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# Statutory Violation Labeled Negligence Per Se

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## TORTS

### STATUTORY VIOLATION LABELED NEGLIGENCE *PER SE*

The Arkansas State Highway Commission, pursuant to its authority to regulate load limits, filed suit to recover damages sustained when defendant's overloaded truck caused a bridge to collapse. The trial court submitted the issue of negligence to the jury which found for the defendant, although the statute expressly declared that any violator should be held civilly liable for damage. On appeal, *held*: reversed. The defendant's violation of the regulation constituted negligence *per se*. *Arkansas State Highway Comm. v. Mode*, 157 S.W. (2d) 53 (Ark. 1942).

A majority of jurisdictions deem violations of traffic statutes to be negligence *per se*. *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920); *Winder & Son v. Blaine*, 29 N.E. (2d) 987 (Ind. 1940); *cf.* Note (1918) 28 YALE L.J. 91. Arkansas and a few other states, however, have held such violations to be mere *evidence* of negligence. *Shipp v. Missouri Pacific Transp. Co.*, 197 Ark. 104, 122 S.W. (2d) 593 (1939); *Hansen v. Kemmish*, 210 Iowa 1008, 208 N.W. 277 (1926); Note (1930) 10 B.U.L. REV. 211, 219. Here the court decided that a clause in the statute expressly imposing civil liability upon violators has the effect of making breaches ordinarily accepted only as *evidence* of negligence, into negligence *per se*.

The court should have ruled for the plaintiff without any reliance upon common law doctrines of negligence. *Cf.* Thayer, *Public Wrong and Private Action* (1913) 27 HARV. L. REV. 317, 319-328 with Lowndes, *Civil Liability Created by Criminal Legislation* (1932) 16

MINN. L. REV. 361 *passim* and Note (1932) 32 COL. L. REV. 712, 716. Common law negligence is irrelevant where liability is statutory. Here liability was squarely placed by the statute upon violators of the commission's ruling, and the court's failure to act directly under it resulted only in needless confusion. The Arkansas legislature should be commended for expressly setting forth its intent as to civil liability. ARK. DIG. STAT. (Pope, 1937) § 6809(a). Such statutes would go a long way toward clarifying and settling the law in situations where confusion has resulted from the common law's clumsy attempt to keep pace with modern developments. It is regrettable that such statutes are rare, and it is even more regrettable when courts fail to take advantage of them when they exist.