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CRIMINAL LAW-REQUISITE MENTAL ELEMENT IN CRIMINAL ASSAULT

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CRIMINAL LAW—REQUISITE MENTAL ELEMENT IN CRIMINAL ASSAULT —Defendant was driving his car after dark at a speed greatly in excess of that prescribed by a local ordinance. While proceeding in this fashion, the car overtook and struck a bicycle, severely injuring a passenger thereon. From a conviction of criminal assault of the passenger, defendant appealed. *Held*, affirmed. The necessary intent to injure a specific passenger of a vehicle may be inferred from the recklessness evidenced by driving at night at a speed greatly exceeding the statutory limit. *Wellons v. State*, (Ga. App. 1948) 48 S.E. (2d) 925.

It is often stated that an intent to injure is a requisite for liability in criminal

assault.[1] This indicates that the actor must not only desire to produce a muscular movement,[2] but must also intend a consequential injury arising from this act.[3] To determine the full import of this statement, consideration should be directed to a determination of the meaning of intent. In the law of assault, the word is of major significance as a symbol representing various series of operative facts. Beyond an actual desire to produce a given consequence, one type of series of facts which has been defined as intent is a desire on the part of the actor to perform an act which he knows will necessarily result in a given consequence. It is probably in this sense, the expectancy of the consequence, that the word is employed in common usage, and it appears settled that such a mental state is sufficient to ground liability. The term has come to represent another type of series of operative facts, however. Where the actor desires to perform an act under certain circumstances, he will be considered to "intend" what the court feels are the natural and probable consequences of the act. Such a mental state is more of the nature of an enforced anticipation rather than expectancy,[4] and may be illustrated by the following statement: driving a car at a high rate of speed is a product of the will of the driver—intention to injure may be implied from the consequences that are naturally to be apprehended as a result of the particular act the doing of which was intentional.[5] Courts will not infer an intent to injure from all willful acts, the natural and probable consequence of which is injury.[6] The circumstances surrounding the willful act must show "reckless disregard for the safety of others,"[7] gross negligence,[8] or the desired act must be done "recklessly."[9] If the act is

[1] 6 C.J.S., Assault and Battery, 924; 22 MICH. L. REV. 717 at 719 (1924).

[2] Cook, "Act, Intention, and Motive in the Criminal Law," 26 YALE L.J. 645 at 647 (1917).

[3] 22 MICH. L. REV. 717 at 719 (1924).

[4] Ibid. On the historical development of this meaning of intent, see Hall, "Assault and Battery by the Reckless Motorist," 31 J. CRIM. 133 (1940); cf., Tulin, "The Role of Penalties in Criminal Law," 37 YALE L.J. 1048 (1928).

[5] State v. Schutte, 87 N.J.L. 15, 93 A. 112 (1915).

[6] People v. Waxman, 232 App. Div. 90, 249 N.Y.S. 180 (1931).

[7] Luther v. State, 177 Ind. 619 at 625, 98 N.E. 640 (1912).

[8] Medley v. State, 156 Ala. 78, 47 S. 218 (1908). The court in this case did not impute an intent to injure to one who committed a willful act under circumstances of gross negligence resulting in injury. Rather it held that gross negligence replaces intent as an operative fact of assault. Since little distinction has been made between gross negligence and reckless disregard of consequences in American cases [PROSSER, TORTS, 262 (1941)], it is felt that the court reached its result not because of any logical inability to infer an intent to injure from gross negligence, but rather because of a desire to redefine the operative facts of criminal assault. Such a solution is welcome elimination of needless legal circumlocution. See also State v. Linville, 150 Kan. 617, 95 P. (2d) 332 (1939); and Commonwealth v. Hawkins, 157 Mass. 551, 32 N.E. 862 (1893).

[9] State v. Sloanaker, 1 Del. Cr. 63 at 65 (1858). As to what conduct courts will characterize as exhibiting reckless disregard for the safety of others, gross negligence, or recklessness, no definite rule is available. It is clear, however, that mere negligence will not suffice. Luther v. State, 177 Ind. 619, 98 N.E. 640 (1912). For applications of the several tests indicated above, see Brimhall v. State, 31 Ariz. 522, 255 P. 165, (1927); Commonwealth v. Kalb, 129 Pa. Super. 241, 195 A. 428 (1937); Commonwealth v. Davis, 150 Va. 611, 143 S.E. 641 (1928); and 99 A.L.R. 835 (1935).

malum in se,[10] or unlawful, [11] some courts will infer from it an intent to injure. It is quite clear that in the absence of statute,[12] the law in this area has broadened the scope of the crime, not by attacking directly the major premise, that is, that intent to injure is necessary in assault; but rather by broadening the application of the minor premise, that is, the meaning of intent.

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[10] King v. State, 157 Tenn. 635, 11 S.W. (2d) 904 (1928) (crime of driving while intoxicated was considered to be malum in se, and the court held that an intent to injure could be inferred from this fact); see also Commonwealth v. Adams, 114 Mass. 323 (1873).

[11] It is generally held that while violation of a statute or ordinance may be some evidence of recklessness, this alone will be insufficient from which to infer an intent to injure. State v. Schutte, 88 N.J.L. 396, 96 A. 659 (1916). But some courts do find it to be sufficient. See State v. Sudderth, 184 N.C. 753, 114 S.E. 828 (1922); Fishwick v. State, 33 Ohio C.C. 63, 14 Ohio C.C. (n.s.) 368 (1911); De Lisa v. Scott, 47 Ohio App. 503, 192 N.E. 174 (1934). These cases do not, however, attempt to eliminate the element of intent from the operative facts of criminal assault.

[12] For example, see Vernon's Tex. Penal Code Ann. (1936), Art. 1149, defining "Assault with a Motor Vehicle" to include acts of negligence.