ 689 Automobile salesperson

Where the dealer has no right to control the salesperson as to the manner and mode of carrying out the details of his or her duties, but rather the salesperson is responsible to the dealer only for the results achieved, such salesperson is an independent contractor and the dealer is not liable, under the doctrine of respondeat superior, for injuries inflicted by the salesperson's negligence in the operation of the vehicle.[n1] Where the salesperson is paid on a commission basis only, the salesperson is an independent contractor responsible to the dealer only for the ultimate results,[n2] although the fact that the salesperson is paid only on a commission basis does not preclude a finding that he or she is an employee if the requisite control by the employer is otherwise shown.[n3] The fact that the salesperson is paid a salary and not just a commission supports a finding that he or she is an employee.[n4]

The fact that a salesperson controls the hours he or she works supports the conclusion that the salesperson is an independent contractor rather than an employee.[n5] This conclusion is not affected by the fact that the salesperson is required to report regularly for sales meetings or other purposes.[n6] However, in some cases a salesperson was deemed an employee notwithstanding lack of control by the dealer over his or her hours of work.[n7] The fact that the dealer exercises some control over a salesperson's working hours supports a finding of employee status.[n8]

Generally, one who arranges to sell the motor vehicle of an individual, but who is not in the regular business of dealing in motor vehicles, is an independent contractor and not, as a matter of law, an employee of the vehicle owner.[n9]

Even though at the time of the accident the salesperson was using the motor vehicle for social purposes, he or she may be found to be acting in the scope of employment if he or she had some specific business contact in mind in connection with the social purposes,[n10] or had unrestricted authority to solicit prospective purchasers.[n11] but usually under such circumstances the salesperson is not, as a matter of law, acting in the scope of employment.[n12]

Under statutes which impose liability upon the owner of a motor vehicle for its negligent operation by another using or operating it with the owner's permission or consent, in the business of the owner or otherwise,[n13] an automobile dealer may be liable for the negligent operation of his or her motor vehicle by a salesperson operating it with the former's permission, whether the salesperson is acting within the scope of employment or otherwise.[n14] The dealer is not liable under such a statute where the salesperson does not have the dealer's express or implied consent to use the vehicle.[n15]

FOOTNOTES:

n1 Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 53 A.L.R.2d 626 (Ky. 1955); Blanchard v. Ogima, 253 La. 34, 215 So. 2d 902 (1968); Bell v. State, 153 Md. 333, 138 A. 227, 58 A.L.R. 1051 (1927).

Related References:
Liability of employer for negligent operation of motor vehicle by automobile salesman, 53 A.L.R.2d 631.

As to the indicia of the relationship of independent contractors, generally, see Am. Jur. 2d, Independent Contractors §§ 5 to 26.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1424 (Instruction -- Liability of dealer for negligence of sales representative demonstrating automobile).

n2 Hall v. Preferred Acc. Ins. Co. of N.Y., 204 F.2d 844, 40 A.L.R.2d 162 (5th Cir. 1953); Blanchard v. Ogima, 253 La. 34, 215 So. 2d 902 (1968).

n3 Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 53 A.L.R.2d 626 (Ky. 1955); Modern Motors v. Elkins, 1941 OK 123, 189 Okla. 134, 113 P.2d 969 (1941).

n4 May v. Farrell, 94 Cal. App. 703, 271 P. 789 (1st Dist. 1928); Meyn v. Dulaney-Miller Auto Co., 118 W. Va. 545, 191 S.E. 558 (1937).

n5 Whitehall Chevrolet Co. v. Anderson, 53 Ga. App. 406, 186 S.E. 135 (1936); McDonald v. Dodge, 231 Iowa 325, 1 N.W.2d 280 (1941); Blanchard v. Ogima, 253 La. 34, 215 So. 2d 902 (1968).

n6 Whitehall Chevrolet Co. v. Anderson, 53 Ga. App. 406, 186 S.E. 135 (1936); McDonald v. Dodge, 231 Iowa 325, 1 N.W.2d 280 (1941).

n7 Fearn v. Ralph Hamlin, Inc., 215 Cal. 211, 8 P.2d 1015 (1932); Becker v. Brummel, 319 Ill. App. 499, 48 N.E.2d 419 (1st Dist. 1943); Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 53 A.L.R.2d 626 (Ky. 1955).

n8 Modern Motors v. Elkins, 1941 OK 123, 189 Okla. 134, 113 P.2d 969 (1941); Ely v. Rice Bros., 26 Tenn. App. 19, 167 S.W.2d 355 (1942).

n9 Simril v. Davis, 42 Ga. App. 277, 155 S.E. 790 (1930); Horn v. Rhoads, 317 Mo. 572, 296 S.W. 389 (1927).

n10 Dawson Motor Co. v. Petty, 53 Ga. App. 746, 186 S.E. 877 (1936); Boston v. B. & M. Super Service, 91 N.H. 392, 20 A.2d 633 (1941); Easterlin v. Green, 248 S.C. 389, 150 S.E.2d 473 (1966).

n11 Thomason v. Harper, 162 Ga. App. 441, 289 S.E.2d 773 (1982).

n12 Morgan v. Collier County Motors, Inc., 193 So. 2d 35 (Fla. Dist. Ct. App. 2d Dist. 1966); Allen Kane's Major Dodge, Inc. v. Barnes, 243 Ga. 776, 257 S.E.2d 186 (1979); State ex rel. City Motor Co., Inc. v. District Court of Eighth Judicial Dist., In and For Cascade County, 166 Mont. 52, 530 P.2d 486 (1975); Brownlee v. Holiday Lincoln Mercury, Inc., 675 S.W.2d 817 (Tex. App. Fort Worth 1984).

n13 § 640.

n14 Bayless v. Mull, 50 Cal. App. 2d 66, 122 P.2d 608 (2d Dist. 1942); Flaugh v. Egan Chevrolet, 202 Minn. 615, 279 N.W. 582 (1938).

n15 Ewer v. Coppe, 199 Minn. 78, 271 N.W. 101 (1937).

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8 Am Jur 2d Automobiles and Highway Traffic § 690

§ 690 Driving to or from work or meals

An automobile salesperson may be acting in the scope of employment when the accident occurs while he or she is driving from work to home,[n1] or from home to work,[n2] in the employer's motor vehicle. However, the contrary result has also been reached where the salesperson was involved in an accident while driving home from work,[n3] or while driving to work from home.[n4] Evidence that, at the time of the accident, the salesperson was driving to or from meals does not necessarily mean that he or she has left the scope of employment,[n5] although the contrary result has also been reached.[n6] Evidence that, at the time of the accident, the salesperson was using the employer's motor vehicle to give a ride to third persons having no direct or immediate connection with the employer's business usually,[n7] but not always,[n8] shows that the employee left the scope of employment.

FOOTNOTES:

n1 Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 53 A.L.R.2d 626 (Ky. 1955); Isherwood v. Douglas, 34 N.J. Super. 533, 112 A.2d 756 (App. Div. 1955).

n2 Sullivan v. Thompson, 30 Cal. App. 2d 675, 87 P.2d 62 (2d Dist. 1939).

n3 McCauley v. Steward, 63 Ariz. 524, 164 P.2d 465 (1945); State ex rel. City Motor Co., Inc. v. District Court of Eighth Judicial Dist., In and For Cascade County, 166 Mont. 52, 530 P.2d 486 (1975).

n4 Senn v. Lackner, 157 Ohio St. 206, 47 Ohio Op. 136, 105 N.E.2d 49 (1952).

n5 Fostrom v. Grossman, 161 Minn. 440, 201 N.W. 929 (1925); Ford v. Reinoehl, 120 Pa. Super. 285, 182 A. 120 (1935).

n6 Conart Motor Sales v. Shullo, 70 Ohio App. 423, 25 Ohio Op. 152, 46 N.E.2d 415 (9th Dist. Summit County 1942).

n7 Bayless v. Mull, 50 Cal. App. 2d 66, 122 P.2d 608 (2d Dist. 1942); Phipps v. Milligan, 174 Md. 438, 199 A. 498 (1938).

n8 Foley v. McDonald, 283 Mass. 96, 185 N.E. 926 (1933); Rosamond v. Lucas-Kidd Motor Co., 182 S.C. 331, 189 S.E. 641 (1937).

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8 Am Jur 2d Automobiles and Highway Traffic § 691

§ 691 Liability of lessor for operation by driver furnished by lessor

A lessor of a vehicle that furnishes a driver to operate the vehicle and retains substantial supervisory control over the driver maintains the relation of employer and employee between the lessor and the driver furnished, so as to render the lessor liable under the rule of respondeat superior for the negligence of the driver in the operation of the vehicle. [n1]

However, the lessor is not always liable; rather, the determination of liability for the acts of the driver of a leased motor vehicle depends on the question of who has the power to control and direct the driver. [n2] It is the right of control rather than the actual exercise of control that distinguishes the one having that right as employer. [n3] In particular cases, the question of who is liable for the acts of the driver furnished with a leased motor vehicle is usually one of fact for the jury. [n4] However, it is a question of law where the facts and circumstances are such as to compel a holding that the relationship of employer and employee existed between the driver and the lessor or between the driver and lessee. [n5]

Where one is engaged in the business of renting out motor vehicles and furnishes a driver as part of the hiring, there is a factual presumption that the driver remains in the employ of the lessor, since the driver is engaged in the very operation for which he or she was originally employed. [n6]

FOOTNOTES:

n1 Hiltgen v. Sumrall, 47 F.3d 695 (5th Cir. 1995); Kelley v. Summers, 210 F.2d 665 (10th Cir. 1954) (tractor); Hinton v. Hoskins, 411 F. Supp. 282 (W.D. Ky. 1976); Landis v. McGowan, 114 Colo. 355, 165 P.2d 180 (1946); Casey v. E.J. Cattani & Son Gravel, 133 Ill. App. 3d 18, 88 Ill. Dec. 315, 478 N.E.2d 630 (3d Dist. 1985); Allen v. Minix, 350 S.W.2d 145 (Ky. 1961); Harkins v. Paschall, 348 So. 2d 1019 (Miss. 1977); Holland v. Dolese Co., 1982 OK 43, 643 P.2d 317 (Okla. 1982); Lynn v. Cepurneek, 352 Pa. Super. 379, 508 A.2d 308 (1986).

As to statutes which render the owner of a motor vehicle liable for the negligence of its operator, who is using it with the owner's consent or permission, as furnishing an additional basis of liability, see § 640.

Related References:
Liability under respondeat superior doctrine for acts of operator furnished with leased machine or motor vehicle, 17 A.L.R.2d 1388.

n2 Wicklund v. North Star Timber Co., 205 Minn. 595, 287 N.W. 7 (1939); McNamara v. Leipzig, 227 N.Y. 291, 125 N.E. 244, 8 A.L.R. 480 (1919).

As to liability of lessee for operation by driver furnished by lessor, see § 692.

n3 Kimble v. Wilson, 352 Pa. 275, 42 A.2d 526 (1945).

n4 Lee Moor Contracting Co. v. Blanton, 49 Ariz. 130, 65 P.2d 35 (1937).

n5 Constitution Pub. Co. v. Dale, 164 F.2d 210 (C.C.A. 5th Cir. 1947).

n6 § 694.

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8 Am Jur 2d Automobiles and Highway Traffic § 692

§ 692 Liability of lessee for operation by driver furnished by lessor

The lessee of an automobile,[n1] truck,[n2] or other motor vehicle,[n3] is not liable for the negligent operation of the leased vehicle by such a driver, under the doctrine of respondeat superior, where the lessor retains substantial control over the driver, particularly where the lessor expressly agrees to be liable for the neglect of the driver.[n4] However, where the driver is under the direction and control of the lessee, the lessee, not the lessor, is liable under the doctrine of respondeat superior for the negligent operation by the driver of the leased vehicle.[n5] This result is so despite the terms of a contract between the lessor and the lessee that the driver should remain the employee of the lessor and should not become the employee of the lessee.[n6] Where there is evidence of control of the driver of the vehicle by both the lessor and the lessee, both may be held liable for the negligent operation of the vehicle.[n7]

The mere fact that the lessee has the power to direct the driver when and where to go,[n8] or what route to take,[n9] or that the lessee rides with the driver while the work is being done,[n10] does not make the driver the lessee's agent, thus relieving the owner from responsibility for the driver's negligence. Moreover, the fact that the lessee controls the selection of the driver by telling the lessor which one to furnish with the leased vehicle does not make the driver the employee of the lessee so as to render the latter liable for the driver's negligent driving.[n11] However, the fact that the lessor pays the driver's wages during the time he or she is driving for the lessee does not prevent the driver from becoming the employee of the lessee where the latter otherwise has supervisory control over him or her.[n12]

FOOTNOTES:

n1 Densby v. Bartlett, 318 Ill. 616, 149 N.E. 591, 42 A.L.R. 1406 (1925); McNamara v. Leipzig, 227 N.Y. 291, 125 N.E. 244, 8 A.L.R. 480 (1919).

