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NEGLIGENCE-LIABILITY FOR NEGLIGENCE OF MINOR DRIVER IMPUTED TO PERSON SIGNING M:rNoR's APPLICATION FOR DRIVER'S License

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NEGLIGENCE—LIABILITY FOR NEGLIGENCE OF MINOR DRIVER IMPUTED TO PERSON SIGNING MINOR'S APPLICATION FOR DRIVER'S LICENSE—A father signed his daughter's application for a driver's license in accordance with the terms of a Utah statute, which required that the application for a minor's driver's license be signed by the parent or guardian, and imputed liability for the minor's negligence or wilful misconduct to the person signing the application.[1] Before

[1] Utah Code Ann. (1943) §57-4-12: "(a) The application of any person under the age of eighteen years for an instruction permit or operator's license shall be signed and verified . . . by the father of the applicant, if the father be living and has custody of the applicant, otherwise by the mother or guardian having custody of such minor, or in the event that a minor has no father, mother or guardian . . . by some other responsible person who is willing to assume the obligation imposed under this act upon a person signing the application of a minor.

"(b) Any negligence or wilful misconduct of a minor under the age of eighteen when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor. . . ."

the daughter reached her majority (i.e., eighteenth birthday), the following events took place: (1) her mother was given sole custody of her in a divorce action; (2) she married; and (3) she negligently drove her car against the plaintiff, who brought suit against the daughter, her husband, and her father. The trial court dismissed the action as to the father, even though he had not requested cancellation of the license as permitted by statute.[2] On appeal, *held,* reversed. Liability for minor's negligence is imputed to the person who signed the application for the driver's license, regardless of loss of custody and minor's subsequent marriage, where cancellation of the license had not been requested. *Rogers v. Wagstaff,* (Utah 1951) 232 P. (2d) 766.

Appellee's contentions, accepted by the trial court, were that the daughter's marriage had ended her minority,[3] making the statute inapplicable, and that appellee's liability ended when he lost custody of his daughter. The determination of the first contention is necessarily a question of statutory interpretation of the words "persons under the age of eighteen years."[4] Two definitions of "minor" might be argued: (1) any person under eighteen years of age, or (2) any person under eighteen years of age not otherwise emancipated. The court's choice of the former seems the better one, considering the legislative intent "to protect the public by requiring proof of financial responsibility in behalf of persons under the age of eighteen years before issuance of a driver's license."[5] The principal case indicates that use of the more restrictive definition might result in a lack of any responsible person to pay a damage judgment. Furthermore, the court's conclusion finds support in the fact that a substantially similar California statute expressly states that a minor under eighteen is not exempted by reason of marriage.[6] Although some courts have said that these statutes are in derogation of the common law rule, and hence ought to be strictly applied,[7] they reach the same result as the principal case. A better view would seem to be that such statutes are remedial, and should not be so strictly construed as to defeat the legislature's intent in passing them.[8] Using this approach, the Utah court's conclusion seems the proper one.

[2] Utah Code Ann. (1943) §57-4-12: "(d) Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be cancelled. . . . the person who signed the application of such minor shall be relieved from the liability imposed under this act. . . ."

[3] Utah Code Ann. (1943) §14-1-1: "The period of minority extends . . . in females to . . . eighteen years; but all minors obtain their majority by marriage."

[4] Utah Code Ann. (1943) §57-4-12(a), see note 1 supra. Ibid.: "(f) All operators' licenses issued to persons who are under the age of eighteen years at the effective date of this act are hereby cancelled until they have been duly reapplied for as provided in this section."

[5] Principal case at 769.

[6] Cal. Vehicle Code (Deering, 1948) §350(b).

[7] Weber v. Pinyan, 9 Cal. (2d) 226, 70 P. (2d) 183 (1937); Houston v. Holmes, 202 Miss. 300, 32 S. (2d) 138 (1947).

[8] Bispham v. Mahoney, 37 Del. 285, 183 A. 315 (1936).

Appellee's second contention, that custody of the minor is a requisite to any imputed liability, appears to have less to support it. While the signer must be a person having custody of the minor if possible, a person not having custody may sign in the absence of any person having custody.[9] In other states with substantially similar statutes, liability has been imputed to the signer even though he was not a proper signer under the terms of the statute,[10] or had subsequently lost custody.[11] The Utah statute simply states that liability shall be imputed to the signer, making no exception.[12] To add to this statement the condition that the minor must remain in the signer's custody would seem an unwarranted restriction, considering that custody is not necessary to create the liability in the first instance, and in view of the authority making liability independent of continued custody. The Utah court is thus imposing a separate statutory liability, independent of any relationship which might give rise to a vicarious liability at common law. Cases decided under similar statutes have reached the same result.[13] As previously noted, the court's interpretation of the legislative intent is to protect the public by requiring proof of financial responsibility in behalf of minors under eighteen years. Provisions for release of the signer upon proof of the minor's independent financial responsibility[14] and cancellation of the license upon proof of the signer's death[15] tend to support the court's interpretation. The provision for cancellation of the license and release from liability on the signer's request[16] allows escape from any inequities. It is submitted that the court's interpretation of the legislative intent is reasonable and well served by the decision in this case.

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[9] Utah Code Ann. (1943) §57-4-12(a). See note 1 supra.

[10] Pontius v. McLain, 113 Cal. App. 452, 298 P. 541 (1931); Bispham v. Mahoney, supra note 8.

[11] Easterly v. Cook, 140 Cal. App. 115, 35 P. (2d) 164 (1934).

[12] Utah Code Ann. (1943) §57-4-12(b). See note 1 supra.

[13] Sgheiza v. Jakobar, 132 Cal. App. 57, 22 P. (2d) 19 (1933); Easterly v. Cook, supra note 12; Weber v. Pinyan, supra note 7; Scheibe v. Town of Lincoln, 223 Wis. 425, 271 N.W. 47 (1937); Sleeper v. Woodmansee, 11 Cal. App. (2d) 595, 54 P. (2d) 519 (1936); Rogers v. Foppiano, 23 Cal. App. (2d) 87, 72 P. (2d) 239 (1937).

[14] Utah Code Ann. (1943) §57-4-12(c).

[15] Id., §57-4-12(e).

[16] Id., §57-4-12(d). See note 2 supra.