Related References:
Liability under respondeat superior doctrine for acts of operator furnished with leased machine or motor vehicle, 17 A.L.R.2d 1388.

n2 Kreider Truck Service, Inc. v. Augustine, 64 Ill. App. 3d 576, 21 Ill. Dec. 464, 381 N.E.2d 791 (5th Dist. 1978), judgment rev'd on other grounds, 76 Ill. 2d 535, 31 Ill. Dec. 802, 394 N.E.2d 1179 (1979); Chambers v. Palaggi, 88 Ill. App. 2d 221, 232 N.E.2d 69 (1st Dist. 1967); Watson v. Tippen, 277 So. 2d 700 (La. Ct. App. 2d Cir. 1973); Clemons v. E. & O. Bullock, Inc., 250 Md. 586, 244 A.2d 240 (1968); Lisogorsky v. Raoufi, 227 A.D.2d 386, 642 N.Y.S.2d 70 (2d Dep't 1996); Price v. McNabb & Wadsworth Trucking Co., 548 S.W.2d 316 (Tenn. Ct. App. 1976).

n3 Dubisson & Goodrich v. McMillin, 163 Ark. 186, 259 S.W. 400 (1924); Ryan v. Associates Inv. Co. of Illinois, 297 Ill. App. 544, 18 N.E.2d 47 (1st Dist. 1938).

n4 Wagner v. Motor Truck Renting Corporation, 234 N.Y. 31, 136 N.E. 229 (1922).

n5 Pittsburgh Valve Foundry & Const. Co. v. Gallagher, 32 F.2d 436 (C.C.A. 6th Cir. 1929); Yelloway, Inc. v. Hawkins, 38 F.2d 731 (C.C.A. 8th Cir. 1930) (bus); Braden v. Turner, 284 F. Supp. 379 (E.D. Tenn. 1968); Rediehs Exp., Inc. v. Maple, 491 N.E.2d 1006 (Ind. Ct. App. 1986); American Fidelity & Cas. Co. v. Johnson, 336 S.W.2d 351 (Ky. 1960); Grothmann v. Hermann, 241 S.W. 461 (Mo. Ct. App. 1922); Currier v. Abbott, 104 N.H. 299, 185 A.2d 263 (1962); Matkins v. Zero Refrigerated Lines, Inc., 93 N.M. 511, 602 P.2d 195 (Ct. App. 1979); Wadford v. Gregory Chandler Co., 213 N.C. 802, 196 S.E. 815 (1938) (tractor); Lang v. Hanlon, 305 Pa. 378, 157 A. 788 (1931).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1431 (Instruction -- Liability of person who hires vehicle and driver for negligence of driver).

n6 Garfield v. Smith, 317 Mass. 674, 59 N.E.2d 287 (1945); Finegan v. H.C. & A.J. Piercy Contracting Co., 189 A.D. 699, 178 N.Y.S. 785 (1st Dep't 1919).

n7 Vance Trucking Co. v. Canal Ins. Co., 249 F. Supp. 33 (D.S.C. 1966), judgment aff'd, 395 F.2d 391 (4th Cir. 1968); Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193, 49 A.L.R.4th 1047 (1983); Mineo v. Tancini, 349 Pa. Super. 115, 502 A.2d 1300 (1986), order aff'd, 517 Pa. 335, 536 A.2d 1323 (1988).

n8 Lind v. Eddy, 232 Iowa 1328, 6 N.W.2d 427, 146 A.L.R. 695 (1942); Allen v. Minix, 350 S.W.2d 145 (Ky. 1961).

n9 Forbes v. Reinman & Wolfort, 112 Ark. 417, 166 S.W. 563 (1914); Meyers v. Tri-State Automobile Co., 121 Minn. 68, 140 N.W. 184 (1913).

n10 Norwegian News Co. v. Simkovitch, 112 Misc. 141, 182 N.Y.S. 595 (App. Term 1920); Macale v. Lynch, 110 Wash. 444, 188 P. 517 (1920).

n11 Schweitzer v. Thompson & Norris Co. of New Jersey, 229 N.Y. 97, 127 N.E. 904 (1920).

n12 Western Express Co. v. Smeltzer, 88 F.2d 94, 112 A.L.R. 74 (C.C.A. 6th Cir. 1937).

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8 Am Jur 2d Automobiles and Highway Traffic § 693

§ 693 Liability of lessee for operation by lessor personally

Where one leases a motor vehicle to another and personally operates the leased vehicle, the relation of master and servant generally does not exist between the lessor/driver and the lessee so as to render the lessee liable under the doctrine of respondeat superior for the negligent operation of the motor vehicle, where the lessee exercises no control over the lessor/driver in the operation of the vehicle.[n1] However, the lessor-lessee relationship does not necessarily negative a employer-employee relationship, which, under the circumstances, may exist between the lessee and the lessor/driver of the motor vehicle so as to render the lessee liable under the doctrine of respondeat superior for the negligent operation of the vehicle.[n2] For example, where the lessee carries the lessor/driver on his or her pay, insurance, and social security rolls, the lessor/driver is an employee of the lessee and the lessee is liable for the negligent operation of the leased vehicle by such driver.[n3]

FOOTNOTES:

n1 Ozan Lumber Co. v. McNeely, 214 Ark. 657, 217 S.W.2d 341, 8 A.L.R.2d 261 (1949); Clarke v. Hernandez, 79 Cal. App. 2d 414, 179 P.2d 834 (3d Dist. 1947); Sawin v. Nease, 1939 OK 546, 186 Okla. 195, 97 P.2d 27 (1939).

Related References:
Liability under respondeat superior doctrine for acts of operator furnished with leased machine or motor vehicle, 17 A.L.R.2d 1388.

n2 Warren v. Hale, 203 Ark. 608, 158 S.W.2d 51 (1942); Lembke v. Fritz, 223 Iowa 261, 272 N.W. 300 (1937); Johnson v. R. T. K. Petroleum Co., 289 N.Y. 101, 44 N.E.2d 6 (1942).

n3 Dicenzo v. New York Shovel & Crane Corp., 282 A.D. 741, 122 N.Y.S.2d 879 (2d Dep't 1953), judgment aff'd, 308 N.Y. 871, 126 N.E.2d 309 (1955).

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8 Am Jur 2d Automobiles and Highway Traffic § 694

§ 694 Liability of borrower for operation by driver furnished by owner

Where one loans a motor vehicle to another along with a driver in his or her general employment, the driver becomes the employee of the borrower, rendering the latter liable under the doctrine of respondeat superior for the negligent operation of the vehicle by the driver and relieving the owner from liability in such respect.[n1] The owner is not liable for the negligence of the driver even when the owner was riding with the borrower at the time of the accident, where the borrower had assumed full supervisory control over the driver.[n2] In other words, responsibility for the negligence of the driver depends upon the power of the borrower to control and direct the driver during the time the driver and the vehicle are loaned.[n3] In a few cases where the driver remained under the supervisory control of the owner during the period of the loan of the motor vehicle, and the borrower exercised no control over the driver other than to direct where to drive and stop, the owner has been found liable under the doctrine of respondeat superior for the negligent operation of the vehicle by such driver during the period of the loan.[n4]

In some jurisdictions one lending a motor vehicle to another along with a driver may be liable for the driver's negligence in the operation of the vehicle, notwithstanding the lack of an employer-employee relationship between the owner and the driver during the period of the loan, under statutes imposing liability upon owners of motor vehicles for the negligent operation of such vehicles by others using or operating them with the permission of the owner, whether such use is in the business of the owner or otherwise.[n5]

FOOTNOTES:

n1 Braun v. Averdick, 113 Ohio St. 613, 4 Ohio L. Abs. 12, 150 N.E. 41 (1925); Dunmore v. Padden, 262 Pa. 436, 105 A. 559 (1918).

n2 Pease v. Gardner, 113 Me. 264, 93 A. 550 (1915); Pease v. Montgomery, 111 Me. 582, 88 A. 973 (1913).

n3 Hooper v. Brawner, 148 Md. 417, 129 A. 672, 42 A.L.R. 1437 (1925).

n4 Shevlin v. Schneider, 193 A.D. 107, 183 N.Y.S. 178 (1st Dep't 1920); Heitkamp v. Krueger, 265 S.W.2d 655 (Tex. Civ. App. Austin 1954), writ refused n.r.e.

n5 § 652.

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8 Am Jur 2d Automobiles and Highway Traffic § 695

§ 695 Generally

Whether one person is liable under the doctrine of respondeat superior for the negligence of another in the operation of a motor vehicle owned by the latter depends upon whether a relationship of employer and employee or principal and agent exists between the two persons.[n1] The relationship of employer and employee can exist between salespersons or representatives,[n2] including automobile salespersons[n3] and insurance agents or brokers[n4] operating their own motor vehicles, and the company represented by them, where the company has the right to control such persons in the manner in which they do their work. However, where the company has no right to control the manner in which a salesperson,[n5] including an automobile salesperson[n6] or insurance agent or broker[n7] does his or her work, but its right of control extends only to the results obtained, the status of such person in operating his or her own motor vehicle is that of an independent contractor, and the company is not liable for its negligent operation.

FOOTNOTES:

n1 Sherwood v. Arndt, 332 S.W.2d 891 (Mo. 1960).

As to whether the relationship between the driver of a motor vehicle and another is that of employer and employee or principal and agent, see § 663.

n2 Auer v. Sinclair Refining Co., 103 N.J.L. 372, 137 A. 555, 54 A.L.R. 623 (N.J. Ct. Err. & App. 1927); Dishman v. Whitney, 121 Wash. 157, 209 P. 12, 29 A.L.R. 460 (1922), modified, 124 Wash. 697, 215 P. 71 (1923).

n3 Whitehall Chevrolet Co. v. Anderson, 53 Ga. App. 406, 186 S.E. 135 (1936); Modern Motors v. Elkins, 1941 OK 123, 189 Okla. 134, 113 P.2d 969 (1941).

Related References:
Liability of employer for negligent operation of motor vehicle by automobile salesman, 53 A.L.R.2d 631.

n4 Southern Nat. Ins. Co. v. Williams, 224 Ark. 938, 277 S.W.2d 487 (1955); American Family Life Assur. Co. v. Welch, 120 Ga. App. 334, 170 S.E.2d 703 (1969); Jokisch v. Life & Cas. Ins. Co. of Tenn., 424 S.W.2d 111 (Mo. Ct. App. 1967); Little v. Poole, 11 N.C. App. 597, 182 S.E.2d 206 (1971); Commonwealth Life Ins. Co. v. Gay, 1961 OK 186, 365 P.2d 149 (Okla. 1961).

Related References:

Liability of insurance company for negligent operation of automobile by insurance agent or broker, 36 A.L.R.2d 261.

n5 Hoffman v. Lamb Knit Goods Co., 37 F. Supp. 188 (W.D. Mich. 1940); Kickham v. Carter, 335 S.W.2d 83 (Mo. 1960); Haykl v. Drees, 247 A.D. 90, 286 N.Y.S. 38 (4th Dep't 1936).

n6 McCraner v. Nunn, 129 Kan. 802, 284 P. 603 (1930); Henry v. Condit, 152 Or. 348, 53 P.2d 722, 103 A.L.R. 131 (1936).

n7 American Family Life Assur. Co. v. Welch, 120 Ga. App. 334, 170 S.E.2d 703 (1969); Jaramillo v. Thomas, 75 N.M. 612, 409 P.2d 131 (1965); Webb v. Justice Life Ins. Co., 563 S.W.2d 347 (Tex. Civ. App. Dallas 1978).

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8 Am Jur 2d Automobiles and Highway Traffic § 696

§ 696 Requirement that employee have employer's permission to use vehicle

One is not liable under the doctrine of respondeat superior for the negligent operation of a motor vehicle owned by the driver, even though the relationship of employer and employee exists between such two persons, unless the vehicle was, at the time of the accident, being used by the driver in the scope of his or her employment,[n1] and with the employer's express or implied permission.[n2] In the absence of express or implied authority to use the vehicle, the employer is not liable for its negligent operation,[n3] even though the employee was engaged in work for the employer's benefit.[n4] However, if the employee is engaged in a special errand or mission on behalf of the employer, the employer may be liable for the employee's negligence in operating the vehicle under the doctrine of respondeat superior.[n5] Moreover, where the duties to be performed are such that the employer should have realized that the use of a motor vehicle is reasonably necessary for efficiency, and does not supply a vehicle, the employee generally is deemed to have implied authority to supply the necessary transportation by using his or her own motor vehicle.[n6]

FOOTNOTES:

n1 § 697.

n2 Barnes v. Towlson, 405 A.2d 137 (Del. Super. Ct. 1979) (wherein the employee was required to use own car for work); McAllister v. Miami Daily News, 154 Fla. 370, 17 So. 2d 613 (1944); National Convenience Stores, Inc. v. Fantauzzi, 94 Nev. 655, 584 P.2d 689 (1978); Ellis v. American Service Co., 240 N.C. 453, 82 S.E.2d 419 (1954); Gillespie v. Ford, 225 S.C. 104, 81 S.E.2d 44 (1954).

n3 Luquire Ins. Co. v. McCalla, 244 Ala. 479, 13 So. 2d 865 (1943); Swanbeck v. Hubbard, 336 Ill. App. 384, 84 N.E.2d 159 (4th Dist. 1949).

n4 Henkelmann v. Metropolitan Life Ins. Co., 180 Md. 591, 26 A.2d 418 (1942); Nies v. Trinidad Asphalt Mfg. Co., 286 S.W.2d 70 (Mo. Ct. App. 1955); Gittelman v. Hoover Co., 337 Pa. 242, 10 A.2d 411 (1940).

Related References:
Employer's liability for negligence of employee in driving his or her own automobile, 27 A.L.R.5th 174.

n5 Evington v. Forbes, 742 F.2d 834 (4th Cir. 1984); Anderson v. Pacific Gas & Electric Co., 14 Cal. App. 4th 254, 17 Cal. Rptr. 2d 534 (1st Dist. 1993); Sussman v. Florida East Coast Properties, Inc., 557 So. 2d 74 (Fla. Dist. Ct. App. 3d Dist. 1990); Jones v. Aldrich Co., Inc., 188 Ga. App. 581, 373 S.E.2d 649 (1988); Pyne v. Witmer, 129 Ill. 2d 351, 135 Ill. Dec. 557, 543 N.E.2d 1304 (1989); Michaleski v. Western Preferred Cas. Co., 472 So. 2d 18 (La. 1985); Studebaker v. Nettie's Flower Garden, Inc., 842 S.W.2d 227 (Mo. Ct. App. E.D. 1992);

Connell v. Carl's Air Conditioning, 97 Nev. 436, 634 P.2d 673 (1981); Bazan v. Bohne, 144 A.D.2d 168, 534 N.Y.S.2d 496 (3d Dep't 1988); Taylor v. Pate, 1993 OK CIV APP 79, 859 P.2d 1124, 85 Ed. Law Rep. 1219 (Ct. App. Div. 1 1993); Van Osdol v. Knappton Corp., 91 Or. App. 499, 755 P.2d 744 (1988); Direkly v. ARA Devcon, Inc., 866 S.W.2d 652 (Tex. App. Houston 1st Dist. 1993), writ dismissed w.o.j., (Apr. 13, 1994).

n6 Larkins v. Utah Copper Co., 169 Or. 499, 127 P.2d 354 (1942); Belles v. Mallory, 369 Pa. 216, 85 A.2d 129 (1952).

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8 Am Jur 2d Automobiles and Highway Traffic § 697

§ 697 Scope of employment, generally

An employer is not liable under the doctrine of respondeat superior for the negligent operation by an employee of a motor vehicle owned by the employee unless at the time of the accident the employee was acting within the scope of employment.[n1] The mere fact that the driver was traveling to work at the time of the accident is insufficient to justify the conclusion that the employee was acting within the scope of employment,[n2] even though the employee was also doing something in the line of his or her employment duties where the service to the employer is incidental to the trip to work.[n3]

Where, however, the trip to work can be regarded as part of the employee's employment duties,[n4] or where the employee combined business duties with the trip to work,[n5] or where the employee is furthering the employer's business and is being compensated for the time,[n6] the employee could be found to have been acting within the scope of employment. Where, however, it is neither necessary nor within the contemplation of the parties that the employee would be required to use his or her own vehicle in the performance of the duties of the job, the employer is not, as a matter of law, liable for the employee's negligence in operating the vehicle.[n7] Also, the employer is not liable where the employee is on a strictly personal errand at the time of the accident.[n8]

Where the employee's duties are not performed at any fixed location, but rather he or she is required to travel to various places, it is more likely that the travel to work will be deemed an incident of the employment and that the employer will be liable for the negligent operation of the employee's motor vehicle while so traveling,[n9] although the contrary result has been reached.[n10]

The mere fact that while traveling in his or her own motor vehicle an employee performs, or intends to perform, acts intended to produce a business benefit for the employer, does not justify the conclusion that the driver is acting in the scope of employment, where the business purpose is incidental to the primary personal purpose of the trip.[n11] However, under the circumstances the business purpose of the employee, although combined with a personal errand, may be sufficient to justify the conclusion that the employee is acting within the scope of his or her employment.[n12] In any event, even if it appears that an employee was initially on an errand in the scope of employment, the employer may be found not liable on the ground that, at the time of the accident, the employee was deviating from the course of employment on a personal errand.[n13] A finding that the employee was acting in the scope of employment may be justified, however, if at the time of the accident, the employee had returned to his or her employment and resumed a business purpose.[n14]

FOOTNOTES:

n1 United Broth. of Carpenters and Joiners of America, Local Union No. 55 v. Salter, 114 Colo. 513, 167 P.2d 954 (1946); Torelli v. City of New York, 176 A.D.2d 119, 574 N.Y.S.2d 5 (1st Dep't 1991); Miller v. Reiman-Wuerth Co., 598 P.2d 20 (Wyo. 1979).

n2 Garcia v. U.S., 88 F.3d 318 (5th Cir. 1996); Pitt v. Matola, 890 F. Supp. 89 (N.D. N.Y. 1995); Dillman v. Great Dane Trailers, Inc., 649 N.E.2d 665 (Ind. Ct. App. 1995); Washington v. Reed, 624 So. 2d 465 (La. Ct. App. 2d Cir. 1993); Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995); Logan v. Phillips, 891 S.W.2d 542 (Mo. Ct. App. E.D. 1995); Shumway v. Geneva General Hosp., 233 A.D.2d 868, 649 N.Y.S.2d 288 (4th Dep't 1996); Hooper v. C.M. Steel, Inc., 94 N.C. App. 567, 380 S.E.2d 593 (1989); Faber v. Metalweld, Inc., 89 Ohio App. 3d 794, 627 N.E.2d 642 (8th Dist. Cuyahoga County 1992); Direkly v. ARA Devcon, Inc., 866 S.W.2d 652 (Tex. App. Houston 1st Dist. 1993), writ dismissed w.o.j., (Apr. 13, 1994); Wilson v. H.E. Butt Grocery Co., 758 S.W.2d 904 (Tex. App. Corpus Christi 1988).

Related References:
Employer's liability for negligence of employee in driving his or her own automobile, 27 A.L.R.5th 174.

n3 S. & W. Const. Co. v. Bugge, 194 Miss. 822, 13 So. 2d 645, 146 A.L.R. 1190 (1943).

n4 Largey v. Intrastate Radiotelephone, Inc., 136 Cal. App. 3d 660, 186 Cal. Rptr. 520 (2d Dist. 1982); Clark v. Hoff Bros. Refuse Corp., 72 A.D.2d 936, 422 N.Y.S.2d 219 (4th Dep't 1979); Van Osdol v. Knappton Corp., 91 Or. App. 499, 755 P.2d 744 (1988).

n5 Belanger v. Pouliot, 82 R.I. 330, 107 A.2d 426 (1954).

n6 Mata v. Andrews Transport, Inc., 900 S.W.2d 363 (Tex. App. Houston 14th Dist. 1995).

n7 Ferrell v. Martin, 276 Pa. Super. 175, 419 A.2d 152 (1980).

n8 Bailey v. Filco, Inc., 48 Cal. App. 4th 1552, 56 Cal. Rptr. 2d 333 (3d Dist. 1996); Aubrey Silvey Enterprises, Inc. v. Bohannon, 182 Ga. App. 738, 356 S.E.2d 693 (1987); Casimiro v. Thayer, 229 A.D.2d 958, 645 N.Y.S.2d 243 (4th Dep't 1996); Swartzlander v. Forms-Rite Business Forms & Printing Service, Inc., 174 A.D.2d 971, 572 N.Y.S.2d 537 (4th Dep't 1991), order aff'd, 78 N.Y.2d 1060, 576 N.Y.S.2d 214, 582 N.E.2d 597 (1991).

n9 Smith v. Fine, 351 Mo. 1179, 175 S.W.2d 761 (1943); Rice v. Garl, 2 Wash. 2d 403, 98 P.2d 301 (1940).

An employer was liable for an employee's negligent driving his own vehicle to a dock from which the employee expected to depart to work a special shift at the employer's request. Orgeron on Behalf of Orgeron v. McDonald, 639 So. 2d 224 (La. 1994).

n10 Fidelity & Cas. Co. of N. Y. v. Carpenter, 234 F.2d 528 (5th Cir. 1956); Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995) (wherein employee was not actually performing any designated job responsibilities at time of accident); Bunch v. Standard Oil Co. of California, 144 Or. 1, 23 P.2d 328 (1933).

n11 Slattery v. O'Meara, 120 Conn. 465, 181 A. 610 (1935); Railway Express Agency v. Bonnell, 218 Ind. 607, 33 N.E.2d 980 (1941), re-h'g denied, 218 Ind. 607, 34 N.E.2d 927 (1941); Kelleher v. State Mut. Life Assur. Co. of America, 51 A.D.2d 872, 380 N.Y.S.2d 146 (4th Dep't 1976).

n12 Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); Van Vranken v. Fence-Craft, 91 Idaho 742, 430 P.2d 488 (1967) (holding that scope of employment is a jury question).

n13 Gordoy v. Flaherty, 9 Cal. 2d 716, 72 P.2d 538 (1937); Kirkpatrick v. McCarty, 112 Colo. 588, 152 P.2d 994 (1944).

n14 Loper v. Morrison, 23 Cal. 2d 600, 145 P.2d 1 (1944); Prince v. Atchison, T. and S. F. Ry. Co., 76 Ill. App. 3d 898, 32 Ill. Dec. 362, 395 N.E.2d 592 (3d Dist. 1979) (rejected by, Bertrand v. Sioux City Grain Exchange, 419 N.W.2d 402 (Iowa 1988)) (wherein evidence of re-entry of scope of employment was insufficient); Hoffer v. Burd, 78 N.D. 278, 49 N.W.2d 282 (1951).

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8 Am Jur 2d Automobiles and Highway Traffic § 698

§ 698 Going to and from meals

Generally, an employee driving his or her own motor vehicle to a place for eating a meal is not acting in the scope of employment, even though at the time, the employee is carrying property belonging to the employer or traveling with the intention of resuming his or her duties after eating. [n1]

Observation: Where the circumstances of employment make it necessary to the employee to travel for a meal, the employer may be held liable for the employee's negligent use of a vehicle while so traveling, such as where the employee lives at the jobsite for a period of several days and there is no food service at the jobsite. [n2]

Also, where the employee is returning in his or her own motor vehicle from the place at which he or she has eaten a meal, the employee is generally regarded as not acting in the scope of employment until he or she reaches the place of employment, [n3] although the employee will be so regarded where he or she performs some business duties in connection with the trip. [n4]

FOOTNOTES:

n1 Marcel v. Pool Co., 5 F.3d 81 (5th Cir. 1993); Newsome v. Mead Corp., 674 So. 2d 581 (Ala. Civ. App. 1995); Tryer v. Ojai Valley School, 9 Cal. App. 4th 1476, 12 Cal. Rptr. 2d 114, 77 Ed. Law Rep. 357 (2d Dist. 1992); Richardson v. Glass, 114 N.M. 119, 835 P.2d 835 (1992).

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n2 Michaleski v. Western Preferred Cas. Co., 472 So. 2d 18 (La. 1985).

n3 Burns v. Wheeler, 103 Ariz. 525, 446 P.2d 925 (1968); Gittelman v. Hoover Co., 337 Pa. 242, 10 A.2d 411 (1940).

n4 Norlander v. Illinois Nat. Ins. Co., 672 So. 2d 1066 (La. Ct. App. 3d Cir. 1996), writ granted, judgment set aside on other grounds, 680 So. 2d 1166 (La. 1996).

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§ 699 Returning from work

Generally, an employee traveling from work to home or another personal destination after completing work is not acting in the scope of employment so as to charge the employer for the employee's negligence in the operation of the latter's own motor vehicle.[n1] Whether the employee left the most direct route home for a nonbusiness purpose is a factor indicating that the employee was not still working while traveling home,[n2] although it is not always a determinative factor.[n3] The fact that an employee traveling home has further duties to perform en route or after arriving at home may support the conclusion that the employment had not terminated when he or she started home,[n4] although not in every case.[n5] Further, the fact that an employee receives extra compensation as recompense for driving to and from work does not render the employer liable for the employee's negligence while so driving where travel was not performed as part of the employee's employment duties.[n6]

FOOTNOTES:

n1 Garcia v. U.S., 88 F.3d 318 (5th Cir. 1996); Pitt v. Matola, 890 F. Supp. 89 (N.D. N.Y. 1995); Anderson v. Pacific Gas & Electric Co., 14 Cal. App. 4th 254, 17 Cal. Rptr. 2d 534 (1st Dist. 1993); Washington v. Reed, 624 So. 2d 465 (La. Ct. App. 2d Cir. 1993); Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995); Logan v. Phillips, 891 S.W.2d 542 (Mo. Ct. App. E.D. 1995); Taylor v. Pate, 1993 OK CIV APP 79, 859 P.2d 1124, 85 Ed. Law Rep. 1219 (Ct. App. Div. 1 1993); Direkly v. ARA Devcon, Inc., 866 S.W.2d 652 (Tex. App. Houston 1st Dist. 1993), writ dismissed w.o.j., (Apr. 13, 1994).

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n2 Stevens v. Deaton Truck Line, 256 Ala. 229, 54 So. 2d 464 (1951); Paul v. Faricy, 228 Minn. 264, 37 N.W.2d 427 (1949).

n3 Van Horn v. Gibson, 133 N.J.L. 406, 44 A.2d 497 (N.J. Sup. Ct. 1945); Larkins v. Utah Copper Co., 169 Or. 499, 127 P.2d 354 (1942).

n4 Hinman v. Westinghouse Elec. Co., 2 Cal. 3d 956, 88 Cal. Rptr. 188, 471 P.2d 988 (1970); Huntsinger v. Glass Containers Corp., 22 Cal. App. 3d 803, 99 Cal. Rptr. 666 (4th Dist. 1972); Alsay-Pippin Corp. v. Lumert, 400 So. 2d 834 (Fla. Dist. Ct. App. 4th Dist. 1981); Jones v. Aldrich Co., Inc., 188 Ga. App. 581, 373 S.E.2d 649 (1988); Sloma v. Pfluger, 125 Ill. App. 2d 347, 261 N.E.2d 323 (2d Dist. 1970).

n5 Felix v. Asai, 192 Cal. App. 3d 926, 237 Cal. Rptr. 718 (5th Dist. 1987); Shaffer v. Thull, 147 Neb. 947, 25 N.W.2d 755 (1947); Koscelek v. Lucas, 157 Pa. Super. 548, 43 A.2d 550 (1945); Finsland v. Phillips Petroleum Co., 57 Wis. 2d 267, 204 N.W.2d 1 (1973).

n6 Beard v. Brown, 616 P.2d 726 (Wyo. 1980).

SUPPLEMENT:

Cases

Employee of property management company was an insured under the company's commercial general liability (CGL) policy for purposes of employee's act of driving an automobile to work that employee also used to visit job sites, under policy language defining "insured" to include employees only for acts within the scope of their employment while performing duties related to the conduct of the business, and thus employee's collision was within the policy's exclusion for bodily injury or property damage "arising out of the use of any auto owned or operated by any insured," since company benefited from employee bringing his vehicle to work for use in the business; employee was within the "required vehicle" exception to the "going and coming" rule. Sprinkles v. Associated Indem. Corp., 188 Cal. App. 4th 69, 114 Cal. Rptr. 3d 887 (2d Dist. 2010).

Intoxicated motorist was not acting within scope of his employment at time motorist negligently struck and injured accident victim, as required for motorist's employer to be liable for victim's injuries under the doctrine of respondeat superior, as motorist was driving home from restaurant where he had met with his supervisor when the accident occurred, at which point motorist was no longer acting on behalf of or under the direction or control of his employer. Lev v. Beverly Enterprises-Massachusetts, Inc., 457 Mass. 234, 929 N.E.2d 303 (2010).

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8 Am Jur 2d Automobiles and Highway Traffic § 700

§ 700 Driving to or from meetings, banquets, or conventions

Whether an employee is acting in the scope of employment in traveling in his or her own motor vehicle to or from functions such as meetings, conventions, or banquets, having some connection with the employer's business but not constituting a regular part of its operations, depends primarily on whether the attendance at such an affair is a part of the employee's business duties; if it is, the employee is generally considered to be acting in the scope of employment in so traveling.[n1] Thus, for example, an employer may be liable for the negligence of an employee while returning from an impromptu company party after work, where the company's purpose in having such informal parties was to improve morale and relations between labor and management, because under such circumstances, the employee can be said to be using his or her vehicle in the scope of employment.[n2]

An employer is not liable under the doctrine of respondeat superior for injuries caused by an intoxicated employee who left an employer-sponsored party and was involved in an accident, where the employer would otherwise qualify as a social host exempt from liability and where other employees made a conscious attempt to insure that the intoxicated employee did not drive.[n3]

FOOTNOTES:

n1 Dickinson v. Edwards, 105 Wash. 2d 457, 716 P.2d 814 (1986) (rejected by, Bruce v. Charles Roberts Air Conditioning, 166 Ariz. 221, 801 P.2d 456 (Ct. App. Div. 1 1990)); Boynton v. McKales, 139 Cal. App. 2d 777, 294 P.2d 733 (1st Dist. 1956); Gallaher v. Ricketts, 191 So. 713 (La. Ct. App., Orleans 1939); Wood v. H. W. Gossard Co., 204 Md. 177, 103 A.2d 130 (1954); Long v. McKay, 295 Mich. 494, 295 N.W. 239 (1940); Davis v. Pitt Pub. Co., 324 Pa. 449, 188 A. 291 (1936).

Related References:
Employer's liability for negligence of employee in driving his or her own automobile, 27 A.L.R.5th 174.

n2 Wong-Leong v. Hawaiian Independent Refinery, Inc., 76 Haw. 433, 879 P.2d 538 (1994).

n3 Mulvihill v. Union Oil Co. of California, 859 P.2d 1310 (Alaska 1993).

SUPPLEMENT:

Cases

Intoxicated motorist was not acting within scope of his employment at time motorist negligently struck and injured accident victim, as required for motorist's employer to be liable for victim's injuries under the doctrine of respondeat superior, as motorist was driving home from restaurant where he had met with his supervisor when the accident occurred, at which point motorist was no longer acting on behalf of or under the direction or control of his employer. Lev v. Beverly Enterprises-Massachusetts, Inc., 457 Mass. 234, 929 N.E.2d 303 (2010).

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8 Am Jur 2d Automobiles and Highway Traffic § 701

§ 701 Traveling between jobs or assignments

Where an employee travels, in his or her own motor vehicle, between assignments of some permanence at widely separated geographical points, the employee is usually not held to be acting within the scope of his or her employment,[n1] although there are a few cases which have held to the contrary.[n2] Where the employment requires the employee to travel regularly from job to job in the course of his or her work, it is more likely that the employee will be deemed to be acting in the course of employment in so traveling in his or her own motor vehicle, at least where the employer failed to provide other transportation and consented to the use of the employee's vehicle.[n3]

An employee who is driving from one customer to another generally is acting within the course of employment.[n4]

FOOTNOTES:

n1 Cooner v. U.S., 276 F.2d 220 (4th Cir. 1960); U.S. v. Eleazer, 177 F.2d 914 (4th Cir. 1949); McVicar v. Union Oil Co., 138 Cal. App. 2d 370, 292 P.2d 48 (1st Dist. 1956); Westinghouse Elec. Corp. v. Scott, 132 Ga. App. 245, 207 S.E.2d 705 (1974).

Related References:
Employer's liability for negligence of employee in driving his or her own automobile, 27 A.L.R.5th 174.

n2 Heintz v. Iowa Packing Co., 222 Iowa 517, 268 N.W. 607 (1936); Webster v. Mountain States Telephone & Telegraph Co., 108 Mont. 188, 89 P.2d 602 (1939).

n3 Hogan v. City of Chicago, 319 Ill. App. 531, 49 N.E.2d 861 (1st Dist. 1943); Rampi v. Vevea, 229 Minn. 11, 38 N.W.2d 297 (1949).

n4 Nugent v. Curry, 908 F. Supp. 309 (D. Md. 1995).

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8 Am Jur 2d Automobiles and Highway Traffic § 702

§ 702 Where other transportation furnished or directed to be used

Where an employee uses his or her own motor vehicle in furtherance of the employer's business, but without the latter's consent, and at a time when the employer has provided other adequate means of transportation, the employee is acting outside the scope of employment and the employer is not liable for the employee's negligent operation of the motor vehicle.[n1] An employee is not acting within the scope of employment by using his or her own motor vehicle after having been directed by the employer to proceed by other means and specifically forbidden by the employer to drive a motor vehicle.[n2] However, an employee who is furnished particular transportation for use in his or her work may, under some circumstances, be found to be acting in the scope of employment in using his or her own motor vehicle, especially where the employer consented to such substitution.[n3]

FOOTNOTES:

n1 Dr. Pepper Bottling Co. of Kentucky v. Hazelip, 284 Ky. 333, 144 S.W.2d 798 (1940); Dunn v. Campo, 179 So. 102 (La. Ct. App., Orleans 1938).

Related References:
Employer's liability for negligence of employee in driving his or her own automobile, 27 A.L.R.5th 174.

n2 W.U. Tel. Co. v. Hinson, 191 Ark. 617, 87 S.W.2d 66 (1935); Roberts v. Magnolia Petroleum Co., 142 S.W.2d 315 (Tex. Civ. App. Beaumont 1940), writ refused, 135 Tex. 289, 143 S.W.2d 79 (1940).

n3 Cumming v. Automobile Crank Shaft Corp., 232 Mich. 158, 205 N.W. 133 (1925); Stevens v. Moore, 211 S.C. 498, 46 S.E.2d 73 (1948).

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8 Am Jur 2d Automobiles and Highway Traffic § 703

§ 703 Generally

Generally, an occupant of a motor vehicle other than the driver is not liable for injury to a third person due to the negligence of the driver,[n1] unless that person is the owner of the vehicle or has the right to control that vehicle; where the passenger neither owns the car nor hires the driver, the driver has the last word and is the only one who could prevent the injury by his decision whether, or how, to drive.[n2] Liability may exist where the driver was in the occupant's employ,[n3] where the passenger failed to exercise due care for his or her safety,[n4] or where the driver and the occupant were engaged in a joint enterprise.[n5]

However, a guest may be liable for the consequences of the driver's negligent operation of a motor vehicle, where the guest directs or encourages the negligent act, or personally cooperates therein,[n6] or distracts the driver,[n7] but such a passenger is not liable to a driver's estate as a contributing tortfeasor because the driver is not a third party.[n8]

Caution: At least one court has held that a passenger owes no duty to third parties to refrain from distracting the driver.[n9]

FOOTNOTES:

n1 Minor v. Mapes, 102 Ark. 351, 144 S.W. 219 (1912); T.H. v. State, 554 So. 2d 589 (Fla. Dist. Ct. App. 3d Dist. 1989); Hudkins v. Egan, 364 Ill. App. 3d 587, 301 Ill. Dec. 486, 847 N.E.2d 145 (2d Dist. 2006); Handrow v. Cox, 575 N.E.2d 611 (Ind. 1991); Wemett v. Schueller, 545 N.W.2d 1 (Iowa Ct. App. 1995); In re Estate of Infant Fontaine, 128 N.H. 695, 519 A.2d 227 (1986).

Related References:
Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

n2 Hudkins v. Egan, 364 Ill. App. 3d 587, 301 Ill. Dec. 486, 847 N.E.2d 145 (2d Dist. 2006).

n3 § 662.

n4 Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

n5 § 712.

n6 Anthony v. Kiefner, 96 Kan. 194, 150 P. 524 (1915).

n7 Lego v. Schmidt, 805 P.2d 1119 (Colo. Ct. App. 1990); Hetterle v. Chido, 155 Mich. App. 582, 400 N.W.2d 324 (1986).

n8 Hudkins v. Egan, 364 Ill. App. 3d 587, 301 Ill. Dec. 486, 847 N.E.2d 145 (2d Dist. 2006).

n9 Shelter Mut. Ins. Co. v. White, 930 S.W.2d 1 (Mo. Ct. App. W.D. 1996).

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8 Am Jur 2d Automobiles and Highway Traffic § 704

§ 704 Liability of licensed driver accompanying learner

A licensed driver accompanying a learner is not liable for the negligence merely of the learner,[n1] but may be liable if he or she is instructing the learner and fails to exercise reasonable care as an instructor.[n2]

FOOTNOTES:

n1 Sardo v. Herlihy, 143 Misc. 397, 256 N.Y.S. 690 (Sup 1932); Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

n2 Kostecky v. Henry, 113 Cal. App. 3d 362, 170 Cal. Rptr. 197 (4th Dist. 1980); Pierson v. Dayton, 168 A.D.2d 173, 572 N.Y.S.2d 142 (4th Dep't 1991); Public Service Mut. Ins. Co. v. Slating, 113 Misc. 2d 172, 448 N.Y.S.2d 349 (Sup 1982).

As to matters relating to the liability of the owner of a motor vehicle who is an occupant while it is being driven by another for the negligent operation of the vehicle, see § 616.

As to the liability of a passenger giving a student driver instruction, see § 705.

Related References:
Liability, for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

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b. Imputing Driver's Negligence to Occupant of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 705

§ 705 Generally

The negligence of the driver of a motor vehicle is not imputable to an occupant thereof, other than the owner,[n1] so as to prevent or diminish a recovery by the occupant for damages from a negligent third person, unless the occupant had some control or authority over the operation of the vehicle,[n2] was engaged in a joint enterprise with the driver,[n3] or otherwise participated in the negligent acts.[n4] A jury question may be presented as to whether an agency relationship exists between a student driver and the passenger who is providing instructions, where the primary purpose of the trip during which an accident occurred was to provide the student driver with instructions and driving experience.[n5]

It makes no difference that the occupant was riding uninvited and without the knowledge of the driver of the vehicle,[n6] or upon the invitation of the absent owner of the vehicle,[n7] or as a passenger for hire.[n8]

Even though the negligence of the driver of a motor vehicle is not imputable to an occupant under the circumstances, the occupant cannot recover from a third person for injuries sustained in an accident where the driver's negligence was the sole proximate cause of the accident,[n9] or where the occupant was guilty of independent negligence which proximately contributed to the injury.[n10] Where the actions of a automobile passenger that cause an accident are not foreseeable, there generally is no negligence attributable to the driver; however, when actions of a passenger that interfere with the driver's safe operation of the motor vehicle are foreseeable, the failure to prevent such conduct may be a breach of the driver's duty to either other passengers or to the public.[n11]

The negligence of the driver of a motor vehicle is not imputable to a guest or passenger therein so as to bar or diminish recovery by the latter in an action against the former.[n12]

FOOTNOTES:

n1 § 659.

n2 Rayfield v. Lawrence, 253 F.2d 209, 68 A.L.R.2d 868 (4th Cir. 1958); Hinkle v. Union Transfer Co., 229 F.2d 403 (10th Cir. 1955); Hudkins v. Egan, 364 Ill. App. 3d 587, 301 Ill. Dec. 486, 847 N.E.2d 145 (2d Dist. 2006); Angell v. Hester, 186 Kan. 43, 348 P.2d 1050 (1960); Illingworth v. Madden, 135 Me. 159, 192 A. 273, 110 A.L.R. 1090 (1937); Bessey v. Salemme, 302 Mass. 188, 19 N.E.2d 75, 123 A.L.R. 1156 (1939); Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105, 163 A.L.R. 697 (1946); Woodman v. Peck, 90 N.H. 292, 7 A.2d 251, 122 A.L.R. 1402 (1939); Caperon v. Tuttle, 100 Utah 476, 116 P.2d 402, 135 A.L.R. 1399 (1941).

n3 § 712.

n4 Bresee v. Los Angeles Traction Co., 149 Cal. 131, 85 P. 152 (1906); Chapman v. Gulf, M. & O. R. Co., 337 Ill. App. 611, 86 N.E.2d 552 (3d Dist. 1949).

Related References:
Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Proof that nonowner-passenger furnished intoxicants to driver known to be intoxicated. Liability of Motor Vehicle Passenger for Accident, 50 Am. Jur. Proof of Facts 2d 677 §§ 14 to 20.

Proof that owner-passenger failed to control or warn speeding driver during commute. Liability of Motor Vehicle Passenger for Accident, 50 Am. Jur. Proof of Facts 2d 677 §§ 21 to 24.

n5 Hoeft v. Friedel, 70 Wis. 2d 1022, 235 N.W.2d 918, 90 A.L.R.3d 1316 (1975).

As to the liability of a licensed driver accompanying a learner, see § 704.

Related References:
Student-driver's negligence as imputable to teacher-passenger, 90 A.L.R.3d 1329.

n6 Cincinnati St. R. Co. v. Wright, 54 Ohio St. 181, 43 N.E. 688 (1896).

n7 St. Louis & S.F.R. Co. v. Bell, 1916 OK 667, 58 Okla. 84, 159 P. 336 (1916).

n8 Adams v. Hilton, 270 Ky. 818, 110 S.W.2d 1088 (1937); Lachow v. Kimmich, 263 Mich. 1, 248 N.W. 531, 90 A.L.R. 626 (1933); Hofrichter v. Kiewit-Condon-Cunningham, 147 Neb. 224, 22 N.W.2d 703, 164 A.L.R. 1256 (1946); Stevens v. Nurenburg, 117 Vt. 525, 97 A.2d 250 (1953).

n9 Drury v. Franke, 247 Ky. 758, 57 S.W.2d 969, 88 A.L.R. 917 (1933); Nelson v. City of Spokane, 45 Wash. 31, 87 P. 1048 (1906).

n10 Central of Georgia Ry. Co. v. Watkins, 37 F.2d 710 (C.C.A. 5th Cir. 1930); Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105, 163 A.L.R. 697 (1946); Smith v. Atlantic & Y. Ry. Co., 200 N.C. 177, 156 S.E. 508 (1931); Rodgers v. Saxton, 305 Pa. 479, 158 A. 166, 80 A.L.R. 280 (1931).

As to the negligence of guests in a motor vehicle, generally, see §§ 552 to 590.

n11 Pipher v. Parsell, 2007 WL 1746905 (Del. 2007).

n12 Vernon v. Gentry, 334 S.W.2d 266, 79 A.L.R.2d 1 (Ky. 1960).

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8 Am Jur 2d Automobiles and Highway Traffic § 706

§ 706 Where occupant has control over vehicle's operation

The negligence of the driver of a motor vehicle is imputable to an occupant so as to bar or diminish recovery by the latter for injuries sustained from a third person, where the occupant has some control or authority over the operation of the vehicle.[n1] The test is whether the occupant has a right to control or share in the control of the operation of the vehicle,[n2] and if the passenger does have such right, the driver's negligence may be imputed to the passenger even if the passenger is not exercising his or her authority at the time.[n3] The mere circumstance, however, that the occupant has purchased gasoline for the vehicle is not a sufficient basis for a finding that he or she has control of the vehicle.[n4] Similarly, the mere giving of direction's to the driver does not establish that the passenger has control over the vehicle.[n5]

FOOTNOTES:

n1 Atchison, T. & S.F. Ry. Co. v. McNulty, 285 F. 97 (C.C.A. 8th Cir. 1922); Heiserman v. Aikman, 163 Kan. 700, 186 P.2d 252 (1947); Riggs v. F. Strauss & Son, 2 So. 2d 501 (La. Ct. App. 2d Cir. 1941); Applebee v. Ross, 48 S.W.2d 900, 82 A.L.R. 288 (Mo. 1932); Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006); Renich v. Klein, 230 Wis. 123, 283 N.W. 288 (1939).

n2 Chesapeake & Potomac Telephone Co. of Baltimore City v. Merriken, 147 Md. 572, 128 A. 277, 41 A.L.R. 763 (1925); Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105, 163 A.L.R. 697 (1946); Rodgers v. Saxton, 305 Pa. 479, 158 A. 166, 80 A.L.R. 280 (1931).

n3 Crawford v. McElhinney, 171 Iowa 606, 154 N.W. 310 (1915); Riggs v. F. Strauss & Son, 2 So. 2d 501 (La. Ct. App. 2d Cir. 1941).

n4 Russell v. Chicago, R.I. & P.R. Co., 251 Iowa 839, 102 N.W.2d 881 (1960).

n5 Benson v. Sorrell, 627 N.E.2d 866 (Ind. Ct. App. 1994).

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8 Am Jur 2d Automobiles and Highway Traffic § 707

§ 707 Marital relationship between driver and occupant

The general rule that as between the driver of a motor vehicle and an occupant therein, the negligence of the former is not imputable to the latter so as to bar or diminish recovery against a third person whose concurrent negligence caused an injury to the occupant,[n1] is not changed by the fact that the driver and the occupant are married to each other.[n2] The negligence of the driver of a motor vehicle is not imputable to the spouse who is riding as a passenger, in the absence of some element of control or authority over the operation of the vehicle by such spouse,[n3] and will not prevent the passenger/spouse from holding a third person liable for injuries incurred by reason of the concurring negligence of the driver/spouse and such third person.[n4] A person, when traveling in a motor vehicle driven by and under the control of his or her spouse, is, with reference to contributory negligence, in no different position from that which such passenger would occupy if the driver of the vehicle had been a person other than the spouse of such passenger.[n5] It is only when the driver/spouse is acting as agent for the passenger/spouse in the operation of the vehicle,[n6] when they are engaged in a joint enterprise,[n7] or when the passenger/spouse otherwise has some right of control over the operation of the vehicle[n8] that the negligence of the driver is imputable to the passenger/spouse so as to defeat or diminish recovery by such passenger for injuries sustained as a result of the concurrent negligence of a third person.

FOOTNOTES:

n1 § 705.

n2 Barton v. Messmore, 122 Cal. App. 2d 813, 265 P.2d 949, 38 A.L.R.2d 138 (2d Dist. 1954); Snook v. Long, 241 Iowa 665, 42 N.W.2d 76, 21 A.L.R.2d 1 (1950); Dippert v. Sohl, 74 S.D. 236, 51 N.W.2d 699, 29 A.L.R.2d 1 (1952); Painter v. Lingon, 193 Va. 840, 71 S.E.2d 355 (1952); Chandler v. Dugan, 70 Wyo. 439, 251 P.2d 580 (1952).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1409 (Instruction -- Imputed negligence -- Members of family -- Husband and wife).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1410 (Instruction -- Imputed negligence -- Members of family -- Husband and wife -- Negligence not imputed).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1411 (Instruction -- Imputed negligence -- Members of family -- Husband and wife -- Negligence not imputed -- With statement of duty of ordinary care).

n3 Ingersoll v. Mason, 254 F.2d 899 (8th Cir. 1958); Ross v. British Yukon Navigation Co., 13 Alaska 251, 188 F.2d 779 (9th Cir. 1951); LaMonte v. De Diego, 274 So. 2d 254 (Fla. Dist. Ct. App. 2d Dist. 1973); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943); Dippert v. Sohl, 74 S.D. 236, 51 N.W.2d 699, 29 A.L.R.2d 1 (1952); Blondin v. Carr, 121 Vt. 157, 151 A.2d 121 (1959).

n4 Woodard v. St. Louis-San Francisco Ry. Co., 418 F.2d 1305 (5th Cir. 1969); Gilmore v. Morrison, 314 So. 2d 5 (Fla. Dist. Ct. App. 4th Dist. 1975).

n5 Vitale v. Checker Cab Co., 166 La. 527, 117 So. 579, 59 A.L.R. 148 (1928) (overruled by, Callais v. Allstate Ins. Co., 334 So. 2d 692 (La. 1975)).

n6 Rodgers v. Saxton, 305 Pa. 479, 158 A. 166, 80 A.L.R. 280 (1931).

n7 § 714.

n8 § 706.

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8 Am Jur 2d Automobiles and Highway Traffic § 708

§ 708 Parental or custodial relationship between driver and occupant

In accord with the general rule that in an action by or on behalf of a minor for personal injury, the negligence of the minor's parent or custodian cannot be imputed to the child;[n1] the negligence of a parent, a guardian, or a custodian of a minor child in driving a motor vehicle in which the child is riding will not be imputed to the child to prevent or diminish a recovery by the child for injuries inflicted by the negligence of a third person.[n2] However, in several jurisdictions, the negligence of the parent or custodian contributing to the injury of a child is imputed to the child so as to bar or diminish a recovery by or on behalf of the child if the child is incapable of exercising the proper degree of care.[n3] In these jurisdictions, in an action on behalf of such a child for injuries sustained in a motor vehicle accident, the negligence of his or her parent in operating the vehicle in which the child was riding will be imputed to the child,[n4] unless the child was old enough to take care of him- or herself as a passenger without custodial care.[n5]

The negligence of a child in the operation of a motor vehicle is not imputable to the child's parent riding therein, where the parent is not the owner of the vehicle,[n6] or in general control of the vehicle and the details of the journey,[n7] but the negligence of a child is imputable to an injured parent where the parent and child are engaged in a joint enterprise.[n8]

FOOTNOTES:

n1

Related References:
Am. Jur. 2d, Negligence § 1149.

n2 Burzio v. Joplin & P. Ry. Co., 102 Kan. 287, 102 Kan. 562, 171 P. 351 (1918); Northern Texas Traction Co. v. Thetford, 28 S.W.2d 906 (Tex. Civ. App. Fort Worth 1930), writ granted, (Oct. 29, 1930) and modified on other grounds, 44 S.W.2d 902 (Tex. Comm'n App. 1932); Southwestern Bell Telephone Co. v. Doell, 1 S.W.2d 501 (Tex. Civ. App. Fort Worth 1927); Gulessarian v. Madison Rys. Co., 172 Wis. 400, 179 N.W. 573, 15 A.L.R. 406 (1920).

n3

Related References:
Am. Jur. 2d, Negligence § 1152.

n4 Gallagher v. Johnson, 237 Mass. 455, 130 N.E. 174, 15 A.L.R. 411 (1921).

n5 Bessey v. Salemme, 302 Mass. 188, 19 N.E.2d 75, 123 A.L.R. 1156 (1939).

n6 § 659.

n7 Edwards v. Freeman, 34 Cal. 2d 589, 212 P.2d 883 (1949); Anderson v. Burkardt, 275 N.Y. 281, 9 N.E.2d 929 (1937).

n8 Smithson v. Dunham, 201 Kan. 455, 441 P.2d 823 (1968).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1412 (Instruction -- Imputed negligence -- Members of family -- Parent and child).

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8 Am Jur 2d Automobiles and Highway Traffic § 709

§ 709 Other family relationship between driver and occupant

The mere fact that the motor vehicle in which one was riding as a passenger or guest when injured was being driven by a relative, other than a spouse or child, does not take the case out of the general rule that the driver's negligence is not attributable to the passenger or guest so as to bar or diminish recovery by the latter from a third person who was guilty of concurrent negligence. [n1]

FOOTNOTES:

n1 Burzio v. Joplin & P. Ry. Co., 102 Kan. 287, 102 Kan. 562, 171 P. 351 (1918); Anthony v. Kiefner, 96 Kan. 194, 150 P. 524 (1915).

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8 Am Jur 2d Automobiles and Highway Traffic § 710

§ 710 Employment or agency relationship between driver and occupant

Where one driving a motor vehicle is an employee or agent of another riding therein, the negligence of the driver is generally imputable to the occupant so as to bar or diminish recovery by the latter against a third person for injuries resulting from the concurrent negligence of such third person, since the occupant is considered to have control or authority over the driver's acts.[n1] There is, however, authority to the contrary holding that the negligence of the agent or employee will not bar or diminish the recovery of the principal or employer through the doctrine of imputation of negligence where damage or injury has been caused to the principal or employer by the concurrent negligence of the employee or agent and a third party.[n2]

The negligence of a driver is not imputable to the employer/occupant where the driver is operating his or her own motor vehicle, and there is nothing in the terms and conditions of his or her employment whereby the driver has agreed to use his or her vehicle in the employer's business subject to the employer's control in the details of operation.[n3]

The agency relationship which will justify the imputation of a driver's negligence to a passenger or guest must be that of an employer and employee, and such a relationship does not arise from an ordinary carpool or "ride share"arrangement, whereby two or more persons take turns in driving their respective motor vehicles back and forth to work.[n4]

The negligence of an employee or agent in the operation of a motor vehicle is not imputable to the employer/occupant or principal/occupant so as to bar or diminish recovery by the latter against the employee or agent.[n5]

The negligence of an employer who is driving a vehicle is not ordinarily imputable to an employee who is occupying the vehicle and is engaged in the business he or she was hired to do.[n6]

FOOTNOTES:

n1 Johnson v. Battles, 255 Ala. 624, 52 So. 2d 702 (1951); Lingle v. Minneapolis & St. L. Ry. Co., 251 Iowa 1183, 104 N.W.2d 467 (1960); Smalich v. Westfall, 440 Pa. 409, 269 A.2d 476 (1970); Snyder v. Missouri Pac. R. Co., 183 Tenn. 471, 192 S.W.2d 1008 (1946).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1415 (Instruction -- Imputed negligence -- Principal and agent; employer and employee -- Contributory negligence of agent-driver imputed to principal-passenger).

n2 Weber v. Stokely-Van Camp, Inc., 274 Minn. 482, 144 N.W.2d 540 (1966).

n3 Marshall v. Nugent, 222 F.2d 604, 58 A.L.R.2d 251 (1st Cir. 1955).

n4 Bridgewater v. Wagoner, 28 Ill. App. 2d 201, 170 N.E.2d 785 (2d Dist. 1960); Angell v. Hester, 186 Kan. 43, 348 P.2d 1050 (1960).

n5 Darman v. Zilch, 56 R.I. 413, 186 A. 21, 110 A.L.R. 826 (1936).

n6 Robertson v. United Fuel & Supply Co., 218 Mich. 271, 187 N.W. 300 (1922).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
D. Persons Liable, in General
4. Occupant of Vehicle
b. Imputing Driver's Negligence to Occupant of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 711

§ 711 Where occupant is fellow employee

Where one driving a motor vehicle is a fellow employee of another riding therein, the negligence of the driver is not imputable to the occupant so as to bar or diminish recovery by the latter for injuries sustained as a result of the concurrent negligence of a third person, where the occupant has no control over the management of the vehicle.[n1] The fact that the driver and the occupant are fellow employees of a common employer, and are both acting in the scope of their employer's business and in the course of their employment, does not make them participants in a joint enterprise.[n2]

There is some authority to the effect that the negligence of one driving a motor vehicle is imputable to another employee riding therein, so as to bar or diminish recovery by the latter for injuries sustained as a result of the concurrent negligence of a third person, where the occupant has control or authority over the operation of the vehicle.[n3] However, most courts hold that negligence of the driver of a motor vehicle is not to be imputed to a fellow employee riding with the driver, even though he or she has the right to control the manner of operation of the vehicle, in the absence of a relationship which would establish the vicarious liability of the fellow employee.[n4] The right of control over the driver is not sufficient by itself to justify an application of the doctrine of vicarious liability, although it is a factor to be considered with all other circumstances in determining whether the occupant is guilty of independent contributory negligence which would bar or diminish recovery against a third person.[n5]

FOOTNOTES:

n1 Seal v. Lemmel, 140 Colo. 387, 344 P.2d 694 (1959); Nadeau v. Melin, 260 Minn. 369, 110 N.W.2d 29 (1961); Simpson v. Wells, 292 Mo. 301, 237 S.W. 520 (1921); Veek v. Tacoma Suburban Lines, Inc., 49 Wash. 2d 584, 304 P.2d 700 (1956).

Related References:
Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312.

n2 § 713.

n3 Bofill v. New Orleans Ry. & Light Co., 135 La. 996, 66 So. 339 (1914).

n4 Swanson v. McQuown, 139 Colo. 442, 340 P.2d 1063 (1959); Nadeau v. Melin, 260 Minn. 369, 110 N.W.2d 29 (1961); Siburg v. Johnson, 249 Or. 556, 439 P.2d 865 (1968); Veek v. Tacoma Suburban Lines, Inc., 49 Wash. 2d 584, 304 P.2d 700 (1956).

n5 Veek v. Tacoma Suburban Lines, Inc., 49 Wash. 2d 584, 304 P.2d 700 (1956).

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
D. Persons Liable, in General
5. Members of Joint Enterprise

8 Am Jur 2d Automobiles and Highway Traffic § 712

§ 712 Generally

When a passenger has the legal right to control an automobile, the joint-enterprise theory may permit, in some circumstances, the imputation of a driver's negligence to a passenger in the automobile. [n1]

Where an occupant of a motor vehicle is engaged in a joint enterprise with the driver and is injured by reason of the concurrent negligence of the driver and a third person, the driver's negligence is imputable to such occupant and will bar or diminish the occupant's recovery against the third person. [n2] Where an occupant of a motor vehicle is engaged in a joint enterprise with the driver and has an equal right to direct and control the operation of the vehicle, the negligence of the driver is imputable to the occupant even though he or she takes no actual control while the other is driving. [n3]

This joint-enterprise rule imputing negligence of a driver to an occupant has been variously said to be founded upon the doctrine of principal and agent, [n4] or upon the theory of partnership or a relationship akin to partnership. [n5] However, the imputed-negligence doctrine through a joint enterprise operates only as to actions against third parties. [n6]

The joint-enterprise doctrine does not require the imputation of the negligence of one driving an automobile under an instruction permit to a licensed operator accompanying the permittee pursuant to statutory requirements. [n7]

The owner of a motor vehicle who is engaged in a joint enterprise with two other persons, one of whom drives the vehicle, is not liable for injuries sustained by the third member as a result of the driver's negligence, where the owner is personally without fault. [n8] If the negligence of the driver is chargeable to the owner, it is likewise chargeable to the third member of the joint enterprise. [n9]

FOOTNOTES:

n1 Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006).

n2 Weller v. Fish Transport Co., 123 Conn. 49, 192 A. 317 (1937); Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995); Sledge v. Continental Cas. Co., 639 So. 2d 805 (La. Ct. App. 2d Cir. 1994); In re Estate of Infant Fontaine, 128 N.H. 695, 519 A.2d 227 (1986); Smalich v. Westfall, 440 Pa. 409, 269 A.2d 476 (1970); Brandjord v. Hopper, 455 Pa. Super. 426, 688 A.2d 721 (1997).

As to what constitutes a joint enterprise, see § 713.

Related References:
Modern status of rule imputing motor vehicle driver's negligence to passenger on joint venture theory, 3 A.L.R.5th 1.

As to imputation of negligence of one member of joint enterprise to other members, generally, see Am. Jur. 2d, Negligence §§ 1114 to 1116.

n3 Remmenga v. Selk, 150 Neb. 401, 34 N.W.2d 757 (1948); Hofrichter v. Kiewit-Condon-Cunningham, 147 Neb. 224, 22 N.W.2d 703, 164 A.L.R. 1256 (1946).

n4 Clark v. Town of Hampton, 83 N.H. 524, 145 A. 265, 61 A.L.R. 1171 (1929); Miller v. Query, 201 Va. 193, 110 S.E.2d 198, 82 A.L.R.2d 912 (1959).

n5 Kokesh v. Price, 136 Minn. 304, 161 N.W. 715, 23 A.L.R. 643 (1917).

n6 Gilmer v. Carney, 608 N.E.2d 709 (Ind. Ct. App. 1993).

n7 Roberts v. Craig, 124 Cal. App. 2d 202, 268 P.2d 500, 43 A.L.R.2d 1146 (1st Dist. 1954).

n8 Hume v. Crane, 352 S.W.2d 610 (Mo. 1962).

n9 Hume v. Crane, 352 S.W.2d 610 (Mo. 1962).

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Automobiles and Highway Traffic
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8 Am Jur 2d Automobiles and Highway Traffic § 713

§ 713 What constitutes a joint enterprise

The "joint-enterprise theory"is applicable when the occupant and the driver of an automobile together have such control and direction over the automobile as to be practically in the joint or common possession of it.[n1] In order to constitute a joint enterprise for the purposes of the rule allowing the imputation of the driver's negligence to the occupant where the two are engaged in a joint enterprise, there must be a common purpose and a community of interest in the object of the enterprise and an equal right in the driver and the occupant to direct and control the conduct of each other with respect thereto.[n2] A common enterprise in riding in a vehicle is not enough to warrant application of the "joint-enterprise theory"; the circumstances must be such as to show that the passenger and the driver had such control over the car as to be substantially in the joint possession of it.[n3] Thus, one merely riding as a guest in a motor vehicle driven by another, without any voice in directing and governing the movements of the vehicle, is not engaged in a joint enterprise with the driver.[n4] The fact that they have the common purpose of riding together for pleasure,[n5] or the fact that they have a common nonbusiness destination,[n6] does not alone establish a joint enterprise. However, where each may direct the movement or operation of the vehicle, the negligence of the driver is imputable to the occupant in an action by the latter to recover damages for injuries against a third person.[n7]

The fact that the driver of a motor vehicle and an occupant therein are fellow employees of a common employer, and are both acting in the scope of their employment, does not make them participants in a joint enterprise.[n8] Nor does the fact that the driver and the occupant have business at the place of destination,[n9] or are going to work for the same employer,[n10] create a joint enterprise in regard to the operation of the vehicle.

The fact that one riding in a motor vehicle driven by another agrees to pay or share the expenses of the trip does not necessarily establish a joint enterprise,[n11] although under the particular circumstances the jury may find that an agreement between the owner of a motor vehicle and another to take a trip and share the expenses equally creates a joint enterprise,[n12] where each has control and authority as to the manner of driving.[n13] An ordinary carpool or "ride share"arrangement between two or more drivers, whereby they take turns in driving their respective motor vehicles back and forth to work, does not constitute a joint enterprise.[n14]

FOOTNOTES:

n1 Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006).

n2 Fries v. U.S., 170 F.2d 726 (6th Cir. 1948); Pyles-Knutzen v. Board of County Com'rs of County of Pitkin, 781 P.2d 164 (Colo. Ct. App. 1989); McKinney v. Public Service Co. of Indiana, Inc., 597 N.E.2d 1001 (Ind. Ct. App. 1992); Lightner v. Frank, 240 Kan. 21, 727 P.2d 430 (1986); Thomas v. Champagne, 638 So. 2d 1151 (La. Ct. App. 1st Cir. 1994); Brown v. Jones, 200 Mich. App. 212, 503 N.W.2d

735 (1993); Strother by Strother v. Herold, 230 Neb. 801, 433 N.W.2d 535, 3 A.L.R.5th 999 (1989); Welc v. Porter, 450 Pa. Super. 112, 675 A.2d 334 (1996).

Related References:
As to the elements of joint ventures, generally, see Am. Jur. 2d, Joint Ventures §§ 8 to 10.

Proof of existence of joint venture. Existence of Joint Venture, 12 Am. Jur. Proof of Facts 2d 295 §§ 7 to 17.

n3 Harris v. Daimler Chrysler Corp., 638 S.E.2d 260 (N.C. Ct. App. 2006).

n4 Smith v. Williams, 180 Or. 626, 178 P.2d 710, 173 A.L.R. 1220 (1947); Schwartz v. Johnson, 152 Tenn. 586, 280 S.W. 32, 47 A.L.R. 323 (1926); West v. Bruns, 294 S.W. 235 (Tex. Civ. App. Texarkana 1927).

n5 Buford v. Horne, 300 So. 2d 913 (Miss. 1974); Hall v. Blackham, 18 Utah 2d 164, 417 P.2d 664 (1966); Price v. Halstead, 177 W. Va. 592, 355 S.E.2d 380, 64 A.L.R.4th 255 (1987).

n6 Gardner v. Hobbs, 69 Idaho 288, 206 P.2d 539, 14 A.L.R.2d 478 (1949); Schmid v. Eslick, 181 Kan. 997, 317 P.2d 459 (1957).

n7 Wiley v. Dobbins, 204 Iowa 174, 214 N.W. 529, 62 A.L.R. 432 (1927).

n8 Bartholomew v. Oregonian Pub. Co., 188 Or. 407, 216 P.2d 257 (1950); Veek v. Tacoma Suburban Lines, Inc., 49 Wash. 2d 584, 304 P.2d 700 (1956).

n9 Fredrickson v. Kluever, 82 S.D. 579, 152 N.W.2d 346 (1967); Bach v. Liberty Mut. Fire Ins. Co., 36 Wis. 2d 72, 152 N.W.2d 911 (1967).

n10 Carlson v. Erie R. Co., 305 Pa. 431, 158 A. 163, 80 A.L.R. 308 (1931).

n11 Yokom v. Rodriguez, 41 So. 2d 446 (Fla. 1949); Hofrichter v. Kiewit-Condon-Cunningham, 147 Neb. 224, 22 N.W.2d 703, 164 A.L.R. 1256 (1946).

n12 Grubb v. Illinois Terminal Co., 366 Ill. 330, 8 N.E.2d 934 (1937); Murphy v. Keating, 204 Minn. 269, 283 N.W. 389 (1939).

n13 Christopherson v. Minneapolis, St. P. & S.S.M. Ry. Co., 28 N.D. 128, 147 N.W. 791 (1914).

n14 Conner v. Southland Corp., 240 So. 2d 822 (Fla. Dist. Ct. App. 4th Dist. 1970); Bridgewater v. Wagoner, 28 Ill. App. 2d 201, 170 N.E.2d 785 (2d Dist. 1960).

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8 Am Jur 2d Automobiles and Highway Traffic § 714

§ 714 Effect of family relationship

Family relationship alone is not a basis for holding one riding in a motor vehicle driven by another member of the family to be engaged in a joint enterprise with the driver.[n1] For example, a wife riding with her husband in a motor vehicle driven by him,[n2] or a husband riding with his wife in a motor vehicle driven by her,[n3] is not ordinarily deemed to be engaged in a joint enterprise with his or her spouse merely by reason of the marital relationship. The fact that both spouses are going on a pleasure trip does not make the trip the type of common enterprise required for the application of the imputed-negligence doctrine.[n4] In the absence of a right of both to control, direct, and govern the operation of the vehicle, a husband and wife riding together while engaged in carrying out a common purpose are not engaged in a joint enterprise insofar as the operation of the vehicle is concerned.[n5] However, where family members are in fact engaged in a joint enterprise, the negligence of the driver is imputable to the other and may bar or diminish the recovery against a third party who was concurrently negligent.[n6]

FOOTNOTES:

n1 Rock v. Atlantic Coast Line R. Co., 222 S.C. 362, 72 S.E.2d 900 (1952); Finn v. Drtina, 30 Wash. 2d 814, 194 P.2d 347, 2 A.L.R.2d 919 (1948).

Related References:
Modern status of rule imputing motor vehicle driver's negligence to passenger on joint venture theory, 3 A.L.R.5th 1.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1277 (Answer, counterclaim, reply -- Affirmative defenses and new matter -- Imputed contributory negligence -- Joint enterprise -- Husband and wife -- Inspection of jointly owned property).

n2 Woodard v. St. Louis-San Francisco Ry. Co., 418 F.2d 1305 (5th Cir. 1969); Ingersoll v. Mason, 254 F.2d 899 (8th Cir. 1958); Clemens v. O'Brien, 85 N.J. Super. 404, 204 A.2d 895 (App. Div. 1964); Adams v. Treat, 256 Or. 239, 472 P.2d 270 (1970); Morrarty v. Reali, 100 R.I. 689, 219 A.2d 404 (1966).

n3 Sherman v. Korff, 353 Mich. 387, 91 N.W.2d 485 (1958).

n4 Sherman v. Korff, 353 Mich. 387, 91 N.W.2d 485 (1958); Virginia Transit Co. v. Simmons, 198 Va. 122, 92 S.E.2d 291 (1956).

n5 Woodard v. St. Louis-San Francisco Ry. Co., 418 F.2d 1305 (5th Cir. 1969); Bainbrich v. Wells, 28 Colo. App. 432, 476 P.2d 53 (1970), judgment aff'd, 176 Colo. 503, 491 P.2d 976 (1971).

n6 Smithson v. Dunham, 201 Kan. 455, 441 P.2d 823 (1968).

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8 Am Jur 2d Automobiles and Highway Traffic § 715

§ 715 Recovery by one member of joint enterprise against other

The negligence of one member of a joint enterprise driving a motor vehicle may not be imputed to another member who is an occupant, for the purpose of precluding liability of the former to the latter for personal injuries resulting from the negligent operation of the vehicle.[n1] In other words, where one joint venturer is guilty of a tortious act in the operation of a motor vehicle to the damage of an associate in the joint enterprise, he or she must respond in damages.[n2] The doctrine of joint enterprise does not prevent one spouse from holding the other liable for personal injuries inflicted upon the former by the latter's negligence in the operation of an automobile in which both were returning to their home from the performance of an errand.[n3]

FOOTNOTES:

n1 Pepper v. Morrill, 24 F.2d 320, 57 A.L.R. 750 (C.C.A. 1st Cir. 1928); Roberts v. Craig, 124 Cal. App. 2d 202, 268 P.2d 500, 43 A.L.R.2d 1146 (1st Dist. 1954); Hume v. Crane, 352 S.W.2d 610 (Mo. 1962); Smith v. Williams, 180 Or. 626, 178 P.2d 710, 173 A.L.R. 1220 (1947); Archie v. Yates, 205 Tenn. 29, 325 S.W.2d 519 (1959).

As to the liability of a member of a joint enterprise to a third person or a coadventurer for the negligence of another coadventurer, see § 712.

n2 Lightcap v. Mettling, 196 Kan. 124, 409 P.2d 792 (1966); Mencher v. Goldstein, 240 A.D. 290, 269 N.Y.S. 846 (2d Dep't 1934).

n3 Archer v. Chicago, M., St. P. & P. Ry. Co., 215 Wis. 509, 255 N.W. 67, 95 A.L.R. 851 (1934).

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8 Am Jur 2d Automobiles and Highway Traffic § 716

§ 716 Generally

The operator of a motor vehicle who causes injury to another, or damage to another's property, by reason of his or her negligence in operating the vehicle, is liable in damages for the injuries caused, regardless of whether such operator is the owner of the vehicle or is driving the vehicle of another.[n1] Thus, a person who hires or borrows a motor vehicle and drives it in his or her own business is liable for injuries resulting from his or her negligent operation of the vehicle,[n2] even though the owner may also be liable under some common-law rule[n3] or statutory provision imposing liability upon owners.[n4] Also, an automobile dealer may be liable for injuries sustained by a third party in an accident with an allegedly unlicensed and irresponsible driver 10 days after the dealer sold the vehicle to the driver, and liability may be based either on the claim that the driver, who was known to the dealer as a questionable operator of vehicles, frequently bought used cars and returned them for trade-in just before the expiration of the temporary registration, or on the dealer's failure to perform the statutory duty of ascertaining that buyers were licensed drivers.[n5] A person allegedly involved in a conspiracy is not liable for the negligence of the driver, who was an alleged coconspirator, in the operation of a motor vehicle where, at the time of the accident, the driver was not acting in furtherance of the alleged conspiracy.[n6]

FOOTNOTES:

n1 Tanzer v. Read, 160 A.D. 584, 145 N.Y.S. 708 (1st Dep't 1914).

n2 Kuhn v. Auto Cab Mut. Indem. Co., 244 A.D. 272, 279 N.Y.S. 60 (2d Dep't 1935), aff'd, 270 N.Y. 587, 1 N.E.2d 343 (1936).

n3 §§ 614 to 639.

n4 §§ 640 to 658.

Related References:
As to the effect of the relationship of husband and wife between the parties on liability for an injury resulting from the operation of a motor vehicle, see Am. Jur. 2d, Husband and Wife § 261.

As to general principles governing the tort liability of a minor, see Am. Jur. 2d, Infants §§ 127 to 142.

As to general principles governing the tort liability of a mentally impaired person, see Am. Jur. 2d, Mentally Impaired Persons §§ 155 to 157.

n5 Schneider v. Midtown Motor Co., 854 P.2d 1322 (Colo. Ct. App. 1992).

n6 Carroll v. Timmers Chevrolet, Inc., 592 S.W.2d 922 (Tex. 1979).

REFERENCE: West's Key Number Digest, Automobiles [westkey]163(1) to 163(5), 166, 167, 181(1) to 181(7), 183 to 186, 188 to 200
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8 Am Jur 2d Automobiles and Highway Traffic § 717

§ 717 Person giving, selling, or financing a motor vehicle to, or for, a reckless or incompetent driver

While one who lends his or her motor vehicle to another, knowing such person to be an incompetent, reckless, or careless driver, may be held liable for such person's negligence,[n1] some courts have not extended this rule to impose liability upon one who makes a gift of a motor vehicle to an allegedly incompetent, unfit, or reckless driver for injuries inflicted by the driver in the operation of the vehicle, reasoning that vicarious liability should not be imposed on the donee of the vehicle because of the donee's lack of control over the vehicle after ownership passes to the donor, and the remoteness between the gift of the vehicle and the later negligence of the driver.[n2] The rationale of these cases is that the vicarious liability of an owner for putting a motor vehicle in possession of another person known to be unfit to drive, with the foreseeable and probable consequence that such person will injure somebody, is at most a secondary liability that ought not to be extended to charge a person having no control over the motor vehicle which is owned by one sui juris who actually commits the injurious wrong.[n3] Some courts also hold that parents are not liable for the alleged negligent acts of their minor children in operating a motor vehicle given to the children by the parents.[n4]

Other courts, however, have held that one who gives a car as a gift to a known habitual drunk driver, where the facts show sufficient causation, may be liable for injuries inflicted by the driver, on the ground that the foreseeability of injury from such a driver is strong and the policy of preventing drunk driving is compelling.[n5] Also, parents have been held liable for injuries caused by the negligent driving of their minor child where they --

-- had control over the funds used to buy the minor's car, and the minor had a lengthy juvenile record and was evaluated as impulsive and possibly sociopathic.[n6]

-- purchased a motor vehicle for an epileptic child who was involved in an accident during an epileptic seizure.[n7]

-- purchased an automobile for their child despite knowledge of the child's numerous traffic violations.[n8]

-- furnished their child with a motorcycle that was not equipped with a headlight, horn, or rear-view mirror, and despite their knowledge that the child frequently violated their instruction not to operate it in an area where children played.[n9]

-- gave a motor vehicle to a minor in violation of a statute forbidding operation of motor vehicles by minors.[n10]

The sale of a motor vehicle to one known to be an incompetent and inexperienced driver may result in liability to the seller by reason of an accident caused by the negligence of the incompetent and inexperienced driver.[n11] In some jurisdictions, statutes require an automobile dealer to ascertain that buyers are licensed drivers, and a dealer's failure to do so may render the dealer liable for injuries caused by the negligent operation of a vehicle purchased from the dealer by an allegedly unlicensed and irresponsible driver.[n12]

Observation: In a jurisdiction that does not have such a statute, an automobile dealer owed no duty to the public to ensure that the purchaser of a used care held a valid driver's license and was thus not liable for the negligent entrustment of the car to a buyer whose license was suspended.[n13]

FOOTNOTES:

n1 § 617.

n2 Estes v. Gibson, 257 S.W.2d 604, 36 A.L.R.2d 729 (Ky. 1953).

Related References:
Liability of donor of motor vehicle for injuries resulting from owner's operation, 22 A.L.R.4th 738.

n3 Estes v. Gibson, 257 S.W.2d 604, 36 A.L.R.2d 729 (Ky. 1953); Broadwater v. Dorsey, 344 Md. 548, 688 A.2d 436 (1997).

n4 Carter v. Montgomery, 226 Ark. 989, 296 S.W.2d 442 (1956); Durrett v. Farrar, 130 Ga. App. 298, 203 S.E.2d 265 (1973) (overruled by, Smith v. Telecable of Columbus, Inc., 140 Ga. App. 755, 232 S.E.2d 100 (1976)).

n5 Talbott v. Csakany, 199 Cal. App. 3d 700, 245 Cal. Rptr. 136 (4th Dist. 1988).

n6 Hasegawa v. Day, 684 P.2d 936 (Colo. Ct. App. 1983) (overruled by, Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992)) (wherein liability was based on negligent entrustment).

n7 Golembe v. Blumberg, 262 A.D. 759, 27 N.Y.S.2d 692 (2d Dep't 1941).

n8 Kahlenberg v. Goldstein, 290 Md. 477, 431 A.2d 76, 22 A.L.R.4th 719 (1981) (wherein liability was based on negligent entrustment).

n9 Costa v. Hicks, 98 A.D.2d 137, 470 N.Y.S.2d 627 (2d Dep't 1983).

n10 Carter v. Montgomery, 226 Ark. 989, 296 S.W.2d 442 (1956) (holding parent negligent per se); Sedlacek v. Ahrens, 165 Mont. 479, 530 P.2d 424 (1974).

n11 Johnson v. Casetta, 197 Cal. App. 2d 272, 17 Cal. Rptr. 81 (1st Dist. 1961).

n12 Schneider v. Midtown Motor Co., 854 P.2d 1322 (Colo. Ct. App. 1992).

n13 Johnson v. Owens, 639 N.E.2d 1016 (Ind. Ct. App. 1994).

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8 Am Jur 2d Automobiles and Highway Traffic § 718

§ 718 Partners and partnerships

A partnership is liable for damages or injury caused by one member in the ordinary course of the business of the partnership, to the same extent as the partner committing the act.[n1] Accordingly, a partnership is liable for the negligent operation of a motor vehicle by one of the partners who is engaged in the partnership business.[n2] In such a case, however, if the partner causing the damages has, in committing the acts complained of, gone outside the purview of the partnership business, only that partner is responsible.[n3]

The fact that one is a co-owner of a motor vehicle, without more, does not charge him or her with liability as a partner for an injury resulting to a third person from the negligent operation of the vehicle by the other co-owner.[n4]

FOOTNOTES:

n1

Related References:
Am. Jur. 2d, Partnership § 410.

n2 Wadsworth v. Webster, 237 A.D. 319, 261 N.Y.S. 670 (3d Dep't 1932); Roth v. Jelden, 80 S.D. 40, 118 N.W.2d 20 (1962).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 742 (Liability of partnership and individual partners).

n3 Bernheimer Bros. v. Becker, 102 Md. 250, 62 A. 526 (1905).

n4 Towers v. Errington, 78 Misc. 297, 138 N.Y.S. 119 (Sup 1912); Hamilton v. Vioue, 90 Wash. 618, 156 P. 853 (1916).

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8 Am Jur 2d Automobiles and Highway Traffic § 719

§ 719 Person signing minor's application for driver's license

In some states, statutes require that a parent or other custodian of a minor who applies for a license to drive a motor vehicle sign the application and assume liability for the licensee's negligence or willful misconduct in the operation of such a vehicle.[n1] The purpose of such "signer's statutes"is to afford users of the highways protection from minor drivers by requiring a sponsor for the minor to obtain a driver's license, limiting sponsors to those persons who would be likely to be able to exercise control over the minor's driving, and imposing financial responsibility on sponsors for the minor's negligence or willful misconduct.[n2]

Practice Tip: Not all "signer's statutes"impose liability upon the sponsor for the minor licensee's negligent or willful misconduct, and it has been held that where a minor has obtained a driver's license under a statute that does not impose such liability, the fact that the minor wrongfully caused a motor vehicle accident in another state, whose statute does impose such liability, will not suffice to render the minor's sponsor answerable for the accident.[n3]

Under some statutes, such liability is assumed only where the minor does not file proof of financial responsibility,[n4] and the parents or custodian of the minor who sign the application for the license are not liable for the minor's negligent operation of a motor vehicle where the minor has filed proof of financial responsibility.[n5]

Although there is contrary authority under a particular statute,[n6] under such statutes, that those, and only those, parents or others standing in loco parentis, who signed the minor's application for an operator's license are liable for damages caused by the negligence or willful misconduct of the minor while driving.[n7] Such a statute contemplates a person having permanent legal custody, and not one who, such as a teacher, has a limited control over the minor.[n8] Such a statute is inapplicable where, although the parents had signed their minor child's application for a driver's license, the license had not been issued at the time of the accident and the minor was driving against the parents' express instructions.[n9] A parent signing his or her child's application for a license is not liable for punitive damages arising, for example, out of the child's drunk driving.[n10] However, any limitation of liability contained in a statute respecting the liability for a minor's negligence of one signing and verifying the minor's application for a license is not a limitation on the liability of the person signing for his or her own negligence.[n11]

Loss of control or custody of the minor through the latter's marriage or the divorce of the parents, after the parent has signed an application for a license and assumed the statutory liability imposed, does not relieve the parent from liability in case of accident attributable to such minor's negligence or willful misconduct.[n12] Nor does a change in the legal custody of a minor affect responsibilities imposed by the statute.[n13]

Expiration[n14] or revocation[n15] of a minor's operator's license terminates the liability of the parent or other custodian who signed the application, but mere suspension of the license does not have that effect.[n16]

An accident caused by the negligence of one who was driving by permission of the minor does not render the parent who signed the minor's application liable where the statute imposes liability for the negligence of the minor in "driving"a motor vehicle,[n17] but there is authority to the contrary.[n18]

FOOTNOTES:

n1 Vaught v. Ross, 244 Ark. 1218, 428 S.W.2d 631 (1968); Gracie v. Deming, 213 So. 2d 294 (Fla. Dist. Ct. App. 2d Dist. 1968); Ynocencio v. Fesko, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).

Related References:

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct, 45 A.L.R.4th 87.

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 722 (Compliant, petition, or declaration -- Allegation -- Statutory liability -- Of parents signing minor's application for license).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 723 (Complaint, petition, or declaration -- Allegation -- Statutory liability -- Of parent signing minor's application of license).

n2 Ynocencio v. Fesko, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).

n3 Brown v. Seebach, 763 F. Supp. 574 (S.D. Fla. 1991) (the representatives of a Florida decedent killed in a motor vehicle accident allegedly caused by a minor driver could not, under the Florida signer's statute imposing liability on sponsors of minor drivers for such drivers' wrongful acts, maintain an action against the Connecticut parents who had signed for the minor's driver's license, where the Connecticut statute did not similarly impose liability upon sponsors).

n4 Moore v. Jacobsen, 127 Mont. 341, 263 P.2d 713 (1953).

n5 Beardon v. Derry, 645 S.W.2d 356 (Ky. Ct. App. 1983); Bryan v. Bear, 560 S.W.2d 827 (Ky. Ct. App. 1977); Relf v. Woolwine, 13 Ohio App. 3d 353, 469 N.E.2d 896 (10th Dist. Franklin County 1983); Leggett v. Crossnoe, 206 Tenn. 700, 336 S.W.2d 1 (1960).

n6 Vaught v. Ross, 244 Ark. 1218, 428 S.W.2d 631 (1968) (holding that the statute requires that negligence of a minor driving a car with the father's permission be imputed to the father whether or not he signed the minor's application for a driver's license).

n7 Sgheiza v. Jakober, 132 Cal. App. 57, 22 P.2d 19 (3d Dist. 1933); McGeehan v. Schiavello, 265 A.2d 24 (Del. 1970).

n8 Hathaway v. Siskiyou Union High School Dist., 66 Cal. App. 2d 103, 151 P.2d 861 (3d Dist. 1944).

n9 Rocha v. Garcia, 203 Cal. 167, 263 P. 238 (1928).

n10 Hartford Acc. and Indem. Co. v. Ocha, 472 So. 2d 1338 (Fla. Dist. Ct. App. 4th Dist. 1985).

n11 Kostecky v. Henry, 113 Cal. App. 3d 362, 170 Cal. Rptr. 197 (4th Dist. 1980) (father's liability for negligent supervision of unlicensed driver).

n12 Easterly v. Cook, 140 Cal. App. 115, 35 P.2d 164 (3d Dist. 1934); Sgheiza v. Jakober, 132 Cal. App. 57, 22 P.2d 19 (3d Dist. 1933); Gracie v. Deming, 213 So. 2d 294 (Fla. Dist. Ct. App. 2d Dist. 1968); Rogers v. Wagstaff, 120 Utah 136, 232 P.2d 766, 26 A.L.R.2d 1316 (1951).

n13 Rogers v. Wagstaff, 120 Utah 136, 232 P.2d 766, 26 A.L.R.2d 1316 (1951).

n14 Houston v. Holmes, 202 Miss. 300, 32 So. 2d 138 (1947).

n15 Hamilton v. Dick, 254 Cal. App. 2d 123, 61 Cal. Rptr. 894 (3d Dist. 1967); Keating v. Hollstein, 53 Ohio Misc. 2d 15, 557 N.E.2d 1253 (C.P. 1990).

n16 Sleeper v. Woodmansee, 11 Cal. App. 2d 595, 54 P.2d 519 (3d Dist. 1936).

n17 Lundquist v. Lundstrom, 94 Cal. App. 109, 270 P. 696 (1st Dist. 1928).

n18 Tatlock v. Nathanson, 169 F. Supp. 151 (D. Del. 1959).

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8 Am Jur 2d Automobiles and Highway Traffic § 720

§ 720 Person lending license plates

Generally, the lending of one's license plates to another in violation of statute does not render one liable for injuries sustained by the negligent operation of the other's motor vehicle bearing the former's license plates, there being no causal connection between the accident and the violation of the statute.[n1] However, in a few cases it has been held that one who authorized the display of his or her license plates upon another's motor vehicle was liable for its negligent operation, upon the theory that the lender impliedly exercised control over its operation,[n2] or that an improperly licensed motor vehicle on the highways is a nuisance, and all persons who contribute to it are liable for all injurious consequences.[n3] In addition, a dealer in automobiles who regularly permits its employees to use the dealer's license plates on their own vehicles for their own personal errands, in flagrant violation of applicable law, can be held liable for the negligence of the driver of a car displaying the dealer's plates which due to its condition could not have been issued license plates except under special statutory provisions relating to "historic"or "antique"cars.[n4]

FOOTNOTES:

n1 Cook v. Collins Chevrolet, Inc., 199 Conn. 245, 506 A.2d 1035 (1986) (noting that the purchaser and operator maintained liability insurance); Cambron v. Cogburn, 116 Ga. App. 373, 157 S.E.2d 534 (1967); Berube v. Matoian, 463 A.2d 183 (R.I. 1983).

Related References:
Improper use of automobile license plates as affecting liability or right to recover for injuries, death, or damages in consequence of automobile accident, 99 A.L.R.2d 904.

n2 Morgan v. Termine, 2 Misc. 2d 109, 149 N.Y.S.2d 42 (Sup 1956).

n3 McDonald v. Dundon, 242 Mass. 229, 136 N.E. 264, 26 A.L.R. 1243 (1922).

n4 Wieland v. Kenny, 385 Mich. 654, 189 N.W.2d 257 (1971) (noting that the dealer apparently knew of the condition of the car on which the plates were being displayed).

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8 Am Jur 2d Automobiles and Highway Traffic § 721

§ 721 Holder of highway permit where another operates motor vehicle thereunder

The holder of a franchise or certificate of convenience and necessity to transport passengers or goods over public highways is liable for another's negligent operation of a motor vehicle under such a permit,[n1] and cannot escape liability by an arrangement whereby the other is an independent contractor[n2] or is operating under a lease from the holder of the permit.[n3] However, the holder of a highway permit is not liable for the negligent operation of a motor vehicle by one to whom he or she has leased operating rights, where the lessee secures his or her own highway permit and is operating thereunder.[n4]

Under the "logo-liability rule,"a truck lessee is liable to parties injured by the operation of a leased truck bearing the lessee's Interstate Commerce Commission number and logo.[n5]

The holder of a highway permit is liable for the negligent operation of a motor vehicle leased from one not authorized to transport passengers or goods over the public highways, and operated under the former's permit, even though the owner of the vehicle is an independent contractor and liable for the driver's conduct.[n6] However, the holder of a highway permit who employs an independent contractor to transport goods under a one-way lease of the contractor's motor vehicle is not liable for injuries caused by the negligence of the contractor's driver on the return trip with the empty vehicle.[n7]

Statutory employment is a theory of vicarious liability created by the Federal Motor Carrier Safety Regulations (FMCSR).[n8] Under the regulations, motor carriers have both a legal right and duty to control leased vehicles operated for their benefit.[n9] An interstate carrier's liability for equipment and drivers covered by leasing agreements is governed by the Federal Motor Carrier Safety Regulations (FMCSR) rather than common-law doctrines of respondeat superior.[n10] The purpose of the statutory employment regulations under the Federal Motor Carrier Safety Regulations (FMCSR) is to ensure that carriers will be fully responsible for the maintenance and operations of leased equipment and the supervision of the borrowed drivers, thereby protecting the public from accidents, preventing public confusion about who was financially liable if accidents occurred, and providing financially responsible defendants.[n11] However, where the carrier has no right to control the driver, did not have possession of the tractor-trailer, it is not vicariously liable under the regulations.[n12] The fact that a truck driver is an independent contractor does not change the driver's status as a "statutory employee"of a carrier company, under the regulations.[n13] A carrier is deemed the "statutory employer"of a driver, under the regulations when: (1) the carrier does not own the vehicle; (2) the carrier operates the vehicle under an arrangement with the owner to provide transportation subject to federal regulations; and (3) the carrier does not literally employ the driver.[n14]

FOOTNOTES:

n1 Engelke v. Wheatley, 148 Conn. 398, 171 A.2d 402 (1961) (overruled by, State v. Spillane, 257 Conn. 750, 778 A.2d 101 (2001)).

n2 Eli v. Murphy, 39 Cal. 2d 598, 248 P.2d 756 (1952).

n3 Engelke v. Wheatley, 148 Conn. 398, 171 A.2d 402 (1961) (overruled by, State v. Spillane, 257 Conn. 750, 778 A.2d 101 (2001)); Empire Indem. Ins. Co. v. Carolina Cas. Ins. Co., 838 F.2d 1428 (5th Cir. 1988) (rejected by, Nolt v. U.S. Fidelity and Guaranty Co., 329 Md. 52, 617 A.2d 578 (1993)).

Related References:
Liability of lessor motor carrier for lessee's torts or nonperformance of franchise duties, 34 A.L.R.2d 1121.

n4 Blagg v. Strickland Transp. Co., 222 Ark. 303, 258 S.W.2d 894 (1953).

n5 Jackson v. O'Shields, 101 F.3d 1083 (5th Cir. 1996); Connecticut Indem. Co. v. Harris Transport Co., 909 F. Supp. 1212 (W.D. Ark. 1995), decision aff'd, 108 F.3d 1381 (8th Cir. 1997); Graham v. Malone Freight Lines, Inc., 948 F. Supp. 1124 (D. Mass. 1996), order clarified on reconsideration, 43 F. Supp. 2d 77 (D. Mass. 1997), judgment aff'd, 201 F.3d 427 (1st Cir. 1999), published in full at, 314 F.3d 7 (1st Cir. 1999); Gilstorff v. Top Line Express, Inc., 910 F. Supp. 355 (N.D. Ohio 1995), rev'd, 106 F.3d 400 (6th Cir. 1997); Detrick v. Midwest Pipe & Steel, Inc., 598 N.E.2d 1074 (Ind. Ct. App. 1992); Jerina v. Schrock, 37 Ohio App. 3d 171, 525 N.E.2d 524 (11th Dist. Geauga County 1987) (rejected by, Wyckoff Trucking, Inc. v. Marsh Bros. Trucking, 1989 WL 92136 (Ohio Ct. App. 12th Dist. Warren County 1989)); Appeal of Allied Van Lines, Inc., 517 Pa. 591, 535 A.2d 81 (1987).

n6 Barry v. Keeler, 322 Mass. 114, 76 N.E.2d 158 (1947); Virgil v. Riss & Co., 241 S.W.2d 96 (Mo. Ct. App. 1951); Jocie Motor Lines v. Johnson, 231 N.C. 367, 57 S.E.2d 388 (1950).

n7 Costello v. Smith, 179 F.2d 715, 16 A.L.R.2d 954 (2d Cir. 1950).

Related References:
Liability of freight motor carrier possessing certificate from Interstate Commerce Commission and employing noncertified independent contractor under "one-way"lease of latter's vehicle for negligence of latter's employee on return trip, 16 A.L.R.2d 960.

n8 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

n9 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

n10 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

n11 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

n12 Omega Contracting, Inc. v. Torres, 191 S.W.3d 828 (Tex. App. Fort Worth 2006).

n13 Sharpless v. Sim, 209 S.W.3d 825 (Tex. App. Dallas 2006), reh'g overruled, (Jan. 9, 2007) and review denied, (June 1, 2007).

n14 Sharpless v. Sim, 209 S.W.3d 825 (Tex. App. Dallas 2006), reh'g overruled, (Jan. 9, 2007) and review denied, (June 1, 2007).

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8 Am Jur 2d Automobiles and Highway Traffic § 722

§ 722 Persons attracting children into streets

On the theory that it could reasonably be expected that children would be attracted to a vehicle used for selling or delivering goods on a public highway, and that the danger inherent in so attracting children to the street should be foreseen and guarded against by the person creating the attraction, liability for damages suffered by a child as the result of his or her response to the attraction may be imposed, even though the actual injury was inflicted by another motorist using the street.[n1] However, where the possible negligence of the owner or operator of a vehicle used in selling or delivering goods on a street, in attracting children to such a vehicle, was remote from the automobile accident causing the injury, and that other intervening acts were the proximate cause of the injury, the truck owner or operator is not liable.[n2]

FOOTNOTES:

n1 Schwartz v. Helms Bakery Limited, 67 Cal. 2d 232, 60 Cal. Rptr. 510, 430 P.2d 68 (1967); Ferrer v. Harris, 55 N.Y.2d 285, 449 N.Y.S.2d 162, 434 N.E.2d 231 (1982), order amended on other grounds, 56 N.Y.2d 737, 451 N.Y.S.2d 740, 436 N.E.2d 1342 (1982); Thomas v. Goodies Ice Cream Co., 13 Ohio App. 2d 67, 42 Ohio Op. 2d 147, 233 N.E.2d 876 (10th Dist. Franklin County 1968); Hastings v. Smith, 223 Tenn. 142, 443 S.W.2d 436 (1969).

Related References:
Civil liability of mobile vendor for attracting into street child injured by another's motor vehicle, 84 A.L.R.3d 826.

n2 Molliere v. American Ins. Group, 158 So. 2d 279 (La. Ct. App. 1st Cir. 1963), writ refused, 245 La. 586, 159 So. 2d 290 (1964); Bloom v. Good Humor Ice Cream Co. of Baltimore, 179 Md. 384, 18 A.2d 592 (1941).

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8 Am Jur 2d Automobiles and Highway Traffic § 723

§ 723 Imputation to child of parent's negligence in permitting child to be in street

In most jurisdictions the rule is that in an action by or on behalf of a child of tender years for personal injury, the fault or negligence of his or her parent or custodian cannot be imputed to the child.[n1] Thus, any negligence of a parent in permitting a child of tender years to be upon the street without adequate supervision[n2] is not imputed to the child in an action by or on behalf of such child for injuries inflicted upon him or her by the negligent operation of a vehicle in the street.[n3] However, in some cases the negligence of a parent or of the custodian of a child non sui juris contributing to the injury of the child by a third person, is imputed to the child so as to bar a recovery by or in behalf of the child, if the child itself is not capable of exercising the proper degree of care.[n4] Under such a rule, any negligence of a parent in permitting a child of tender years to be upon the street without adequate supervision is imputable to the child in an action by or on behalf of such child for injuries sustained when struck by a negligently operated vehicle.[n5]

FOOTNOTES:

n1

Related References:
Am. Jur. 2d, Negligence § 1149.

n2 § 476.

n3 Zarzana v. Neve Drug Co., 180 Cal. 32, 179 P. 203, 15 A.L.R. 401 (1919); Montoya v. Winchell, 69 N.M. 177, 364 P.2d 1041 (1961); Lowery v. Berry, 153 Tex. 411, 269 S.W.2d 795 (1954).

n4

Related References:
Am. Jur. 2d, Negligence § 1152.

n5 Casey v. Smith, 152 Mass. 294, 25 N.E. 734 (1890).

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